Testimony in Support of The Little Shell Tribe of Chippewa Indians

Restoration Act of 2013 (S. 161)

Presented by The Hon. Gerald Gray

On Behalf of The Little Shell Tribe of Chippewa Indians of Montana

Senate Committee on Indian Affairs Hearing on Various Recognition Bills

October 30, 2013

PO Box to 543 • Black Eagle, MT 59414
Little Shell Tribal Office • 625 Central Ave West, Suite 101 • Great Falls, MT 59404
www.littleshelltribe.us

INTRODUCTION

My name is Gerald Gray, and I am the elected Chairman of the Little Shell Tribe of Chippewa Indians. On behalf of the Little Shell Tribe I urge Congress to enact The Little Shell Tribe of Indians Restoration Act of 2013, S. 161. Further, I ask that this written testimony be included in the record of this hearing.

The Little Shell Tribe of Chippewa Indians of Montana (Tribe) has been involved in the federal acknowledgment process since 1978. To put that into perspective, the Tribe has been in the process for all or parts of five decades. We still do not have a final determination and no indication of when a final determination might be rendered. We urge Congress to end the Tribe's ordeal by legislatively recognizing the Tribe. The Tribe already has suffered too long from the brutalizing effects of the Bureau of Indian Affairs' administrative recognition process -- and forcing it to wait any longer only prolongs the historical injustices already endured by a Tribe that has no federally protected land base on which it can protect its heritage and culture, and provide desperately needed services and housing for its people.

I. Overview of the Procedural History of the Tribe's Participation in BIA's Federal Acknowledgment Process

On July 14, 2000, twenty-two years after starting the process, Kevin Gover, the Assistant Secretary-Indian Affairs ("AS-IA"), signed a "Proposed Finding for Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana." 65 Fed. Reg. 45,394 (July 21, 2000) ("PF" or "Proposed Finding"). After summarizing the evidence under each of the criteria, the Assistant Secretary concluded that *"the petitioner should be acknowledged to exist as an Indian*

tribe."[1] *Id*. at 45,396 (emphasis added). However, on November 3, 2009, after an administration change, the Acting Principal Deputy, Assistant Secretary-Indian Affairs reversed course and issued a Final Determination (FD) against recognition of the Little Shell Tribe of Chippewa Indians of Montana (Tribe), thereby reversing the favorable proposed finding. 74 Fed. Reg. 56,861. The Acting Principal Deputy reversed Assistant Secretary Gover's Proposed Finding despite the fact that in the interim *no negative comments were received* on the PF, and despite that fact that *the State of Montana, all affected local governments, and all Montana Tribes, as well as others, expressly supported Little Shell's recognition*.[2]

The Tribe appealed to the Interior Board of Indian Appeals (IBIA) on several grounds within its jurisdiction, as set forth in 25 C.F.R § 83.11 (d)(9). On June 12, 2013, the IBIA rejected the Tribe's arguments based on those grounds. The Tribe also raised arguments outside the jurisdiction of the IBIA that were referred to the Secretary of the Interior under §§ 83.11 (f)(2) and (g)(2). 25 C.F. R. § 83.11 (f) (2) which provides that the Secretary has the "discretion to request that the Assistant Secretary reconsider the final determination on [the] grounds"

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[1] Relying largely on the summary under the proposed findings, the Montana Supreme Court held that the Little Shell Tribe met the criteria of *Montoya v. United States*, 180 U.S. 261 (1901) for common law recognition as a Tribe. *Koke v. Little Shell Tribe of Chippewa Indians of Montana, Inc.*, 315 Mont. 510, 68 P.3d 814 (2003).

