

**U.S. Department of the Interior
Office of Self-Governance - Indian Affairs
Self-Governance PROGRESS Act Negotiated Rulemaking Committee**



MEETING MINUTES

Designated Federal Officer (DFO)—Vickie Hanvey

DATE: **February 29, 2024**
Federal Register Notice: FRN 2023-26124
Meeting Number: 13
DFO Convened at: 1:02 p.m. ET
DFO Adjourned at: 6:46 p.m. ET
Location: Virtual Meeting via Zoom Link
(Managed by Self-Governance Communication and Education Tribal Consortium)
Broadcast via Federal Register Zoom (Public Access)
Designated Notetaker: Regina Gilbert, ADFO, RACA
Facilitation: None

In accordance with the provisions of Federal Advisory Committee Act (Public Law 92-463, as amended), the meeting was open to the public.

CONSENSUS AGREEMENTS SUMMARY:

The Self-Governance PROGRESS Act Negotiated Rulemaking Committee (the “Committee”) reached consensus on the following during the meeting:

1. Approval of the Committee’s February 8, 2024, plenary session meeting minutes.
2. Approval of the new naming and structuring of the subparts.
3. Approval to add the definition of “Non-BIA Bureau director/commissioner” to Subpart A.
4. Approval of Subpart F- Non-BIA Annual Self-Governance Compacts and Funding Agreements (which is now Subpart G) with the exception of the two identified items of non-consensus below.
 - 1000.129(a) The question asks, “Are there any non-BIA programs that may not be included in a funding agreement?” Subsection (a) addresses inherent federal functions. The tribe proposed referencing an existing and long-standing Solicitor guidance that helps explain what may or may not be an inherently Federal function and the party’s made attempts at meeting the concerns but were unable to get to consensus. The Federal and Tribal positions will both be presented in the draft text.
 - 1000.137(b)(1)(iii)] with the question being “What funds are included in a non-BIA funding agreement?” We are in consensus will all parts of this except subsection (b)(1)(iii) that deals with direct contract support costs. The parties were not in

agreement with how to reference section 106(a) of the Indian Self-Determination Act. The Federal and Tribal positions will both be presented in the draft text.

5. Approval of Subpart R- Appeals with the exception of the two identified items of non-consensus below.
 - 1000.420 What does Title I eligible programs mean in the subpart?” There’s a disagreement about whether or not an appeals avenue can be created for the BIA through a bureau head or the Assistant Secretary, specific to the BIA. The Federal and Tribal positions will both be presented in the draft text.
 - 1000.X12 “To whom may a Tribe/Consortium appeal a decision under 1000.XX?” including the Federal proposal of 1000.425. This generally deals with the dispute previously mentioned regarding the ability for Tribes/Consortiums to raise the disputes to the BIA bureau head with the Assistant Secretary as an option before going to the IBIA. The Federal team disagreed with this proposal as the appeals process was not otherwise changed, amended, or even addressed by the PROGRESS Act.
6. Approval of Subpart K- Construction with the exception of the identified items of non-consensus below.
 - The tribal caucus is objecting to the deletion of the definition provision of Categorical Exclusion.
 - There are an additional six proposed regulations of non-consensus which relate to NEPA provisions as follows:
 1. 1000.XX12 What environmental requirements must be included in the construction project agreement or funding agreement that includes a construction project when a Tribe/Consortium agree to assume some certain Federal environmental responsibilities of the Secretary under section 407 of the Act?
 2. 1000.XX14 Are Tribes/Consortia required to grant a limited waiver of their sovereign immunity to assume certain Federal Environmental responsibilities?
 3. 1000.XX15 Are Tribes/Consortium entitled to determine the nature and scope of limited immunity waiver?
 4. 1000.XX16 Who was the proper defendant in a civil enforcement action?
 5. 1000.XX17 What environmental responsibilities remain with the Secretary?
 6. 1000.XX22 How are Tribes/Consortia recognized as having lead agency status?

OPENING:

The meeting was convened by Designated Federal Officer (DFO) Vickie Hanvey at 1:02 p.m. ET.

BLESSING:

Chairman Attebery offered the blessing.

ATTENDANCE:

DFO Hanvey took a roll call of the primary and alternate Committee members, finding that a quorum was in attendance and that the meeting could proceed. See Appendix A for a list of all attendees.

