

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 38**

RIN 1076—AE02

**Southwestern Polytechnic Institute (SIPI) Personnel System****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Notice of proposed rulemaking.**SUMMARY:** The Bureau of Indian Affairs is proposing to amend its regulations to allow the Southwestern Indian Polytechnic Institute to develop a new alternative personnel system.**DATES:** Written comments on the proposed rule must be filed June 7, 2000. A public hearing will be held on June 8, 2000.**ADDRESSES:** You may send written comments on the proposed rule and written comments to supplement oral testimony to: Dr. Carolyn Elgin, President, Southwestern Indian Polytechnic Institute, P. O. Box 10146, 9169 Coors Boulevard, NW, Albuquerque, New Mexico 87184.**FOR FURTHER INFORMATION CONTACT:** David Parrish, Dean of Administration, at (505) 346-2340.**SUPPLEMENTARY INFORMATION:**

*Review of Comments:* Comments will be available for inspection at SIPI, Room 107, 9169 Coors Boulevard, NW, Albuquerque, New Mexico, 87184. Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. This 30 day time frame is necessary to ensure that statutory requirements for implementation no later than October 31, 2000 are met. A public hearing will be held on June 8, 2000.

Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address and other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor request(s) for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submission from organizations and from individuals identifying themselves as representatives or officials of organizations.

*Public Hearing:* A public hearing will be held at SIPI, Library Building, Board of Regents Conference, 9169 Coors Boulevard, NW, Albuquerque, New Mexico, 87184. Any person who wants to participate in the public hearing should notify the person identified under **FOR FURTHER INFORMATION CONTACT** section.

(1) If no one expresses an interest in participating in a hearing at the given location on the given date, we will not hold the hearing. If only one person expresses an interest, we may hold a public meeting rather than a hearing, and we will include the results in the Administrative Record.

(2) If we hold a hearing, we will continue the hearing until everyone who wants to testify has done so. We will include the results in the Administrative Record.

At the time of the hearing, interested persons or institutions may present written or oral comments on the proposed rule. The hearing will be informal. However, anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. He will then plan the hearings and provide sufficient time for all interested persons and institutions to be heard. Priority will be given to those on the schedule. Other individuals may speak during any remaining available time. Each speaker's presentation will be limited to 10 minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

This demonstration project is initiated under the authority of Pub. L. 105-337. The congress believes that SIPI requires more flexibility and autonomy in their personnel activities than is currently allowed by the Office of Personnel Management regulations (Title 5, U.S.C.). The Congress further required that if a demonstration project is implemented, that it be implemented no later than October 31, 2000. This demonstration project allows SIPI to develop a completely new personnel system to meet the unique needs of the SIPI mission. This project is designed to increase the flexibility of training modules and services provided to the students attending SIPI. To accomplish these goals, a separation from Title 5 requirements was necessary.

**Background**

Individuals employed at the Southwestern Indian Polytechnic Institute (SIPI) are currently covered under Title 5 of the CFR (Administrative Personnel). Under the demonstration project, SIPI employees will no longer be covered by Title 5 of the CFR, but

will be covered by Part 38 of Title 25 (Indians), as established in this proposed rule. This action will allow SIPI greater autonomy in administration and improvement of the academic program while maintaining SIPI and its employees as an integral part of the Bureau of Indian Affairs. Under this demonstration project, employees at SIPI will be converted to the Excepted Service and all future appointments to positions at SIPI will be in the Excepted Service. SIPI Management will establish qualifications and classifications standards that will directly support the mission of SIPI in providing quality education programs for its students. The employee compensation and pay system will be converted to that of the current contract education pay system with no loss of pay or benefits. The current Title 5 benefits (*ie.* Retirement, Health, Life Insurance and Thrift Savings Plan) will be continued. The current annual and sick leave program will be continued. A new 5 step performance evaluation system will be utilized under the project. Any collective bargaining agreement in effect on the day before this demonstration project commences shall be recognized by SIPI until the earlier of:

- (1) The date occurring 3 years after the commencement date of the project;
- (2) The date as of which the agreement is scheduled to expire (disregarding any option to renew); or
- (3) such date as may be determined by mutual agreement of the parties.

