UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

25 CFR PART 81
SECRETARIAL ELECTION PROCEDURES

October 26, 2014
1:00 p.m. - 4:00 p.m.

The Hyatt Regency Hotel
265 Peachtree St NE
Atlanta, Georgia 30303

Before Mildred R. Hornblower, CCR

Certified Court Reporters
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PANEL MEMBERS

Danelle Daugherty - Bureau of Indian Affairs Office of
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De Springer - Bureau of Indian Affairs Office of Indian Services

Laurel Iron Cloud - Bureau of Indian Affairs Office of Indian Services

Barbara Coen - Office of the Solicitor

Jim Porter - Office of the Solicitor

Elizabeth Appel - U.S. Department of the Interior Regulatory Affairs & Collaborative Action
PROCEDINGS

MS. IRON CLOUD: Good afternoon, everybody.

We'll go ahead and get started. I am Laurel. I'm the division chief for tribal government services.

On behalf of the assistant secretary, I welcome you to this consultation session.

Just to make sure that everybody is in the correct room. This is the consultation for the proposed rule for 25 CFR, part 81, secretarial election procedures.

With me today, I have Dannele Daugherty, out of the Great Plains region. And De Springer from the Indian Affairs Agency. We have also from the solicitor's office to my right Barb Coen and Jim Porter. All of us are here to be able to talk about the Rule, go through the Rule, explain the Rule.

We have a PowerPoint prepared for you all. At the back of the room, we have Liz Appel from our regulatory affairs office. She has copies -- if you didn't get one -- she has copies of the Rule and our PowerPoint.

Also to the right, we have Ms. Hornblower. She is our court reporter today. We're putting everything on the record. We will have the
resulting transcript available for the public.

She also asks that when you make comments, at lease for the first time, pronounce your name slowly and spell out your name so she can get your comments clearly.

At this point, I would ask that you all introduce yourselves. This is a small group. We can get introductions. Let us know where you're. I'd appreciate that.

Good afternoon, everyone. My name is Veronica Darnell, and I work with the Attorney General's office for Pascua Yaqui Tribe in Arizona.

Good afternoon. My name is Anne Joiner Rone. I'm the vice chairperson of the (indecipherable).

Good afternoon, everybody. I'm Stephen Smith of the Kiowa Tribe of Oklahoma and also Southern Plains region vice president.

Good afternoon. My name is Arlan Melendez. I'm tribal chairman of Reno Sparks Indian Colony and the Shoshone people. I'm also the area vice president for the western region of the national conference.

Good afternoon. My name is Dolly Pewitt. I work out of the office of the chief for the
Seneca-Cayuga Nation in Grove, Oklahoma.

My name is Vernon Miller. I'm on the Tribal Council for the Omaha Tribe.

Good afternoon. My name is Joan Tamichi, and I am a citizen of the Hopi Tribe and work with a program called the Native Nations Institute.

Good afternoon. My name is Paul Ellis. I'm a member of the Oneida Nation of New York, and I'm also tribal policy liaison for the Food and Drug Administration center for Tobacco Products.

MS. IRON CLOUD: Welcome, everybody. I would just like to say I'm Barbara Coen, Department of the Interior Solicitor's Office.

MS. IRON CLOUD: Welcome, everybody. Thank you for the brief introductions; however, I want you all to know that of the people at the table, I am new to the office. I came on board approximately six months ago. So this process was already in the hopper, so to speak, when I got here. I would like you all to know that the other people at the table, the panel, the people on the panel, have decades of experience doing this work. I'm just really pleased that they have agreed to help and be here to provide this information.

So we'll get started. Like I said, we have
the PowerPoint to start with. If at any point you have questions, comments, please feel free to ask them, and we'll move on from there. Thank you.

MS. DAUGHERTY: As Laurel said, I'm Danelle Daugherty. We're going to start off a little bit with De Springer speaking first, because really the history of these regs and their development and certainly the consultation processes and discussions that have gone on over time, De has been much more involved than I have. When she talked about decades of experience, she must've been referring to De, because I don't quite have a decade at Interior yet.

I want to let everybody know right out of the gate that in the secretarial election process, we do need all the tribal involvement and comments so we can take a look at this and make any changes before we roll these regulations out, based on both the needs of the tribes and the needs of the Department of the Interior. That is one of the reasons the secretarial election regs exist is that there are some elections that are required, because they are in the tribe's governing documents that require that the federal government conduct those elections, and we need some guidance
to get those elections performed in a manner that
is consistent with every location. So we do have
the regulations for that purpose. We're really
looking forward to your interaction and your
comments. If you don't have interaction and
comments today, there's some time period to get
those comments in. Please keep that in mind.
I'll turn it over to De, because she's really the
one with decades of experience.

MS. SPRINGER: Well, really I'm an old fart. I've been doing this for 28 years. When I first
started working for the bureau back in '86, that
was one of the things that was my concern. I
don't know about the secretarial elections. I've
never done one before. When they hired me, they
said, don't worry about it. We hardly ever do
secretarial elections, so it'll be a piece of
cake. We did five in two years.

As you'll notice in this packet, we've kind
of broken out secretarial elections for IRA tribes
and OIWA tribes. That's strictly for Oklahoma.
Through the years, the regs were initially updated
in '91. They did consultations and everything in
'91, and the process was never completed. So then
about '93 or '94, they came back and said all the
regulations have to be written in plain English.

So that's when we started trying to take the last
draft and put them into plain English. Plain
English is a lot harder than it sounds.

So then that kind of went by the wayside.

When I left the central office at the end of '98,
one of the last things I had to do was to make
sure the regs were ready to go to consultation
publication. Which I did. In '99, I sent them my
latest draft. They never went anywhere. As
administrations change through the years, the
priorities changed, so regs are going to be hot
for one minute, then the next minute they're not.

With this assistant secretary, that's been one of
his pushes is to get regulations updated, and we
just have to follow to his schedule.

And so we presented the regs to him last
fall. We were waiting to get the okay to do the
consultations. We finally got that okay, so
that's why we have these consultations. We
tried -- I don't know how many of you are familiar
with the old regs in the CFR, but when you try to
follow them, you have to flip back and forth.
Everything is like, well, according to this part,
so you flip back and forth. So what I did for my
own peace of mind was I did an outline of who does what, tribe does this, Bureau does that, the tribe does that. So we kind of rolled that out and we tried to put the regs in an order that makes it more clear, and that they're easier to follow. So hopefully, when you read them, you'll have a better understanding of what the regulations are.

So a couple of years ago I was asked to act as division chief of Tribal Government Services. One of my assignments was to get these regs out. They asked me to put a team together of individuals that had history with the regs and whatever. So we put together a team of Danny Daugherty. She was new to the Bureau. And one of the reasons that we asked a couple of people that were new to the Bureau is because when you're doing these regs and you're seeing them time and time again or you've done them time and time again, you see things that aren't necessarily there. Or you read the regs or you've done the process, and so you know what you're doing, but are the instructions clear?

So we had Danny Daugherty help us. We had Gail (indecipherable). And I think Sherry Levins helped us out with Southern Plains region. And
then for the old farts that we had who had a lot more years than I did was Karen Catcher, she was the deputy regional director of Eastern Oklahoma. She's now retired and works with the Cherokee Nation. Suzanne Cheney, she was a community services officer out of Southern Plains. She's now retired. I think she's just enjoying grandkids now.

So we had all these ladies come in. We would spend days. We would start at 8 o'clock, and we wouldn't quit until 9 o'clock at night trying to get these into some kind of order that everybody can understand them and try to get new ideas.

The regs are basically the same. The processes are the same. The few changes that we did make is what is a proper request. One of the things that always gets us tangled up when we're trying to do this process is the review of the proposed amendments or the proposed constitution, because everybody was starting the 90-day or the 180-day time frame when they submitted that request to the Bureau.

In some cases, it was taking us longer than 90 days or 180 days to get a document that you could vote on. So then the attorneys would come
in and say, well, we're going to sue you because you missed your 90 days. Well, we would give them a choice. You can go ahead and sue us, we stop, you work on your lawsuit, or we continue to work on the document that you presented. Like I said, I've been doing this 28 years, and I haven't been sued for that part.

The thing is, that with these regulations is that whenever -- then we changed it so that when your request comes in for the election, your review has already been done, your legal review has been done. You have the exact language that you want voted on.

The other thing that's changed in there is we are now asking the tribe to present us a list of all tribal members 18 years of age and older. In the past the Bureau used to be able to provide those lists, because tribes used to give us their enrollment information. We used to have a system where we keep that up, and if they wanted an election, we can just get it off our computer. We had our own list. We don't have that anymore. The tribes all have their own databases and their own ways to maintain their membership, so now we have to ask the tribe for that information. And
so those are two of the main things that we've changed with the proper requests.

So we'll kind of go through the amendments, and I'm just kind of giving you a background of where we were and how we got to here. It's a condensed version that has taken me 20 years to get from there to here. So I hope that in the end, one of the things that you'll walk away from these consultations with is the fact there needs to be more information sharing with your membership. If you want to amend your constitution, have membership meetings, do straw polls, because there have been cases where, you know, we presented documents, we've done the election, and they failed miserably.

It's always a good thing, because one of the things I always tell people is that your constitution is how you govern yourself. This is how you say this is how we want it to be, this is how we want to be governed. Whatever decisions you make in your constitution, you have to live with it. There needs to be more participation, because I've noticed through the years that a lot of tribes have been letting attorneys do their work or they're hiring consulting firms to do
their work.

When you look at it, you have to live with that. Is this what you said? And I actually said in a consultation with one of the tribes when were going article by article in the constitution. I told them, I said this part, I don't understand. I said, I read it quite a few times. I don't understand what it means. What was your intent with this?

So the chairman was looking at it, and he said, I don't know. Their tribal attorney was there. So what does this mean? Well, he told me he wanted this, and that's what it says. The chairman said, but that's not what it says. His response was, well, we can take it out. So he never really got what the intent was or what he wrote.

As tribal leaders or if you have your constitutional committees, or whatever, you need to have input from your membership, and you need to understand and be clear on what you're saying. Because a lot of times, one word can mess up your intent. Even sometimes a comma can mess up your intent. So you need to be clear and make sure that everybody can understand what it is you're
trying to say. You want to write it not in, you
know, legal terms. You want anybody in your tribe
18 of a years of age or older should be able to
understand what the provisions of your
constitution are. So this is your governing
document.

A lot of the constitutions that are out there
are the old ones from the '30s and the '40s,
which have never been updated, and the tribes have
outgrown those constitutions. So one of the
things you want to do is you want to look at your
constitution, and what I always tell people it's
like a growing being. You've got to nurture that
like a baby. You have to nurture that baby. You
have to teach them things and get them acclimated
to things as they're growing up. You have to look
at your constitution that way, because it's not
stagnant. It can be changed at any time.

If your tribe is changing, evolving, it's
getting more sophisticated, then your governing
documents need to follow that.

You can do that with informational meetings.
Develop constitutional conventions within your
tribe and work with the BIA. You can get an
informal review anytime. I've answered hundreds
of questions from tribes wanting to know, can we
do this? What exactly do you want to do? And
then we'll help them put some language together to
to get where they want to go.

So that's kind of the one thing that when I
talk to tribes, and whatever, that's one thing
that I want to stress is that there be more input
between the membership and the governing body,
because everybody in the tribe has to live by this
document. Your attorneys, your consultants,
they're not tribal members, so as soon as they're
done, as soon as they're paid, they can walk away,
and you're left to live with whatever they
provided for you. It's always good to make sure
that you have a lot of input into your governing
documents.

Like I said, we broke the regs now into the
Oklahoma Indian Welfare Act and the IRA. We also,
even though there's an Alaska amendment in there,
we didn't put a section in there for the Alaska
amendment. I've been meeting with Alaska since
June, so I'm finding out about the Alaska
amendment firsthand. It's a little bit different
process than what we have going on here. We'll
probably address that later on.
The Oklahoma Indian Welfare Act, as many of you know, was adopted in 1986. At that time the tribe had to vote whether or not they wanted to accept the IRA or not. If you did not vote against it, then the IRA applies, if you voted against it, then you are not allowed to adopt a constitution under the IRA. The Oklahoma Indian Welfare Act was an exception to the IRA. They felt issues in Oklahoma were a little different than they were in most of the country. So the Oklahoma Indian Welfare Act was adopted specifically for Oklahoma tribes.

The main difference between the IRA secretarial election procedures and the Oklahoma Indian Welfare Act procedures is that for the IRA, we do the election, and then we do the approvals. For the Oklahoma Indian Welfare Act, we do the approval, and then there is a ratification of that approval. Why it was done that way? It was done before my time, so I can't answer that. Anyway, that is how we've done it through the years.

So one of the things that we also did when we revised the regs this time is there were two parts, part 81, secretarial elections, part 82 was petitioning. So what we did was we combined
them, because the petitioning process -- if you go
to the petitioning process, what you're trying to
do is get to the secretarial election process. So
we just kind of add them together so we would know
that that's another way that you can get to a
secretarial election. We added that.

So then we just kind of put the legislative
background in there on how the amendments to the
IRA had come about, and when regulations were
adopted.

One of the things that I didn't know until
'82 was when I started working for the Bureau, we
always had a registration process in the
secretarial election regulations. When I started
looking at older constitutions like when I started
working with Alaska, or whatever, I noticed that
their 30 percent was based upon their adult
membership, not on registration.

So our solicitor that works with Barb and
Jill, his name is Scott King, he told me that they
didn't have a registration process until 1967.
That's why we have, you know -- our percentage of
participation is based on how many people
registered to vote in the election. That's where
that came from. Even though I've been doing this
a long time, I'm still learning stuff, too.

I don't know how many of you know him, but
Kevin Washburn, the assistant secretary, is here, and he wanted to address you guys for just a
minute. Just a minute now.

MR. WASHBURN: Yes, ma'am. I will just say a
couple words. I want to thank everybody who's here.
This actually is very important work that's being
done here. Frankly, De Springer and Danny
Dougherty, De Springer probably the most has been
working on this for a very, very long time.
Danny Daugherty, Barb Coen's worked on it a long
time, and Jim Porter as well. Liz Appel, in the
back, from my office, has worked on this for a
while, too.

