

UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY

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TRIBAL CONSULTATION

Proposed Secretarial Elections Rule (25 CFR 81)

Thursday, November 20, 2014

8:30 a.m. - 10:20 a.m.

Whitney Oaks Golf Club  
2305 Clubhouse Drive  
Rocklin, California 95765

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Reference No. 15298

Reported by: Patricia R. Chapin, CSR No. 13493

1 PRESENTERS:

2 LAUREL IRON CLOUD, Chief, Division of Tribal Government  
3 Services, Office of Indian Services

4 SCOTT KEEP, Senior Counsel, Division of Indian Affairs

5 DANELLE J. DAUGHERTY, Deputy Regional Director, Indian  
6 Services, Great Plains Regional Office

7 VIOLA BROOKS, Bureau of Indian Affairs, Tribal Government  
8 Specialist

9 HARLEY LONG, Bureau of Indian Affairs, Tribal Government  
10 Officer

11 JIMMIE A. KING, Social Services Representative

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13 ATTENDEES:

14 LEORA TREPPA DIEGO, Habematolel Pomo of Upper Lake

15 KATHLEEN D. TREPPA, Habematolel Pomo of Upper Lake

16 COLLEEN PETE, Robinson Rancheria

17 LYDIA AGRAYO, Manchester Point Arena Band of Pomo

18 JOSEPH HOLSTEIN, Habematolel Pomo

19 ALISON HARVEY, United Auburn Indian Community

20 LISA ELGIN, Manchester Point Arena Band of Pomo Indians

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1 Rocklin, California

2 November 20, 2014

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

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

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

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

1 record.

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

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

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

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

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

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

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

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

23 MS. IRON CLOUD: Thank you all very much. So the  
24 process that we're going to go through today is, we'll  
25 provide some background, like I said, leading up to how

1 we got to this process, how we got to this draft that is  
2 before you right now. And we'll also go through some of  
3 the consolidation and some of the work that's been done  
4 to bring it into the one part, and we'll talk about the  
5 major changes.

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

10 MR. KEEP: Good morning. I'm Scott Keep. I'm  
11 the senior counsel in the division of Indian Affairs.  
12 We're in Washington DC. My assignment this morning is to  
13 try to give you some of the past background on how we got  
14 to where we are today on the regulations. I'll also give  
15 you a little bit of background on how the regulations  
16 developed historically after the passage of the IRA in  
17 1934.

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

24 (Reporter interruption.)

25 MR. KEEP: We can provide you with historical

1 documents about how the regulations developed.

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

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

23 The current proposal that is before you began  
24 probably in the early 2000s, and we came out with  
25 proposed regulations in 2009 and conducted, I believe it

1 was, five consultations in late 2009 and 2010 to consider  
2 the proposed revisions to bring the regulations up to  
3 date following the '88 amendments.

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

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

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

22 MS. DAUGHERTY: Good morning. I have to say I  
23 come from the (inaudible) reservation. Laurel is from  
24 the same reservation. And for a lot of years, we were  
25 the poorest county in the nation, and then I think we

1 were like No. 2 or No. 3, depending on the year, but  
2 we're still way up there. And to come out and see that a  
3 beautiful business like the one that we're presenting in  
4 today -- I'm just really pleased about those sorts of  
5 things. I love traveling around the country and seeing  
6 how different the nations are. So thank you for hosting  
7 this consultation.

8 As Scott mentioned, we have been working on this  
9 process for a while. I came into tribal government in  
10 2008, and this process had already been through some  
11 permutations. I attended the last round of  
12 consultations. And then after those consultations, there  
13 was some significant redrafting.

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

20 And the prior Part 81 and Part 82 -- 82 was about  
21 petitioning, and 81 was about conducting elections. But  
22 82 also had a lot of parts in it about conducting  
23 elections, and we thought well, that really doesn't make  
24 any sense at this point because there's a petitioning  
25 process to get a petition completed, and at the end of



1 that process once a valid petition is submitted and the  
2 election can go forward, then the process is exactly the  
3 same as the other process where a tribe's governing body  
4 initiates a request for a secretarial election. So we  
5 thought it would be much clearer to have a section that  
6 solely addressed how you conduct an election, and then a  
7 distinct section that only addressed how you engage in a  
8 petitioning process that leads up to that official  
9 request for a secretarial election. So we were hoping  
10 that would eliminate any confusion about the differences  
11 between those parts. So that was one of the biggest  
12 changes. And then the substance of some of the process  
13 has stayed very much the same.