[2] Two third party comments were received. One was moot and the other comment simply requested explanation of certain matters. George T. Skibine, "Summary under the Criteria and Evidence for Final Determination Against the Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana," 15-16, (Oct. 27, 2009) ("FD").

referred by the IBIA. On September 16, 2013, the Secretary of the Interior granted the Tribe's request on all grounds and referred five serious questions to the Assistant-Secretary, stating: "Based on the nature of the five alleged grounds, particularly with regard to the due process concerns and questions regarding burdens of proof, I am Exercising my discretion to request that you reconsider the Little Shell Final Determination." (Exhibit A attached). The five questions sent back to the Assistant-Secretary for reconsideration are as follows:

1. Should reconsideration be granted based on the allegation that due process required that Petitioner be provided with an opportunity to review and comment on the interviews of 71 individuals conducted by OFA, and other materials obtained by OFA after Petitioner's last filings and prior to the issuance of the Final Determination?

2. Should reconsideration be granted based on the allegation that application of criterion § 83.7 (a) is arbitrary, capricious, and contrary to law?

3. Should reconsideration be granted based on the allegation that the Final Determination erred in requiring Petitioner to demonstrate that the Federal actions relied upon by Petitioner to obtain the benefit of section 83.8, were clearly premised on Petitioner's ancestors being a tribal political entity with a government-to-government relationship with the United States, and that the Final Determination applied an incorrect burden of proof to the evidence that Petitioner provided to show five instances of previous Federal acknowledgment?

4. Should reconsideration be granted based on the allegation that the Final Determination imposed upon Petitioner a burden of proof greater than that required by § 83.6(e)?

5. Should reconsideration be granted based on the allegation that it was arbitrary and capricious, or contrary to law, for the Final Determination to reverse the favorable Proposed

Finding, when no substantial negative comments were received regarding the Proposed Finding and Petitioner submitted evidence strengthening its petition?

As to these questions, the Secretary concluded that "The allegations in these grounds suggest that further review by your office would ensure that the Department's final decision in this matter benefits from a full analysis and comports with notions of a full and fair evaluation of the Little Shell petition."

Earlier this year, and prior to the referral of these questions to the Secretary, the Assistant Secretary for Indian Affairs made an important announcement of "Consideration of Revisions to Federal Acknowledgment Regulations." (Copy attached as Exhibit B). Because the Little Shell FD is not yet final agency action, the Tribe requested that it be provided the same opportunity to suspend further consideration of its petition until the revised regulations are promulgated. This request was also addressed by the Secretary who concluded that, "In addition to addressing the five matters referred by the IBIA, please consider the petitioner's request that the Department suspend consideration of the petition pending the enactment of revised acknowledgment regulations."

During the decades that the Tribe has been subjected to the administrative recognition process, it has consistently highlighted its concerns about the defects in that process and the profound injustices those defects often cause. After years of having its concerns fall on deaf ears, the validity of the Tribe's complaints shows signs of finally being addressed by the depth and breadth of the proposed amended regulations. Nevertheless, these proposed regulations are not yet adopted, and the Tribe has no way to know when or even if they will be. The United States owes an obligation to the Little Shell Tribe and its people, and that obligation already has been too long overdue in its fulfillment. Accordingly, the Little Shell Tribe respectfully urges

the United States Congress to exercise its constitutional power to restore federal recognition to our Tribe, and finally to deliver us from the misery that for five decades has been our lot with the current version of the Bureau of Indian Affair's federal acknowledgment process.

II. The Ways in Which the Current Administrative Federal Acknowledgment Process Has Failed the Little Shell Tribe

For the purpose of demonstrating to Congress that the current administrative process is woefully defective, and that to avoid further injustice Congress must step in to recognize the Tribe, the Tribe provides below additional information related to the five questions raised by the Tribe and referred by the Secretary to the Assistant Secretary.

1. The Regulations Denied the Tribe Due Process; The Draft Regulations Implicitly Recognize the Need for More Due Process Protection in the Administrative Acknowledgment Process.