These are very important rules. The
secretarial elections, in some ways their time
might be passed, but they are still a requirement
in many tribal constitutions. If nothing else, we
need to amend the secretarial election process so
that it works better when people are amending that
requirement for secretarial elections out of their
constitutions, which we are fully supportive of
tribes doing, because that's tribal
self-governance and tribal self-determination.
But we don't want our election process to be an obstacle to tribes doing that. We need to get it fixed so that they can do that.

De and Danny are going through a lot more detail of kind of what all this means. But that's basically the gist of it for me. We need to have a good set of rules for you so that you can amend your constitutions and hold secretarial elections.

There have been a lot of changes since we first drafted our secretarial elections. One change to the United States Constitution that we have to follow. We need our secretarial elections to be lawful under federal law, and that's who we are accountable to is the federal law. As long as you have a secretarial election provision in your constitution, you have to suffer under that as well. But if you amend the secretarial election provision out of your constitution, then you're purely subject to the tribe's processes, and frankly that may be the way it should be. But we need to have a good process for you to get there. So that's what this is about.

We've had several tribes comment on the secretarial elections rule, or proposed rule, and we are very grateful for that. This has been a
long time in coming, because a lot of the work on  
this was done four years ago or so or more, and  
this is one of those things that's not terribly  
sexy, but it's important, so I'm glad that you all  
are here to help provide guidance on it.  

I don't need to say a whole lot more than  
that. I'm going to stick around for a little  
while. We've got a bunch of other listening  
sessions and consultations going on  
simultaneously, so I've been trying to read each  
of them. This one is a very important one, and  
I'm glad that you all are here to talk about this  
and to help us work through it. Thank you.  

De, I'll turn it back to you.  

MS. DAUGHERTY: That was a little over a  
minute, Kevin.  

MS. SPRINGER: Like Mr. Washburn was saying,  
in this day and age, a lot of tribes are taking  
the secretarial rule out of their future  
amendments. We've kind of had a running argument  
on whether or not, you know, that was contrary to  
federal law or not. I was on the side that says  
that was contrary to federal law. But then when  
it was explained to me, as long as the BIA  
conducts the election that removes us, it's not
contrary to federal law. We have to agree to take it out.

We have had some tribes in the past few years that have thought about taking the secretarial approval out of their constitutions, and we haven't had any elections pass where that's been taken out. As far as I know, there's only one tribe in the country that has taken secretarial approval out of their amendments, and that's the Potawatomi tribe out of Kansas. Just like Mr. Washburn said, that's part of self-governance. That's part of your inherent authority to govern yourselves and decide how you are going to govern yourselves.

One of the things that -- I think we even address it in there that you can do it. We do the election and if we approve it, then your future amendments no longer have to be approved by the secretary. That's for the IRA.

The OIWA was silent on that. The OIWA doesn't say the secretary shall, so the OIWA tribes have to know they've always had that authority to do that. Nobody has, but I think Cheyenne and Arapahoe are the only ones that took that out of their constitution. That's probably
about seven or eight years ago.

Just like I said, it just depends on how your tribe is evolving and how you want to govern yourselves. Do you want the Bureau involved in your business? Because as we're going through and doing these constitutional reviews and everything, one of the things that we've been telling the tribes since I started working at the Bureau in '86 was that if there is not a Federal statute that requires the Bureau to take action, don't put it in your constitution.

There's a lot of constitutions that say the secretary shall approve our board members. The secretary shall approve our ordinances, our tribal codes. If there is no Federal statute that requires that, then don't put that in there, because every time you want to make a change to your ordinance, you had to get approval from the secretary.

Nowadays, we're hearing, we don't want the BIA in our business. We don't want the BIA telling us what to do. So that's what you need to do. You need to look at your constitution, see what provisions are there, and if there are any provisions in there requiring secretarial
approval, see if there's a statute that requires that approval. If not, then take it out when you're amending your constitution.

One of the other things that we started putting in there was like -- I don't know if all of you guys remember -- attorney contracts used to have to be approved by the secretary. That was in the IRA. The IRA just changed, and they took the secretarial approval out of attorney contracts.

So one of the things we started doing in the early '90s was putting a phrase in there "as long as required by federal law." So if the law changed, then your constitution automatically changed because the federal law changed. So there are little tricks that you can do there.

If there's a question of your jurisdiction or your territory, you can put in there the statement, to the extent allowed by federal law. So you don't have to take it out, because it's not contrary. You're saying that if we come up to this situation, we're going to follow federal law.

The main thing is to look at your document. Make sure it still meets the needs of today, because your constitution may be from the '40s. A lot of those 1930s, 1940s constitutions were
boilerplate, and they were boilerplate by region.
I didn't realize that until I started working for
the Great Plains. The Great Plains had in their
boilerplate has a lot of language in there dealing
with land, leasing land, homesteads, and all this
other stuff.

You look at constitutions from the other
regions, they don't have that in there. For some
reason, for that region, it was important to those
tribes, so it was put in there. So now the couple
of tribes that I work with, they're trying to
eliminate a lot of that and take it out. So it
just depends. The boilerplate constitutions were
what the government thought you needed at that
time.

One of the things I always tell my relatives
when they're running for office, or whatever, we
have our tribal building, we have our executive
committee, we have our governor or lieutenant
governor. I said, these things are what the
governments said that we have to have for them to
do business with us. That doesn't define who we
are. Who we are is how we raised our kids, our
tribal traditions, our culture, our ceremonies,
and all of this stuff. That defines who we are.
If you ask me, are you a native? I'm not going to say I'm native. I'm going to tell you I'm Shawnee. I'm not native, I'm not Indian, I'm Shawnee. It's kind of hard for me to use that term a lot. It just doesn't define who we are. I'm Shawnee, you're Kiowa, you're Pascua Yaqui, you're Pascua Yaqui. So these are things that, you know -- a lot of tribes are looking at the way that they used to govern themselves in the past, whether they had chiefs or whether they had different traditional councils, or whatever.

In my tribe, we have our governor who was the leader of our executive committee, but we also have a war chief and we also have a ceremonial chief. The ceremonial chief and war chief aren't involved with our governor. The governor's not involved with our war chief or ceremonial chief. So there's different ways to look at how you govern yourself.

One of the things that comes up is tribes get into conflict, or whatever, and the next thing you know you hear we have a hereditary council, we have a traditional council, and they're wanting us to do this, so we're not going to follow our constitution anymore. I don't know about you, but
I'm not going to tell anybody they're not hereditary chief or they're not hereditary council, because I'm not from that tribe, so I don't know what their traditions are, what their culture is. I'm not about to tell anybody they're not native.

The bad thing for the Bureau is we have to follow your constitution even though your council may be not following your constitution correctly or they may be tweaking things here and there without really following procedures. We have to follow the constitution the way it's written.

So those things that you need to keep in mind, too, when you're looking at your documents. It's not just a piece of paper that's you're going to change. You have to look at it, see why it was written that way, see what things have changed, and how you can improve that to meet your needs of today.

Did you have a question?

MR. SMITH: Steve Smith, Kiowa tribe. This is just about something you just said about your tribe, the Shawnee. That you had a war chief and a ceremonial chief. I don't know how much involvement with your expertise you have with the
Shawnee constitution, but I'm just curious how are those two, the war chief and the ceremonial chief, is that mentioned in your constitution?

MS. SPRINGER: No.

MR. SMITH: So that kind of stuff doesn't have to go in?

MS. SPRINGER: No, that doesn't have to go in at all. Like I said, our governor and our legislative body is something that's there because the government said they had to have somebody to negotiate with. Our ceremonial chief and our war chief is the traditional side.

MR. SMITH: I guess when I was thinking about this -- so then if your ceremonial chief were to tell somebody to do something contrary to your constitution --

MS. SPRINGER: They're not political.

MR. SMITH: They're not political?

MS. SPRINGER: No.

MR. SMITH: But you were saying that you've heard from some tribes where they said, you know, this hereditary council or somebody told us we're not going to follow this, but the government is not really going to go --

MS. SPRINGER: We're not going to tell them,
no, you're not the hereditary chief. What we have
to tell them is we have to follow the
constitution. If that is not in their
constitution, we don't know how that hereditary
council came about, we don't know who appointed
it, what authorities they have. All we have is
what is written in the constitution, and that's
what we have to follow.

MR. SMITH: So what if a tribe were to
include some -- you're a citizen of the Shawnee,
but if a tribe were to delineate some sort of
authority to those more ceremonial or traditional
things, if that was clearly stated in the
constitution, then would that be recognized?

MS. SPRINGER: If it's in the constitution
and it's not contrary to federal law. Basically,
what we're looking at when we're looking at the
constitution is we're looking to see that it's not
contrary to federal law. The other thing we're
looking for is that it's technically sufficient.

So if you say we're going to do this, then it has
to be one answer. We're going to do this, and
this is going to be the outcome. If you write
your amendments or you write your constitution to
where we're going to do this, this, this, and this
can happen. That's where you get into tribal dispute. That's where you start having conflict. Because you said this, this, or this could happen when you don't have a clear line of what your authorities are and what your outcome is going to be.

I have seen constitutions that have like a peacemakers council or an elders council or some kind of advisory council that may be made up of elders where they really don't have governing authority but they may be a conflict-resolution type group. So if there's two people arguing over here about this, or whatever, you can go talk to the elders, and they can talk about it and give them advice. But still the decision is going to be from the elected leadership. They're just seeking advice from this other group.

So there is no right or wrong just as long as you define what authority these different groups are going to have. One of the things I'm kind of dealing with Alaska right now is a lot of their constitutions say, and traditional law. Traditional law is going to trump their constitution. We don't know what that traditional law is. We only know what the constitution says.
So what I've been telling them is that they need to define how far that traditional law goes and when the constitution is going to apply. Is traditional law just advisory and the constitution is what you're really going to follow or what? There are still a lot of questions out there that these tribes are going to have to answer for themselves and then tell the Bureau where the authorities lie. We're not here to tell you how to govern yourselves. We're just here to try to make the process easier for you, because the process has been out there for a long time. Hopefully, with the way we wrote the regs and the way we structured them, that they flow better and it's an easier process for everybody.

MS. DAUGHERTY: As you can tell, De has a long history of working on documents.

We're going to go ahead and cover the portions of the regulation that discuss how this process works.

De is going to take a break here, and she'll come back and chime in when she returns.

It's broken into six subparts. Subpart A, which just describes the purpose and scope, which De addressed a little bit initially.
Subpart B, which is the definitions. We spent a lot of time in the definitions area. Maybe the definitions are the same, but I'll highlight some here in a minute that have changed and why they changed or how we summarized those conversations and that effort.

Subpart C is the general provisions.

Subpart D is the secretarial election process of the IRA, and subpart E is under OIWA. De's going to present that portion as somebody who's really familiar with Oklahoma. So her break better not be longer than subpart E.

Then subpart F is formulating petitions to request a secretarial election. That is the one unique part to all of this. Up until that point, we're just talking about conducting -- in subpart C and D particularly, we're talking about just how does conducting the secretarial election process work.

Then the last thing is F where the tribe might have in its governing document the possibility that members can petition for a change typically to the constitution. That's where we see most of these types of elections occurring is when a tribe that already has their constitution,
that a secretarial election is required to amend
the constitution, that that language is already in
there, that's where we see the most of our
secretarial election action across the country.

Let's go ahead into subpart A here. I'll
also click on my slides. As I mentioned, the
second bullet is where we see the most action.
Where it's already a tribe's document that the
secretary is required to be involved in amending,
adopting, or revoking the tribe's governing
document.

Then the first bullet will let you know that
sometimes it's required by federal law. The best
element I can think of is a restoration act.
Let's say a tribe is restored and in restoration
act it requires secretarial involvement. That's
where you might see "as required by federal law."

Then you will see it also for ratification of
the federal charter, the charter itself requires
it or that it's being ratified under the OIWA.
Here's the interesting part. Prior to 1990 there
were charters that were issued before that time
because at that time, this only applied to tribes
that had been involved in the IRA process. But
after 1990, all tribes were invited to adopt
charters. We do see some tribes doing this fairly actively. De commented that tribes were adopting charters. That there were a lot of tribes that were working on charters right now. So we see a lot of tribes looking at this as a mechanism to create an economic development arm of the tribe.

So after 1990, the amendments of the charter itself requires a secretarial election for amendments. But after 1990, the tribe can not require it. They can just say our charter -- the governing council, the governing body, has that authority, but sometimes it will still opt to put that in there where it's a secretarial election requirement. If I were the attorney for the tribe, I wouldn't require that, but if you choose to do that, that's your right to do so.

Then either federal or tribal law requires a secretarial election prior to any other action. I don't have an example of that. I don't think I've been around long enough. But if you want to ask De when she comes back about the bullet on slide No. 9, you can go ahead and ask her that. Like I said, the bulk of the work I've seen, in the seven years I've worked for the Bureau, have been amendments to constitutions that have the
requirement already in their amendment section to have secretarial involvement in the election.

For the definition section, which is subpart B, I just highlighted a few of the definitions that either changed or were clarified. I'm going to go over those briefly. The regulations this time require that the voting can be done via a mail-out ballot unless the tribe's constitution requires otherwise. Keep in mind, that's what the present constitution might say in the amendment section, a lot of times the amendment sections don't have a lot of details within them, but that's certainly something you could consider going forward as well is to amend the amendment section either to remove our involvement in your election processes, to remove our involvement when you want to change your constitution as an example. But I suppose if you want to keep the BIA involved in your election process, but want to provide more guidance, such as we want polling sites even though you don't require it now, that's something that can be done as well. It will be up to the individual tribe whether they want either of those things. Our continued involvement in your election or if you do want our involvement in
an election, that you would like to have polling
sites as part of that process, but unless it's in
the amendment section, the regulations going
forward will be all by mail out.

Then also if the polling sites are required
in your constitution, there will be the option of
having some absentee voting. We'll be talking
about that in a little more detail further in the
presentation where we discuss that a little more
specifically. That absentee voting will only be
in force or be necessary if the election itself
requires polling sites.