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

24 And I'm just going to survey everybody in the  
25 room. Does your tribe have a constitution? Is that your

1 governing document? Everyone is saying yes. Because  
2 there are some tribes that have no governing document at  
3 all. They do things still from just how traditionally  
4 they managed the nation. And then there's some tribes  
5 that have articles of incorporation.

6 Is that right, Scott?

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

14 And then there are other proponents where a  
15 secretarial election applies, and that is in regards to  
16 charters. I don't know if your nations also have  
17 charters under the Indian Organization Act, but it also  
18 applies in certain scenarios in there. And if you want  
19 to get to the nuts and bolts of that, there's all these  
20 fun little permutations of it -- is your charter in place  
21 before 1990 or is it a new charter after 1990? And even  
22 if it's a new charter after 1990 where you wouldn't  
23 necessarily have to have an election, if you propose  
24 language that requires it, it brings you right back in.  
25 So if you want to talk about real specifics like that, we

1 certainly can do that without twisting your minds into  
2 it. But where we see the most action in secretarial  
3 elections is amendments to constitutions.

4 And of course, the other component is sometimes  
5 there will be a recognition of the nation or federal  
6 statute reinstating a nation, so there will be a  
7 requirement by federal law. This is how a nation is  
8 going to initiate a new document, its governing document,  
9 for the first time. So that might require a secretarial  
10 election as well.

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

25 And honestly, even though we're highlighting

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

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

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

24 So the first major change is that it establishes  
25 that voting is done -- or as it currently stands, the

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

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

23 Also, in this day and age, we're also definitely  
24 seeing some budget challenges, so we wanted to make sure  
25 the maximum amount of resources were freed up to provide

1 other services. So there were several reasons. But the  
2 major reason we discussed was that we really did want to  
3 encourage the highest voter turnout possible. And once  
4 again, if your document either has it and you -- when I  
5 say "it," I mean it has a requirement for polling  
6 location and you don't want that in there or vice versa,  
7 if it doesn't and you do want it in there, that's  
8 something that we can tackle at the next secretarial  
9 election. Propose a secretarial election to alter it one  
10 way or the other.

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

22 But these regulations previously did not  
23 expressly say you can do that. So I think some people  
24 didn't know if it was even possible because it's not  
25 covered. But we've made that crystal clear in this

1 version that you can take the secretary out of the  
2 amendments process, which I think is the best way to go.  
3 I know some tribes have a concern, you know, does that  
4 mean we're trying to sever the government relationship,  
5 and we don't want to do that. But I think from my  
6 personal viewpoint, that's where the nations become  
7 stronger and stronger, when they're addressing and  
8 dealing with all their constitutional amendment changes  
9 themselves. So I think it's a process. Some are more  
10 comfortable doing it than others, but these regulations  
11 allow for that, so I'm really excited about that language  
12 change.

13 MS. HARVEY: Where is that in the section?

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

20 The other proposed change, and Scott may weigh in  
21 on this one too. It voids an authorization -- in the  
22 current version, it would void an authorization for an  
23 election anytime an election was not acted upon within  
24 90 days from the date. That section was removed, and not  
25 for any reason to say we weren't going to conduct an

1 election within 90 days, but more so that we want to be  
2 able to continue that process.

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

13 And Scott do you have any comment?

14 MR. KEEP: I'm not sure I can add much to it. I  
15 think that some of the tribes are more spread out and  
16 they need additional time to educate their tribal members  
17 as well as it may be that we're having trouble making  
18 sure that we have a reasonably complete voter list so  
19 that we have a list of folks that we need to give notice  
20 to of the need to register to vote. So those are some of  
21 the things, I think. So if a tribe hasn't had an  
22 election in a number of years that they have required  
23 registration for, we don't have current addresses or  
24 locations for all the tribal members. Some of them are  
25 things that sort of require some additional time.



