BUREAU OF INDIAN AFFAIRS

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TRANSCRIPT OF
DISCUSSION OF PROPOSED REVISIONS TO
SECRETARIAL ELECTIONS (25 CFR 81)
HELD ON NOVEMBER 18, 2014
AT EMBASSY SUITES
1815 S. MERIDIAN
IN OKLAHOMA CITY, OKLAHOMA
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REPORTED BY: MICHELE WATSON, CSR
MS. IRONCLOUD: Welcome to everybody here. We appreciate those of you who braved the slick weather and cold weather to come out. The purpose of today's consultation is to look at the 25 CFR currently Part 81 and Part 82. And we've provided everybody with a copy of the proposed rule which is compiled in Part 81.

And, ultimately, we would like to hear from you all what your thoughts are, what your input is with regard to the changes. The current rule kind of compiles 81 and 82 in a more comprehensive version, provides some structure to the procedures and some clarity. And we'll go over several of the changes. Danny will do a little breakdown of the history of how we got to where we are now. We're all -- all three of us are able to answer questions, but we really want it to be interactive. We want any questions that you might have to be brought forward. Any insight you have, any objections to any of the parts of the rule as proposed to be put on the record.

Michele Watson is here as our court reporter. We're making a full record of this
consultation. So if you would, please identify
yourself when you're speaking. So at this point
I would like everybody to go around the room and
have you introduce yourselves and let us know
who we're speaking to and with. Thank you.

MS. BEAREAGLE: Good morning, my
name is Jennifer Beareagle. I'm from
Fredericks, Peebles and Morgan and I'm here on
behalf of the Santee Sioux Nation.

MS. LOWE: Good morning, my name is
Debra Lowe. I'm general legal counsel for the
Chickasa Nation in Ada, Oklahoma.

MS. WORK: Good morning, my name is
Susan Work. I'm an attorney with Hobbs, Straus,
Dean & Walker who represent various tribes here
in Oklahoma.

MS. PHILLIPS: Good morning, I'm
Andrea Phillips from the Southern Plains
Regional Office, Tribal Government Specialist.

MS. BRINER: Good morning, I'm Dawn
Briner. I'm the Election Board Secretary for
the Otoe Missouri Tribe.

MR. BANKS: Wesley Banks for the
Kickapoo Tribe in Kansas.

MR. MILLER: Good morning. Wallace
Miller from Stockbridge-Munsee.

MR. BRUNER: Terry Bruner, Deputy Regional Director of Southern Plains.

MR. DEERINWATER: Dan Deerinwater, Regional Director, Southern Plains.

MS. ALEXANDER: Brena Alexander from Southern Plains Regional Office.

MR. EMHOOLA: Lonnie Emhoola from the Anadarko Agency, Tribal Government Specialist.

MS. IRONCLOUD: Did we get everybody?

MS. LOVIN: Sharon Lovin, Southern Plains Region Tribal Government.

MS. IRONCLOUD: Thank you. And before we move forward, I would like to give a special thanks to the Tribal Government Services office here at Southern Plains. You did a wonderful job setting this up. We really, really appreciate it. Thank you.

So at this point I will hand the mic over to Danny and she will provide a little bit of the background as to how we got here, and then at the end we'll talk a little bit more about the process.
MS. DAUGHERTY: Good morning, everybody. I am here from the Great Plains Region, which is in Aberdeen, South Dakota. And my involvement -- I first became employed with the Bureau in 2007 and I moved to the title Government Division for our region in 2008. And one of the things we do in our region -- it varies from year to year, but we do see a lot of activity on secretarial elections. And so when it was proposed that we would do some amendments to the regulations, I was involved with the team that started drafting those documents. It also included Dee Springer, who has a long history of working for the bureau, probably 30 years, and probably the person I know that has the most extensive background in secretarial elections, conducting them and awareness of the regulations.

And then also Karen Catcher and Suzanne Chaney, who are now retired. So when it came time to do the consultations, they called myself and Dee because we were involved with some of the drafting. There's been a lot of people involved with the drafting process. There's also a number of other people that have
helped us walk through. People who have helped
us along the way.

And these regulations have not been
updated since 1981. Prior to that there were a
couple periods of activities back in the '30s
and, I believe, the '60s to do some work in this
area, but these regulations themselves have not
been updated since 1981.

Initially there was an effort in
the '90s, early '90s, '91, '92 and Dee Springer
was involved in that effort that predated my
tenure with the BIA. And there were some public
meetings held. That was prior to the time when
there was an order for consultation with tribes.
So they were called public meetings at that
time, where some drafting and discussion
occurred and then just like a lot of projects in
general, it sort of fell by the wayside. And so
that effort was reinitiated back in 2009 and
2010 with a very active effort to rewrite the
regulations. And what we found during that time
period is there were a lot of times that
situations had occurred that the regulations
didn't exactly explain. And so there were
people around the country -- either case law or
specific instances of descriptions of what we chose to do in certain areas where there was a gap in the regulations. And it was felt by a lot of people that the time had come to really articulate those things and put them in the regulations more expressly.

So in 2009 and 2010 there was a lot of drafting and also a series of consultations. As a result of those consultations, a new draft emerged. It was, I think, more concise than what those series of consultations reflected. It definitely was more compact and more simplified. It actually ended up being a much better document. But because there was another, yeah, definitely a lot of responsiveness to what the comments were and then just things that we noticed during the review process. However, because it had changed so much from that round of consultations, that we felt it was necessary to come around and discuss with tribes again what the drafts look like today. So that's why we're coming around.

We did already have one consultation session in Atlanta, Georgia during the NCAI meeting and that occurred on October
26th, 2014, and then, of course, we're having this meeting here today. And then we also have later this week in California, in Rockland, California, a consultation session on November 20th, 2014. Those are all that are planned at this present time. You know, it is possible that that might change, but I know for the time being that is all that is planned for now.