The next deposition was eligible voter. We
had gone back and forth on this issue and wouldn't
expect it to be a problem, but there was a lot of
debate. It just came down to the point where the
definition is it's a member of the tribe we don't
get into (indecipherable), because an Indian who
is not (indecipherable), to have some proposals
early on and have those discussions, but we just
got right down to it that the eligible, the person
who could possibly vote in the election would be a
member of the nation. Once again, that definition
would back up to a member.

Now, tribal request was one of the areas
where the definition -- you can look at that in 81.4 of the regulation as they're published, those are provided to you -- is what De mentioned earlier. I'll just elaborate on that a little bit more.

What we were seeing, and it's really -- I think it's fascinating -- I see all sorts of ranges of documents that come in for changes to the constitution. I'll see the tribe hire a very sharp attorney, and when they come in the door, they are ready to go. They even have articulation accompanying them saying, hey, our intent was to do this. So you'll see some very solid documents. We propose to remove the entire Article 5 and replace it with this Article 5 language, and it's very well written and very well thought out.

Sometimes when we get these requests, they come in literally in the form of a resolution that says, we want to increase our membership blood quantum requirement. That's all it says in the resolution. There's no draft language proposed to replace the existing membership criteria of the constitution. And then everything in between. Unfortunately, it actually makes me kind of mad when I see these ones come in, but we'll see ones
that come in from attorneys that were hired, and
they'll be riddled with typos and incorrect
cross-references. That's not a requirement that
we review. As De said, we look to see if it's
contrary to federal law or if the proposed
language -- another thing we see sometimes is the
proposed language comes in and it changes one
section, but then it creates a conflict in another
section. So we check for those two things
particularly. But we also provide technical
comments on everything else we see, and we let
people know right out of the gate. These are just
suggestions. These are things we noticed. These
are typos, incorrect cross-references, and you can
leave them in or you can fix them. That's
entirely your call. The only place where you
would hear us say, well, you can't do that --
you'll never hear it out of my lips, hopefully --
but is if it's contrary to federal law or a
conflict within the constitution.

So the tribal request, after that long story,
gets you back to tribal request has to include the
language that's going to be voted on. So if I get
just a general resolution that just says we want
to change the membership requirement without
specific language that says exactly how you're going to change it, then that request isn't complete, because you have to get to the point where you have actual language that can be voted on to be replaced in a constitution.

The other part of the tribal request will have to be, basically, authority from the governing body that that's what the tribe seeks to do. In most cases where I come from, that's a resolution, but I know there are other ways that tribes declare what their intent is. Some operate off a voice vote or you have only this oral recording of what the intent was of the governing body, whatever that mechanism is. That's the other thing we need is the authorization from the governing body that the tribe intends to modify its document. The example I've been using, for example, their constitution.

Then the last portion of the tribal request is we need a mailing list, as De articulated, from the tribe itself. They're the best resource of that information. This is just my little sidenote, you can take or leave it, but one of the things I've noticed in the years that I've worked for the Bureau is that when those mailers go out
from the lists that we get from the tribes, it is quite common -- and I don't know if this is true in every region, but I know it's true in the Great Plains region -- it's very common to get many, many, many of those mailers back. That's how the process works. We mail the information out. Oftentimes -- I don't know the exact percentage -- I suppose we could collect some data on this -- but for some reservations get literally hundreds of these mailers back. So if there's one thing that I can emphasize to tribes is to make sure that if you're thinking about doing a secretarial election process, have tons of foresight, and start the process early on to get the mailing list updated. Encourage people to update their addresses just months and months in advance of a constitutional amendment election or any type of secretarial election event that's required to make the changes as we described in the purpose section of this presentation. That's just my little pitch.

We talked a lot about different things. Some people at prior consultations asked for definitions of things like eligibility. They want us to to define what a resident looks like if that
was required in the amendment section for the
people who could possibly be eligible voters.
Just the sorts of things that we did not include
in those definitions. Especially we didn't feel
the need to include the definition of Indian,
because we already said that eligible voters would
be members, and the nations would decide who those
individuals were, so we didn't feel it was
necessary. If you think we're wrong, go ahead and
submit a comment, and we'll definitely take a look
at that.

That's one thing I would like to say. We're
a team that worked on this. It's subject to any
changes or proposals. Certainly let us know if
there's something that you think should change and
let us know what those reasons are. We'll
definitely take a look at it. These are not a
done deal just because we're doing this
presentation.

Scope of technical assistance. I already
touched on this a little bit, and I'm not going to
read you all these slides, because much of this
process has changed -- hasn't changed -- so I'm
going to try to touch on the highlights for you.

One of the things that we've been working --
on these documents when they're submitted, when
you turn in the language you intend to vote on,
whether it's the entire document of just parts of
the documents, we'll definitely provide technical
assistance on that.

I've actually been working with tribes in our region, and I hope you consider us your partners in this effort, because I think we can do some amazing things when that happens. We've seen some really good examples in the Great Plains region. We've actually gotten to the point where tribes will -- in the Great Plains region -- will contact us before they even pass a resolution, and say, could you take a look at this before we take it the full tribal council, and let us know if you catch anything that you know might be problematic. That's not required in this process. You don't have to do it. I'm just saying it works really well in our region to take a first look at it before a resolution is sought. We can certainly provide that.

But at any point the tribe submits what they feel is the language that will be part of the tribal request as the definition defines it as the language that you're going to vote on, at any time
when you submit that, you will get a technical comment letter back from us in writing. We try to break ours up in terms of these are required changes. We very rarely have required changes, rarely. Every once in a while you'll see something. Just odd things, too. It'll be things typically like the attorney who drafted it did the work for another tribe and didn't change the name of the tribe, and we'll let them know that. You need to change that to actually your tribe's name. I make light of that, but people miss things. You see what you want to see. It's not a terrible reflection that, oh, you're so inadequate that you have these little errors in here. People are human, and it's always nice to have an extra set of eyes.

So we'll have suggested comments. This section talks about that technical assistance. I'm going to do De's pitch again. It's one of the things we do see. De is right about this. The election will occur, the tribe does a lot of work, we do a lot of work, the election is run, and then the amendments don't pass. That's very common. We see that happen far too often. So I would pitch too, here, is lots of voter education, lots
of public meetings. We don't see a lot of that all the time, and that really, I think, makes people fearful about why their governing body is trying to change something. So we really encourage that. There are some great examples out there of tribes that have done that work before this process occurs.

Just one highlight here is that there are times where there are parts of the regulations that may have a conflict with a federal statute or that there might be gaps. We'll definitely always resolve those in favor of the statute, because that's how all that type of interpretation works.

Who can vote in a secretarial election? I know Mr. Washburn already touched on this. Sometimes an amendment section of the tribe's constitution, as an example, you'll see that they only want 21-year-olds and older to vote. Or you'll see -- and this is a tricky part, and I'm going to call it out, because I know that it creates a lot of confusion -- but if you look at tribal governing documents, there will be an amendment section. How do I amend this document? How do I amend this charter? How do I amend this constitution. Then there will be another section
that says, here's how we conduct our tribal leadership elections. I think there's a lot of confusion between those two sections.

A tribe will assume that the pieces over here in the leadership election apply to the secretarial election where it's required. So that's one thing to remember, that when you're trying to make changes to your constitution and you want them to apply in the secretarial election context for amending the constitution, for example, you better make sure that language is proposed and put in an amendment section so it's clear that that's where that's intended to apply.

Mr. Washburn said it, and I'll say it again, that even if you put it in there and you say we only want 21-year-olds, people 21 years of age and older to vote, we're compelled as the Bureau conducting these elections by federal law that has to be 18 years of age or older no matter what. So if you want to change that, don't come to me, go do a United States Constitution amendment, which should be pretty simple to do, right? No, I don't think so. We're compelled by that law, we're constrained by that in the constitution.

So that's the main highlight from that one
that we just wanted to emphasize. It hasn't changed, we just wanted to emphasize it. We do actually -- when we have secretarial elections today, we'll have people file challenges to the election on that basis, and the IBA always says that's not a basis to challenge the election or invalidate the election.

This section, all these components have pretty much stayed the same. Obviously, you heard me say the definitions about polling sites if polling sites are required, once again, they'll be required if the amendment section of the constitutional document requires it, but otherwise, these elections will be conducted fully by mail-out ballot.

This section is the same, but I wanted to emphasize the one from 81.13. This language had in it -- the prior regulations and certainly the current regulations have this, but there used to be a long time ago when the Bureau was a little more paternalistic than they are now -- you guys can giggle or whatever you want on that point -- I like to think --

MS. SPRINGER: Me and her.

MS. DAUGHERTY: De and I, for sure, we're^
tribal-oriented tribal government staff, and we have a lot of influence in the country, I think, just because we're this tag team of expertise. But that's one thing we really worked on with all of the staff is to remember that we are advocating for what the tribes want to do as much as possible wherever we can.

The only reason this requirement was in there and why we emphasize it and why we think it's important is sometimes you'll have these elections side by side, and you'll have an election to vote on a document that requires registration as you'll see on later slides, and then you'll have an election for tribal leadership where there is a tribal election roll for the tribe that's different than ours, because we require that registration for the process to make sure that the people who are participating in the election that we're in charge of legitimately have a right to vote.

So then when you have those elections side by side, occasionally somebody can't vote in our elections because they haven't registered and polling sites are required. That's why the mail-out ballots were proposed, too, is to
eliminate that, "except for where polling sites are required." This largely shouldn't be an issue going forward, but there was some confusion between differences between the two elections. Previously, it was really discouraged to have the elections at the same time. Now with the mail-out ballots, that should be less of a problem, and even when there are polling sites, we'll just work with each of the nations to make sure that people are informed when people have questions about this issue that they understand the differences between the two types of elections.

For secretarial elections when they're conducted, the local agency there deals with the cost of that election. I know people believe that if they continue to have secretarial elections, where the Bureau's involved, there's some cost savings. I don't know if that outweighs in your mind the tribe being empowered to do its own amendments. From my perspective -- just my personal belief -- I don't care -- I wouldn't care if the Bureau was paying for an election. I would just want to do the amendments myself as a nation, but that's up to each tribe as to what their beliefs are in that area.
This is a fun one. We added 81.17, because of an experience we had in our region. We actually had a tribe way down the road in the secretarial election process that wanted to cancel the election. But at the point they wanted to cancel it, there was a lot of momentum, a lot of registration, so we made a rule -- and if you think this is wrong for you, we would really value your input on this particular section, because we did add it as reaction to a situation we had in our region was when can you stop a secretarial election after you have all of the voters registered that they want to vote in that election? Can the council then step in and stop that election after people have indicated their intent to participate in it?

So what we suggested -- so we'd love to hear your input on this, because it's a new one -- is that requests for secretarial elections may be withdrawn in the same manner in which they were requested. But if you look in your printout of the actual language of 81.17, we do emphasize "but not after the deadline for voter registration."

What our discussion was was that at that point, the voters had registered and indicated that an
intent that they wanted that election to go forward, so you guys can let us know if you support that concept or if you support the concept that the governing body should be able to step in at that point and just withdraw the election anyway. So we value your comments in that area if you have a strong feeling one way or another. That's why we proposed it was because that issue arose. We had no guidance in the prior regulations. We did not know what to do, so we wanted to make a rule so we would know what to do. We value your input on that one.

MS. IRON CLOUD: What did you do?

MS. DAUGHERTY: At that point, it was even later than that point. It was right before the election. We looked at all of the processes at that point, and said that we were going to go forward with the election. I don't think they actually got an official resolution from the tribe conducting it. We just got a letter from the chairman at that point, and we told them that we needed a resolution, and I don't think they ever produced one.

MS. IRON CLOUD: Did the amendment pass?

MS. DAUGHERTY: It did.
We didn't have any guidance, so we put some in for ourselves, but we value your input on changing it to however you think it should go.

Steps to request an election. We've already covered this one a little bit. We talked about submitting the proposed document, and then you'll get a technical comment letter from us. I think I'll elaborate on tribal requests.

This has stayed pretty much the same, but we do have to provide technical assistance in writing -- which we always have done, at least 30 days before the election, and we articulate any concerns we have about anything in there that might be contrary to federal law. Because De and I -- like I said, we've always done and always encourage other tribal members and other tribal government staff to give us suggestions. Where you see something, don't turn a blind eye to it. Just let the tribe know you're cross-referencing a subsection that doesn't exist. That happens sometimes when people are drafting things like that. We do provide suggestions, but it's not a requirement.

So this has pretty much all stayed the same, but one thing I did want to highlight on here is,
once again, like said, for a tribal request, we need a voters list, we need the exact language you're going to vote on, and we need the authority from the tribe's governing body, whether that's a resolution or another kind of document or voice vote or however the tribe conducts business as a nation.

Then as De mentioned, let's say we get all through that process and the language completed, we're all in agreement that the proposed language is final, and we're ready to say this election can go forward, then what happens? Well, the next step is that we -- when I say we, at our level it's typically the regional director -- will send a memo to the superintendent is what you most commonly see. What we will tell that individual is that you have 90 days to conduct this election, or if it's adopting a new governing document or revoking an entire existing document, you have 180 days.

I'm not 100 percent sure why the difference, and my gut is that because of the -- when it's about adopting or revoking an existing one, it's such a significant act that you need more time for voter education to occur. This is also statutory,
too, so I don't think we can change this 90 and
180 days. You're going to have to go to Congress
to get those two numbers changed. So if you want
to propose to change them, we'll definitely have a
comment section on following up on these
consultations is if the tribe proposed it be
different than 90 days and 180 days, but we don't
have the authority to change that one. That's why
that's in there.

The secretarial election memo, this is the
same as before. Just for your edification, when
that memo comes down from the regional director to
the superintendent telling him you have to call
this election, the superintendent is often the
leader of the board, because we do have,
typically, one of our staff conduct the election.
It's usually the superintendent. I don't know if
we ever heard of a case where it wasn't. It is
usually the superintendent.

Then he lets the tribe know, and we also let
the tribe know that we sent that letter out, that
the election is going to occur. We have 90 days
to run it in most of the cases I've seen, because
it's not to revoke the entire document or adopting
an entirely new document.
So let's take the 90-days example. He will contact the tribe and say, who else do you want on the election board? The tribe has the opportunity to pick two additional people to add to the election board. The tribes almost always do that where I come from. Occasionally, they don't. They'll just leave it to the Bureau to pick the other two people. That happens, but most tribes participate, and say, we want this person and that person. So that's typically what happens.