1           The reason for the expiration from at least some  
2 of the concerns in the solicitor's office is that  
3 sometimes they go stale. And so particularly with regard  
4 to any petition where it takes a long time for the  
5 petition to circulate and get the number of signatures  
6 and to verify those signatures, some of that process  
7 needs additional time.

8           MS. DAUGHERTY: Thanks, Scott.

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

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

24           So this section is the definition of a tribal  
25 request, because there was -- okay. Anyway, the tribal

1 request -- here's what would happen typically in these  
2 processes. When you hear that the election occurs in  
3 90 days, what would often happen is a tribe would pass a  
4 resolution, and the resolution would come to the office.  
5 And the tribe would say okay, let's have the election in  
6 90 days. And sometimes that resolution would be very  
7 sparse; it would say things like we want to change the  
8 enrollment criteria from a quarter to an eighth, or in  
9 our region we've seen it from an eighth to a quarter as  
10 far as the quantum requirement, and then it wouldn't say  
11 anything else. Or that we want to increase the  
12 prohibition on running for office from two years to  
13 ten years.

14 So then we would have to communicate back to the  
15 tribe and say well, what we really need is -- here's your  
16 constitution, the precise language that's in your  
17 governing document, and what we need is what is the  
18 precise language that you want to replace some section  
19 with, whether it's in the membership criteria or the  
20 leadership criteria as far as who's eligible for a  
21 candidate to run for office. And so then the tribe would  
22 say oh, okay, well, we haven't really worked on the  
23 precise language. So then they'd sit down with their  
24 attorneys and have discussions. And all of that effort  
25 is eating up time. So then the tribe would come back

1 maybe in a week or two, and then we'd have to stop and  
2 look at the language. All the while, everyone is  
3 concerned is the clock ticking, is it not ticking.

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

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

1 they fully understood what this election was about.

2 So a tribal request now is defined, and it  
3 requires three things from the tribal nation. The first  
4 is a duly-adopted resolution. And once again, I'll  
5 survey the crowd. Do you guys all work with resolutions?  
6 Nobody does anything differently than a resolution.  
7 There are some tribes that have a general counsel, and  
8 they do a voice vote or things like that. They might  
9 call a resolution something different. Whatever the  
10 governing body's way of expressing its intent, then we  
11 have to do that. And in our case, it sounds like it's a  
12 resolution.

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

25 So the second part of the tribal request is, as I

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

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

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

24 Harley, I don't know if you have done any  
25 elections.

1 I know that's one thing I see a lot in my region,  
2 is a lot of return mail. And that's -- I mean people  
3 move a lot. That's just the nature. We're very -- I  
4 think even though they always say the Plains Indians were  
5 the nomadic ones, I think we're all nomadic now. It's  
6 just such a different society. We have access to so much  
7 more transportation. So that's definitely an issue. So  
8 I would say if you're going to start on this process at  
9 all, definitely consider doing some sort of publicity  
10 drive to get people to update their mailing list so that,  
11 once again, you maximize voter participation in these  
12 important decisions.

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

21 So that was what we suggested be the components  
22 of a tribal request so that when we got a request, it was  
23 ready to go and you could easily achieve that election in  
24 the 90 days that you're seeking to have the election  
25 within.

1           So then the other component here, I'll just touch  
2 on real briefly, is as far as the exact language, one of  
3 the things we see more often in our region is tribes will  
4 submit that language to us even before they do a  
5 resolution and just ask us is there anything we should  
6 watch out for in this language. So we even have started  
7 to work with the tribes in our region in advance of a  
8 resolution to give them some pointers on what might be  
9 some of the challenges.

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

25           The other -- before I go on, does anyone have any

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

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

25 What came up in this case was, we had a tribal



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

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

25 So this has some guidance. And what that

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

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

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

25 MS. HARVEY: Because you could have people

1 submitting a petition, and then, what if the tribal  
2 counsel requests to have it canceled?

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

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

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

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

22 MS. DAUGHERTY: Okay.

23 MS. HARVEY: So if 20 percent of the people ask,  
24 do the same 20 percent of the people then have to  
25 withdraw? Or some other 20 percent?

