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Pt. 81

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Authority:: 25 U.S.C. 473a, 476, 477, as amended, and 503.

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Subpart A—Purpose and Scope

§ 81.1 What is the purpose of this part?

This part prescribes the Department's procedures for authorizing and conducting elections when Federal statute or the terms of a tribal governing document require the Secretary to conduct and approve an election to:

- (a) Adopt, amend, or revoke tribal governing documents; or
- (b) Adopt or amend charters.

§ 81.2 When does this part apply?

- (a) This part applies only to federally recognized tribes, in the circumstances shown in the following table.

If a tribe wants to . . .	And . . .
(1) Adopt a new governing document to reorganize under Federal statute	The Federal statute requires an election before or after Secretarial approval.

(2) Adopt a new governing document to reorganize outside Federal statute	The governing document requires approval under the Secretary's general authority to approve.
(3) Amend or revoke a governing document adopted under Federal statute	The Federal statute requires an election and approval for amendment or revocation.
(4) Amend or revoke a governing document adopted outside Federal statute	The governing document requires Secretarial approval of an amendment or revocation.
(5) Ratify a federal charter of incorporation	The charter requires Secretarial approval or is being ratified under the Oklahoma Indian Welfare Act (OIWA).
(6) Amend a federal charter of incorporation	The charter requires a Secretarial election to amend.
(7) Take other action	A Federal statute or tribal law requires a Secretarial election in order to take that action.
(8) Remove the requirement for a Secretarial approval from a governing document	A Federal statute or tribal law requires a Secretarial election in order to take that action.

(b) Secretarial elections will be conducted in accordance with the procedures in this part unless the amendment article of the tribe's governing document provides otherwise and is not contrary to Federal voting qualifications or substantive provisions, in which case the provisions of those documents shall rule, where applicable.

(c) If the amendment provisions of a tribal governing document have become outdated and the amendment cannot be effected under them, and the recognized tribal governing body requests a Secretarial election, the Bureau may authorize a Secretarial election under this part to amend the documents.

§ 81.3 Information collection.

The information collection requirements contained in this part are approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and has been assigned OMB control number 1076-0183. This information is collected when, under Federal statute or the tribe's governing documents, the Secretarial election is authorized to adopt, amend, or revoke governing documents; or adopt or amend charters. This information is required to obtain or retain benefits. A Federal agency may not collect or sponsor an information collection without a valid OMB control number.

Subpart B—Definitions

§ 81.4 What terms do I need to know?

For purposes of this part:

Absentee ballot means a ballot the Secretarial Election Board provides to a registered voter, upon request, to allow him or her to vote by mail even though polling sites are used.

Amendment means any modification or change to one or more provisions of an existing governing document or charter.

Applicable law means any treaty, statute, Executive Order, regulation, or final decision of a Federal court, which is applicable to the tribe.

Authorizing Official means the Bureau official with delegated Federal authority to authorize a Secretarial election.

Bureau means the Bureau of Indian Affairs, Department of the Interior.

Business day means a weekday (Monday through Friday), excluding Federal holidays.

Cast means the action of a registered voter, when the ballot is received through the mail by the Secretarial Election Board, or placed in the ballot box at the polling site.

Charter means a charter of incorporation issued under a Federal statute and ratified by the governing body in accordance with tribal law or, if adopted before May 24, 1990, by a majority vote in an election conducted by the Secretary.

Day means a calendar day. A Secretarial election may be held on a Saturday, Sunday or Federal holiday.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Affairs or his or her authorized representative.

Electioneering means campaigning for or against the adoption, ratification, revocation or amendment of a proposed governing document or a charter.

Eligible voter means a tribal member who will be 18 years of age or older on the date of the Secretarial election (and, if the tribe's governing document imposes additional requirements for voting in a Secretarial election, also meets those requirements).