If the tribe doesn't do so for 10 days, then we're empowered to select those two people. We won't do that silently. We'll keep asking, are you going to appoint two people to the board? We have until the last minute, because we really do believe that type of participation is so vital to this process.

I just put this in there just sort of to show you how this typically rolls out, especially as you're preparing for the election. We'll create what is called an eligible voter list. You can look at that in the definitions. I know we talked about eligible voter, qualified voter. We shied away from the qualified voter language, because that appears in a lot of constitutions based on
some of those boilerplates that included that when
talking about leadership elections.

We really talked about two different types of
gilman voting. The first one is eligible voter, and
that's going to be every member of the tribe. In
the first instance, every member of the tribe
could conceivably vote if they register. So you
create the eligible voters list. Then we get that
from the tribe, because that's the list they give
us when they first put in their formal request.

Then once we have that, we assemble a notice
packet. These have gotten very nice. We actually
have a great sample if you ever get in the
position where you're having a secretarial
election and you want to see that sample, you have
our contact information now, you can get it from
us. It's just a pamphlet now. We have everything
that's required by the regulations and statutes
right in one pamphlet. So you get all the notice
information out in one document. It's very nice.

So we mail that to each of the persons on the
eligible voters list at least 60 days before the
date of the election. Again, I've also been
involved in processes where we're scrambling to
help make this happen and make sure we meet that
requirement. It's a lot of paper sometimes. In some of the instances, I don't know who's the biggest tribe in the room that would participate in a process like that, but we have some tribes that have tens of thousands of members, so you can imagine we're doing mailers for 30,000 or more in the example of my tribe, so that can be quite a process. We mail to everybody. Everybody on that list 18 and older that the tribe provided to us, we mail it everybody.

They all have the opportunity to register, so they send in their registration form -- and we'll talk a little bit more about these on the slide coming up -- we collect all those registrations that come in before the registration deadline, because there will be a registration deadline created during this process. Then we create and post a registration voters list. So that's the third from the bottom.

I did want to point out that we're going to cover in another part of the regulations. There is a challenge process for the registered voters list. I'll cover that, but basically it's people get to look at the list. We post it without information like addresses and things like that.
We want the tribe to create a process where people can make sure that the registered voters list is a valid list, but still trying to protect privacy as best as we can.

So in that challenge process, people can come forward and say, we think you left somebody off the list that was properly registered. I registered, so I should be on that list. Or the other version is, why is that person on the list, they're not even an enrolled member? So we investigate each one of those things to make sure the final list is proper.

Then if this is an election that's conducted entirely by mail, then we keep a version of that list where we keep track of those ballots as they come in. It's a very thorough documentation process. People -- in advance, we get a lot of people become trained to write down the dates on everything as they come in and collect things in batches. It's a very rigorous process.

Then if polling sites are required, then you have to also notate by the names on the registered voters list if anybody requested an absentee ballot. So that's sort of how the process rolls out. Certainly during establishing the voters
list and conducting the basics of the election.

I already touched briefly on the notice packet, but you can go down and vote on this without being (inaudible). This will be largely the same as it has been. The one thing I do want to point out is in the first dark bullet -- what did you call these, De? You have a word for this. The dark bullets and the hollow bullets. Well, the first dark bullet in the second column from the bottom, it's just pointing out that as part of the notice packet because of this change in the regs regarding polling sites, it'll explicitly say in there whether the election will be conducted entirely by mail out, or whether polling sites will be utilized for the election. So that's the only significant change to this part of the regulations.

This is also the same. We are required by regulations in the regulations to post the notices and the outcome of the election when the lists come out -- or list, I should say one list -- They're posted at the local Bureau office and the tribal headquarters. Then sometimes the board designates other places that they can be posted. But these two sections haven't changed.
I will call this out just because I know there's some confusion about this, but this has not changed, but I'll mention it. The information on the registration form where you're registering to vote to participate in a secretarial election process, that's what we use it for, to determine voter eligibility. We have to tell the voters in the packet that their participation is voluntary. So nobody has to register to vote for that election if they do not want to. But we also let them know that if you want to participate, you do have to register. So that helps us track the people who are eligible to vote in, and then later on it helps us calculate whether the proper threshold was met for the election.

I touched briefly on the registered voters list, so I won't spend a lot of time on this. Where it's posted, how it's prepared, what's included on it, and why we exclude addresses and things like that for privacy. I already discussed challenges to the registered voters list. I will call out especially that the challenges should be in writing. That they detail the name of the person and the rationale as to why the person should be included or excluded and any supporting
documentation that the person has to show -- to support their challenge of their inclusion or exclusion. Then the challenges to the list are resolved by the secretarial election board, so that would be typically the superintendent and whoever else the tribe added to that board to make that decision on whether the person's name should remain on the list or whether a name should go off the list or whether new names should come on the list before it is finalized for the actual election ballot process.

That takes us to ballots. This is also unchanged. I just wanted to emphasize a couple of things. Sometimes we'll get proposals for membership as an example. I'll use that as an example. They'll say, can we have an election that says, do you want the membership blood quantum to remain 1/4 or do you want it to go up to 3/4 or do you want it to go down to 1/8 or do you want it to go down to 1/16th or you want it to remain the same. Well, you can already tell that if that occurs, that would be a much more complicated ballot. We just want the ballots to be as simple as possible.

Then the other challenge becomes if you have
too many alternates on one ballot, you'll start to see that the vote won't achieve a successful outcome. It's very common that that can occur. So we just try to keep the ballot simple so we left this regulation the same. Once again, if there's something that you want to propose that's different, we'll certainly look at that. That's the one we see sometimes is they'll come in with very complicated ballots that will come in the door. You can already tell that it might be a challenge.

We did address this, because it's never been addressed in the regulations before, but more and more tribes are starting to encourage the use of voting machines, and there are companies that are much more available to do this type of work, especially in the larger urban areas. So we just wanted to emphasize that in the regulations to let them know that's certainly a valid way that we may conduct the election just to give you that awareness.

Honestly, I think you'll see that -- We've got a question. I missed the hand. I thought Steve Smith was bold enough to jump up to the mic and stop me.
MR. SMITH: What you were just saying about -- you were talking about voting machines, so I'm assuming if -- if you do a mail out, the Bureau -- a secretarial election will always be electronic, or what?

MS. DAUGHERTY: No. If you do a mail out, it will be cheaper, but when I talk about voting machines -- yeah, I'll clarify that, thanks for asking the question -- would be if polling sites are required. The Bureau itself might contract with a company, especially where those companies are more readily available some of the times, to conduct the election. So we might actually do the government procurement process. Normally it goes by, because it's so difficult I want to pull my hair out some days. But the Bureau itself, this is a federally run election, so if polling sites are required, as we described earlier, because it's in the amendment section, the Bureau might contract to have an election conducted electronically.

MS. SPRINGER: There have been quite a few done secretarial elections done by a third party, and they follow our regulations. They may have polling sites, they may have voting machines, or
they may do the whole thing by absentee ballot or
by mail-out ballot, but then they have tabulating
machines that they run the ballots through.

Being old-school before they had voting
machines, we did it by hand. When I started
working for the Bureau, I worked out of the
Shawnee Agency, and our smallest tribe was 200
members. Our largest tribe at 15,000. Like I
said, we did five elections in two years, so we
did elections for both tribes, and we did them by
hand.

MR. SMITH: In our tribe, I guess it was 15
years ago, the Cayugs Indian Council decreed that
it will all be electronic, so we do have absentee
voting as well as polls, but they get the same
ballot. So then the absentee ballots that go out
by mail, when they're received they're run through
the machine just like the ballots from the poll.
The ballot itself is identical.

MS. DAUGHERTY: Even from the Bureau, imagine
that going forward we're going to possibly see
more and more of this type of effort.

MR. MELENDEZ: The question I have is trying
to meet the threshold of 30 percent. We see a
difference if they didn't go to that polling spot,
do we have any information whether or not you just
don't use a polling spot and everybody does it by
mail. Do we see the possibility of not meeting
the threshold. Is there any research on the idea
that lessens the amount of participation based on
people not answering mail?

MS. DAUGHERTY: That's a good question. If
we shift to that, there's not -- I know we haven't
done the data collection of returns. As I
mentioned, one of the challenges with this process
has always been whether it's polling sites or mail
out, is that we don't get good addresses a lot of
times. So there's really going to have to be a
tribal push on that end of things. But you're
right, we do have data regarding -- and we could
collect it and maybe summarize it as a sample to
see how many people mail back in their
registration packets, as an example. We know it's
less. We know the registration. Oftentimes, it
mirrors the participation in the leadership
election process. As many of you know, far fewer
people participate in leadership elections, too.
To answer your question, no, we don't have a lot
of data on that. We do have data we could
analyze, but if this is a new proposal of the
regulation and we do it for all of them, we kind
of collect some data and look at that and see what
those outcomes are and make sure. We have a bunch
of elections that aren't meeting the threshold,
and that certainly is a challenge. We do have a
lot of people that might be able to participate
better when they don't have to go to a polling
site, especially for some of the larger
reservations.

MR. MILLER: One of our concerns is -- I'm
kind of deviating a little bit. In reference to
the ballots in Nebraska, when meeting your
(inaudible) and have a voter registration list
provided by the tribe and talk about mailing the
ballots out, I know that's part of our
constitution, the ballot has to be mailed out and
not a polling site. In Nebraska, a concern that
the majority of our tribal members have is they
want physical address when you're getting your
tribal names -- a street address is required in
the state of Nebraska -- because that's an
obstacle that if you're going to get anything, it
has to have a street address on it.

Well, in my community, there's (inaudible)
which is a prominent (inaudible) where a majority
of our tribal members also live, we have street addresses, but our mail's not delivered to that, so we have to use a P.O. box. And the state of Nebraska won't accept a P.O. box as a valid address on any IDs. That's why our tribal members will put a P.O. box. When you're mailing these ballots out, it comes back to you because of that reason. So I'm not sure how we can overcome that, I guess, because we toe the line with the state of Nebraska in terms making our tribal elections as valid as possible to be used. So that's a concern of mine. I'm not sure how we can overcome that when we're getting our tribal list together, maybe we as a tribe can try to include mailing addresses when providing that to you, but like I said, that's also difficult to be in line with the state by providing a valid ID. When we're using it to vote in the state elections, it has an actual physical address and not the P.O. box. I think where an issue may be arising also when they mail it back to you "not valid as an address," because that physical address that oftentimes is going to be valid either.

MS. DAUGHERTY: I think we've probably all seen the media in just the past couple days about
the struggle in North Dakota where they're saying
that same thing, that they're not allowing P.O.
Boxes for voting. You can speculate as to why
that is, but the bottom line is for this process
wherever the person wants to receive their mail,
they put it down there, this will go there. I
mean if the tribe wants to maybe even, wherever
they're going to receive their mail will work for
this process.

MS. SPRINGER: Even though we send the
election packet out to the last known address that
we have or what the tribe sends to us, there's
nothing that stops you from saying you have five
brothers and sisters, you got the packet, but your
brother and sisters didn't. There's nothing that
says you can't make a copy of the registration
form and give it to your brothers and sisters as
long as they submit that and give us where they
want their ballot to be sent to. Our registration
forms don't have numbers on there, it's just a
plain form that we -- when we do our registration
form, that's what we're asking for, is where do
you want your ballot sent.

MR. MELENDEZ: That's one of my questions
with the new rule. Will there be a universal form
that specifically has on there mailing address,
physical address so that way it does work through
that. That could be a universal way of
identifying where it's mailed to.

MS. DAUGHERTY: Yeah. If the whole process
for you to receive your ballot, your information
in the mail, polling sites, if you ask for an
absentee ballot all in the mail. So it will be a
mailing address.

MS. SPRINGER: When they see they don't have
a post office box, do they have postal delivery in
town?

MR. MELENDEZ: No. Everyone who has a post
office boxes to get mail, because they don't
provide mail service to our tribe. That's a real
obstacle.

MS. IRON CLOUD: So for your tribe, do you
have -- for your tribal information, do you use
the P.O. box or the initial list of addresses,
would that include P.O. box, or would that include
the physical address?

MR. MELENDEZ: That's the issue, because the
address we have on file is what's on your tribal
ID card. For that to be valid in Nebraska, it has
to have a physical address. They reject the P.O.
box on there.

MS. IRON CLOUD: That's, I guess, it will be the same situation with (inaudible) voters. I just recently heard from my family members that on their IDs, on their state-issued driver's license, for example, say 3 miles North BIA Highway 18, they try to send something to that, it's not going to be delivered. That is an issue.

MS. DAUGHERTY: So maybe we can do that just to be explicit. Put that as a comment that we need to have a uniform form that says where you're going to receive your mail to make sure people don't confuse that issue that's being raised in other types of elections.

MR. MELENDEZ: A thing that helps tribes, too, when they're going to that secretarial election, that they're going to provide the information to you, you can get that from the tribal members rather than just giving you whatever address they have. If that's a comment that I can provide, that that be provided also in this process, that may help.

MS. DAUGHERTY: Well, you just did. We're taking that information down.

MS. SPRINGER: You're on the record.
MS. DAUGHERTY: As far as ballot packets, as I said, they're sent in the mail as soon as the list of registered voters is complete. Once again, we just want to emphasize the polling site issue that's changed in these regulations because of how we discussed that issue before.

Procedures of ballot counting is still the same. Where polling sites are required, when do we close those? Or if it's mail-out ballots, after the deadline for receiving mail-out ballots occurs is when counting occurs. The secretarial election rules that we emphasize is in that process, they must all be in the room while they're counting ballots for outcomes.

We put in these next couple of slides just to clarify this percentage of participation required. How we calculate the percentage of participation, which is 30 percent is the (indecipherable), but sometimes in the amended section of the tribe's constitution, they might want it to be higher than 30 percent, so might do that in the amendment section of their constitution. But it just basically is to take care of the total voter participation, that includes all valid ballots and cast spoiled ballots. So sometimes somebody will
cast a ballot, and it'll be spoiled for some reason, like they'll select all the choices or things like that. You usually don't see too many of those. It's usually single digits, in my experience. Those are all the people who participated.