1 MS. DAUGHERTY: That's a good question. That's  
2 why the consultation process is so important, because it  
3 helps us address clarification questions. So that's  
4 great.

5 MR. KEEP: That is a good question. All right.  
6 The existing regulations on a petition requires  
7 60 percent. So the secretary wanted to lower that  
8 percentage, and then lowering that percentage has created  
9 sort of this additional issue that might not have  
10 existed. So that's one we hadn't thought of. All right?  
11 I appreciate you raising it. I think we have to address  
12 it.

13 MS. DAUGHERTY: Definitely.

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

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

22 MS. DAUGHERTY: It was billed 20 percent. The  
23 60 percent is in regards to new documents. But sometimes  
24 if you look in the amendment section of the document that  
25 you're addressing, the minimum is 20 percent. That's

1 sort of the default. But sometimes tribal constitutions  
2 or other governing documents will have higher percentage.  
3 So you just have to look there as well.

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

6 MS. DAUGHERTY: If it's higher.

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

8 MS. DAUGHERTY: Yes.

9 MR. KEEP: And I think we really have to look at  
10 that sort of -- that's a new twist because even if it's  
11 20 percent and you got a request for 20 percent, but then  
12 30 percent come in and say we want to revoke or we want  
13 it canceled, we have got an issue as well as the  
14 30 percent requested and then 20 percent come in and say  
15 we don't want it to go forward. And again, it's  
16 indicating 20 percent is the minimum. It's a twist that  
17 really hasn't been fully explained and explored. And  
18 these are important questions that we need to --

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

1 politics everywhere.

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

19 MS. DIEGO: Leora Diego. First of all, I'd like  
20 to thank the bureau for this opportunity and the  
21 consultation process. I would like to make a formal  
22 statement in regards to this issue that we're talking  
23 about. Addressing tribes who have -- because in our  
24 constitution, we have the executive council or tribal  
25 council can do a request for secretarial election. Plus

1 we also have a petition process. So I would just like to  
2 see that both of those are addressed so it's clear on  
3 what that process is going to be.

4 MS. DAUGHERTY: Okay.

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

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

13 Anybody have any other questions on that  
14 particular issue?

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

18 MS. DAUGHERTY: Where that date actually comes  
19 from is this -- well, that's good. It helps explain  
20 what's going on. Let's say you turn in your official  
21 tribal request and you have the exact language and you  
22 have a resolution or a petition. So we get that, we go  
23 through any technical assistance process. And then okay,  
24 we're good to go. Then the regional director -- it's  
25 called the authorizing official in the language, but what

1 it really means in almost every case is the regional  
2 director. The regional director will issue a letter to  
3 the superintendant typically. It says the local bureau  
4 official, which may be different in some cases, but  
5 almost always again, it's the superintendant. They issue  
6 a memo to the superintendant, and it says superintendant,  
7 we have a request, it's a valid request, we're  
8 authorizing you to conduct an election in 90 days.

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

16 The first thing that board does is sit down to  
17 meet to establish the process, and they back things out  
18 according to the time. But what they typically do is say  
19 hey, we need to meet the 90-day deadline, so the election  
20 needs to occur on or before this date, so let's set an  
21 election date. And then they will go backwards. The  
22 board does that all on their own. They say when do we  
23 need to have the registration deadline, when do we need  
24 to have our posting of the registered voters list, when  
25 do we need to stop challenges to the registered voter



1 list. They put all those dates together. We participate  
2 in that process because one of our staff is on that  
3 board, but it's really up to that board including the two  
4 members from the tribe to establish what are these  
5 deadlines leading up to the election.

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

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

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

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

25 MS. HARVEY: And further on that same issue,

1 there was -- they would like to see clarity that elected  
2 tribal officials and any type of member can serve on that  
3 election board because there was confusion over that.

