

DEPARTMENT OF THE INTERIOR**Office of the Secretary****25 CFR Chapter VI****Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee**

AGENCY: Office of Self-Governance, Office of the Secretary.

ACTION: Notice of intent to establish negotiated rulemaking committee.

SUMMARY: As required by the Negotiated Rulemaking Act of 1990, the Department of the Interior (DOI) is giving notice of the intent to establish a Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing the Tribal Self-Governance Act of 1994. DOI invites any interested party to comment on the proposal to create this negotiated rulemaking committee and on the proposed membership of the committee, which is subject to the requirements of the Tribal Self-Governance Act. In addition, DOI invites persons who believe that they will be significantly affected by the proposed rule to apply or nominate other persons for membership on the negotiated rulemaking committee. In particular, DOI seeks to add four members to the committee from non-Self-Governance tribes.

DATES: Written comments concerning this notice must be received on or before March 17, 1995. Nominations from non-Self-Governance tribes and other interested parties may be made by submitting applications on or before March 17, 1995. Each application must contain the information described in the "Application for Membership" section below.

ADDRESSES: Please submit comments and applications to: William A. Sinclair, Office of Self-Governance, U.S. Department of the Interior, MS 2548-MIB, 1849 C Street NW., Washington, D.C. 20240. Comments and applications received will be available for inspection at the address listed above from 9:00 a.m. to 3:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William A. Sinclair, Acting Director, Office of Self-Governance, Office of the Secretary, at the address listed above, or by telephone at (202) 219-0240.

SUPPLEMENTARY INFORMATION: The Tribal Self-Governance Act of 1994, Public Law 103-413 (Act), requires the Secretary, upon request of a majority of the Self-Governance tribes, to initiate

procedures under the Negotiated Rulemaking Act, 5 U.S.C. 561, *et seq.*, in order to negotiate and promulgate the regulations necessary to carry out the Self-Governance Program. The Act calls for a negotiated rulemaking committee to be established pursuant to 5 U.S.C. 565 comprised of federal and tribal representatives, with a majority of the tribal representatives representing Self-Governance tribes. The Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of Self-Governance and the government-to-government relationship between the United States and the Indian tribes. On November 1, 1994, a majority of the self-governance tribes wrote the Secretary requesting the immediate initiation of negotiated rulemaking.

Copies of the Committee's charter will be filed with the appropriate committees of Congress and with the Library of Congress in accordance with section 9(c) of the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988) (FACA).

Scope of the Proposed Rule

The proposed rule generally will include provisions governing how DOI carries out its responsibility to tribes under the Act and how tribes carry out their responsibility under the Act. The provisions will include procedural (information and deadline) and substantive (residual funds retained) requirements governing how DOI conducts negotiations with tribes. The rule will also set forth a definition of stable base budgets and timelines for the transfer of these and other funds to tribes. The provisions will govern how additional tribes are accepted into the Self-Governance Program planning and negotiation process and how DOI awards planning and negotiation grants. The rule will set forth how DOI will process regulation waiver requests from tribes, establish an ongoing process for determining and negotiating tribal shares of BIA and eligible non-BIA programs, set up mechanisms to review tribal trust functions, and establish retrocession procedures for programs or portions of programs under the Act if there is imminent jeopardy to a physical trust asset or to public health or safety. The provisions will include procedures for the Secretary to ensure that proper health and safety standards are provided for in construction projects included in annual funding agreements. The rule will establish reporting requirements of tribes and DOI under the Act and a mechanism for negotiating the inclusion of specific provisions of the Office of Federal Procurement and Policy Act and

Federal acquisition regulations into annual funding agreements.

It is anticipated that the negotiated rulemaking committee will develop proposed regulations in all of the above-referenced areas and any other areas that may be suggested during the process.

Interests Significantly Affected

A limited number of identifiable interests will be significantly affected by the rule. Those parties are Indian tribes, tribal organizations as defined in section 4(l) of the Indian Self Determination and Education Assistance Act, and individual tribal members, including owners of allotted Indian lands.