So what we wanted to do today is really just go over some of the more significant changes that, as Laural mentioned, to have this discussion regarding what the highlights were of the changes. Substantively a lot hasn't changed. The old regulations that you're familiar with will be very familiar to you as you read through this proposed rule. But one of the things that we did in part 81 and 82 -- Part 82 used to be the section that was about petitioning and Part 81 was regarding conducting secretarial elections, but there was some information in Part 82 that sort of overlapped Part 81.

So one of the changes that was made, and you'll see this in the subparts in the proposed rule, is that there's a very clean
section about how you conduct a secretarial election. Because there's a certain set of steps that happens in the petitioning process. And once you get to the end of that petitioning process, then the election is conducted exactly the same way as if the election were conducted as a result of a tribal governing body's request for secretarial elections. So we felt it was important to have just one set of rules about how you conduct a secretarial election because it does really happen the same way. And we know that there was some overlapping language between the old Part 81 and Part 82.

So in the new section there's just one section regarding how a secretarial election is conducted and then there's a separate and distinct section about just the components of how to do the petitioning process. So that's one specific change.

But how do you know if this rule applies to you? Well, you know right away it applies to you if you are a tribe that has conducted changes to your governing documents using the secretarial election process. But you'll see the process right there. A federal
law requires a secretarial election to take an action.

Typically, where you see that most often is in a case of if you have a federal law, for example, establishing or reestablishing. A tribal governing document requires a secretarial election to take action. So if you look, for example, in the constitution in the amendment section, you'll see in there that it says to make changes to this document, you have to conduct a secretarial election or involve the commissioner of Indian Affairs, you know, using some of the older language that you see in some of the earlier constitution drafts.

A Federal Corporate Charter requires secretarial approval, or the tribe is adopting or amending a Federal Charter of Incorporation. And there's certain rules that applies to this, obviously, the OIWA, the Oklahoma Indian Welfare Act, requires a secretarial election to ratify a document that's been approved by the secretary and then there's some fun and quirky rules about 1990 that if your document was approved before 1990, it's typically required. If it's after '90, it's not
required unless the document says so. And I'll
tell you right now, you're not going to remember
all of that. The best answer for this is if you
have any concerns or questions about whether you
think one is required, definitely let us look at
your documents with you and we can provide that
technical assistance on a case-by-case basis.

One of the fun things I've seen in
this process just in working for the BIA and
that also just on the last consultation -- I
think it's so fascinating -- is that in the
amendment section of tribal constitution, in
particular, and certainly in charters as well,
they aren't all cookie-cutter, a lot of times
they look very similar, but then I've seen
slight variations in language and slight
variations in interpretation or even real
specific requirements for conducting a
secretarial election for that tribe that are
different from tribe to tribe. So that the most
important thing is that on a tribe-by-tribe
basis, if you have any questions, we need to
actually look at the language with you and what
your interpretation is of that language and you
can see specifics that might not be in other
constitutions. But really it is a tribe-by-tribe analysis, which I always think is amazing because it's really just an expression of the tribe deciding how those things are going to happen, how they are going to make decisions about their governing documents.

Does anybody have any questions about that section regarding if this rule applies to you?

(No response.)

And then the next section is: What does this proposed rule do? I'd like to -- I described it was just to make the steps clear about how to conduct a secretarial election. The proposed revisions lists what a tribal request must include and I will go over that in more detail here in a second. You know, what a petition has to include. You'll notice if you look at old Parts 81 and 82, and this new proposed revision is that the petition section is almost identical. It's there are no substantive changes of major significance other than the one I'm going to go over here in a minute. It more explicitly sets out the exact steps in the process. And including -- we talk a
little more specifically about technical assistance and this is just going to be my personal pointers just from my years of experience on a technical assistance process.

In the Great Plains region we've gotten to the point where a lot of times now tribes will give us their documents to review before they even go to the tribal council or the tribal governing body to get approval. And a lot of times we will provide technical assistance even in advance. And it's not required at all. The regulations don't require it. You can, you know, do what you need to do before you submit a request for secretarial election, but some tribes have started to give those documents to us earlier and then we kind of give a heads up on oh, did you watch out for this, or did you notice this? And just another set of eyes I think is always good and we like to view ourselves as your partners in getting the best quality document out there. A lot of times, and this is just human nature, we get caught up in drafting a section that we want to modify in the constitution, and then a step I see missed a lot is that we don't take those
changes and then study the whole constitution
and make sure we change everywhere that needs to
be changed as a result of that one proposed
amendment. So it's just those sorts of things
that we can work together, but it talks
precisely about getting that technical
assistance, that if you submit your final
request, that will get you technical assistance
in writing, so you can know exactly what the
concerns are regarding the document, if any.

And a lot of times now, I'm so
impressed with the quality of attorneys that we
get a lot of really clean documents coming in
the door. It's really amazing. I'm always
fascinated in working on this process, but it
describes more specifically what that technical
assistance exactly will look like. You'd be
confident that you'll get a response in writing,
and what the timing of that response will be.

It talks about establishing a
secretarial election board, providing the notice
of the secretarial election, registering,
challenging the registered voters list. All
these things are very -- they're just as they
were in the old document and there might be some slight clarification, including things like the definition of days and excluding weekends and holidays and things like that very specifically.

Here's -- this one I think is a really good addition, and I know this was talked about in the comments before, and certainly it's been a lot of discussion. The old regulations didn't say anything about them -- in them specifically about removing us from -- actually removing the Bureau from the constitutional amendment process. These new regulations do. So if you look at the old regulation, you could speculate and speculate and say, can we remove the Bureau from our amendment process; can we take them completely out and move forward without having Bureau approval of the document and having a secretarial election every time we want to amend our constitution? These regulations are specific about that. You can take us out of the process. I know there's a lot of reasons why people debate whether that's a good or bad idea. I mean I'm just always with the mindset that a nation making its decisions for itself is a good thing. I'm not going to
complain either because it will mean less work for me and the agencies, but I think it's important that a nation be able to make their decisions that they want to make about what their governing documents look like. So that's now very explicit in here that that is -- that is something that can occur and it wasn't in the prior draft.