So that total number divided by the total number of registered voters, all the people that got those registration forms back, and then you get your percentage participation. The percentage participation, as I said, can fall to 30 percent, but if the amendment section has a different number, then it would be higher than 30 percent. There's just an example.

MS. SPRINGER: One of the things that happened a few years back is one of the tribes had an election, and their percentage of participation was 51 percent. So one of the things that we didn't realize at the time but we realize now is we cannot round up. This election ended up in the courts, and even though the bureau said, well, they got the 51 percent, when they did the numbers, it was 49.89.

MR. PORTER: It was not 51 percent.

MS. SPRINGER: It was not 51 percent, and the
tribe won and that constitutional election failed. So these are kind of things that we didn't even think about at that time. You say about five, you go up, and below five, you go down. That was just normal mathematics.

Somebody actually took us to court on that and they won. Whatever your constitution says, that's the percentage you're going to be looking at. The IRA and OIWA both say at least 30 percent participation. So it's up to the tribe if they want to go up to or stay the same. It's still going to be at least 30 percent. There's no rounding in these numbers. We learned the hard way.

MS. COEN: The other thing is it's 30 percent of the registered voters, not your total voters, but 30 percent of your registered voters.

MS. DAUGHERTY: That's just an example that shows the math. How do you get posting votes? If you guys participated in our rapping session I was involved in, De and I had probably and Karen had like a 40-minute conversation at least about spoiled ballots. It was hilarious.

What if it's mutilated? What if it's mismarked? We had all these definitions, and then
we came back full circle and said we're just going
to have to keep spoiled ballots. So sometimes
people realize they spoiled their ballot before
they cast it. And so it's just a process for us
to replace the ballot if the person realizes they
made an error before they turn it in.

MS. SPRINGER: Before they actually cast it.

MS. DAUGHERTY: Right, right.

MS. SPRINGER: Once they cast it, it's in
there.

MS. DAUGHERTY: Sometimes people do realize
that they marked it incorrectly, and they want to
change it. This just provides a process for that
to occur if they realize it before they cast it.

Challenges to the election results. We
clarified the number of days. That was the other
thing, too, we also clarified that days means
calendar days so that there is no question about
how to count all of our deadlines, 90 days, 180
days. Then of course if your deadline falls on a
weekend or holiday, the challenge deadline will be
extended to the next business day.

MS. SPRINGER: One of the reasons we did that
is we had a challenge in one of the elections out
in Minnesota. We did the disapproval on the
Friday, because the 45th day was on a Sunday. I was going on vacation, so I wanted this done. So that was my reason for getting done. Anyway, we got it done, got everything signed, got everything out to the tribes and the region offices and everything.

Then they challenged it. They took us to court. One of the things that the judge said in the decision was that we made the decision before the 45 days ended. And so even though the regs weren't clear that we went to the next business day, because it's not specifically stated in there, the way I was always taught is if it's not specifically stated in there and it falls on a weekend, too bad, so sad, you got to do something before that.

So what we wanted to do is to make sure that -- because secretarial elections aren't always on Saturday or Sunday, sometimes they're in the middle of the week, or whatever. So your 30 days might end on the weekend. So if we give you to close of business the next business day, then that gives everybody a little more chance to file those challenges or anything to help get things taken care of. That's why we added that in there,
because it wasn't in there before.

MS. DAUGHERTY: For challenges, remember I had said earlier that if somebody challenges a registered list, does the election board decide that? Well, it's different at the end of the election. If there's a challenge to the entire election, you need that reviewed at a different level. The superintendent is the one that's conducting it, it gives you a different set of eyes looking at it to see if the election was conducted properly.

MS. SPRINGER: When we say it's usually the regional director, who is usually the one that will authorize the election is the one that also does the approval. One of the problems that are coming up with in the Bureau now is that, you know, regional directors do not have delegated authority to authorize elections. Where they're coming up in the Bureau now is that, you know, regional directors do not have delegated authority to authorize elections. So we may not have a superintendent for that region or there might not be an agent for that region. So we've actually had to go to other agencies and ask if that superintendent would be willing to be the election
board chairman and conduct the election.

Another problem that we've come up with is that not all tribes go to the agency. Some tribes go directly to the regional office. So we've had to actually divide the duties at the regional office so that if this person reviewed and was part of the group that authorized the election, they cannot conduct the election. So we always have at least somebody out there that was not a party to the review and everything else so that they can conduct the election.

The reason of authorizing an official is the challenges -- if you conducted the election, you can say whether you did something wrong. You can't review your own work and say, I did it right and expect everybody to agree with that if something went wrong during the election process. So we've been trying to maintain those levels of approval and who can do what.

When I started in tribal government in DC in 1991, we had a branch chief, we had four specialists, and we had a secretary. By the end of 1995, I was the one elected from the government. And so we went through that much change, and I didn't even have a secretary, so we
were scrambling around to do stuff. So as the Bureau staff goes down -- because even tribal
governments now don't have fully staffed agencies or offices.

So one of the pushes that we've been trying to make is that the Bureau start staffing the tribal government again. In fact, that's one of the things I did in Alaska is I asked for two positions in Alaska regional, you know, a tribal government officer and a tribal government specialist to get tribal government back on track there.

So one of the main things you cannot do is you cannot do a function and then do the review and approval of that same function. We're getting pretty crafty in the BIA on how to keep those things separate.

MS. DAUGHERTY: If you look at the regs throughout, they're written in terms of the local Bureau official. Most commonly that's the superintendent and then also the authorizing official typically (inaudible) the record is corrected if there's a couple of anomalies where you may not have a superintendent or maybe a different person, an authorized official, it's
typically the regional director and superintendent. There are some exceptions.

Finalizing the election results, if a challenge is sustained that may have an impact on the outcome of the elections, an example -- there's some examples of that. Let's say they say that there is documented evidence of electioneering occurring that somebody told five people how to vote and somebody saw them. This is an outlandish example, but let's say they say we have documentation, we have pictures of this guy getting five people to vote one way or the other right close to the polling place, and the outcome of the election was only three votes apart, let's say. In that case, when you documented that you have video, you have pictures, or whatever -- you're never going to have that much of evidence -- but let's say you did. Then that might be sustained if it does have an impact on the outcome of the election. Then, because it's only three votes apart, then you -- in that instance where it would change the outcome of the election, then there's a recount, in that description I just described is that a new election would be authorized and completed,
because that improper behavior could have
influenced outcome of the election.

Now, that election, let's say you only got
maybe one doing that, and the distance between the
outcome was 100 votes or 200 votes, well, you can
document that. You can say, well, that was an
improper thing that occurred, but it doesn't
affect the outcome of the election, so it's not
sufficient to throw out the entire election. So
then those would be some examples of where that
might occur right now.

MS. SPRINGER: Usually, when challenges
happen, somebody will say, I know so-and-so didn't
get to vote, or I know this happened, or whatever.
The thing we have to look at is substantiating
evidence. Anybody can say anything, I saw this,
or somebody told me this. Those are a lot of the
things we hear.

I heard so-and-so did this, but what's your
evidence? If they don't have anything, then nine
times out of ten it's going to be dismissed.

MS. DAUGHERTY: But nobody ever has these
conversations during an election about election
fraud or improper behavior or anything.

MS. SPRINGER: You can make the claim, but
you also have to have evidence of what you're alleging.

MS. DAUGHERTY: That's not just in Indian country, this is just something that happens in elections. People are concerned about improper behavior. It happens in elections everywhere, not just in Indian country.

But if all the challenges are in, and there's an authorized official and regional director are looking at the challenges, they're either denied or dismissed, then he has to conduct a full review of the election as well -- he or she -- and determine if the amendments or the documents will be adopted or rejected.

If the election was conducted as it should be and the vote looks clean, the percentages are all met, you are not going to see the regional second-guessing that process here. You're not going to get this on a state level. Just double check with the (inaudible) requirements that he's required to check, he or she, and then the authorizing official will issue a decision letter. It will talk about the challenges if there were any progress. Sometimes there aren't any challenges.
He or she will give you the outcome of their review, the final election results, and then issue his approval or disapproval of the document. It's typically an approval if the election was conducted as it should be and it passes.

Your local Bureau official typically sends you a letter if it doesn't pass, then you know you don't need to do anything else. It'll just say it failed and there's no documentation that it failed because of the vote. To change it was less than vote to keep things the same. That happens, too. That's a successful election, too. I think some people think, oh, we failed, but it isn't it's all part of a process to decide whether we're going to changes things or not. I'm pleased with whatever the outcome is. If people made their best effort to take a look at changes, their document is all part of our process of being nations. It makes me happy to see it.

MS. SPRINGER: And there are cases where, you know, they'll pass by a lot. There are cases where they barely get by. One thing that I haven't seen before and I haven't seen since is I actually had an election that came to a tie. We recounted five times. I said, well, it failed
because you didn't get the majority of the vote.
They say, no, it passed, because we didn't get the
majority for no. So we argued back and forth and
counted them again. Good thing it was a small
tribe. We only had like 60 votes, 60 ballots we
were counting.

So I called the regional office. I said, well, this is what happened. I'm saying it
failed, so I need some guidance on how to move
forward with this. About an hour later, they
called back and said, we called central office.
We never had this happen before. They eventually
agreed with me. They didn't have enough to make
it pass. Even though they didn't have enough to
make it fail. The regs say you need a majority, a
51 percent majority to pass. So I won that one,
but I haven't had a tie since. Luckily it was my
tribe with 200 people and not a tribe of 15,000.

MS. DAUGHERTY: Now that you touched on the
tribal number, maybe that should be one of the
comments that we should expressly say that it's a
majority, 50 percent plus one. That's my comment
for the record. These things can happen. Those
good things do happen, obviously.

Once he or she has decided all of these
things in this last big bullet, then he has to issue a letter, but it has to occur within 45 days. If it doesn't occur within 45 days, the secretary's approval shall be considered given.

We try to avoid that 45 days. As a matter of fact, one of the regs, typically, with the work that we've done leading up to the election, that's usually much, much quicker than 45 days, because we already have reviewed the documents fairly thoroughly. In our region, it usually happens within just a couple days. Especially for some of the simple elections where they're voting on one or two small provisions, is typically within a couple of days. But 45 days is the outer limit, and we don't typically see us going out that far.

MS. SPRINGER: Unless by statute that we have to.

MS. DAUGHERTY: Exactly, yes, how it is in the statute, unless Congress makes a change.

MR. SMITH: I want to ask a question.

Going back to page 81.12, the holding the secretarial election at the same time as a council election. I mean -- and I didn't know if there was a rule on that or not. So many tribes either try to take it into consideration that might not
be so good an idea. Say a tribal election is in November, for example, so if you decide to hold a separate election in that same year, it seems to me you're trying to do it in spring. If you try to do it in the spring and have maybe three or four months in between the tribal election in November and say a secretarial election in March or something like this, well, seems to me you'd have to submit it in 2014 rather than 2015. I'm trying to get an idea even though you're saying it's okay to do it. Just to be practical, what would you suggest? Let's say for example, tribal elections, like my tribe is November of next year, and say we're looking at the tribal secretarial election and it's ready to be November right now, so wouldn't it be critical to do one in January when you submit, call for a secretarial election through the Bureau, or is it getting too close together?

MS. DAUGHERTY: Do you want them together?

MR. SMITH: No. We would like to see more separation, but it's late in the year. Otherwise, you wait until 2016 to have a clear separation, one in one year and one in the other. I know you say it's up to the tribe.
MS. SPRINGER: Yeah. It is up to the tribe.

This is one of the things we were talking about to set up your time frames, and whatever. A lot of people will get confused, especially if your tribal elections have no registration process.

So, you know, it's okay to ask -- talk to your Bureau folks out there, and say, you know, we're this far with this, and our election is here. We want to have it, you know, this far away to separate it. It can be worked out.

It's just when it's two elections that are held on the same day and they're having two different guidelines for you, you're supposed to vote or we have registration on one, and might not have registration on the other, that's where your tribal members get confused. They'll say, I just voted over here, and they didn't say anything about registering. They come to the secretarial election, and they find out. Well, you didn't register, so you're not allowed to vote.

In order to avoid the confusion, for the membership, it's best to work with your tribal government and have the tribal staff at the agency and figure out what's going to work best for the tribe. One of the things that you always want to
look at is when are you going to get the most
voter turnout. If it's something the tribe really
wants to pass, and they've got a lot of
informational meetings and it's been explained to
the membership, usually you don't have a problem
with voter participation. If it's something that
the tribe, you know, membership really wants
governing -- but if it's something that, you know,
the governing body may want but they really
haven't explained it to the membership, then
that's where you run into problems.

If the membership's starting to think, well,
we didn't know anything about this. What are they
trying to do to us? What are they trying to get
away with? So they start getting suspicious, and
then you lose that chance to really inform them
openmindedly [sic]. So it's really best to be
open with your membership when you're thinking
about changing the constitution. You also need to
know, well, this is the way it reads now. This is
what we want it to read, and this is why. I don't
know about you guys, but I'm always asking why.

It's just better communication.

MS. DAUGHERTY: It is a challenge. You do
have to make those decisions quickly to get the
maximum voter participation by putting it with this election that we know people are very interested leadership elections typically turn out for them heavily. Then the other school of thought is we really want to -- like what you were saying -- have the attention be on changing our governing body document that guides our nation. This is our supreme law of our land. It's definitely why we left that flexibility. You have to make those determinations about what is most important. I totally get that. I think that having the attention on just that and not be distracted by what's going on the leadership election is helpful. This allows that flexibility. It's a tough decision. It's all part of have -- you know, operating your tribal nation.

I guess my last thing was that you will make that decision, and if he waits too long after 45 days, it will become deemed approved.

MS. DAUGHERTY: We'll take a break.

(A short break was taken.)

MS. DAUGHERTY: De, you get to take over just for two slides, because I'm stingy.

MS. SPRINGER: The next side deals with the
Oklahoma Indian Welfare Act. There are a few people here from Oklahoma.