Before the Final Determination on the Tribe's petition, an OFA staff member made an additional, extensive field trip to visit the Tribe, during which 71 individuals were interviewed. FD page 49, fn 38. In addition, scores of other documents were obtained and relied upon in the FD. *Id*. There is no provision in the regulations for petitioners to review documents under such circumstances and the FD was issued without the Tribe having had the chance to review and respond to this evidence.[3] The FD specifically indicates that the OFA relied on "evidence that the Department researchers developed during their verification research." 74 Fed. Reg. 56,862.

[3] Indeed, the Tribe was required to file a FOIA request to even obtain the materials which should have been provided to it as a matter of course. It then had to wait months to get the materials, was denied access to some materials, and was required to pay costs of over $5000 to receive the documents that were provided. The IBIA's

There are substantial benefits that flow from federal recognition. § 83.2 provides that "Acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes. Acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States…." Given the importance of the benefits which flow from recognition, tribes have a right to due process in the recognition process. *Kelly v. Railroad Retirement Board*, 625 F.2d 486, 490 (3d Cir. 1980); *Marconi v. Chicago Heights Police Pension Board*, 836 N.E. 2d 705, 725-26 (Ct. App. Ill. 2005).

While the Tribe's direct contention that it had a right to see and comment on all evidence before a FD issued is not addressed by the draft regulations, there are proposed changes which reflect a realization that the present regulations do not provide adequate due process. § 83.10 (n)(2) provides for the opportunity for a hearing on the "reasoning, analyses, and factual bases for the proposed finding, comments and responses. The Office of Hearings and Appeals (OHA) or Assistant Secretary for Indian Affairs (ASIA), written in the proposed regulations as "[OHA or AS-IA?]," may require testimony from OFA staff involved in preparing the proposed finding. Any such testimony shall be subject to cross-examination by the petitioner." Exhibit B. These suggested revisions are consonant with the Tribe's contentions and the Tribe has suggested, in comments on the preliminary discussion draft regulations, that the final regulations require that

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pondering over what was received and when, is irrelevant since all materials were received after the time in which the Tribe could have commented prior to the FD. 57 IBIA at 127, n. 21.

petitioners receive all documents on which a FD is based, with an opportunity to comment before issuance of the FD.

2. Criterion 83.7 (a) Is Arbitrary, Capricious, and Contrary To Law. The AS-IS Evidently Realizes This As the Draft Regulations Propose Deletion of This Criterion.

25 C.F.R. § 83.7 is titled "Mandatory criteria for Federal acknowledgment." Failure to meet any criterion results in a negative Final Determination. 74 Fed. Reg. 56,861. Criterion (a) requires a showing that "The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900." While such a showing may constitute evidence that a tribe exists, it cannot be a mandatory criterion. The unacceptability of (a) as a mandatory criterion is demonstrated by a simple thought experiment. Imagine that a tribe definitively satisfies the other six criteria – in other words, demonstrates tribal existence in every meaningful sense. Imagine further, that they have not been referred to as a tribe, or even as a collective by unknowing outsiders "on a substantially continuous basis since 1900". They would be denied acknowledgment under the regulations. That result cannot possibly be the law, as it would clearly violate the equal protection clause of the Constitution which requires those similarly situated to be treated similarly. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985). It would also violate Congressional legislation requiring that all tribes be treated equally. Federally Recognized Indian Tribe List Act of 1994, PL 103-454 (1994).

The AS-IA has apparently conceded this issue by proposing, in the draft regulations, to delete criterion (a). See Exhibit B, §83.7(a). The Secretary has also requested reconsideration of criterion (a).

3. The OFA Applied The Incorrect Standard To The Question of Previous Federal Acknowledgment.

The FD indicates that to show previous federal acknowledgment, and so avail itself of the relaxed standards of proof contained in § 83.8, the Tribe had to show not merely that its existence was previously acknowledged, but that it had a previous government-to-government relationship with the United States. 74 Fed. Reg. 56,863. The latter requirement runs afoul of the regulations and the policy underlying those regulations and will be the subject of comment on the preliminary discussion draft regulations. The Discussion Draft Regulations propose some excellent improvements in streamlining the process if a petitioner demonstrates previous federal acknowledgment.