This clarifies that the BIA will give deference to tribal interpretation of their own documents, but I think anybody who can read Internal Board of Appeals, BIA decisions, regarding Bureau decisions, knowing that that's the case that we have to give deference to tribal interpretation of their documents, but we've made it explicit in the regulations now. And then this is an issue that I know comes up a lot because sometimes a tribal governing document will say in their tribal leadership elections that only 21-year-olds can vote or something to that effect. Because these are federal elections we have to comply with the 26th amendment.

So all of these elections when they occur, that secretarial elections will require
that the voters be allowed to vote at 18 years of age or older. And I know that's a challenge, but it's one of those things that if the tribe is interested in not having that be a requirement for their amendment process, then the next move would be to remove us from that amendment process and then you can have any sort of decision about the age you want for those elections, but because these are federal elections, we're tied by that Federal law.

And then the last section that's highlighted I guess is to clarify that when elections occur, we pay those costs, the agency, the region, however we figure how to pay for it, we pay the costs of the election as it moves forward.

I know some people consider that a benefit. I know some tribes in weighing what their resources are, keep us involved in the process for that reason. But it's just a tribe-by-tribe decision on whether you want to move forward in removing us from a future election or not.

I am going to highlight this here just because it is here, but the proposed
revision comments are due by December 17th. And you can submit those a number of ways. I know Laural -- if you have any questions, you can even just call her outright. I think her number is on the second page on the back of this document. The www.regulations.gov, you can submit there or you can just e-mail them directly to Laurel, you can deliver her a copy in writing, you can mail her a copy; there's any number of ways that you can submit comments. Your comments today, we'll take all of your comments that you have to make right now as we go through this presentation, if questions occur, or things that you want to be considered as we're looking at the final draft, you can make those today and the court reporter will take those down. So there's a lot of different ways that you can make comments in this process.

Or if you brought comments on behalf of your tribes -- if you brought any comments on behalf of your tribe, we can make them a part of this actual record for today, too. So just let me know.

MS. DAUGHERTY: Okay. So then on the back half you have kind of this grid of your
flier. We thought that we would highlight the most significant changes, the major changes to the proposed rule. So when you come away from here, you can go back and say, well, what were the most significant changes. These are definitely the big changes. Most of the other work is really just clarifying and reorganizing and simplification, but these were the things that changed.

And once again that's the beauty of the consultation process. Just because we propose these changes, doesn't mean they're a done deal. I mean, if you look at each of these items as we go over them, and you think it should be different and you have a reason, hey this should be in a different way and here's why. Even if we don't cover it here as one of the highlighted changes and it's something that's always been in place or hasn't changed, once again, part of the consultation process, you can say, hey, we know that the regulations stated this previously, but you're proposing that they state this now, and they've always read that way for decades, but we want to change both sections, too. So if there's any proposed
changes, even if they aren't changes between the
last draft and the current draft, you're invited
to comment on any section at all. But the only
reason we're highlighting these ones is they are
specific changes that are being proposed from
the prior draft.

The first changes, if you look at
currently, that voting is done either at a
polling place or by absentee ballot. In the
proposal it establishes that voting is done by
mail unless the amendment sections require
polling sites. And there are a number of
reasons to do that, the one that I guess comes
to the surface, is sometimes -- and you guys all
know this if you've done secretarial election
processes, I mean it's a very important process.
It is the process to change the governing
document that dictates the supreme law of the
land for your nation. And sometimes we don't
always have the best voter turnout. And I know
that is -- there's probably a lot of reasons why
that occurs. I know voter education is always
an important issue to go around and make sure
people know and understand the significance of
these changes. But one of those main reasons is
to hopefully increase voter turnout by allowing
the voting process to occur during a mail out
versus during on-site polling. But if a tribe
itself determines that they think polling is
still a good mechanism and they want to stay
with that mechanism, if it's not already in the
documents, you can propose a secretarial
election to put it back in there and remain with
the polling sites. So that is one of the
changes and hopefully to increase voter turnout,
you know, overall to save costs in the current
budget environment, all sorts of different
things, but that was the hope, was that mainly
that would increase voter turnout because the
voter turnout isn't always very high
percentagewise and I know that's always been a
concern for tribes. So that's why that was
proposed as part of the changes.

At this point, as we go down the
list of changes, we invite and we encourage
discussion from those of you from tribes and
tribal members, any any come in as attorneys
representing tribes. So does anybody have any
commentary, any objection, anything to say
specifically about this current change in
Section 81.18?

MS. IRONCLOUD: If you have your hand up and if you don't have any comments, that's twice as well.

MS. DAUGHERTY: If you want to say that's an awesome idea.

UNIDENTIFIED SPEAKER: I have a question.

MS. IRONCLOUD: Sure.

UNIDENTIFIED SPEAKER: On the Bureau funding secretarial elections --

MS. IRONCLOUD: There you go.

UNIDENTIFIED SPEAKER: On the bureau of funding secretarial elections has there been any movement to get in the budget cycle fundings to do that because taking it out of an agency or region may reduce the services provided to other tribes?

MS. IRONCLOUD: At this point, there is no change to the process currently that is in place for the secretarial elections, for the funding of it. Tribes are not -- will not be on the hook to pay. The Bureau of Indian Affairs will pay for these. So that's, I guess, an internal discussion, but at this point that
discussion has not come about. We're doing it as we had paid for them previously.

UNIDENTIFIED SPEAKER: Okay. If the tribe removes the Bureau from the process, secretarial elections, is the Bureau then still responsible for funding that secretarial election?