Committee Attendance		
	Present	Absent
Tribal Primary Members	6	1
Federal Primary Members*	5	0
Total Primary Attendance	11	1
Tribal Alternate Members*	3	3
Federal Alternate Members	3	3
Total Alternate Attendance	6	6
* One Vacancy		

ADMINISTRATIVE UPDATES AND DISCUSSIONS:

Review of February 8, 2024, Plenary Session #11 Meeting Minutes:

DFO Hanvey indicated the meeting minutes would be deferred to later in the meeting.

Charter Extension and Committee Membership Extensions:

DFO Hanvey requested ADFG Gilbert provide a status report that the Charter extension and the Membership extensions. Both are with the Secretary’s office waiting for signature processing.

REVIEW OF DRAFTING SUBCOMMITTEE WORK:

DFO Hanvey indicated there are several items to be discussed. The Committee is going to recess and allow the drafting subcommittee to finalize a few more items and asked how much time is needed for the drafting subcommittee to complete its work. The meeting was opened for discussion.

Ron Allen stated he would like to maximize the afternoon and recess until at least 4:00 p.m. to conclude for the end of the day to give enough time to caucus and close as many subpart items as possible. Sharee Freeman agreed.

RECESS

At 1:30 p.m. ET, a motion was made by Ron Allen to recess and reconvene at approximately 4:00 p.m. ET and Sharee Freeman seconded the motion.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to recess and reconvene at 4:00 pm ET.

RECONVENE

At 1:30 p.m. ET to 6:16 p.m. a notice was posted on the public access site that the Committee was in recess. At 6:16 p.m. ET, the Committee reconvened. The Drafting Subcommittee

reported they have reached consensus on several items for submission to the full Committee for review and approval.

Review of February 8, 2024, Plenary Session #11 Meeting Minutes

DFO Hanvey presented the minutes for approval. There were no comments from the Committee to identify any corrections. Ron Allen made a motion to approve the minutes and was seconded by Richard Peterson.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to approve the February 8, 2024 plenary minutes.

REVIEW OF DRAFTING SUBCOMMITTEE WORK:

Restructure of the Subparts:

Moving forward with the work of the drafting subcommittee, DFO Hanvey presented the restructuring of the subparts (inserted below). The Federal proposal was with the primary objective to keep the subparts the same as the current structure as much as possible. The Tribal counter proposal had a few edits proposed which were accepted by the Federal team. The subcommittee proposed to the full committee to change the following:

- Subpart E – Compacts
- Subpart H – Negotiation
- Subpart I – Final Offer
- Subpart Q – Operational Provisions (renamed from Miscellaneous)
- Subpart T – Tribal Consultation Process

		DISCUSSION PURPOSES ONLY Status as of 2/26/24 DFO Hanvey	
FED Proposed New Subparts		TRIBAL counter Proposed New Subparts	
Subpart	Title	Subpart	Title
Subpart A	General Provisions		
Subpart B	Selection of Additional Tribes for Participation in Tribal Self-Governance		
Subpart C	Section 402(d) Planning and Negotiation Grants		
Subpart D	Other Financial Assistance for Planning and Negotiations Grants for Non-BIA Programs		
	Negotiation Process for Annual Funding Agreements		
Subpart E	G 2—(Renamed: Compacts)		
Subpart F	Annual-Funding Agreements for Bureau of Indian Affairs Programs		
Subpart G			
Subpart G	Non-BIA Annual Self-Governance Compacts and Funding Agreements		
Subpart G			
	Negotiation Process for Annual Funding Agreements		
Subpart H	G 3—(Renamed: Negotiations)		
Subpart I	Public Consultation Process (Consultation Process)	Subpart I	Negotiation Process for Annual Funding Agreements G 1—(Renamed: Final Offer)
Subpart J	Waiver of Regulations		
Subpart K	Construction		
Subpart L	Federal Tort Claims		
Subpart M	Reassumption		
Subpart N	Retrocession		
Subpart O	Trust Evaluation Review		
Subpart P	Reports		
Subpart Q	Miscellaneous (Renamed: Operational Provisions)		
Subpart R	Appeals		
	Negotiation Process for Annual Funding Agreements		
Subpart S	G 1—(Renamed: Final Offer)	Subpart S	Conflicts of Interest
Subpart T	Conflicts of Interest	Subpart T	Public Consultation Process (Consultation Process)
Appendix A	No Appendix A (No model compact in Regulations)		
PREAMBLE		PREAMBLE	

Upon further review, Melanie Fourkiller made some friendly amendments.