Proposed Agenda and Schedule for Publication of Proposed Rule

It is the Secretary's intent to publish the proposed rule for notice and comment within 12 months of the establishment of the committee. Consequently, the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee shall terminate 12 months after the date the charter is filed or upon publication of a final rule implementing the Act, whichever occurs first. The charter for the negotiations committee specifies that a minimum of three meetings will be held. The first meeting will serve as an organizational meeting to establish procedures, deadlines and a work schedule to accelerate discussions and decisions in order that the 12 month time period will be met. Following this first meeting, the Department will publish in the **Federal Register** the procedures, deadlines, and a schedule of negotiation committee meetings.

Negotiation Procedures

The following procedures and guidelines will apply to the negotiated rulemaking committee, unless they are modified as a result of comments received on this notice or during the negotiation process.

The committee may use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to help the negotiation process run smoothly, and help participants define and reach consensus.

The members of the committee, with the assistance of the facilitator, may adopt procedures for committee meetings which they consider most appropriate.

The goal of the negotiating process is for the committee to reach consensus on the proposed rule. Consensus means unanimous concurrence among the

interests represented unless the committee agrees to define such term to mean general but not unanimous concurrence, or agrees upon another specified definition.

If the committee reaches consensus on the proposed rule, the committee shall transmit a report containing the proposed rule to the Secretary at the conclusion of negotiations. If the committee does not reach consensus on the proposed rule, it may transmit a report specifying any areas in which it did reach consensus, and any other recommendation it considers appropriate, including dissenting views of committee members. DOI, to the maximum extent consistent with its legal obligations, will use the consensus of the committee as the basis for a proposed rule for notice and comment. Parties to the negotiation may withdraw at any time. If this happens, the remaining committee members will evaluate whether the committee should continue or be reconstituted.

Meetings will be held in the Washington area, or in another location, at the convenience of the committee. DOI will announce committee meetings in the **Federal Register**. These meetings will be open to the public.

Records of Meetings

In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. Appendix, DOI will keep a record of all committee meetings.

Administrative Support

The Office of Self-Governance will provide funding for the costs of the committee, as well as administrative support and technical assistance, including logistical support services, for the activities of the committee.

Committee Membership

The Act requires that the committee be comprised only of Federal and tribal government representatives and that a majority of the tribal committee members be representatives from Self-Governance tribes. In a letter to the Secretary on November 1, 1994, the Self-Governance tribes nominated the following persons:

Rhonda Swaney—(Salish & Kootenai-Flathead)
Ron Allen—(Jamestown S'Klallam)
Loretta Bullard—(Kawerak)
Dale Risling—(Hoopa)
Bernida Churchill—(Mille Lacs)
Lindsey Manning—(Duck Valley Shoshone Paiute)
Merle Boyd—(Sac & Fox)

The Secretary has determined that the individuals listed above shall represent the Self-Governance Tribes. In order to comply with the Act the federal representatives will be comprised of two individuals and that there will be four representatives from non-Self-Governance tribes, for a total of thirteen committee members. The federal representatives shall consist of a Special Assistant to the Secretary and the Deputy Assistant Secretary for Indian

Affairs. The representatives of the non-Self-Governance tribes will be selected by the Assistant Secretary-Indian Affairs from the nominations received under this notice.

Application for Membership

Non-Self-Governance tribes may nominate tribal leaders to fill the four designated positions on the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee. Each nomination shall include:

1. The name, address and telephone number of the nominee and the name of his or her tribe.
2. Evidence that the nominee is authorized to represent that tribe.
3. A written commitment from the nominee to actively participate in good faith in the development of the proposed rule.

The Assistant Secretary-Indian Affairs will give full consideration to all applications and nominations timely submitted.

Solicitation of Public Comments

Members of the public are invited to submit comments on this proposal to establish the Joint Tribal and Federal Self-Governance Negotiated Rulemaking Committee, as well as on the proposed membership of the committee.

Dated: February 6, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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