

Bureau of Indian Affairs, Interior

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§ 75.18 Adoption.

The Tribal Council of the Eastern Band of Cherokee Indians shall be empowered to enact ordinances governing the adoption of new members.

[39 FR 43391, Dec. 13, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.19 Distribution of judgment funds.

The membership roll of the Eastern Band of Cherokee Indians of North Carolina will be brought up to date as of October 10, 1974, to serve as the basis for distributing certain judgment funds awarded to the Band in Indian Claims Commission dockets 282-A through L.

(a) Filing of and action on applications shall be in accordance with regulations in this part 75, except as otherwise provided in paragraphs (b) through (g) of this section.

(b) In lieu of notice provisions contained in § 75.3, the Commissioner of Indian Affairs or his authorized representative shall provide notice of the bringing up to date of the membership roll through publication of these amended regulations in the FEDERAL REGISTER and through appropriate press releases and other public notices.

(c) Application forms may be obtained from the Tribal Enrollment Office of the Eastern Band of Cherokee Indians, Council House, Cherokee, North Carolina 28719. Completed applications must be received by the Tribal Enrollment Office no later than midnight January 8, 1975.

(d) Requests for applications for enrollment in the Band received after midnight of the deadline date will not be furnished until after the funds have been distributed.

(e) In lieu of the procedures given in § 75.14, appeals from rejected applicants must be in writing and filed pursuant to part 62 of this subchapter, a copy of which shall be furnished with each notice of rejection.

(f) The Tribal Council and the Superintendent shall attach separate statements to the roll certifying that to the best of their knowledge and belief, the roll contains only the names of those persons who were determined to meet the requirements for enrollment. The roll shall then be submitted through

the Area Director to the Commissioner for approval.

(g) To facilitate the work of the Tribal Enrollment Committee the Commissioner may issue special instructions not inconsistent with the regulations in this part 75.

[39 FR 43391, Dec. 13, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 81—TRIBAL REORGANIZATION UNDER A FEDERAL STATUTE

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AUTHORITY: 25 U.S.C. 473a, 476, 477, and 503.

SOURCE: 46 FR 1670, Jan. 7, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 81.1 Definitions.

As used in this part:

(a) *Adult Indian* means any Indian as defined in paragraph (i) of this section who has attained the age of 18 years.

(b) *Amendment* means any modification, change, or total revision of a constitution or charter.

(c) *Authorizing Officer* means the Bureau of Indian Affairs official having authority to authorize the calling of a Secretarial election.

(d) *Cast ballot* means an official ballot that is cast in the proper manner at

the proper time by a duly registered voter. A ballot is cast by duly placing it in the ballot box or, in the case of absentee voting, when the ballot is duly received through the mail by the election board.

(e) *Charter* means the charter of incorporation the Secretary may issue to a reorganized tribe pursuant to Federal Statute.

(f) *Commissioner* means the Commissioner of Indian Affairs or his/her authorized representative.

(g) *Constitution* or *Constitution and Bylaws* means the written organizational framework of any tribe reorganized pursuant to a Federal Statute for the exercise of governmental powers.

(h) *Federal Statute* means one of the following: (1) The Act of June 18, 1934, 48 Stat. 984, as amended (Indian Reorganization Act); (2) the Act of June 26, 1936, 49 Stat. 1967 (Oklahoma Indian Welfare Act); or (3) the Act of May 1, 1936, 49 Stat. 1250 (Alaska Native Reorganization Act).

(i) *Indian* means: (1) All persons who are members of those tribes listed or eligible to be listed in the FEDERAL REGISTER pursuant to 25 CFR 83.6(b) as recognized by and receiving services from the Bureau of Indian Affairs; provided, that the tribes have not voted to exclude themselves from the Act of June 18, 1934, 43 Stat. 984, as amended; and (2) any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood.

(j) *Invalid ballot* means an official cast ballot discovered at the time the votes are counted which does not comply with the requirements for voting or is not an official ballot. An invalid ballot is not to be counted for determining the number of cast ballots.

(k) *Member* means any Indian who is duly enrolled in a tribe who meets a tribe's written criteria for membership or who is recognized as belonging to a tribe by the local Indians comprising the tribe.

(l) *Mutilated ballot* means an official ballot that has been damaged to the extent that it is not possible to determine the choice the voter intended to make. There are two kinds of mutilated official ballots:

(1) A ballot that is mutilated and not cast. In this case, the mutilated ballot may be exchanged for a new one. If the need arises to exchange a mutilated absentee ballot, no additional time will be provided for the new ballot to be received by the election board.

(2) A ballot that is mutilated and cast. A mutilated cast ballot is to be counted in the same manner as a spoiled cast ballot.

(m) *Officer in Charge* means the Superintendent, Administrative Officer, or other official of the local unit of the Bureau of Indian Affairs (or a Bureau employee that such person might designate) having administrative jurisdiction over a tribe.