4 MS. DAUGHERTY: I think that --

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

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

10 MS. HARVEY: Well, there was.

11 MS. IRON CLOUD: Because that is a member.

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

22 MS. IRON CLOUD: Absolutely.

23 MS. DAUGHERTY: Thank you. This is a real  
24 consultation process, because I guarantee you, even when  
25 we're all done with this and we all approve of a final

1 version and publish it, there's going to be issues that  
2 come up where you find another gap. That's just the  
3 nature of rulemaking and lawmaking. You think you have  
4 got everything covered, and I'm always -- I'm always not  
5 surprised at how something comes up, and we're like why  
6 didn't we think of that; it's so obvious. Thank you very  
7 much. Does anybody else have any other comments on that  
8 subject? Okay.

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

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

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

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

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

25 MS. DAUGHERTY: And that's one of those things we

1 think, oh, let's just clean it up. But we can't because  
2 it's a law. The regulations can't alter the law, and the  
3 Oklahoma Indian Welfare Act is a law, and the regulations  
4 have to follow it. So like Scott said, it's not  
5 something that Indian nations here need be concerned  
6 about. Maybe for some reason I'll eat those words, but  
7 it's just a component in the regulations that wasn't  
8 before.

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

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

22 MR. KEEP: I'm not sure there are very many at  
23 all right now. As I indicated in my opening remarks, in  
24 the '60s and early '70s, tribes that had not maybe paid  
25 much attention to organizing tribal governments began to

1 reorganize and adopt formal governing documents, where in  
2 many instances -- particularly it was common out here in  
3 California, a lot of groups had articles of association  
4 more in the nature of a homeowners association -- they  
5 started to adopt a formal constitution. So we've really  
6 had -- I think if you looked at it from a historian's  
7 point of view, you'll see there's been a major evolution  
8 in Indian tribal governments from the late '60s to now.  
9 In the last 40 years, tribes have become very  
10 sophisticated in their governing documents and what they  
11 want. And we don't have very many instances of tribes  
12 that had no formal governing document or tradition.  
13 There's very few.

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

25 One of the reasons 20 percent was suggested was

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

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

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

25 MS. HARVEY: So does this current threshold only

1 apply when they're doing the first-time document? What  
2 about amendments to existing documents? Is there a  
3 threshold?

4 MS. DAUGHERTY: There is. The fallback is  
5 30 percent.

6 MS. IRON CLOUD: Or less.

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

11 MS. HARVEY: And that's currently?

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

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



1 petition percentage. I've seen it be 30 percent in some  
2 of our nations.

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

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

9 And I'm not trying to cut you off. I just want  
10 to make sure I get this in there for the record for you  
11 guys. I'm not trying to cut off communication, but if  
12 you walk away from here after we do any additional  
13 questions you might have and you want to submit comments,  
14 there are a number of ways you can do that. You all have  
15 this handout here. You can go to [www.regulations.gov](http://www.regulations.gov).  
16 You have Laurel Iron Cloud's email address,  
17 [laurel.ironcloud@bia.gov](mailto:laurel.ironcloud@bia.gov). You have Laurel's phone  
18 number. She can provide you -- answer any questions you  
19 have. And then also, within this federal register  
20 publication, all the contact info is in there, including  
21 the address for Laurel as well, and you can write a  
22 document and submit it by mail. So you can do it on the  
23 [regulations.gov](http://regulations.gov) website, by email, by mail, any of those  
24 mechanisms to submit any additional comments after today.  
25 So I just wanted to get that in there. I'm not trying to

1 cut anybody off.

2 Because now, if you have any other questions  
3 about the changes we just talked about, the regulations  
4 as they're proposed, how they were before, any other  
5 thoughts or ideas or questions you have about the  
6 proposed regulations.

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

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

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

19 MS. DAUGHERTY: Last year they weren't conducting  
20 elections during the time period when we were in the  
21 government shutdown. And so then there became an  
22 unavailability of bureau staff to deal with some of the  
23 issues. So the question is: Do we need to have a  
24 section that addresses that possibility that maybe even  
25 says something to the effect that the time is told and

1 that the tribe might have some -- that the board has to  
2 sit down after that time period and, you know, maybe  
3 reinstitute the timelines or that the bureau would always  
4 retain staff and be able to continue the election process  
5 no matter what.