Like I said earlier, the main difference between the IRA secretarial election process and the OIWA secretarial election process is that the proposed document, whether it's a proposed amendment or to the constitution, is approved before we have a secretarial election. So with the IRA, we do the election, and then we do the approval. Nobody's ever explained to me why, but that's just the way it is.

We follow the same steps. When we get that request, and get the voter list, get the resolution and everything, then we will go ahead -- with the request from the OIWA, we will go ahead and check and review and everything and then approve it. Then authorize the superintendent to conduct the election. So we go through all the same processes that are in part one. The only difference is when we conduct the election, and then we approve it.

We have election boards just like the other ones. We have election boards with two people from the tribe. All of the challenge periods, all of the registration periods, the way we conduct
the election for Oklahoma tribes is the same as we conduct elections for other tribes.

The only difference is when the Oklahoma tribes are having their election, they're actually ratifying that approval. So if it passes, then that amendment or document becomes effective on the date of ratification. We don't wait until 45 to do an additional approval like we have 45 days in IRA constitutions. Because these elections are under two different statutes, the IRA is separate from the OIWA.

MS. DAUGHERTY: I think the other one, too, is that when the authorizing official does his level review, he's also just checking to see that the election is properly conducted just because of the issues De described. Steve is back.

MR. SMITH: Yes. I think our constitution -- as far as amendments, our constitution Article 9 Amendment, it has the two ways to propose, by business committee and then by petition. That's what I always tell Kiowa voters, and they, we need to change this or change that. I say, if you have a really good idea that you think up, don't go through the trouble of going out and getting 400 voters to a the business committee meeting,
community because we can just submit it whenever we want to. But I don't think our constitution calls for secretarial election. That part isn't in it.

MS. DAUGHERTY: It may not.

MR. SMITH: So that was my question about the change in the regulation where tribes are going to be allowed to take out the part where we have to submit, you know, these amendments in the future. That says that will be conducted by a secretarial election.

MS. DAUGHERTY: If it's in there. If it's already in there.

MS. SPRINGER: If it's in there.

MR. SMITH: In our process -- I'll read it real quick -- this constitution and bylaws may be amended in an election -- it also has old language, it says, Commissioner of Indian affairs -- so we need to change that to Assistant Secretary of the Interior?

MS. DAUGHERTY: It still means the same thing, but, yes, it's old language.

MR. SMITH: There's other language that says he. You never know, it might be a she someday.

These constitution and bylaws may be amended in a
general election authorized by the Commissioner of Indian Affairs and conducted by the general election board -- that's our election board -- upon receipt of a resolution and enacted by the business committee, the Commissioner of Indian Affairs shall, if he approves the proposed amendment, authorize the general election board to conduct an election to permit qualified voters to either adopt or reject the proposal.

MS. DAUGHERTY: We've actually seen those with the solicitors where that occurs, where we authorize the election to occur when it has that kind of twist in the language, and we've actually had exactly what you're describing. Your general election board conducts it, and then it comes back to us to determine that the election was done right. We actually had one in our region that that's that way. It's not usual to see that explicit language like you have there, but it does. So that's what would occur. You're correct. Go to your solicitors in your region to have that discussion. I'm telling you in our region, we have something similar, and they do that exactly how it's described in there.

MR. SMITH: Then I guess we have to have at
least 600 people vote. That confuses some of our
Kiowa voters. They think you have to have 600
people vote to approve it. I think it means like
if 600 people vote, if 301 approve it, then it
passes.

My question was, if in the future if the
KIOWAs decided to, you know, amend this or remove
the part about submitting it, would we be required
to have a secretarial election, or would you be
able to follow the process?

MS. DAUGHERTY: We'll follow that.

MS. SPRINGER: We would follow that.

MS. DAUGHERTY: That's an unusual twist. You
don't always see that kind of language in there,
but we do have a tribe in our region that does
exactly that, yeah. You would have to come to us
to authorize and call the election, but then you'd
still follow that process.

MR. SMITH: I just wanted to comment on what
you said earlier about clear language. We had
that. It never should have gone on the ballot in
November of 2011 -- I'm sorry, 2010 -- there was
an issue vote. In our tribe, we do candidates and
the budget in June, and then issues and/or
amendments in November. So in November 2010,
there was a question like you said, multiple-choice about blood quantum. It was make everybody on the roll full-blood, 4/4, consolidate all of your Indian blood, whether it belonged to other tribes into one the tribe you belong to. Leave it at 1/4, which is what we are currently at, or lower it 1/8.

I wasn't in office yet, but why is there a multiple-choice question like this? The following June, I don't know why the election board put it on the ballot with the top two choices, which was leave it at 1/4 or lower it to 1/8. They put it on the ballot and if 600 voters voted in this election, this will be an amendment. I told the election board chairman, I was like, nobody's even submitted that to Washington. What you were saying earlier is like, if that was to go on the ballot to lower it from 1/4 to 1/8, then it should have on the question on the ballot shouldn't it be what the constitution currently says now, and then how that wording would be exactly changed to lower it.

MS. DAUGHERTY: That's typically the ballots we incur generally in our region would reflect that. We encourage them to have language as it
is, language of how it would change. That's how we encourage for sure.

MS. SPRINGER: You have to be careful when you're changing your membership criteria. Even though you want to change from, say you want to change from 1/4 to 1/8, you don't want to change -- say that was Article 2, Section 1B -- it said you had to be 1/4 Kiowa. Say you want to lower it 1/8, you're not going to change B to change it to 1/8. You want to add a section C which will say, after the approval of this amendment, those children possessing 1/8 or more Kiowa blood can be members. You want to keep the history of your tribe has developed through the years. Some tribes may start out with no blood quantum. Some tribes may start at 1/4.

In my tribe there was a period of time where there was no blood quantum, and we didn't realize that. Then when I used to work for the tribe and did enrollment, I noticed that these people aren't even 1/4, how did they become members? So I had to go back to the constitution. They were born in that time period where no blood quantum was required. So that's how they keep members.

So when you add in another section to change
that membership criteria, you're leaving your past membership intact. One of the things that's happened today and really makes me nervous is people think if they change the membership criteria and tighten it up, then they can go back and take people off the roll that don't meet today's criteria even though they met yesterday's criteria. They really shouldn't be doing that.

Your amendment only goes from this day forward.

MR. SMITH: I understand. It's been confusing, because in that June of 2011 to lower it to 1/8, and we had 51 percent to lower it. So I believe my tribe definitely needs the voters, if it's that close, deserve the chance to vote on it in the right way. I'm always getting grandparents that, we passed that, we made the amendment, and my grandkids can't get on the roll. I have to tell them, actually that was on the ballot, but it wasn't an amendment.

The only other part in our constitution that specifically calls for secretarial election is if the business committee is permanently unable to raise a quorum, then the secretary will call the election. It says the secretary can conduct that election according to whatever rules they
prescribe.

So about a year ago, I was having informal discussions with people at both the regional and the agency. We were thinking that was going to happen. I remember him saying, we were thinking we would just make it that anybody who was over 18 and if you have Kiowa ID, that you can vote. I was actually for that.

I was like, yeah, in a tribe of 12,000, we usually have 5- to 600 vote in elections. So I was like, if we can get anything over 1000, that would be great. Now that I'm seeing your presentation, if we did that, we wouldn't be able to make the threshold, because there is no way 30 percent of all those people -- I'm glad that you have that in there, registered voters.

I would like to see in the future my tribe make it easier for more KIWAs to vote. I think currently you have to vote -- you don't have to vote in every election -- we have two elections a year -- but you can't miss two concurrent elections, or your name is taken off the voters roll. That probably needs to change, too.

You answered my question. If we do changes, we'll follow it as it is stated there. Thank you.
MS. DAUGHERTY: The last section is talking about the petitioning process. Once again, we were having a discussion up here. The petitioning process will also be in your amendment section if it's allowed. I can tell you right now, there are some constitutions that don't allow for a petitioning process. I think it's a good idea, because then you have a chance to have the people bring forth an amendment or a change or to revoke an entire document, replace the entire document. Sometimes it's not in there. There isn't a lot of constitutions, so if your constitution does allow for bringing forth a petition to make an amendment to whatever documents -- my example's always been constitutions -- if it does all the petitioning, this is the process to get that petition gathered and submitted so that an election can be called by a petitioning process.

For this process, it's very similar. It hasn't changed much. They're allowed in the governing documents or if the tribes doesn't have an existing governing document and the election to adopt such documents is initially under federal statute -- that's the example I gave you -- like perhaps a restoration would allow for that.
What may tribes petition for? Pretty much the same things: To amend or revoke the governing document, amend a charter, amend or ratify a charter under OAWA or other action authorized by its governing document or charter.

When you prepare the petition, it's just like many other petitions. There's just some special requirements that you have to make sure are in place. Once again, this is unchanged from before, but you submit the proposed document to the local Bureau official for technical comments. That's once again so we get to the point where we have the actual language to be voted on, so when people are signing the petition, they know exactly what the proposed change to the documents are or whether it's replacement or it's just a small sections that are amended. All the different things that you can do.

This process also requires that those petitioning appoint a spokesperson. So we can communicate with one person -- speaking to one person who's the leader of the petitioning process. Once again, the technical assistance is provided in the same way.

For who may petition? Any member of the
tribe 18 years of age or older whose governing
documents or charger permits petitioning. Same
thing for people that can sign. Who leads the
petition process? I already discussed that.
That's a spokesperson.

Here's what the petition must include. It
must include a summary of the petition purpose,
the proposed document, the proposed amendment,
number of lines for each side to print their legal
name. And then you have this process at the
down of each page of signatures you're
collecting, it's basically a declaration statement
from a signature collector, you can have somebody
go around and say, hey, I collected these
signatures, and I'm going to tell you that --
there's a statement on there -- that we can
provide to you, whoever the petitioner is, when
you're getting those documents ready to go around
and start collecting signatures. Then it also has
to be notarized. A notary says, hey, this person
is signing that they agree that they collected all
these documents. The notary will just witness
their signature at the bottom of each petition
page.

There is no limit on the number of pages as
long as the pages meet the requirements.

Here's the one interesting thing. This hasn't changed at all, but I'm just to highlight it, is that the spokesperson may ask the local Bureau official how many signatures are required. So what you do is your local Bureau official, typically the superintendent, the superintendent will work with the tribe to collect what that number is. Sometimes, honestly, there have been occasions when the tribe did not want to participate in this process. So we literally have gotten to the point where we write a letter and say, hey, look, according to our records, there's something you submitted to us, and we believe your membership is 10,000. Unless we hear from you in like 30 days, we are going to honor this requirement we have under our regulations. Let this petitioner know that they need at least this many signatures. Then sometimes we'll hear back from them to change the numbers, and sometimes we won't. That's sort of been our solution to that issue. Typically, that doesn't happen. There have been some occasions where it does, and that's how we address it.

Go ahead, Mr. Smith.
MR. SMITH: When the government decides numbers that way, is it a formula based on the size of the membership?

MS. DAUGHERTY: That's what it should be.

MS. SPRINGER: It depends on what your constitution says, too.

MR. SMITH: I'm assuming that when you do that, the constitution of that tribe doesn't say anything about it.

MS. DAUGHERTY: What we're talking about is getting the correct number to calculate the right number of signatures they need to collect on the petition. So they have to give us the original number to calculate the percentage.

MS. SPRINGER: If your amendment section says 30 percent of your membership are 18 years of age and older, then say you've got 600 that are 18 years of age and older, that 30 percent will be voting.

MS. DAUGHERTY: No. That's for the voting.

I think the --

MR. SMITH: Our petition specifically says a number, 400 signatures.

MS. SPRINGER: They changed that. They moved it to 20 percent.
MS. DAUGHERTY: That leads me to my next point.

MR. SMITH: I assume what you're saying is for tribes that don't have a specific number in their constitution, and somebody has to figure it out.

MS. DAUGHERTY: This a good point to bring us, and I'm glad we're doing this, because this emphasizes this point. You have to know what you're calculating the percentage off of.

If you'll notice this next bullet -- I would highlight this, because we really do need your input on this -- for a tribe adopting a governing document for the first time, the petition -- this is how the regulation and how we wrote them -- the petition must have the signatures of 20 percent of the tribal members 18 years of age or older. The current regulations require 60 percent, because whoever drafted the first regulations clearly wanted some sort of emphasis that, hey, this is the first time this document is being adopted. We want a lot of participation to make sure this is the will of the people.

As it's drafted, we put 20 percent. That -- I'm not going to say it wasn't me, but I do think
it needs to be higher than 20 percent. This isn't always my call. This is the perfect situation where commentary to the regs is an important thing. What do the tribes think?

MS. IRON CLOUD: We want to hear from the tribes on this.

MS. DAUGHERTY: You can tell us even right now, or I'll show you how you can also submit comments after the fact. We're curious what tribes think on this particular issue. When tribes adopt it for the first time, what should that percentage be for collecting of petition signatures. Otherwise, it might already be in the document, but we're going to have to come to some decision as to whether that reflects the percentages that he was referencing. Is there a minimum default amount, and then the tribal number can be higher? So we're looking for some input on that. Is there a minimum default amount for this figure? I believe the tribes should be allowed to be higher. We would totally agree with that. We definitely need your input on this one, because we're not quite sure what to do with it.

MS. SPRINGER: One of the things you're going to run into with such low percentages, you know,
you may have two groups that want to be the petitioning group. There are ones that want it to be known that they put this thing forward. They may be a group that is in the minority. The other 80 percent may not like what they're proposing. But if they only have to get 20 percent of your membership, then that 20 percent is going to be guiding what everybody else does.

One of the things that happens is even though you have a chance to register to vote in this election and whatever, some people will say, well, it's not going to do any good, so I'm not going to register. I'm not going to vote. Then all of a sudden, there's a challenge. We can challenge that. If you didn't register to vote, you have no challenge.

So we need to make sure that these numbers are numbers that show the will of the people. To me, 20 percent was lower than I ever thought of. We all thought 60 was a good number, and it had been 60 for a thousand years. Then when we got this last version, it said 20 percent. I'm like, what? We're not the last say so, but it depends what the tribes want.

MR. SMITH: Is that 20 percent of membership
or registered voters?