MS. IRONCLOUD: At that point it will not be a secretarial election.

UNIDENTIFIED SPEAKER: Okay.

MS. DAUGHERTY: Any other comments before I move on to the next section?

And the next section: Voids an authorization for a secretarial election any time the election is not acted on within 90 days from the date the BIA authorizes the election. In the new section, that is removed. And typically what is occurring is that when we have the documents in hand, I have not seen any problems with getting the election done in a timely manner. In our region what we see most commonly is every once in a while a tribal request and that's why we added this section -- or removed this section technically. We will get tribes to approach us and request to extend
the date. And this mechanism allows that to occur more easily. But what they'll do is they'll say, well, we just don't think there's enough voter education, so we were wondering if we could extend the date 30 or 60 days. And have been really good in working with us on extending those dates if there's a tribal request to do so. So that's one of the reasons for this section.

And it really ties into the next section. So if you don't mind, I'll cover both of them simultaneously. The old regulations do not define a tribal request. And so I think the challenge has been there and sometimes we'll get a request from a tribe, we'll get a resolution that says we want to have a secretarial election to change our -- the most common one I see is: We want to change our membership criteria from -- either up or down, from a quarter to an eighth, from an eighth to a quarter. Just different variations just as an example. And we want to change our blood quantum requirement from a quarter to an eighth and that will be just one small sentence in the resolution.

And then I'll turn that resolution
in and the tribe will say, well, we want the
election to occur within 90 days from today's
date. But the challenge with that is, is we --
not just the bureau, but the voters, the
membership out there, they need to know exactly
what they're voting on. That as a concept is so
they'll know that they're voting to reduce the
blood quantum just from that resolution, but
what we also need from the tribe, and sometimes
we get with that resolution and sometimes we do
not. And that's why we created a clarification
for tribal requests.

What we also need to see is, we
know what your membership article in your
constitution or whatever your governing document
is, as an example. Let's say it says, oh, here
is the exact language, here is what is exactly
the constitution now. This definition change
for tribal request asks -- that a tribal request
is not complete until you provide the exact
language that you want to be replaced in the
constitution. Because it is really hard, it's
impossible to get out a notice packet to people
to tell them what they're going to be voting on
if they can't see the exact language that will
be going into their constitution.

So if a resolution comes in without that, this language defines that's not a complete tribal request yet. There is no way the bureau can hold an election in 90 days because we don't have a good way to notify the people what their constitution is going to look like when they vote on it if the exact language is not present in that request.

So that's one change in it and I guess from both angles so that you know and the membership knows exactly what they're going on, that the request has to come in with that exact language or sometimes it's a removal issue. So that becomes much simpler. I guess they're going to remove an entire article, which does happen from time to time.

And then the other portion of a tribal request -- there's three requirements for a tribal request. One is that exact language and then the first one, of course, is that resolution or other document we describe as having the authorizing, I guess, the authority of the tribal governing body. Most commonly, I see resolutions, but I know there are sometimes
that operate by tribal -- by general council and
they just have a voice vote, or other mechanisms
that express the authority of their nation. So
we just need whatever that is and the most
common version we see of that is a resolution.

Do any of your nations do anything
different than a resolution? I'm just curious.
Anybody do anything different than a resolution
from your governing body? Okay. And that's
most common for sure, but there are some
exceptions to that rule. So we'll have to have
that resolution, plus the exact language and
then the last thing that we'll have to have to
complete an official tribal request is a list of
all tribal members who will be 18 years of age
or older within 180 days of date of this
request. And that allows us to notify all the
people who could potentially vote in that
election. And this is just my two cents on this
issue, and I don't -- Southern Plains, maybe you
can articulate what you see down here is from
tribal government, Lonnie, but sometimes when we
have secretarial elections up in Great Plains,
we get a lot of returned mail. I know it's a
challenge. People move a lot and that's just
the nature of the beast.

When I first went to work for the bureau, or actually when I first went to work at a federal agency, I had to list all my prior addresses for like seven to ten years and it was like a traumatic endeavor and how many places did I live in the prior seven to ten years. And even places where -- I lived in this town, but I couldn't tell you exactly where I lived. And I know you move a lot. That's just the nature of how we do things sometimes. And so I know that's a challenge, but I would really encourage just as a side note for tribes that are getting ready to conduct secretarial election is to maybe conduct, if you know you're going to do it and you're starting to work on the language, you're starting to have public meetings to educate the community about, hey, we want to make some changes, we want your input, at the same time to be updating that mailing list. You know, most commonly it's with the enrollment office that we get those lists from. So if that's the case, I mean, have your enrollment office encourage people to update those lists. Just so you, once again, maximize voter
participation. Because if we're doing it by mail-out -- even if you're doing it at a polling site, that's how you get people notice is by mailing them the information packet about what that election is going to look like. Just these major drives and try to get the voter list updated so you have fewer returned packages because every one of those returned packages is somebody that might not get to participate in the process because you can't find them. So that's just my little stump for the day.

So that's what creates a tribal request, is that mailing list provided by the tribe, the exact language to be voted on and then the resolution or other voice of the governing body, indicating that they want to have that secretarial election. And then, of course, the other component, which, if your constitution allows for a partitioning concept because not all of them do in their amendment section, is if we receive an appropriately formatted petition requesting a secretarial election. That's the other option and alternative to a resolution from the governing body. And once again, you have to go back to
your governing document or your charter, if you
would, if it doesn't allow any processes.

Does anybody have any questions
about tribal request, why we articulated that
those three things need to trigger a secretarial
election process? And the thing -- I mean I
think it works for both angles too, because then
the tribe knows if I turn these three things in
and get the technical assistance back on them
and respond to that technical assistance, we're
off to the races.

MS. IRONCLOUD: Or any ideas of how
the department can make the process clear, we
tried as hard as we could to make the process
clear, but if anybody has ideas on taking it a
step even further to have a document that's even
more useful for tribes, we're open to that. So
at this point, we've put it out to the tribes
and do you have any input, questions, or
anything like that?