- Subpart C – is renamed to “Planning and Negotiation of Grants”
- Subpart F – is renamed to “Funding Agreements for Bureau of Indian Affairs”

She then made the motion to approve the naming and restructuring of the subparts. Sharee Freeman seconded the motion.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to approve the new naming and structuring of the subparts.

Definition update:

DFO Hanvey asked the alternate DFO to provide the update to the full subcommittee with Director Fourkiller sharing language on the screen.

Regina stated one of the definitions missing from Subpart K is the definition of a non-BIA bureau director/commissioner to eliminate confusion with Director on the BIA side. The full subcommittee came into consensus with the proposed definition to read and will be added to the definition section in Subpart A:

Non-BIA Bureau director/commissioner means the director of non-BIA bureaus and commissioner of the Bureau of Reclamation.

Melanie Fourkiller moved to approve the definition and add to Subpart A, seconded by Byron Loosle.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to approve to add the definition of “Non-BIA Bureau director/commissioner” to Subpart A.

Subpart F – Non-BIA Annual Self-Governance Compacts and Funding Agreements:

Brian Upton shared screen. Both the tribal and federal caucus have consensus on all parts with the exception of two items.

- 1000.129(a). The question asks, “Are there any non-BIA programs that may not be included in a funding agreement?” Subsection (a) addresses inherent federal functions. The tribe proposed referencing an existing and long-standing Solicitor guidance that helps explain what may or may not be an inherently Federal function and the parties took a few stabs at meeting the concerns but were unable to get to consensus. The Federal and Tribal positions will both be presented in the text.
- 1000.137 with the question being “What funds are included in a non-BIA funding agreement?” We are in consensus will all parts of this except subsection (b)(1)(iii) that deals with direct contract support costs. The parties were not in agreement with how to reference section 106(a) of the Indian Self-Determination Act. The Federal and Tribal positions will both be presented in the text.

For the remainder of Subpart F- Non-BIA Annual Self-Governance Compacts and Funding Agreements (which is now Subpart G) the subcommittee is in consensus.

DFO Hanvey asked for a motion to approve.

Sharee Freeman moved to approve Subpart F with consensus on all the parts with the exception of the two identified items [1000.129(a) and 1000.137(b)(1)(iii)]. The motion was second by Richard Peterson.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to approve Subpart F- Non-BIA Annual Self-Governance Compacts and Funding Agreements (which is now Subpart G) with the exception of the two identified items [1000.129(a) and 1000.137(b)(1)(iii)] of non-consensus.

Subpart R – Appeals

Jordan Romero-Villanueva presented the document on the screen and stated he would just go over the areas of disagreement. He commended the working subcommittee for making good progress on this as we have only two sections where we have disagreement. Otherwise, there is general consensus on this subpart. I’ll just go through the two non-consensus items that both deal with a similar issue.

The first non-consensus item asked the question “1000.420 What does Title I eligible programs mean in the subpart?” There’s a disagreement about whether or not an appeals avenue can be created for the BIA through a bureau head or the Assistant Secretary, specific to the BIA. Since this section deals with that disagreement, this is still subject to both the Tribal and Federal sides to work out the final language.

The next question is the Tribal proposal of 1000.X12 “To whom may a Tribe/Consortium appeal a decision under 1000.XX?” And the Federal proposal of 1000.425. Both the Tribal and Federal side present their proposal. This generally deals with the dispute previously mentioned regarding the ability for Tribes/Consortiums to raise the disputes to the BIA bureau head with the Assistant Secretary as one option before going to the IBIA. The Federal team disagreed with this proposal as the appeals process was not otherwise changed, amended, or even addressed by the PROGRESS Act.

Otherwise, there is general agreement on this subpart, subject to technical edits.

Ron Allen asked Jody Schwarz if she had any clarifications. She responded, no clarifications.

DFO Hanvey asked for a motion to approve.