MS. DAUGHERTY: 20 percent of membership.

This is for adopting -- the special case where you're adopting the document for the first time, you're petitioning for that document for the first time, just keep that in mind. That's definitely where we're looking for some commentary.

As far as submitting petitions, one of the regulations we put in place was petitioners have one year from the date of first signature to gather the required signatures. This is just to make sure there is some eventual closure to the process, and that also -- here's an example, let's say you didn't have a deadline of a year, and the tribe has just recently passed an amendment to lower the blood quantum to 1/8. So if you wait five years to let people collect signatures, you may have a bunch of new members that come on board that aren't reflected in the process. It just prevents the process from getting stale. That's a requirement to prevent that from happening.

Then a spokesperson would submit the petition once it's completed to their local Bureau official. Then they check, you know, they write down when the petition was filed, post a copy of
the petition for 30 days with the challenge
instructions, notify the petitioners in writing of
the number of signatures received, and a statement
that signatures may not be added or withdrawn,
provide the tribe's governing body with a copy of
the petition, and then providing technical
comments if needed at that point.

Challenges to the petitions. Who may
challenge? Any member of the tribe 18 years of
age or older. It must identify the location of
the signature, like which page is it on, provide
supporting documents for what the basis is of the
challenge, and then the local Bureau official must
confirm that there are a valid number of
signatures on that petition, and make sure the
petitioning procedures are followed. So for
example, that example I gave you of let's say
somebody turns in a bunch of pages with
signatures, and there's no certification at the
bottom that the person collected those signatures,
as an example.

Once the authorizing official makes a
decision, they have to make a decision within 60
days of the official filing date. So when a
petition comes in, they put what's the official
filing date. The authorizing official has 60 days
to make a decision whether to call that election.
That decision is final for the department. So
then once the authorizing official says, okay,
we're calling an election, we're right back into
the other process, that we just spent an hour and
a half going through, where the election is
conducted just like an election as if it had been
called by the governing body of the tribe.

That petition is only valid for one
secretarial election.

De, do you want to say something? I saw you
waving a finger at me.

When De says jump, I say how high?

That's a brief overview of the petitioning
process, how you collect petitions, and once that
petition is turned in and it's valid, then the
process just follows the regular secretarial
election process.

MR. MELENDEZ: I was kind of looking at this
whole change, you know, when we go back and
explain it to our tribal councils, they're going
to ask, what is the most significant change to
everything you're talking about here? So are we
saying that petitions weren't really allowed
before, and now we're entertaining that they can be allowed? Just general citizens can petition? As you know, some tribal councils have referendums in them, which really when you vote on that, I guess that's the secretary also if you have a referendum in your constitution.

MS. DAUGHERTY: No. A referendum is typically a whole separate process where what's most common for use of a referendum is to see if people either want to recall a resolution that the tribe has passed, or else to propose some sort of law. That's typically run by the tribes.

MR. MELENDEZ: I thought that still requires the --

MS. DAUGHERTY: It's possible there's a constitution out there that might say that. That's totally possible. Typically, a referendum vote is entirely a tribal process. Typically, to look at a resolution or ordinance, you know, of law of the tribe, to either propose it or if what has already been passed, to challenge it, so the people can challenge it. That's typically what a resolution is.

MR. MELENDEZ: So petitioning is not new?

MS. DAUGHERTY: Petitioning is not new. It
all depends on whether it's allowed in the amendment section. The amendment section will say if petitioning is allowed. A lot of constitutions allow for petitioning, and some do not. Some don't allow that option. So if the option's not allowed, this doesn't matter. If it is, then it does.

MR. MELENDEZ: So we have to look at our constitutions?

MS. DAUGHERTY: Exactly.

MS. SPRINGER: Look at your amendment section of your constitution. A lot of them will say, by resolution of the tribal council, or then it will say a petition by a certain percentage of the adult membership.

MR. MELENDEZ: Petitioning for what?

MS. SPRINGER: To amend the constitution.

MR. MELENDEZ: Amending the constitution, that might be something different than just people petitioning in general?

MS. DAUGHERTY: Exactly. Yes.

MS. SPRINGER: You would follow your tribal procedures for that. The secretarial election process is just for amending the constitution if your constitution requires that.
MS. DAUGHERTY: Or like a charter.

MR. MELENDEZ: The reason I say that is as soon as we go back to tell our councils that issue on petitioning, there's so much dissension from the international congress and our board meeting of recalls and so many things going down, we start raising petitions by just general citizens, I can already see the unrest that's happening that I see in different areas having to deal with us fighting amongst ourselves. As soon as you get at some point the petition to change the constitution to oust the regular council members -- I'm trying to sort this out as to what it actually means and push it to the forefront. The people that are factions on reservations jump at this the way to more so attack the sitting council. So I'm kind of looking at this in that light as, okay, what does this actually mean?

I'll take this back to our tribal council and say, okay, are we going to see more petitions to change our constitution because they're not happy with the sitting tribal council, so they'll look at it as, hey, is this some way that we can change something to change whoever's in office now? I'm just saying, as we start to talk about petitioning
and all this stuff, the thought in my mind and by
the tribal council is dissension now causing
(inaudible) amongst ourselves? That's what I was
wondering about this. Thank you.

MS. DAUGHERTY: That makes sense, and you
really have raised an important issue. There is a
lot of confusion about those issues about the
processes and tribal processes that are recall,
impeachment, those sorts of things for leadership.
Then the other process, referendum, which is a
vote, like I said, on an ordinance or resolution.
Then this process, which is for different
governing documents. Typically you see the most
action constitutions. But there's a lot of things
to know.

I have a friend named Tracy who has a story
out there called Looking for Superheroes. Apply
for this job, we're looking for superheroes.
That's the challenge I think of leadership in
Indian country. You're expected to learn and know
a whole bunch of things, so if you're confused
about where different things apply, that's only
natural. There's a lot of different rules at
different times. We have contact information in
here for you, and you're free to contact any of us
at any time. I have some cards up here, and we're happy to help in any way we can help. Yeah, a lot of this does start and depend on what's in your governing document. So that will be something where you start is go back and look at your own documents and say, okay, does our document and amendment section require secretarial involvement, then we're going to take a look at these procedures.

Anybody else? Anybody else have questions? I will answer as many questions as you want. I'm not throwing anybody out.

MR. MELENDEZ: There's a lot of people that don't know less than I do about what we're talking. I saw where you're going to schedule some training in Rockland, California. I think that's November or something.

MS. DAUGHERTY: It's at the back of your packet.

MR. MELENDEZ: I'll try to get some people out of the west coast to come. I'll try to get some people from our election committees. In fact, I'll be calling them probably Monday to make sure we go to that. They work with this every day, so they know more know than I do about where
they stand as far as some of these changes. So we'll pass that on. Will it be Sacramento and Rockland?

MS. DAUGHERTY: That's correct, yes.

MR. MELENDEZ: Thank you.

MS. IRON CLOUD: It's a consultation, actually.

MS. DAUGHERTY: It's a consultation. It's like training. You get to know what the new regs will look like.

MS. SPRINGER: You might want to talk to Charlotte Johnson out of Phoenix. She's your regional tribal officer. If you want constitutional training, I know they do give -- BIA does give constitutional training out there. Just request it. I don't know when's the last time she's done it, but you might check with her and see if she's got it scheduled.

MS. DAUGHERTY: She's also got a lot of experience, too.

MS. GUERIN: Who does the training for the Portland area, constitutional training?

MS. SPRINGER: Check with Greg Norton. I know he has some kind of training set up. I'm not sure of the dates. He wanted me to come and help
him, but I wasn't available at that time. Check with Greg at the regional office, and he can tell you.

MS. DAUGHERTY: Honestly, when you get to the point where you're submitting language or thinking about submitting language, definitely contact your superintendent, your regional office, and let them know if you could come out and explain this process to us, because we're starting down this road. We come go out all the time to do that. Sometimes the tribe will start on the process, and they'll back off, which is okay. We don't consider it wasted at all. We're saying the process is here, they just decide not to engage right now. We're happy to do that either way. Whether it culminates in a vote or the tribe was just exploring it and then has other priorities. We're happy to do that.

MR. SMITH: So we have to go through that to follow the chain. It's like we could just contact these two knowledgeable ladies who seem to know so much about that?

MS. DAUGHERTY: Flattery will get you everywhere.

MR. SMITH: Seriously, if I have questions
about language, I would much rather be able to send you an e-mail with all of your experience but I guess as the way it is I have to go to my superintendent first, and then they have to forward it up to you?

MS. SPRINGER: You're in a good spot, too, because Terry Bruner is your deputy director out there. Terry's got a lot of years of tribal government service, too. Terry's been one of my go-to people. We've got Terry. Suzanne retired, so Sherry was still fairly new. When I say fairly new, I mean less than 10 years. You do have some good people within Southern Plains that could help you out.

MR. SMITH: Okay.

MS. DAUGHERTY: I assure you that when a lot of times people run into quirky stuff, they call De or I anyway, so if it's quirky, they'll probably call us anyway. They do a lot. Any other questions or comments, come on up.

MS. DARNELL: The question was if a tribe submits to get the consultation, get the technical assistance portion started and hopefully it wouldn't take very long, but if we started it under the current rule, but then the new rule went
through, would we be under old rule or the new rule once we requested to have the tribal council pass a resolution?

MS. DAUGHERTY: I certainly can't answer that on the fly.

MS. SPRINGER: I would say we would go ahead and process it even though -- technically we're dealing with problems with 90 days or 180 days. It's not necessarily the tribe, it's the tribal attorney. If the tribe submits a resolution with the request and everything, we're still going to have to process it. Whether we get it done today or tomorrow, we're still going to have to follow the process. Whether we get it done today or tomorrow, we're still going to have to go forward with that process.

We're basically in the same boat, because we wouldn't have your membership, so we'd still have to request that listing from you. So what we're trying to do with these regs is put all of the review and technical assistance, put it in the forefront so whenever the tribe has come forward with an actual request for the election, all the amendment language has been settled. You already know if it's contrary to federal law -- and
because the process, hopefully, your membership
knows it's coming up and what the issues are, or
whatever. So when you begin that resolution with
the actual language and the membership list, we
can just go about getting it done.

MS. COEN: I don't think that the change in
the regs would change the kind of request that
you're asking. I don't think that you would get
foiled by the new regs unless it dealt with the --
for instance, like this petitioning process, if
you don't have an IRA constitution already, you
would then have to follow the new regulations when
they come in. As De said, if you already have an
IRA constitution --

MS. GUERIN: Yes, but I think the technical
assistance (indecipherable).

MS. COEN: I think that the technical
assistance that the Bureau gives and the actual
conduct of the election, that part, as far as your
eligible voters, your registered voters, all of
that is the same. The clarification on calendar
days, for instance, and what happens if it's on a
weekend. If the election is held after the new
regs are adopted, those kinds of time frames would
apply. I don't think -- De, you can confirm or
Danny -- I don't think that a tribe is going to be inconvenienced by the adoption of the new regs if you already have an IRA constitution.

MS. DARNELL: I think particularly what I was interested in was that how you talked about the difference in the polling place language. That seems like it kinda would be harder depending on whether the tribe wanted the polling places or they wanted the mail-out ballot. Anyway, that's just what I was kind of interested in.

MS. DAUGHERTY: We'll have to watch the timing on that, but for sure, that, to me, will be the biggest issue. So to me, if I was answering this question in front of the Supreme Court and they ask you something you don't know off the top of your head, I'll research that issue, and I will get back to you. We'll definitely have some conversation about that, because we do need to have a definitive answer if everybody's going to be in the process when we get to the point where this might be approved. I think you just kind of raised one where you're right, there's a funny issue there.

That's where the issue will come up. You'll have to decided at the mailing of the notice. So
if your notice packet has already gone out before
the regs come in, then you won't be affected by
it, because your voters' packet will already have
said how that election will occur. That will be
right after your registered voter list. I think
that timing will work out, because the notice
packet will have already been mailed out. But if
it doesn't come to a place until the notice
packet's out, then the regs come out, before the
notice packet goes out, then it will be in the
regs. That's where I think is where the turning
point myself.

    MS. COEN: I guess the question is: Is it
that you want polling places as opposed to just
mail out?

    MS. DARNELL: I think that has been the
question that has been raised by the council. It
seems like if there's not a particular specific
interest saying we want polling places in the
response, but not that specific, but just the idea
of are there going to be polling places or not.

    MS. SPRINGER: Do you have polling districts
in your constitution now?

    MR. URBINA: No. So our original secretarial
election had polling places on the reservation but
also in our traditional communities located in the
state of Arizona. So they're trying to figure out
whether these communities would be included rather
than by mail out.

        MS. SPRINGER: Do you have a reservation?
        MR. URBINA: Because your polling places
can't be outside of the reservation, and that
would still be true after this? Okay.

        MS. DAUGHERTY: Unless you make a comment
that says, that shouldn't be true. We can address
that situation. Absolutely.
        MR. URBINA: They're considered Native
American communities.
        MS. SPRINGER: It's considered Indian
country?
        MR. URBINA: They're considered Native
American communities.
        MS. DAUGHERTY: So is that Indian country?
        MR. URBINA: Maybe.
        MS. DAUGHERTY: I would argue that case.
        MR. URBINA: That's what we would argue for
sure, especially if they want polling places.

Another issue is that there is a current
petition out by a group of voters. There was
opinion written a couple weeks ago that they would
be given, I don't know, as much time as they needed to come up with the signatures to start an election. This new regulation kind of cuts it off at one year. Would they be grandfathered, that specific group?

MS. SPRINGER: Have they started collecting signatures?

MR. URBINA: They have for about a year. They didn't get enough signatures, so that kind of died. However, they've been told that once they start again to collect signatures, they would have as much time as they did to collect the signatures.

MS. SPRINGER: I think they were asking for five years.

MR. URBINA: Five years, exactly.

MS. SPRINGER: Then I think they said two.

MR. URBINA: Okay. We don't have a copy of that letter.

MS. SPRINGER: That was a conversation I had. I don't know if it actually went out in writing.