Eligible Voters List means a list of eligible voters, including their birthdates and their last known mailing addresses. The Eligible Voters List is compiled and certified by the tribe's governing body or the Bureau if the Bureau maintains the current membership roll for the tribe.

Federal statute means the Indian Reorganization Act (IRA), 25 U.S.C. 476, 477, as amended, the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. 503, and any tribe-specific Federal statute that requires a Secretarial election for the adoption of a governing document.

Final agency action means the Authorizing Official's approval or disapproval of a Secretarial election or acknowledgment of the tribe's or petitioners' withdrawal of a request for Secretarial election, and is final for the Department.

Governing document means any written document that prescribes the extent, limitations, and manner in which the tribe exercises its sovereign powers.

Local Bureau office means the local administrative office of the Bureau that is the primary point of contact between the Bureau and the tribe.

Local Bureau Official means the Superintendent, Field Representative, or other official having delegated Federal administrative responsibility under this part.

Mailout ballot means a ballot the Secretarial Election Board provides to a registered voter to allow him or her to vote by mail in an election conducted entirely by mail.

Member of a tribe or tribal member means any person who meets the criteria for membership in a tribe and, if required by the tribe, is formally enrolled.

Petition means the official document submitted by the petitioners to the Secretary to call a Secretarial election for the purpose of adopting or ratifying a new governing document, amending the tribe's existing governing document, or revoking the tribe's existing governing document.

Petitioner means a tribal member who is 18 years of age or older (and, if the tribe's governing document imposes additional requirements for petitioning, also meets those requirements), and signs a petition.

Polling site ballot means the ballot the Secretarial Election Board provides to a registered voter, allowing him or her to vote when polling sites are required by the amendment and adoption article of the tribe's governing document.

Recognized governing body means the tribe's governing body recognized by the Bureau for the purposes of government-to-government relations.

Registered Voter means an eligible voter who has registered to vote in the Secretarial election.

Registered Voters List means the list of all Registered Voters showing only names and, where applicable, voting districts.

Registration means the process by which an eligible voter signs up to vote in the Secretarial election.

Revocation means that act whereby the registered voters of a tribe vote to revoke their current governing document.

Secretarial election means a Federal election conducted by the Secretary under a Federal statute or tribal governing document under this part.

Secretarial Election Board means the body of officials appointed by the Bureau and the tribe (and the spokesperson for petitioners, as applicable) to conduct the Secretarial election.

Secretary means the Secretary of the Interior or his or her authorized representative.

Spoiled ballot means the ballot is mismarked, mutilated, rendered impossible to determine the voter's intent, or marked so as to violate the secrecy of the ballot.

Spokesperson for the petitioners or spokesperson means a tribal member who provides a document signed by other tribal members that provides him or her authority to speak or submit a petition on their behalf.

Tribal request means a request that includes all of the components set out in 81.6.

Tribe means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that is listed in the **Federal Register** under 25 U.S.C. 479a—1(a), as recognized and receiving services from the Bureau of Indian Affairs.

Voting district means a geographic area established to facilitate the voting process, if required, by the amendment and adoption articles of the tribe's governing document.

Subpart C—Provisions Applicable to All Secretarial Elections

§ 81.5 What informal review is available to a tribe or petitioner when anticipating adopting or amending a governing document?

A tribe that plans to adopt or amend a governing document or a spokesperson for a petitioner may, but is not required to, submit the proposed document with a request for informal review to the Local Bureau Official.

(a) During the informal review:

(1) Bureau personnel will help the tribal government or petitioner spokesperson in drafting governing documents, bylaws, charters, amendments and revocations, explain the Secretarial election process, and provide guidance on methods for voter education, such as informational meetings.

(2) The Local Bureau Official will review the proposed document and will offer technical assistance and comments to the tribe or petitioner spokesperson, including but not limited to guidance on whether any of the provisions of the proposed document or amendment may be contrary to applicable laws.