The draft regulations provide in § 83.8 (d) (2) and (3) that if previous federal acknowledgment is shown, then community § 83.7 (b) and political influence § 83.7 (c) need only be shown for the present time. These are excellent proposals and should be adopted in the final regulations. Further changes must be made to clarify what must be shown to establish previous federal acknowledgment. The present regulations have been interpreted by OFA to require that a petitioner show not only that its existence was previously acknowledged, **but also** that it had a previous government-to-government relationship with the United States. See, e.g., 74 Fed. Reg. 56,863.

The Tribe has submitted comments on the discussion draft regulations arguing that this needs to be done and is hopeful that its views will ultimately prevail on this issue as it has so far on the other issues. In this regard, it is significant that this issue relates to burden of proof, which was an area given special emphasis, as noted previously, in the Secretary's referral to the Assistant Secretary. See Exhibit A.

4. The Final Determination Imposed A Higher Burden of Proof Than Should Have Been Required, Had Historical Circumstances Been Properly Taken Into Account. The Discussion Regulations Propose Significant Changes in The Criteria That Must Be Met.

Kevin Gover, the then AS-IA, in issuing a preliminary finding in favor of the Tribe, indicated that the historical circumstances, in large part caused by US policy, dictated that the proof of criteria under the regulations be interpreted in light of those circumstances. The FD did not adequately allow for historical circumstances. In vindication of the Tribe's position throughout the years, the discussion draft regulations propose sweeping changes in the criteria themselves in recognition of the complexity of tribal histories cause by US policy. Even the proposed changes are inadequate, but are a vast improvement and vindicate the Tribe's constant urging that complex historical situations must be taken into account.

The draft regulations propose substantial changes to criterion § 83.7 (b), community, which are in general salutary, but the final regulations need to go further. The draft regulations change the requirement that a petitioner show that a "predominant portion" of the petitioning group comprise a distinct community to a showing that an unspecified, "(XX)," per cent do so, and changes the time frame for such a showing from historic times to from 1934. The proposal to eliminate the reference to "predominant portion" is a good one, but the proposal to insert a percentage is fundamentally flawed. A percentage arrived at in the abstract cannot do justice to the complexity on the ground. Rather, a determination should be made "based on an overall evaluation of the totality of the evidence" and a favorable finding "should not be precluded because of some gaps in the record." The determination should be governed by the "substantial evidence" test, with the evidence viewed in the light most favorable to the petitioner, and taking into account historical circumstances and any adverse effects of federal actions or policy.

The present definition of community refers to "consistent interactions and significant social relationships within its membership". The present regulations distort this definition when they set forth the types of evidence that can be presented to meet the criterion of community, by references to "*significant rates* of marriage", "*significant rates* of informal social interaction which exist broadly among the members of the group", "a *significant* degree of shared or cooperative labor…", "evidence of *strong* patterns of discrimination…"; "Shared sacred or secular ritual activity encompassing *most of the group*"; cultural patterns shared among a *significant* portion of the group…". These qualifiers distort the meaning of the definition which does not imply any specified portion of the community must engage in any specific activity. Rather, it just requires consistent interaction and relationships of significance "within the membership". Few recognized tribes today could meet the arbitrary standards imposed by the qualifying terms contained in the references to the types of evidence listed. It is best to list the types of evidence without the qualifiers which seem to introduce arbitrary standards at every turn and then to make a determination based on the totality of the evidence.

Likewise the draft regulations propose changes in the ways in which community can be definitively shown. The present provisions provide that community can be shown by demonstrating 50 per cent in-marriage, 50 per cent sharing of distinct cultural patterns, or 50 per cent concentration in residential areas. The draft regulations delete the reference to 50 per cent and instead indicate an unspecified, "[XX]," per cent. § 83.7 (b) (2). If percentages for *definitive* showings of community are ultimately adopted, it should be made clear that these percentages do not imply that something close to those percentages is needed to establish community absent such a definitive showing.