MS. DAUGHERTY: Okay. The next
one, I'd be interested if you have any comments,
particularly on this one, because this one got
incorporated from an action from our region, and
we had no guidance. So we thought that the
regulations should say something. So if you think that our proposed solution isn't the correct way to go, we would really be interested in comments on this one, but the old regulations didn't address whether a tribe may withdraw a request for a secretarial election. And what we had happen in our region was a secretarial election process had occurred, and it was far into the process, literally the election was set to occur. We already had a large number of members registered to vote, the election was within a week or so and then the tribal council came forward and said, we want to withdraw the secretarial election. We don't want to have the secretarial election anymore. So we were left with no guidance, and then we had all these members who had expressed an interest in voting, that they wanted to vote in that election process, so that the rule we proposed was that you can't withdraw a request for an election after the deadline for registration to vote.

Now, I know here's the competing factors in my mind, and you can tell me if you think of others, but at what point does the process get far enough along that you have the
intent of the tribe and the intent of the
membership? I mean our government relationship
is with the tribes individually, but what do you
want this to say in regards to where the members
who have now registered to vote get that
opportunity to vote. And so this is the one I'm
very interested in, if you have any comments, or
if you want to submit something in writing
later, you know, think it over and submit the
comments in writing, but if you have a large
number of your membership that are ready to
vote, they've registered to vote, they want to
vote, they want a chance to weigh in on those
documents, does the regulations -- do the
regulations currently proposed at 81.17 at some
point can the tribe still withdraw, and this
says, no, at the point after they're registered
to vote. If you think it should be otherwise,
at that point we want to hear -- I've got a
question over there.

MS. IRONCLAD: If you could
identify yourself again for the court reporter
also.

MR. MILLER: Wallace Miller from
Stockbridge-Munsee. Our last secretarial
election, the day before election, the tribal
government was fighting us for probably 40 days,
a third of the members did not get registered.
Of that third, they lived in the same address
for 20 years. There was nobody verified. We
had a three-step process, enrollment, mailing
list, sent it to the bureau, which came back to
our election committee and nobody verified, a
husband would get a registration, the wife
wouldn't, been married 20, 25 years. Now you
could probably name 10 families that way. The
day before the secretarial election was going to
happen, the bureau finally stepped up and said
we need to cancel this because about a third of
the voters never got the registration. How do
we verify that everybody gets registered?

MS. DAUGHERTY: And there is a
possibility that not everybody will not get
registered. There are people who just decline
to register. As a matter of fact, you'll see in
this language that there is a requirement that
we put in there to advise people it's voluntary,
that the bureau is not forcing you to register
for anything, but you can't vote unless you do
register. But one of the process areas where
you can check to make sure that the mailing list
is what it should be is we do have a criteria
where there is posted the registered voters
list. And so if somebody can come forward and
say, hey, I should have been on that list, I am
a member, I'm here, whatever, you know, if that
is a requirement, but usually it's not. And
then we would go back and look at our original
mailing list, if that person had a claim that
they didn't get a packet, that's the time to
tell them when you see that registered voter
list posted and in the materials we send out and
right in the regulations themselves, that list
will be posted both at the local agency and then
at the tribal headquarters. And so that's the
time for voters to check and make sure they're
on the list and then it's also time for them to
check whether they're not on the list, is the
other alternative. And so then throughout that
process, even at the end of the election, there
is a mechanism, let's say today, we were on the
registered voter list and then if somebody says
there's some sort of election irregularity,
there is a time to challenge also after the
election. But the key for what you're
describing for registration is that posted
registered voters' list to say I should have
been on this list, I should have gotten on the
list.

MR. MILLER: The list was right
outside of my office door. I started calling
people as soon as I registered them. A third of
my family didn't get registered. Like I say,
husband, wife, whoever it may be.

Well, my question to vote is: How
do we verify? I mean I can't put all the blame
on our enrollment office. The way I look at it,
it was a three-step process, the enrollment
office made the list, shipped it to the bureau,
who shipped it back to the election committee.
Who do you blame? I couldn't blame anybody.
It's a three-step process. I looked at it that
way.

MR. PORTER: Do you know where the
failure was?

MR. MILLER: No, they never figured
out where it came from.

MR. PORTER: Did your tribe
committee send a list that was incomplete to the
BIA, or did the BIA get a complete list and then
have their names drop off when they sent it out?

MR. MILLER: I couldn't answer that right now.

MR. PORTER: I mean to me this is a huge problem underlying this process is that the quality of the list provided by the tribe to the BIA is a hugely problematic thing. And if that list is inaccurate, where does a tribal member challenge that if the election board only sends out notice to the people on the list provided by the government and that list does not include people, we've got all of the disenrollments of it, you know, more out in California than elsewhere, when does a tribal member have the opportunity to say that list provided by the tribe was wrong in the three days available to challenge the elections board's registered voters list or after the election has been approved?

MS. DAUGHERTY: I would like to point out, too, that part of the secretarial election process, if you look at it, and this is where it becomes really important who you pick to become part of that process. If you look at -- let's see if I can get to the right
spot -- so the secretarial election board, that starts under 81.22, but the secretarial election board is part of this process every time. So one important thing to remember and you can remember this from your nation, the safeguard for this issue is typically a secretarial election board chair will be the superintendent in most cases. The language of the regulation says the local bureau official, but many, many times that's the superintendent. And it's part of the regulations and it's still part of the regulations now and it was part of the regulations before. The tribe has 10 days once that election is authorized. Let's say we have all the things turned in, the voters' list, the language, the resolution and the regional director says, all right, local bureau official, typically isuperintendent, you can call that election. From when they get that letter saying hey, you can call that election, the secretarial election board has to be formed. It starts with the local bureau official and then a local bureau official notifies the tribe, you need to let us know if you want to add two people to the board, you have that right to add two tribal
officials to the secretarial election board.