(b) The Bureau will provide technical assistance for a petition only upon request of the spokesperson. Bureau personnel will provide a courtesy copy to the tribe's governing body of all correspondence regarding technical assistance to the petitioners. The spokesperson will be responsible for obtaining the approval of the tribal members it represents on changes to the content of the petition.

§ 81.6 How is a Secretarial election requested?

To request a Secretarial election:

(a) **The tribe** or **petitioner** must submit:

(1) **A duly adopted tribal resolution, tribal ordinance, other appropriate tribal document requesting the Secretary to call a Secretarial election, or, in the absence of an existing governing document or if authorized or required by the existing governing documents, a petition that has been verified by the Bureau as having the minimum number of required signatures** of tribal members; and

(2) The exact document or amended language to be voted on; and

(b) The tribe must submit a list in an electronically sortable format with names, last known addresses, dates of birth, and voting district, if any, of all tribal members who:

(1) Will be 18 years of age or older within 120 days of the date of the request; and

(2) Meet any other voting restrictions imposed by the tribe's governing document for voting in the Secretarial election.

§ 81.7 What technical assistance will the Bureau provide after receiving a request for election?

After receiving a tribal request for election under § 81.6, the Bureau will provide the following technical assistance.

(a) The Local Bureau Official will review and make a recommendation on the proposed document or amendment, prepare background information on the tribe, and submit to the Authorizing Official.

(b) The Authorizing Official must do all of the following:

(1) Review the proposed document or amendment and offer technical assistance to the tribe (and spokesperson, for petitions);

(2) Consult with the Office of the Solicitor to determine whether any of the provisions of the proposed document or amendment may be contrary to applicable law; and

(3) Notify the tribe (and spokesperson, for petitions) in writing of the results of the review.

- (i) If the review finds that a provision is or may be contrary to applicable law, the notification must explain how the provision may be contrary to applicable law and list changes to the document that would be required to allow the Authorizing Official to approve the document as not contrary to applicable law.
- (ii) The notification must be sent to the tribe (and spokesperson, for petitions) promptly but in no case less than 30 days before calling the election.
- (iii) For IRA elections, the tribe may choose to proceed with the election without incorporating required changes, but the Authorizing Official may not approve election results ratifying provisions that are contrary to applicable law.
- (iv) For OIWA elections, the Authorizing Official may not authorize a Secretarial election on any proposed document that contains provisions that may be contrary to applicable law.

§ 81.8 What happens if a governing Federal statute and this part disagree?

If a conflict appears to exist between this part and a specific requirement of the Federal statute, this part must be interpreted to conform to the statute.

§ 81.9 Will the Secretary give deference to the Tribe's interpretation of its own documents?

The Secretary will give deference to the tribe's reasonable interpretation of the amendment and adoption articles of the tribe's governing documents. The Secretary retains authority, however, to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe or when a provision, result, or interpretation may be contrary to Federal law.

§ 81.10 Who may cast a vote in a Secretarial election?

If the tribe:	Then the following individuals may cast a vote:
(a) Is reorganizing under Federal statute for the first time,	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial election; and (2) Has duly registered, regardless of residence or other qualifications contained in the tribe's governing documents or charter
(b) Is already reorganized under Federal statute,	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial election; and (2) Otherwise meets the qualifications required by the tribe's governing documents or charter for that particular type of Secretarial election; and (3) Has duly registered.
(c) Is not reorganized under a Federal statute but tribal law requires a Secretarial election	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial election; and (2) Otherwise meets the qualifications, if any, required by the tribe's governing documents or charter for that particular type of Secretarial election, if any; and (3) Has duly registered.

§ 81.11 May a tribe establish a voting age different from 18 years of age for Secretarial elections?

No. A Secretarial election is a Federal election. According to the 26th Amendment of the U.S. Constitution, adopted July 1, 1971, all individuals 18 years of age and older must be allowed to vote in Federal elections.

§ 81.12 What type of electioneering is allowed before and during Secretarial election?