§ 83.7 (c) (2) provides that political influence can be shown by "demonstrating that group leaders and/or other mechanisms exist or existed which:

(i) Allocate group resources such as land, residence rights and the like on a consistent basis;

(ii) Settle disputes between members or subgroups by mediation or other means on a regular basis;

(iii) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior;

(iv) Organize or influence economic subsistence activities among the members, including shared or cooperative labor."

The draft regulations propose a new "(v) Show a continuous line of group leaders and a means of selection or acquiescence by a majority of the group's members." This is a good revision if the word "majority" is deleted and with that change should be adopted.

Proposals for criterion (c), political influence, likewise changes the relevant period for which political authority is measured from historic times to 1934. § 83.7 (c). This is an important step in the right direction, but once again adopts an arbitrary criterion. 1934 is obviously based on the date of the passage of the Indian Reorganization Act (IRA), but that Act contemplated actions related to recognition occurring after that date, and that factor should be reflected in the final regulations. In addition, the situation on the ground may be such, that starting from 1934 does not adequately do justice to the Tribe's situation, and in that case the regulations must be flexible enough to deal with the history and context of each Tribe. Once again, the decision must be made based on the totality of the evidence without the present

qualifiers attached to the type of evidence, such as “significant numbers of members”, “most of the membership”. If, the evidence provides “substantial evidence” of political influence, then the criterion must be considered met.

5. The Reversal of the Favorable PF Despite A Stronger Record, and No Negative Comments, Is Arbitrary, Capricious, and Contrary To Law. The Draft Regulations Implicitly Agree With That Conclusion.

As noted previously, no negative comments of any consequence were received as to the favorable PF, despite years for people to complain. In fact, substantial time and money were invested in strengthening the petition. To reverse the favorable PF under such circumstances is arbitrary, capricious and contrary to law. *Cf. Mobile Communications Corp. of America v. F.C.C.*. 77 F.3d 1399, 1407 (D.C. Cir. 1996).

The draft regulations implicitly recognize the force of the Tribe’s argument and would resolve the issue in the Tribe’s favor. Exhibit B, § 83.10 (m) provides:

At the end of the period for comment on a proposed finding, "[OHA or AS-IA?]" **will automatically issue a final determination acknowledging petitioner as an Indian tribe** if the following are met (emphasis supplied):

(1) The proposed finding is positive, and

(2) "[OHA or AS-IA?]" does not receive timely arguments and evidence challenging the proposed finding from the State or local government where the petitioner’s office is located or from any federally recognized Indian tribe within the state.

As noted, no substantive negative comments were received from anyone, and all local and state governments and Indian Tribes in Montana support the acknowledgment of the Little Shell Tribe. *See* 74 Fed. Reg. 56,862, FD at 15-16, and PF at 9. Under such circumstances, as

recognized in the draft regulations, an automatic favorable final determination would be warranted, not reversal of a proposed favorable finding.

CONCLUSION

The Little Shell Tribe of Chippewa Indians applauds Assistant Secretary Kevin Washburn for finally addressing the serious, long-identified flaws and failures of the current administrative federal acknowledgment process, a process that repeatedly has been criticized by the Senate Indian Affairs Committee as broken. The regulations as presently written have subjected the Tribe to a continuing, serious miscarriage of justice that has stretched now over five decades. The arguments the Tribe has made as to the defects in the system are largely vindicated in the discussion draft regulations. It is crucial that the process of amending the regulations go forward expeditiously and be strengthened along the lines the Tribe has argued.

However, it is not known how long the process of amending the regulations will take, what shape the ultimate regulations will have, or even whether they will ever be adopted. The Tribe already has waited too long for restoration of its recognition. The Tribe must not be asked to continue to wait in limbo for several more years while it waits to see what happens to the regulations. Again, the Little Shell Tribe of Indians respectfully urges Congress to end the Tribe's ordeal by extending federal recognition to the Little Shell Tribe through enactment of the Little Shell Tribe of Chippewa Indians Restoration Act of 2013.