It's not the same secretarial election -- or
it's not typically the same election board as
the leadership elections. So people, the tribe
then will say, well, we want to make sure this
list is right, this process happens correctly.
So we're going to pick our two best people to
bird dog this process, and out of the two, the
secretarial election board. So two of the three
members of the secretarial election board
overseeing the process will be tribal people.
And so then we just encourage tribes to add
those two people as people that you know and
believe will safeguard that process to the best
of their ability. Sometimes tribes don't
propose anybody to us. They let it lapse and
they let us pick those two people, but most of
the time, the tribes do. So that would be one
safeguard to make sure you pick two really good
people to be added to that board.

MR. MILLER: For the last three
elections that's what we did.

MS. DAUGHERTY: And do those
persons double check those lists?

MR. MILLER: They are supposed to.
Our tribal government, when it comes to secretarial elections, we step aside. We'll ask the bureau -- the committee comes forward, we'll ask the bureau to hold the election and we step aside. We try to keep our fingers as clean as we can for something -- but this last time, it was a fiasco. I think the election would have been Thursday. Wednesday at 4:30, just before I walked out of the office is when the Bureau finally canceled the election.

MS. DAUGHERTY: Okay. And I can't address every single --

MR. MILLER: I know, I know.

MS. DAUGHERTY: It is part of the record now that you have concerns about how that played out and so we'll definitely look at what those facts were on that and see if there was some way that the process could have addressed or prevented any of those sorts of challenges. We have to make sure the integrity of these elections is at the highest levels because these are the tribal governing documents. So I guess my general answer to your first thing that you raised was that there's a couple ways to protect it. The first one is appoint really good people
to that secretarial election board that will
double check those things on behalf of the
nation. And then the second thing is to really
get out there and inform voters, to say, look,
when that registered list is posted, make sure
your name's on it. And if it's not on there and
it should be, you have a right to challenge that
list. And any -- you could even have like let's
say a sister comes in and she's registered to
vote and she knows that her other sister is not
on that list and they probably should be, you
might want to double check with your sister, to
say, I mean, that's all part of voter
registration, did you get a packet? If you did,
why didn't you fill it out? Because if you
didn't fill it out you didn't get to vote. If
you didn't get one, why didn't you get one.
Let's go back and look at the list and see if
there's some reason you weren't on that mailing
list, or perhaps your package did get lost. You
know, those sorts of things. So you can kind of
come to it from two angles.

A good secretarial electric board,
plus informed electorates, members that go to
check that registered list and make sure you're
on it, getting a lot of publicity out there in
the community about that issue. Go check the
registered voters list, make sure you're on it.
If you're not, let them know, challenge that
list and get your name on it.

MS. IRONCLOUD: All right, just as
a reminder, that eligible voters list depends
hugely on the list that's provided from the
tribe. So at the heart of it is the tribal --
the list coming in from the tribe.

MS. BRINER: Dawn Briner with the
Otoe Missouri Tribe. In reading this section,
in 81.17, it says that the tribe cannot
withdraw, but it doesn't say whether the bureau
can withdraw. Listening to his comments over
here and they withdrew the petition the day
before the actual election. So shouldn't there
be some language in here about when the bureau
-- what bureau's limits are as far as who's
withdrawing the petition?

MS. DAUGHERTY: You know, and once
again, I'm definitely going to make sure as part
of this review process that we look at the
situation there, but yeah, that's -- your point
is well taken. I think those limitations on the
bureau as well can be added -- or considered and
added definitely. I'm glad you said that
because that's all part of what this process is.

If you have those questions or considerations to
put in the language, we'd be happy to do that
too. But I am very curious now to see, you
know, what happened in your case to look at
particularly the letters and communication that
occurred during that process and see what
exactly happened. I mean this is like -- I mean
we've seen outside of Indian countries, things
like Bush versus Gore or Al Franken sitting
around for three months waiting to see if he's a
senator, or he's not a senator. Elections are
not perfect processes. And that's certainly
true in Indian county as well, and there are
problems with them sometimes. And it can vary
based on the qualifications and skills of staff
as well. We do our best to try to make sure
that everybody is educated in what needs to be
done or doesn't need to happen, and so I think
your point is well taken, that it would be good
to have some guidance from the bureau in those
regards, especially if we have a case scenario
or specific scenario that showed where that
might have been problematic. So we're
definitely going to look at that specific
situation and then consider your
recommendations. So thank you for being
involved in the process.

Do you have any other questions on
this section? Even if we move on, please always
remember we can revisit as we go along or we
can, you know, take comments in writing after
the fact.

Okay. The next section, the
original regulations, or the regulations as they
stand right now, they don't address the
differences between secretarial elections and
those conducted under the IRA and Indian
Reorganization Act and the Oklahoma Indian
Welfare Act. There's also a little typo there
-- IOWA, I wanted to change it to Iowa. I each
asked --

(People talking at the same time.)

MS. DAUGHERTY: Every week it seems
like when I'm writing things, so, auto correct,
the curse of auto correct. All this does is
that it just specifically clarifies that
secretarial elections conducted under the OIWA
require the authorizing official to approve the
proposed documents, subject to ratification by
tribal voters. Just because it's -- it's just a
difference nuance, it's just because the OIWA
has that slightly different language, so just
conceptually, here's how it works: We may
authorize an election in Great Plains region and
the voters vote and those amendments from their
proposal might pass. If they do pass, then that
election packet plus the proposed language,
comes back to the region and then we'll approve
that document.