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

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

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

19 MS. DAUGHERTY: I know what we do in our region  
20 is endorse that and that's definitely something we'll  
21 consider as we're finishing these up. What has happened  
22 in our region is in a different scenario, and I described  
23 it earlier. Tribes have said can we extend our deadline,  
24 we want to extend the deadline and put it in writing to  
25 request it. And we allow that. And the only reason that

1 I've seen them do it is twice in my years since 2008, is  
2 because they wanted to do more voter education, they  
3 wanted more time to talk about the changes. So I don't  
4 see why that we couldn't put it in there for other  
5 reasons. And I don't know that we have to articulate  
6 exactly why.

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

14 MS. HARVEY: United Auburn Indian Community.

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

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

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

25 MR. KEEP: There's a general provision in the

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

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

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

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

23 The way to get around it is to work with the  
24 tribe, to have the tribe submit to restart that 90-day  
25 period on mutually-agreeable terms. I think that that

1 certainly should be possible to do. But that's what the  
2 problem is. If it's a deadline in our regulations, the  
3 assistant secretary doesn't need to put a particular  
4 provision in these regulations. He can use the general  
5 waiver authority. But if it's a statutory timeframe,  
6 he's got to work with the tribe to figure it out.

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

9 MR. KEEP: No. Those are all interim ones that  
10 the bureau has set in order to meet its statutory  
11 deadline. Really the only statutory deadlines are the  
12 90 days for calling an election on amendment of a  
13 constitution or 180 days on a new constitution and the  
14 45 days for approval after the election. I think those  
15 are the only three.

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

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

21 Are there any other questions? Any comments,  
22 anything?

23 MS. BROOKS: My name is Viola. And I know I  
24 missed the first part of this, but about polling and not  
25 necessarily requiring a polling place, what I have

1 witnessed with some other elections is that absentee  
2 ballots not being counted because they don't come in by  
3 the date. So is it the postmarked date? Or it's clear  
4 in the regulations that it's, you know, received by close  
5 of business? And then what happens if the election  
6 committee selects to have the election on a Saturday or a  
7 Sunday? And how would that impact the absentee ballots  
8 being received through the mail?

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

16 But if you do have that situation where you have  
17 absentee ballots, those are part of the deadlines that  
18 are set. It's the deadline to get absentee ballots out.  
19 And it's expressed, and that's been, I guess, backed up.  
20 But there are absentee ballots that won't be counted  
21 because they come in too late. That's just a  
22 requirement. People hang onto them and send them in  
23 later sometimes. So that's why it's really important at  
24 the agency level, and we train our agency staff that when  
25 that stuff comes in, you time-stamp it so that everyone

1 knows when this was received. And if you know that the  
2 regulation in there say about the weekends and holidays,  
3 there's typically hard and fast extra challenges. But  
4 there's a hard and fast deadline to receive absentee  
5 ballots to vote and then also to receive registration.  
6 Those deadlines are deadlines. And if we time-stamp all  
7 of those things at the agency level, you know this is a  
8 valid vote that came in and this is not.

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

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

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

21 MS. DAUGHERTY: No. Secretarial elections are  
22 federal elections that are only required under -- when  
23 does the rule apply? Your own ordinances, your own  
24 leadership elections -- those are all internal tribal  
25 processes. I suppose -- I'm not going to totally



1 discount it because there might be a tribe out there that  
2 says hey, we want this ordinance to be approved by a  
3 secretarial election. I haven't seen it. And honestly,  
4 if a tribe proposed it, we might resist that because  
5 there's only so many limited resources. We can't be  
6 throwing elections for every little thing under the sun.  
7 But no, nations passing their own laws, nations having  
8 referendums on resolutions or new proposed laws, all of  
9 that is tribal election. I know that's confusing, but  
10 these elections are federal elections that are only for  
11 changing the documents.

12 MS. ELGIN: Amendments to the constitution.

13 MS. DAUGHERTY: Or a corporate charter.

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

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

1 the document, but not by an election; that would just be  
2 the approval process.

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

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

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

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

1 the election will be authorized. Then that's when the  
2 clock starts ticking, from the authorization. You have  
3 90 days to do it from the date the regional director  
4 authorizes the election to go forward.