Ron Allen moved to approve Subpart R- Appeals with consensus on all the parts with the exception of the two items of non-consensus (1000.420 and 1000.XX12) subject to additional clarifications. The motion was seconded by Sharee Freeman.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to approve Subpart R- Appeals with the exception of the two identified items [1000.420 and 1000.XX12] of non-consensus.

Subpart K – Construction:

Matt Jaffe presented this subpart and shared the document on screen. Subpart K is the largest subpart of the revised Part 1000 regulations. The rewrite in Subpart K, the subcommittee is recommended eight subheadings:

1. Construction Definitions;
2. Purpose and Scope;
3. Notification and Project Assumption;
4. Requirements and Standards;
5. NEPA Process;
6. Role of the Secretary;
7. Role of the Tribe/Consortium; and
8. Other.

Non-consensus provisions in Subpart K- Construction include the following;

- The tribal caucus is objecting to the deletion of the definition provision of Categorical Exclusion.
- There are an additional six proposed regulations of non-consensus which relate to NEPA provisions as follows:

1. 1000.XX12 What environmental requirements must be included in the construction project agreement or funding agreement that includes a construction project when a Tribe/Consortium agree to assume some certain Federal environmental responsibilities of the Secretary under section 407 of the Act?
2. 1000.XX14 Are Tribes/Consortia required to grant a limited waiver of their sovereign immunity to assume certain Federal Environmental responsibilities?
3. 1000.XX15 Are Tribes/Consortium entitled to determine the nature and scope of limited immunity waiver?
4. 1000.XX16 Who was the proper defendant in a civil enforcement action?
5. 1000.XX17 What environmental responsibilities remain with the Secretary?
6. 1000.XX22 How are Tribes/Consortia recognized as having lead agency status?

With the exception of those noted as non-consensus, the subcommittee reached consensus on the draft regulatory provisions and recommend its adoption.

DFO Harvey asked for a motion to approve.

Melanie Fourkiller moved to approve Subpart K- Construction with consensus on all the parts with the exception of the identified items of non-consensus (definition of Categorical Exclusion and six NEPA provisions numbered 1000.XX12, 1000.XX14, 1000.XX15, 1000.XX16, 1000.XX17 and 1000.XX22). The motion was seconded by Kelly Titensor.

Consensus on the motion was tested by DFO Harvey, with no Committee members objecting. Accordingly, a consensus was reached to approve Subpart K- Construction with the exception of the identified items of non-consensus (definition of Categorical Exclusion and six NEPA provisions numbered 1000.XX12, 1000.XX14, 1000.XX15, 1000.XX16, 1000.XX17 and 1000.XX22).

REVIEW OF TIMELINE AND MEETING SCHEDULE:

March 1, 2024 from 9 am to noon:

DFO Harvey stated that tomorrow the Drafting small group including herself, Regina Gilbert, Matt Jaffe, Brian Upton, and Jordan Jordan Romero-Villanueva will coordinate clean up and review of the consensus documents. Would like to accumulate the consensus documents and send out to each committee member to review and read through on your own.

March 14, 2024:

In the Federal Register the next meeting will be March 14, plenary meeting with the drafting subcommittee to meet during the week of March 11 – 15. On the schedule we have rooms reserved for a hybrid meeting for March 14, plenary session for a half a day. DFO Harvey requested feedback from the Committee if they prefer to meet in-person or virtually. Rooms have been reserved and we are prepared either way. She deferred to the Committee for decision.

Ron Allen stated that he and Melanie discussed with Tribal caucus different schedules and other commitments to work around. We're proposing to stick with virtual. We need to do some coordinating for days we can't cover and come a little closer to where we can on the areas that we are in disagreement. Also, to talk through the schedule of where we are of getting into the system and processed for tribal consultation.

Melanie Fourkiller stated also add the subcommittee for earlier in the week to work on the preamble. If it is helpful to get all the consensus versions of this subpart organized and cleaned up. We can also meet in person if those who can join.

Ron Allen added that the leadership of the committee can get on a phone between now and then to adjust to the schedule to have it all wrapped up by March 14.