In the case down here in Oklahoma,
because of the Oklahoma Indian welfare Act, it's
just in a slightly different order. The
election -- the regional director here would
approve the document in advance and then the
voters would decide whether to ratify it or not.
It's just a timing issue. That's the
difference, but the old regulations didn't
articulate that specifically and that's all we
did in here so people would understand that
nuance. And so -- yeah, definitely a
clarification or just an omission. It was just
not physically in the regulations and now it is.
Just to make sure that everybody knows that that exists. You guys don't here know it exists. You work with it -- work with it all the time, but it's, you know, different in other areas of the country and we just wanted to make sure that people understood that difference that is required by the Oklahoma Indian Welfare Act, the other section.

And then next section and this is another one that we're definitely looking for input from people. As they exist now, the current regulations state that at least 60 percent of tribal members who petition for a secretarial election to adopt a governing document under a Federal statute for the first time, your trends are already established that wouldn't apply to you, but every once in a while, you'll see a new tribe added to the list of recognized tribes and sometimes those tribes are added as a result of a federal statute. It may say in there, oh, this is how you're going to do your election for the first time. I'm going to establish your governing documents for the first time. As it's written now, it requires 60 percent of those potential tribal
members to petition. Well, supposing that it be reduced to 20 percent. I know this number has been debated quite a bit. I know because the default number for other secretarial elections is 30 percent for participation process that people talk about that number as well.

I know it may not be something that you're worried about because you're in an established nation, but if you have any comments on this as far as new tribes coming -- I mean the other number I saw discussed was 50 percent -- doesn't make sense that -- 51 percent -- 50 percent plus one that at least a majority of the people would agree with a new document. But this really affects adopting a governing document under a federal statute for the first time. It's a pre-specialized situation, but if you have any comments on it, we definitely would welcome them either here right now or in writing at a later date.

MS. BRINER: Dawn Briner. The only thing that I saw that stood out to me was the tribal members versus tribal voters, whether the 20 percent requirement should be attached to those registered voters, people who are eligible
to vote in any election versus the entire enrollment, because the way it sits now, you're requiring 20 -- whatever the percentage is, of the entire enrollment over who's eligible to vote.

MS. DAUGHERTY: Well, in this case it's the petition for the document, the organizing document for the first time. So in this case, yeah, it's everybody. But it's not to be confused with the other part of these election requirement which talks about the calculation -- that section starts at 81.39. That's a different calculation and that's where -- I recognize there is a lot of confusion because, you know, they're represented as well, but the default percentage is 30 percent, and it's 30 percent of the registered voters, not 30 percent of all potential voters. This little section, 81.60 is different because it talks about petitioning to do a governing document for the first time. So like at 81.39, yes, you are correct. That is 30 percent or if the tribal amendment section of their constitution, as an example, is higher, let's say instead of 35 or 40 percent, it would be a higher number, but
you're right, that calculation is based off
registered voters, not the entire possible
voting list as provided from the enrollment
office.

Once again, if you have comments on
that and think that's not correct, it's not a
right number, you know, that it should be based
on the entire membership. I don't know what
it's like down here but I know voter
participation is a challenge. It's a challenge
for the entire country generally and
particularly for secretarial election processes,
it's just something I can't emphasize enough,
you know, both from the bureau side, which is
why we try to mail out that information to every
single person because we want to reach every
single person, but just generally the tribe
assisting with those processes, to help do voter
education that ups those participation numbers
because it is a challenge. I don't know if it
was of the entire membership what the success
rate would be, what that percentage would have
to be to ever effectually change the
constitution. So we're trying to make it
achievable, given the realities of voter
participation that we see. It's higher in some, in some nations and not as high in others, but there's some nations that I think would really struggle to reach that 30 percent for general changes if it was higher than 30 percent, all required to be on the whole list versus just the registered voters list.

But keep in mind this one that I just covered, 81.60 is a separate process, it's a distinct and unique situation, just how many people need to sign, how many members of the membership need to petition to request a secretarial election to adopt a governing document under a Federal statute for the first time. It's just kind of a unique situation. But If you have any comments back about 81.39 and that amendment process or the requirement for secretarial election or whatever, for a charter or for revoking a constitution, whatever actions you might seek, that's a totally separate percentage calculation.

Now, I know it's kind of convoluted. I have a little chart up here if you want to stop up afterwards, I can show it to you, to be precise, but if you have any comments
about this section, it's one of the ones that we did debate the number quite a bit. And it is just a very specialized case. We won't see this very often, but if you have any comments about it, we'd welcome comments.

MS. IRONCLOUD: Yeah, we would really appreciate any kind of comments you have, whether or not it's applicable to your -- applicable to a tribe that you're either in a leadership position for, or you represent, or if you have some guidance you would like to provide or some input on this, the department would really appreciate it.

MS. DAUGHERTY: Other than that those are definitely the most distinct changes. I think as you read through it, you have, you know, a copy of the whole proposed set of regulations. And if you have a chance, obviously compare it to the existing Part 81 and 82. I think that this one is much simpler to follow and much simpler to read. The subparts are very distinct in separating out the sections. Particularly, once you get past the petitioning process, it leads you right over to the back -- the further right back, the subpart
D where that applies and subpart E, which is OIWA, and Part D is IRA. We definitely want all of your comments from any part of these regulations, even ones that have existed prior. But those really are, those are the big changes that were made are the ones that I just outlined, probably with tribal request being the biggest, being really specific of what that entails.

You can find additional information about this proposed rule. There's a website link there. I know it's pretty long. And as I mentioned, Laurel, as the Division Chief for Tribal Government Services special office is available to answer your calls or questions at any time. I have my cards up here if you want to get one afterwards. We definitely can answer any follow-up questions that you might have.

And I just want to thank you for coming and participating and I will let Laurel guide the discussion after this.

MS. IRONCLOUD: Are there any questions or are there any issues having to do with any part of the proposed rule that you all have at this point?
(No response.)

MS. IRONCLOUD: So it's perfect as the department is putting it forth according to this group?

MS. DAUGHERTY: We're going to get something in writing, I'm sure.