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

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

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

25 MS. DAUGHERTY: And that really is -- I mean

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

15 MR. KEEP: I'd like to add onto that. Removing  
16 the secretarial approval of the constitution and future  
17 amendments does not necessarily do away with the  
18 requirement for secretarial approval if it's required by  
19 some other provision of law. For example, the attorney  
20 contracts. There's other statutes that require  
21 secretarial approval for specific actions; attorney  
22 contracts, certain leases, or all leases. There's a  
23 variety of things. So you haven't gotten rid of the  
24 secretarial approval requirement for certain other  
25 actions where in those other actions secretarial approval

1 is required by other statutes. So just keep that in  
2 mind. You can clean it up, as Dani suggested. It really  
3 is helpful to make sure that you've gone through.

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

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

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

24 MS. BROOKS: I'm a member of the Hoopa Valley  
25 tribe, and we run and conduct our own elections to amend

1 our constitution but still require secretarial approval.  
2 So that's just another option. And for whatever reason,  
3 that's just the way our tribe has selected to do it. We  
4 don't necessary do the secretarial election process, but  
5 we send everything into the bureau, you know, with the  
6 request for their approval.

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

22 MR. HOLSTEIN: I just want to say thank you for  
23 answering that question. That brought up some valid  
24 points. For enrollment, I can see that still needs to be  
25 part of it.

1 MS. DAUGHERTY: Any other questions on anything?

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

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

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

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

1 removed the statutory requirement for minimum voter  
2 participation.

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

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

24 MS. IRON CLOUD: Viola, you look like you had a  
25 final question or a question.



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

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

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

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

17 MR. KEEP: Yeah. I just want to add to what Dani  
18 said. One of the other things that everybody needs to  
19 think about when they want to do multiple amendments,  
20 which is good -- you can't say Part 1 we want to have  
21 either -- you can't give three alternatives. All right?  
22 Keep in mind that when you break up the amendments, you  
23 have to have -- you can only keep the existing document  
24 or the new document. You can't say we want either the  
25 existing document or Alternative A or Alternative B.

1 Because that then gives the voters three options. You  
2 might end up with no particular amendment getting a  
3 majority.

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

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

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

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

22 MR. KEEP: And just one last comment, if you  
23 will. One of the things that I think has been difficult  
24 for tribes is we've had tribal leaders who have wanted to  
25 go with an entirely new document, and the bureau has

1 authorized those. And then groups within the tribes have  
2 disagreed and challenged it because it presented the  
3 voters with an all-or-nothing. All right? And that's  
4 very difficult. It needs to be -- the bureau needs to  
5 work with the tribe to make sure that there's an adequate  
6 voter education effort ahead of time.

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

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

21 And as Dani said, a lot of tribes like to do it  
22 with separate different amendments for that very purpose.  
23 It's easier because one particular revision which is  
24 controversial, they can exclude that. So long as all the  
25 ones that are adopted work together, that's the key.

1 MS. DAUGHERTY: Yeah. Definitely there are  
2 some -- you know, this is, I think, just the value of  
3 doing the voter education. Because that's -- it  
4 increases the likelihood that the amendments will have a  
5 chance of passing. Because I really do get the  
6 impression from talking to people in the community,  
7 talking about this process. If people don't understand  
8 something, they will just automatically vote no, and then  
9 all of us have engaged in all this work and effort to  
10 bring this forward and it's not going to pass.

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

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

25 MS. DAUGHERTY: There really aren't. But one of

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

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

22 So even though there's no requirement, if you  
23 want certain actions and you want us involved in those,  
24 then you'll give it to us at that point anyway. There's  
25 no requirement. We actually -- we encourage that you

1 don't have to show us all of your resolutions; you just  
2 have to show us the ones you want us to take action on.  
3 But once you want us to take an action if you're  
4 requesting something from us, we have to be assured that  
5 that's a valid action of the nation to be able to follow  
6 our regulations, so you're going to have to provide the  
7 constitution to us at some point if you want something  
8 form us. But otherwise, no.