**Termination of the Demonstration Project**

This demonstration project will terminate on October 31, 2005, or on such date beyond October 31, 2005, as deemed necessary to validate the results of the project, or as determined by Congress.

**Discussion**

This proposed rule will expedite the employment and utilization of future employees with qualifications that more readily reflect the needs of the Institution than is currently allowed under Office of Personnel Management regulations. It will also provide the administration of SIPI with the flexibility to modify program requirements and more appropriately assign employees to reflect changing requirements.

**Regulatory Planning and Review (E.O. 12866)**

These proposed regulations are not a significant regulatory action because they affect only a small number of employees (approximately 185) and

have no additional effect on SIPI employees beyond the current approved budget. Therefore, they are subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will have no effect beyond the current approved budget which is less than \$6 million.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

#### **Regulatory Flexibility Act**

The Department certifies that these proposed regulations will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it only effects the 185 total positions located at SIPI and has no economic impact on the incumbents of those positions.

#### **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have any annual effect on the economy beyond the current approved budget of less than \$6 million.

(b) Will not cause any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have any adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### **Unfunded Mandates Reform Act**

This rule does not impose any unfunded mandate on State, local, or tribal governments or the private sector. The rule does not have any effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

#### **Takings (E.O. 12630)**

In accordance with Executive Order 12630, the rule does not have any takings implications. A takings implication assessment is not required.

#### **Federalism (E.O. 13132)**

The proposed rule has been analyzed in accordance with the principles and

criteria contained in Executive Order 13132. This proposed rule does not propose any regulation that:

(1) Has any direct effect on the States, the relationship between national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Impose any compliance costs on State and local governments; or,

#### **Executive Order 13132**

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule does not propose any regulation that:

(1) Has any direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Impose any direct compliance costs on State and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rule does not affect the Indian tribal governments, the funding and consultation requirement of Executive Order 13084 does not apply.

#### **Civil Justice Reform (Executive Order 12988)**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not impact the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

#### **Paperwork Reduction Act**

This regulation does not require information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

#### **National Environmental Policy Act**

This rule does not constitute a major Federal action affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

#### **Consultation and Coordination With Indian Tribal Governments (E.O. 13084)**

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084. Because the proposed rule would not affect the Indian tribal governments, the funding and consultation requirement of Executive Order 13084 does not apply.

#### **Clarity of This Regulation**

Executive Order 12866 requires each agency to write regulations that are easy to understand. President Clinton's Presidential memorandum of June 2, 1998 required us to write new regulations in plain language. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading, for example, § 38.15 Southwest Indian Polytechnic Institute. (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: [Execsec@ios.doi.gov](mailto:Execsec@ios.doi.gov).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the provisions of the Public Law. Persons making written submissions should file with the Southwestern Indian Polytechnic Institute. A copy of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with SIPI, and all written communications relating to the proposed rule between SIPI and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will

be available for inspection and copying at the address indicated in the **ADDRESSES** section.

**List of Subjects in 25 CFR Part 38**

Indians—education.

**Words of Issuance**

For the reasons stated in the summary, the Department of the Interior proposes to amend Title 25 CFR, as follows:

**PART 38—EDUCATION PERSONNEL**

1. The authority for part 38 is revised to read as follows:

**Authority:** Secs. 1131 and 1135 of the Act of November 1, 1978 (92 Stat. 2322 and 2327; 25 U.S.C. 2011 and 2015); Secs. 511 and 512 of Pub. L. 98–511; and Secs. 8 and 9 of Pub. L. 99–89 (Indian Education Technical Amendments Act of 1985) and Title V of Pub. L. 100–297 (Indian Education Amendments of 1988) and Pub. L. 105–337.

2. A new § 38.15 is added to read as follows:

**§ 38.15 Southwestern Indian Polytechnic Institute.**

The Southwest Indian Polytechnic Institute has an independent personnel system established under Pub. L. 105–

337, the Administrative Systems Act of 1998, 112 Stat. 3171. The details of this system are in the Bureau of Indian Affairs Manual at 62 BIAM, which may be found in Bureau of Indian Affairs Area and Agency offices, Education Line Offices and the Central office in Washington, DC.

Dated: April 25, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

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