DFO Hanvey included that she is prepared either way as we have the time and space reserved. There is plenty of work to be done. A decision just needs to be made of in-person or virtual so the Committee can make plans. In addition, we have commitment from Sam and Megan to work on the Preamble and the federal portion of the Committee Report. They will be working on that next week.

The Committee preferred to meet virtually.

Committee & Subcommittee Schedule							
		Save the date VIRTUAL	DOI HYBRID In-person (Virtual option)	DOI HYBRID In-person (Virtual option)	DOI HYBRID In-person (Virtual option)		
			FRN 2023-26124	FRN 2023-26124	PLACE HOLDER		
S			2/4 Travel	2/25 Travel	3/10 Travel		S
M	1/29	SubCommittee 1-5pm	2/5 SubCommittee 9am to 5pm	2/26 SubCommittee 9am to 5pm	3/11 SubCommittee 9am to 5pm		M
T	1/30	SubCommittee 1-5pm	2/6 SubCommittee 9am to 5pm	2/27 SubCommittee 9am to 5pm	3/12 SubCommittee 9am to 5pm		T
W	1/31	SubCommittee 1-5pm	2/7 SubCommittee 9am to 5pm	2/28 SubCommittee 9am to 5pm	3/13 SubCommittee 9am to 5pm		W
Th	2/1	SubCommittee 1-5pm	2/8 1/2 Day Subcommittee Full Committee 1-5pm ET Hybrid	2/29 1/2 Day Subcommittee Full Committee 1-5pm ET Hybrid	3/14 1/2 Day Subcommittee Full Committee 1-5pm ET Hybrid		Th
F			2/9 SubCommittee 9am to 12pm	3/1 SubCommittee 9am to 12pm	3/15 SubCommittee 9am to 12pm		F

OTHER MATTERS TO BE DISCUSSED:

None raised.

PUBLIC COMMENT:

Beginning at 6:42 p.m. E.T., members of the public were given an opportunity to comment via Zoom link or by calling in by telephone by DFO Hanvey. No members of the public were present in person and no members of the public had logged into the Zoom link. She reminded everyone that members of the public may also submit written comments to the Committee. The comment period was closed at 6:43 p.m. E.T. after once again confirming that no members of the public were logged into the Zoom link.

ADJOURNMENT:

Ron Allen made a motion to adjourn and was seconded by Sharee Freeman.

Consensus on the motion was tested by DFO Hanvey, with no Committee members objecting. Accordingly, a consensus was reached to adjourn the meeting.

DFO Hanvey adjourned the meeting at 6:46 p.m. E.T.

CERTIFICATION

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.



4/10/2024

Sharee Freeman,

Director Office of Self-Governance, Assistant Secretary – Indian Affairs.

Chair, Self-Governance PROGRESS Act Negotiated Rulemaking Committee

These minutes will be formally considered by the Committee at its next meeting, and any corrections or notations will be incorporated in the minutes of that meeting.

Attachments

Appendix A - Attendees

Attachments (to be posted to the website <https://www.bia.gov/service/progress-act>)

Designated Federal Officers (DFOs) Present

Vickie Hanvey, DFO

Regina Gilbert, ADFO

Members of the Public (19)

Appendix A—Attendees

TRIBAL REPRESENTATIVES	
Present	PRIMARY Tribal Representatives
	Name
	Affiliation
	✓ W. Ron Allen
	Melanie Benjamin
	✓ Richard Peterson (joined later)
	✓ Michael Dolson
	✓ Melanie Fourkiller
	✓ Russel (Buster) Attebery
	✓ Karen Fierro
ALTERNATE Tribal Representatives	
Vacant (Sandra Sampson)	
✓ Jennifer Webster	
✓ Gerry Hope	
Jody LaMere	
Lana Butler	
Will Micklin	
✓ Annette Bryan	
FEDERAL REPRESENTATIVES	
Present	PRIMARY Federal Representatives
	Name
	Affiliation
	✓ Sharee Feeman
	✓ Jody H. Schwarz
	✓ Kelly Titensor
	✓ Byron Loosle
	✓ Scott Aikin
	Vacant (Rose Petoskey)
	ALTERNATE Federal Representatives
Matt Kallappa	
✓ Andrew Caulum	
Nathalie Washington	
Nicole Hanna	
✓ Dorothy FireCloud	
✓ Samuel Kohn	