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

19 And I think the whole part in the process for  
20 membership going to vote, there was a big mixup about how  
21 voters have to register, and they thought they were  
22 already entitled because you're members, why should you  
23 have to register to go through the voting process, so a  
24 lot of people didn't get that. And I get that now. It's  
25 the education part of it. But a lot of members and a lot

1 of elders didn't get that; they said I'm a member, I'm  
2 going to vote, I don't need to turn anything in. And  
3 that's what happened at the polling that day. And a lot  
4 of members were rejected and turned away, and there was a  
5 whole discrepancy about how the information went out, had  
6 wrong address, came back, and they redid them. So that  
7 whole process was just a big kind of a sham for all of us  
8 because you want some of the amendments to pass, but some  
9 of them you don't, so all or nothing didn't work for us,  
10 and we had a low voter turnout. But it turned out, you  
11 know, maybe an eighth of our tribe voting on eight  
12 amendments that most of us didn't want.

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

20 We had a tribe that lowered its blood quantum  
21 requirement down to an eighth from a quarter. And less  
22 than a year later, they said we want to have another  
23 election to bump it back up to a quarter. And I  
24 thought -- we had registered people for a year, and  
25 people went in in droves, and I thought there is no way



1 they're going to raise that back again. And they did;  
2 they successfully did. I was shocked. So anytime  
3 there's amendments in place that it passes and is  
4 incorporated into the constitution or the document and  
5 there is still some disagreement in the community, let's  
6 take another look at that, you're perfectly welcome to  
7 propose another process. In your case, was the election  
8 conducted pursuant to a petition or to the tribal  
9 governing body bringing forth a resolution?

10 MS. ELGIN: Tribal governing body.

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

21 But at any point, that's the best thing about  
22 these processes, is these governing documents are living  
23 and breathing documents. So if there's things you  
24 disagree with, tackle it again. Yeah, you're right. The  
25 more involved that process is, the more community

1 involvement and the more voter education, the more likely  
2 you are to get it done in a way that most people agree  
3 with.

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

8 MR. HOLSTEIN: Joseph.

9 MS. DAUGHERTY: Okay. I think Joseph hit it when  
10 he talked about we want to remove the secretary from this  
11 process. Because then you can do the election as you  
12 seek to do it yourself as a nation. But until that  
13 point, if it's still in there and we're conducting it, we  
14 have to have a way of measuring that the proper people  
15 had a chance to vote. And that's why we do the  
16 registration process, because it's a federal election.  
17 We have to find a way to calculate that 30 percent that  
18 were required to calculate as far as okay, have the  
19 membership -- and then you have a smaller group that  
20 registered, and then 30 percent of those people had to  
21 participate in the election process, and then whatever  
22 the majority of them said is whether we decide if a  
23 change has occurred or not. We have to have a way to  
24 measure that, and as the government, the way to do that  
25 is through the registration process. I know it

1 frustrates a lot of tribal nations. From our  
2 perspective, it can't, because we have to have a way to  
3 verify to everybody that that election was conducted  
4 credibly.

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

16 MS. BROOKS: Also it's important to do a lot of  
17 work ahead of time working with the secretarial election  
18 committee working with, you know, the tribal members.  
19 Because you know your members the best. So understanding  
20 what's the intent too, because it's usually easier to do  
21 the all-or-nothing, do you accept this or do you reject  
22 this, yes or no. You know, so some tribes feel like  
23 putting everything together to all eight amendments on  
24 for one ballot would be, you know, easier or more likely  
25 to have success than voting on each separate amendment.

1 So that's something that, you know, would be a decision  
2 that the tribe and the election committee would have to  
3 decide. You know, and then that's how they format the  
4 election and what type of request and stuff like that.  
5 So that's something that, you know, I would recommend you  
6 consult with the agency, you know, to seek technical  
7 assistance from them and then, like I said, working with  
8 your tribe to decide what you think is the best way to  
9 present this to the memberships.

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

1 there when you're signing the petition. Are they  
2 circulating a petition with an entire document? Are they  
3 circulating it in a pile? Then you'll know.

4 MS. IRON CLOUD: Any further questions or  
5 comments?

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

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

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

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

1 clarification.

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

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

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

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

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

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

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

14 Dated: November 30, 2014

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PATRICIA R. CHAPIN, CSR No. 13493

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