(n) *Official ballot* means a ballot prepared by the Bureau of Indian Affairs for use in an election pursuant to this part. It is possible that an official ballot may be found to be either spoiled or mutilated at the time the votes are counted.

(o) *Registration* means the act whereby persons, who are eligible to vote, become entitled or qualified to cast ballots by having their names placed on the list of persons who will be permitted to vote.

(p) *Reorganized tribe* means a tribe whose members have adopted a constitution pursuant to a Federal Statute.

(q) *Reservation* means any area established by treaty, Congressional Act, Executive Order, or otherwise for the use or occupancy of Indians.

(r) *Revocation* means that act whereby the adult members of a tribe vote to abandon their constitutional form of government as opposed to their voting to amend or totally revise it.

(s) *Secretarial election* means an election held within a tribe pursuant to regulations prescribed by the Secretary as authorized by Federal Statute (as distinguished from *tribal* elections which are conducted under tribal authority. (See *Cheyenne River Sioux Tribe v. Andrus*, 566 F. 2d 1085 (8th Cir., 1977), cert. denied 439 U.S. 820 (1978)).

(t) *Secretary* means the Secretary of the Interior or his/her authorized representative.

(u) *Spoiled ballot* means an official ballot that has been marked in such a way that it is not possible to determine

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the intent of the voter, a ballot that has not been marked at all, or one that has been marked so as to violate the secrecy of the ballot. There are two kinds of spoiled official ballots:

(1) A ballot that is spoiled and not cast. In this case, the spoiled ballot may be exchanged for a new one. If the need arises to exchange a spoiled absentee ballot, no additional time will be provided for the new ballot to be received by the election board.

(2) A ballot that is spoiled and cast. A spoiled cast ballot is to be counted in tabulating the total votes cast in conjunction with determining whether the required percentage of the qualified voters has participated in the election.

(v) *Tribal government* means that entity established pursuant to a tribal constitution as empowered to speak for the tribe or in the absence thereof any group or individual that is recognized by the tribal members as empowered to speak for the tribe.

(w) *Tribe* means: (1) Any Indian entity that has not voted to exclude itself from the Indian Reorganization Act and is included, or is eligible to be included, among those tribes, bands, pueblos, groups, communities, or Alaska Native entities listed in the FEDERAL REGISTER pursuant to § 83.6(b) of this chapter as recognized and receiving services from the Bureau of Indian Affairs; and (2) any group of Indians whose members each have at least one-half degree of Indian blood for whom a reservation is established and who each reside on that reservation. Such tribes may consist of any consolidation of one or more tribes or parts of tribes.

(x) *Voting district* means a geographical area established to facilitate a tribal election process.

§ 81.2 Purpose and scope.

(a) The purpose of this part is to provide uniformity and order in:

(1) Holding Secretarial elections for voting on proposed constitutions when tribes wish to reorganize,

(2) Adopting constitutional amendments,

(3) Ratifying and amending charters,

(4) Revoking constitutions, and

(5) Facilitating the calling of such elections by the Secretary under provisions of a Federal Statute.

(b) This part may also be used as a guideline by tribes wishing to hold constitutional elections that are not held pursuant to a Federal Statute.

(c) Where a discrepancy might appear to exist between these regulations and a specific requirement of the statute governing the reorganization of a tribe or ratification and amendment of charters, the regulations shall be interpreted to conform with the statute.

(d) As much as possible, Secretarial elections shall be scheduled so as to avoid their being held at the same time as *tribal* elections in order to avoid the confusion that results from different requirements for each kind of election.

§ 81.3 Group eligibility.

(a) No tribe which has voted to exclude itself from the provisions of the Indian Reorganization Act, or is otherwise precluded by law, may be reorganized under a Federal Statute. Tribes wishing to reorganize or a reorganized tribe seeking to amend its constitution and bylaws or wishing to vote to revoke such document shall do so under the regulations in this part.

(b) Charters issued to reorganized tribes shall be ratified or amended under the regulations in this part.

§ 81.4 Assistance from the Department of the Interior.

Representatives of the Department of the Interior will cooperate with and offer advice and assistance (including the proposing of amendments), to any tribe in drafting a constitution and bylaws, an amendment, a charter or charter amendment, or in revocation of constitutions. Any payments that might be necessary to non-Bureau staff assisting in the conduct of the election shall be made from tribal funds.

§ 81.5 Request to call election.

(a) The Secretary shall authorize the calling of an election to adopt a constitution and bylaws or to revoke a constitution and bylaws, upon a request from the tribal government.

(b) The Secretary shall authorize the calling of an election to adopt a constitution and bylaws pursuant to a Federal Statute upon receipt of a petition bearing the signatures of at least 60 percent of the tribe's adult members.