MS. DAUGHERTY: What typically happens when we transmit the number of signatures needed, we'll also put a deadline in there now. That's why the regs have a specific deadline in there. The
conversation we're having now is how long before
the signature-taking period gets stale. So as it
is now, what typically happens is we set out the
number of signatures you need for the petitioning
process, and this is how long you have to gather
them just to have an ending.

You're certainly free to submit that comment
about those issues regarding both petition
collections, signature collection time frame, and
polling sites.

MR. URBINA: Can you maybe highlight the
actual changes as well? I came here late, so I'm
not sure if there's a way to designate.

MS. DAUGHERTY: Yes. If you want, we could
even do it right after. One of the ones was a big
one for us, from our perspective, is that we
really finalized and highlighted the language of
what a tribal request is, because there was a lot
of confusion about that in the old regs about the
when the time clock started ticking.

So that's why we put that as when we get a
resolution from the governing body of the tribe
and we get the exact language to be voted on and
we get the voters list with the names and
addresses. So the tribal request became a much
more clear definition so that we would know the
election is ready to be initiated and then have
the time frame to get it done within it so that it
doesn't drag on forever. The tribal request was a
biggie. Then the very issue she brought up, which
was about the mail out and the polling sites only
if it's in the tribe's document, I would say
that's the other real big change.

MR. URBINA: When you say document, do you
mean constitution or laws? This says laws. So if
our election ordinance says polling places, would
that be different than the document?

MS. DAUGHERTY: Is it your elections
ordinance for leadership elections?

MR. URBINA: Yeah.

MS. DAUGHERTY: Which is different than these
types of elections unless -- this is like a law
school nightmare problem. Unless you have a
constitution like Mr. Smith over here where it
says otherwise. So really it can be complicated.

MS. SPRINGER: That's why we put it in there.

MR. SMITH: I was six when this was adopted.

MS. SPRINGER: That's my point. If your
constitution's amendment section requires polling
places. And then that only pertains to elections
regarding amendments. It doesn't pertain to your tribal elections or your referendum elections or whatever else you have in your document. We're only concerned about your amendments to your constitution.

MS. GUERIN: I'm alarmed that only the tribe can submit proposed documents and seek the technical assistance from the BIA. An authorized official -- I guess it's a regional director -- but a tribal request. Okay.

The trouble I have with that is what I mentioned earlier. The people in my community do not trust our council now. They have a majority of six voting every time together, so they're always outvoting the ones who actually are advocating for us. So we the people would like to call for a secretarial election, and we're not going to get a majority vote with the council. There's no way we can get past that collective.

MS. SPRINGER: If you're going to petition for a secretarial election to amend your constitution, that petition comes to the Bureau. It doesn't go to the council, it comes to the Bureau, and the Bureau is actually the one that looks at the petition to make sure that it has the
correct number of signatures, there are not duplicates. That process, the petition process we're talking about here is our process.

MS. GUERIN: Okay. Well, our superintendent is buddies with that little group in tribal council. What happens is if there's misconduct on his part? Who do we go to?

MS. DAUGHERTY: You're talking about the petitioning process, though. You want to initiate a petitioning process? If you look, even though it says that in subpart D, we also have to look at -- and this just might be a lack of clarity on this particular slide, so we'll take a look at that -- but if you look at subpart F, which is the petitioning process, it talks about you submitting the petition.

Then also, if you don't feel safe, then you also go to section 81.4, which is the definition section. If you look not at the PowerPoint but look at the whole regulation that you've got also, 81.4, the definition of a tribal request, covers both of those options. It covers the governing body bringing something, and it covers a petitioner coming forward. So the tribal request definition covers either option. So just because
subpart D PowerPoint says this, it doesn't mean
that's not what a tribal request is. A tribal
request can be either, and that's covered in the
definitions.

MS. GUERIN: Thank you.

MS. DAUGHERTY: You're welcome.

MR. MELENDEZ: I know that for secretarial
election, we had a draft and it was reviewed by
Charlotte Johnson. It was actually sent there.
That's on the tribal side. Now, on individual
petitions, basically they would have to have a
point person, wouldn't they? I mean because if
the tribe sends it in and it's reviewed by
whoever's in the area, and they can't say whether
it lines up with the constitution or whether
they're reviewing it, then it would seem to me
that individual petitions would have to have a
point person, and they would have to have that
reviewed by an area or somebody to basically see
if it lines up with the constitution similar to
how the tribe has that technical assistance.

MS. SPRINGER: The petitioning process that
the superintendent does or local Bureau official
does, is to look at sufficiency of the petition
whether or not they have enough signatures. They
actually review the petition, take off the duplicates, and also check to see if the person that actually signed the petition is a member of the tribe.

After they do all that, then they send that petition to the regional director. The regional director, then the regional director will decide whether or not that petition is sufficient. If he finds that it is sufficient, then we will take the proposed amendment language, and we'll go through the same process of legal review, and whatever.

We're also asking that if they're going to submit an amendment by petition, that that spokesperson for the petitioners start that process before they gather the first signature. You may spend a year gathering signatures just to come in with an amendment that makes no sense.

MS. DAUGHERTY: We do give technical assistance to spokespersons.

MS. GUERIN: Thank you.

MS. TIMECHE: We do work with a number of tribes on this whole issue about revising their constitutions. Two big things come up: One is to provide clarity on it. That has really to do not so much to me but spell it out in your documents
and in these hearings.

But when they make a decision to then remove that clause that is there, that's their responsibility. You know, under the referendums, it's the Bureau's cost. But when they make a decision to then remove that clause, then it's their financial responsibility. For future changes to their constitutions, once (indecipherable) is taken out, any change that they're going to make to their constitution is their financial responsibility.

I just wanted to make sure that we repeat that several dozen times for tribes and say, you know, once the BIA is out in terms of the election cost, that that becomes your process. So you got to have a really good election process in place currently. If you don't have an election code, you might want to think about creating an election code. That's one point.

The second thing that also gets raised -- and you provided this verbally at the very beginning, which I appreciate -- I noticed that there were some comments in the document that you gave us, the Federal Register document you gave us, what would be really helpful, I think, is helping the
tribes to understand about what happens when they decide to remove that clause the BIA is not going to fund them anymore, not going to recognize them, to alleviate all of those fears. I think that just needs to be an educational piece on that so that it gets said from your viewpoint. It's gets said, you know, it's publicized widely about what it is. That's a big issue that gets raised every time they want to talk about that. If you want to have full control, that's one of the ways you can do it. Those are my two comments and recommendations.

MS. DAUGHERTY: I agree with you on both of them, Joan, that we should add some sections.

MS. SPRINGER: We did talk about it, and we have talked about it. One of the things -- even the conduct of the secretarial election, if the tribe is contacted or contracted, they've gotten the money from the BIA to do that function. So unless regional offices kept some money back for secretarial elections, that cost really should go to the tribe. But if the Bureau has money on hand, they can go ahead and fund it. That's one of the things tribes need to keep in mind is once you contact or contract that function, your tribal
government function, you're responsible for the cost of the election. So if the BIA has money, sure, we'll try to help you out, but that's not always going to be a done deal. That's something you need to think about.

One of the questions that came up when she was talking about once we take secretarial approval out of the constitution, people are saying, well, if the IRA no longer applies to us, what about our land? What about this? What about that? When you take secretarial approval out of your constitution, it just makes that constitution a non-IRA constitution, which means we don't have to approve your future amendments. It doesn't have anything else to do the rest of the provisions of the IRA.

MS. TIMECHE: So then put that in writing someplace so that they see it clearly that that's what the BIA is saying.

MS. DAUGHERTY: I'm already drafting it up here, Joan.

MS. SPRINGER: We can talk about that. When we talk about the cost of it, and whatever, and it was like, well, if we really don't have money when an election comes up, we try to go to the tribe.
It just depends on your region. Some regions will, oh, yeah, we can do that. Just tell us what we need to do. Then the other ones are, you know, that's the BIA's responsibility. We don't care if we have the money. It's the BIA's responsibility. So it just depends on who you're working with, what region you're from, or whatever. It differs from one region to the next.

MS. PEWITT: I'm telling Dolly Pewitt with the Seneca Cayuga Nation. We just had a secretarial election last May. So just wanted to say a little bit about our experience. Really, everything you're proposing was pretty much the way we did ours. We started with working with our Bureau I think last summer. We would just meet with them, bring our proposed resolutions, they would sit down with us, we would have discussion on the language, why we needed it, what worked, did it work with other parts of the constitution. At the same time, we were working it through, the vote, through our newsletter and through a series of letters of our chief and other means. Then when we had our vote in May, all five passed.

This is something we've talked about doing for 15 years. But it also helped us, I think,
just in our election process overall, because you
were talking earlier about when to schedule the
elections. We were concerned because we had this
election May 15th, and then we had our regular
election June 7th.

We really had to make a big push to get the
voter registration out, but also to get the word
to our voters to discern what the two elections
were, because we don't have voter registration for
our tribal elections. But then when we did the
summer one also is we went back and rewrote our
election rules. We used a lot of the language
from CFR 2581.

So now we're going to have another
secretarial election I think this spring, so
hopefully, we're all educating our voters and
getting higher participation. We had 85 register
in May. We still have not had even 700 vote in
our regular elections. We had over 700 in the
general election. We had a referendum vote
yesterday, and we had over 1000, which is our
highest voter turnout ever. Just our experience.

MR. SMITH: What's your membership?

MS. PEWITT: We have 5523. We have about
3500 eligible voters, but we only have an address
for maybe 2800.

MS. DAUGHERTY: I love to hear stories like that.

MR. SMITH: Like I said, we're 12,000. I don't know how many are eligible, but we're getting between 5- and 600 voting in most elections.

MS. DAUGHERTY: Hopefully, you hear her story. That's what we like to see is that the more voter education you do, the more transparent the process, you're going to see higher and higher numbers. The more you involve people early on, those are the great stories I love to hear. That's tribal governance.

MS. PEWITT: That's a 15-year process. One thing we started about three years ago is we actually started our own political party, so we actually have another venue for pushing the vote rather than just our tribal leadership. It's a good venue, because it's not just tribal leadership who participates, it's our membership. Because we still have a lot of the turmoil as well, but we're working to educate our people and hopefully quell that a little bit.

MS. DAUGHERTY: Does anybody else have any
other questions. Just because it's 4:09 doesn't mean we're going to push you out the door.

MR. SMITH: Last comment, I promise. I just want to say the government's initiative to make the language clearer, I think is great. I think it works. I'm a reader, but I'm not a lawyer, so when I first got in government, I started going through CFR, and as much as I like to read, you know, it's hard, you know? So this technique -- I can't remember what the term is -- of addressing the reader rather than saying, you know, parties wishing to blah, blah, blah, when you want to do this, then you have to do this. For me, that worked. I could really see the difference. So I know we kick around all government agencies, but in this instance, I really think that was a good initiative. I just wanted to say put it everywhere. Thank you.

MS. GUERIN: Finding out if they met the minimum requirements for an election, it seems obvious to me, but it didn't happen this way.

In March my people circulated a petition. We were challenging a resolution that tribal council passed. So before we started the petition process, we got a tribal roll to see many eligible
tribal voters we have in March. Then we figured, okay, we have to have such-and-such number at least. We'll go over that by 100, just to be safe.

When we took our petition in, they said we needed 50 more, the council said we needed 50 more. It seems obvious to me that before you start a petition, you find out how many eligible voters you have. Me, as an organizer for example, if I want to have a petition next year in June, for example, do I check tribal membership now as I begin this process?

MS. DAUGHERTY: If you're talking about petitioning for this purpose, the first purpose you're talking about is challenging a resolution, right?

MS. GUERIN: I was talking about numbers.

MS. DAUGHERTY: So that would have been a tribal process to challenge a resolution. For this process, yeah, as soon as you are advancing, like you think you're ready to start collecting signatures, I would check the numbers first.

MS. GUERIN: So just before you start printing and circulating petitions?

MS. DAUGHERTY: Exactly. That allows you to
plan and organize, as a community organizer, your effort.

Any other questions? Before everybody runs out the door, I can see you gathering your things. I just want to real quickly show you two quick things.

As you pointed out, you're going to go to another consultation. If you look at the back of your PowerPoint slides you have copies of, there's 20 locations right now. It is possible other ones might be proposed, but they will be sent with a dear-tribal-leader letter. You can look on the new section of the BIA's Web site, they'll be there as well.

Then the last thing that's important is you can still submit comments. You can send them in up through December 17, 2014. There's a couple different ways you can do it. There's a Web site, you can e-mail them to Laurel here. And then you can also mail them or hand deliver them to Laurel at that address listed there. So if you if you think of things after you take this home and read through it some more, want to make additional comments, please do so in all these various ways that you can do that and make additional comments.
If you have any other questions or need further information about any other of this consultation, you also have Laurel's phone number available to you there at the bottom of the slide.

Thank you, and thank you all for coming and we appreciate all of your comments and suggestions.

(The consultation was concluded at 4:16 p.m.)
DISCLOSURE

STATE OF GEORGIA
COUNTY OF CHEROKEE

Pursuant to Article 8.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

Janice S. Baker & Associates, Inc., has no contract/agreement to provide court reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this consultation. The firm will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this consultation.

Mildred R. Hornblower
Certified Court Reporter
Certificate No. 2785
CERTIFICATE

STATE OF GEORGIA
COUNTY OF CHEROKEE

I hereby certify that the foregoing consultation was reported as stated in the caption and the questions and the answers were reduced to writing by me; that the foregoing 136 pages represent a true, correct, and complete transcript of the consultation held on October 26, 2014.

I certify that I am not disqualified for a relationship of interest under O.C.G.A. 9-11-28(c); I am a Georgia Certified Court Reporter here as an independent contractor of Janice Baker & Associates court reporting firm; I will not be taking this consultation under any contract that is prohibited by O.C.G.A. 15-14-37(a) and (b) or Article 7.C of the Rules and Regulations of the Board; and by the attached disclosure form I confirm that Janice Baker & Associates is not a party to a contract prohibited by O.C.G.A. 15-14-37 or Article 7.C of the Rules and Regulations of the Board.

This, the 18th day of November, 2014.

______________________________
Mildred R. Hornblower
Certified Court Reporter
Certificate No. 2785