UNIDENTIFIED SPEAKER: The rules does not provide that challenges may be made and when they must be filed. What is the method?

MS. DAUGHERTY: I'm going to have to flip through here, if you'll have patience with me, but there are two times you can challenge. The first one is to the registered voters list, and if you'll bear with me, give me two seconds, I will find it for you. Okay. So when the registered voters list is -- it's 81.32 and 81.33. If somebody is -- either -- if the registered voters list is posted and somebody thinks they should be on it, and they're not, or the other situation we see, somebody will come forward and say, hey, why is this person on the registered voters' list. They shouldn't be. They're not an enrolled member here or whatever challenge they might have. So that is the first thing you can challenge is whether somebody is
on the registered voters' list and they shouldn't be or whether they're not and they should be. So that's covered in those two sections.

Then the election itself -- let me go down here -- these are just from my notes -- okay, at the conclusion, yep, 81.43, any registered voter seeking a challenge of the results of a secretarial election must -- and that's under 81.43 and it talks about the regional director will review and decide those challenges. So that describes the process for challenging and it's three -- no later than three days after the election results are posted, not excluding weekends or holidays. And the first and last -- some of the challenging writing and articulate, you know, what the challenge is and attach any substantiating evidence they have in regards to that challenge. So those are the two challenge points in the election process.

UNIDENTIFIED SPEAKER:  Thank you.

MS. DAUGHERTY:  You're welcome.

UNIDENTIFIED SPEAKER:  My second question, the provision on who may request a
secretarial election, I believe more clarity should be provided in the rule that petitioner -- does it have to be a tribal member? It doesn't state. MS. IRONCLOUD: Okay. Let me go here.

What specific section are you referring to?

MS. DAUGHERTY: It should be 81.51.

MS. IRONCLOUD: Hold on here.

You're testing our analysis on the fly, but we'll get there.

UNIDENTIFIED SPEAKER: And I had two different lawyers go through this for me.

MS. IRONCLOUD: There you go.

MS. DAUGHERTY: Laural and Jim and I are all lawyers up here. So I can tell you right now we are nothing but trouble.

MS. IRONCLOUD: Lawyers are nothing but trouble, we're evidence of that.

MR. PORTER: 81.55.

MS. DAUGHERTY: A member of the tribe, who is 18 years of age or older.

UNIDENTIFIED SPEAKER: Thank you.

MS. DAUGHERTY: You're welcome.

We're catching on the fly here. We're doing
okay so far, but, no, this is how this works.
If you bring something that we flip around and
we can't find it, like, oops, then we do need to
add that in. So I love this part of this
process.

    MS. IRONCLOUD: We appreciate it.
    MR. PORTER: Well, I appreciate it
and my first question to you is a really
important issue. In my work, I'm not involved
in helping conduct the secretarial elections.
I'm involved in defending the secretary from
challenges of the secretarial election, so the
things in these regulations that give rise to
litigation are points that are of concern to me.
In challenging the secretarial elections and how
they're done and their outcome is, for my work,
the most important part of what these
regulations say. And so I encourage you people
to look at the sections that we talked about as
far as how and when the process gets challenged.
Just for instance, in a challenge to the outcome
of the election, these regs allow only people
who submitted registration applications to
challenge the outcome. What happens to your
people who never got a registration notice in
the first place and weren't able to submit one?

Should they have a standing to challenge the
outcome of the election? According to these
regs, they can. I encourage the attorneys,
we've got excellent firms represented here
today, to take a close look at those provisions
and see if there's clarifications and ways to
which we can make those provisions more clear
and that would, hopefully, prevent litigation
instead of giving rise to it.

MS. IRONCLOUD: Thank you, Jim.

Absolutely we need to be able to gauge what is
important to the tribes and we want that to be
represented, tribes and tribal membership, also
what we want this document to represent are
those issues and add to those issues.

Any other questions, comments or
input? It doesn't have to be over the changes.
It could be over anything having to do with this
document or secretarial elections, the process
overall.

Seeing none, again, we thank you
for coming out, we thank you for providing this
input and we thank Southern Plains for putting
it together and coming to participate and we
appreciate that.

So the next step, we are having --
we're going to have another consultation in
California on Thursday. We will be doing this
same request for input at that point. Once we
are able to finish the consultations and the
deadline of December 17th passes, we'll be able
to get all the written comments, look at the
transcripts, review the transcripts, review the
record, the Department will go through all of
this information and input that we receive and
at that point, if there's any changes that need
to be made, the Department will make those
changes and then we'll go into the publication
process.

So once we get all approval through
the department and go through publication, the
new section 81 will be effective 30 days after
that publication. So we're looking at about --
I don't want to make any promises as to time,
but at least a couple of months, past the
December deadline. So I'll say that, at least a
couple months. Any questions on the process?

MS. DAUGHERTY: And don't forget
all the different ways you can submit comments.
Definitely you have Laural's phone number on this document, you have the regulations.com website and you have Laural's e-mail. You can submit in any of those forms. If you want to mail, Laural can provide her mailing address.

MS. IRONCLOUD: It's on the rule.

MS. DAUGHERTY: Yes, it's on the rule itself here. It's in tiny print. But you pull it up on your computer and see it a lot easier and submit those comments by mail as well.

Thank you all, and this concludes the consultation session.

(Proceedings concluded.)
CERTIFICATION

STATE OF OKLAHOMA     

COUNTY OF OKLAHOMA   

I, MICHELE WATSON, Certified Shorthand
Reporter within and for the State of Oklahoma,
do hereby certify that the proceedings were by
me taken in shorthand and thereafter
transcribed, and the same was taken on
November 18, 2014, in Oklahoma City, Oklahoma.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 1st day of December 2014.

MICHELE WATSON, CERTIFIED
SHORTHAND REPORTER FOR THE
STATE OF OKLAHOMA
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My Commission Expires 12/31/14
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