There shall be no electioneering within 50 feet of the entrance of a polling site.

§ 81.13 What types of voting assistance are provided for a Secretarial election?

If polling sites are required by the amendment or adoption article of the tribe's governing document, the Chair of the Secretarial Election Board will:

- (a) Appoint interpreters;
- (b) Ensure that audio or visual aids for the hearing or visually impaired are provided;
- (c) Ensure that reasonable accommodations are made for others with impairments that would impede their ability to vote; and
- (d) Allow the interpreter or Secretarial Election Board member to explain the election process and voting instructions. At the request of the voter, the interpreter or Board member may accompany the voter into the voting booth, but must not influence the voter in casting the ballot.

§ 81.14 May Secretarial elections be scheduled at the same time as tribal elections?

The Secretarial Election Board will, generally, avoid scheduling Secretarial elections at the same time as tribal elections to avoid confusion. If the Secretarial Election Board decides to schedule a Secretarial election at the same time as a tribal election, the Secretarial Election Board must clearly inform eligible voters of any differences between the tribal election and the Secretarial election and separate ballots must be used for each type of election.

§ 81.15 How are conflicting proposals to amend a single document handled?

When conflicting proposals to amend a single provision of a tribal governing document or charter provision are submitted, the proposal first received by the Local Bureau Official, if properly submitted as a complete tribal request, must be voted on before any consideration is given other proposals. Other proposals must be considered in order of their receipt if they are resubmitted following final agency action on the first submission. This procedure applies regardless of whether the proposal is a new or revised tribal governing document.

§ 81.16 Who pays for holding the Secretarial election?

(a) A Secretarial election is a Federal election; therefore, Federal funding will be used to cover costs. The Bureau will pay for the costs, unless the tribe has received funding for this function through contracts or self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450f, *et seq.*

(b) Once a tribe removes the requirement for Secretarial approval, all subsequent elections it holds to amend the governing document are tribal elections and the tribe is responsible for the costs of those elections.

§ 81.17 May a tribe use its funds to pay non-Federal election officials?

A recognized tribal governing body may use tribal funds to compensate non-Federal personnel to respond to the needs of the tribal government in the conduct of the Secretarial election.

§ 81.18 Who can withdraw a request for a Secretarial election?

The tribe may withdraw the request for Secretarial election in the same manner in which the Secretarial election was requested. The petitioners may withdraw the request for Secretarial election by submitting a new petition, with signatures of at least a majority of the signers of the original petition, seeking withdrawal of the original petition. However, the request for a Secretarial election cannot be withdrawn after the established deadline for voter registration.

Subpart D—The Secretarial Election Process under the Indian Reorganization Act (IRA)

§ 81.19 How does the Bureau proceed after receiving a request for a Secretarial election?

(a) Upon receiving a request for a Secretarial election, the Local Bureau Official will forward the request to the Authorizing Official with any appropriate background information.

(b) The Authorizing Official will issue a memorandum to the Local Bureau official. The memorandum will do all of the following:

(1) Direct the Local Bureau Official to call and conduct a Secretarial election by one of the following deadlines:

(i) If the tribal request is to amend an existing governing document, within 90 days from the date of receipt of the request;

(ii) If the tribal request is to adopt a new governing document (including an amendment to a governing document in the nature of an entire substitute) or to revoke an existing governing document, within 180 days after receiving the request.

(2) Include as an attachment the document or proposed language to be voted upon;

(3) Include as an attachment the Certificate of Results of Election with instructions to return it after the Secretarial election. The Certificate shall read as follows:

CERTIFICATE OF RESULTS OF ELECTION

UNDER A SECRETARIAL ELECTION AUTHORIZED BY (NAME AND TITLE OF AUTHORIZING OFFICIAL) ON (DATE), THE ATTACHED [INSERT: GOVERNING DOCUMENT AND BYLAWS, CHARTER OF INCORPORATION, AMENDMENT OR REVOCATION] OF THE (OFFICIAL NAME OF TRIBE) WAS SUBMITTED TO THE REGISTERED VOTERS OF THE TRIBE AND ON (DATE) DULY (INSERT: ADOPTED, RATIFIED, REJECTED OR REVOKED) BY A VOTE OF (NUMBER) FOR AND (NUMBER) AGAINST AND (NUMBER) CAST BALLOTS FOUND SPOILED IN AN ELECTION IN WHICH AT LEAST 30 PERCENT (OR SUCH

"PERCENTAGES" AS MAY BE REQUIRED TO AMEND ACCORDING THE GOVERNING DOCUMENT) OF THE (NUMBER) REGISTERED VOTERS CAST THEIR BALLOT IN ACCORDANCE WITH (APPROPRIATE FEDERAL STATUTE).

SIGNED:

(BY THE CHAIR OF THE SECRETARIAL ELECTION BOARD AND BOARD MEMBERS)

DATE: ____; AND

(4) Advise that no changes or modifications can be made to any attached document, without the Authorizing Official's prior approval.

(c) The Local Bureau Official will appoint a Bureau employee to serve as the Chair of the Secretarial Election Board and notify the tribe of the need to appoint at least two tribal members, who are at least 18 years of age, to the Secretarial Election Board. If the election is to be held as the result of a petition, then the Local Bureau Official will appoint a Bureau employee to serve as the Chair of the Secretarial Election Board and notify the tribe and the spokesperson for the petitioners of the need to appoint one tribal member each, who is at least 18 years of age, to the Secretarial Election Board. If the tribe or spokesperson for the petitioners declines or fails for any reason to make the appointment(s) by close of business on the 10th day after the date the notice letter is issued, the Chair of the Secretarial Election Board must appoint the representative(s), who are tribal members, if available, on the 11th day after the notice letter is issued.

§ 81.20 What is the first action to be taken by the Chair of the Election Board?

Within 5 days after the Secretarial Election Board representatives are appointed, the Chair must hold the first meeting of the Secretarial Election Board to set the election date.

§ 81.21 What are the responsibilities of the Secretarial Election Board in conducting a Secretarial election?

The Secretarial Election Board conducts the Secretarial election. Except as provided in § 81.43, decisions of the Secretarial Election Board are not subject to administrative appeal.

§ 81.22 How is the Secretarial election conducted?

The Secretarial Election Board:

- (a) Uses the list provided in the tribal request as the basis for the Eligible Voters List;
- (b) Assembles and mails the Secretarial Election Notice Packet at least 30 days, but no more than 60 days, before the date of the Secretarial election to all persons on the Eligible Voters List;
- (c) Confirms that registration forms were received on or before the deadline date;
- (d) Retains the completed registration form as part of the record;
- (e) Develops the Registered Voters List for posting;
- (f) Where the election is conducted entirely by mailout ballot, notes on a copy of the Registered Voters List, by the individual's name, the date the ballot was mailed, and the date the ballot was returned; and
- (g) Where polling sites are required and an individual requests an absentee ballot, notes on a copy of the Registered Voters List, by the individual's name, the date his or her absentee ballot request was received, the date the absentee ballot was mailed, and the date the absentee ballot was returned.

§ 81.23 What documents are included in the Secretarial Election Notice Packet?

The Secretarial Election Notice Packet includes the following:

- (a) Mailout Balloting:
 - (1) The Secretarial election notice;
 - (2) A registration form with instructions for returning the completed form by mail;
 - (3) An addressed envelope with which to return the completed registration form;
 - (4) If the entire document is to be amended or adopted, a copy of the proposed document including proposed language; and if applicable, a copy of the current document proposed for change; and
 - (5) A side-by-side comparison showing the current language to be changed, if applicable, in the left column and the proposed language in the right column.
- (b) Polling Sites (if required by the amendment or adoption articles of the tribe's governing document):