EXHIBIT A

THE SECRETARY OF THE INTERIOR
WASHINGTON

SEP 16 2013

Memorandum

To: Assistant Secretary – Indian Affairs

From: Secretary Sally Jewell

Subject: Request for Reconsideration of Determination Against Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana

The Little Shell Tribe of Chippewa Indians of Montana (Little Shell; petitioners) petitioned for federal acknowledgment via the regulations at 25 C.F.R. part 83. The Department published a Final Determination against acknowledgment. Little Shell asked the Interior Board of Indian Appeals (IBIA) for reconsideration of the Final Determination. The IBIA denied the petitioner's request for reconsideration with respect to grounds over which the IBIA has jurisdiction. *In re Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana*, 57 IBIA 101. The IBIA also identified five alleged grounds for reconsideration over which it does not have jurisdiction pursuant to the regulations, and referred those issues to me in accordance with 25 C.F.R. § 83.11(f)(2).

On July 16, 2013, the Department received the Petitioner's submission setting out arguments in support of these five points, and also arguing for "suspension" of any further assessment of the petition pending enactment of revisions to the part 83 regulations. The regulations at 25 C.F.R. § 83.11(f)(5) provide that I must determine whether to request a reconsideration of the Final Determination by the Assistant Secretary, and notify all parties of my determination, within 60 days of receiving all comments. The Department received comments submitted by Little Shell on July 16. No other comments were submitted. The 60 day deadline for my determination is Monday, September 16, 2013.

Based on the nature of the five alleged grounds, particularly with regard to the due process concerns and questions regarding burdens of proof, I am exercising my discretion to request that you reconsider the Little Shell Final Determination.

The IBIA referred five grounds to me that are beyond its jurisdiction:

1. Should reconsideration be granted based on the allegation that due process required that Petitioner be provided with an opportunity to review and comment on the interviews of 71 individuals conducted by OFA during 56 interview sessions, and other materials obtained by OFA after Petitioner's last filings and prior to the issuance of the Final Determination?

2. Should reconsideration be granted based on the allegation that application of criterion § 83.7(a) in this case is arbitrary, capricious, and contrary to law?

3. Should reconsideration be granted based on the allegation that the Final Determination erred in requiring Petitioner to demonstrate that the Federal actions relied upon by Petitioner to obtain the benefit of § 83.8 were clearly premised on Petitioner's ancestors being a tribal political entity with a government-to-government relationship with the United States, and that the Final Determination applied an incorrect burden of proof to the evidence that Petitioner provided to show five instances of previous federal acknowledgment?

4. Should reconsideration be granted based on the allegation that the Final Determination imposed upon Petitioner a burden of proof greater than that required by § 83.6(d), and failed to take into account the complexity of Petitioner's historical circumstances as required by § 83.6(e)?

5. Should reconsideration be granted based on the allegation that it was arbitrary and capricious, or contrary to law, for the Final Determination to reverse the favorable Proposed Finding, when no substantial negative comments were received regarding the Proposed Finding and Petitioner submitted evidence strengthening its petition?

In re Federal Acknowledgment of the Little Shell Tribe of Chippewa Indians of Montana, 57 IBIA 101, 128-31 (2013).

The allegations in these grounds suggest that further review by your office would ensure that the Department's final decision in this matter benefits from a full analysis and comports with notions of a full and fair evaluation of the Little Shell petition.

In addition to addressing the five matters referred by the IBIA, please consider the petitioner's request that the Department suspend consideration of the petition pending the enactment of revised acknowledgment regulations.

The current deadline for reconsideration of these matters is 120 days from the receipt of this request. *See* 25 C.F.R. § 83.11(g)(1).

Thank you for your attention to this matter.

cc:

K. Jerome Gottschalk
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

The Honorable Steve Bullock
Governor of Montana
State Capitol
Helena, MT 59620-0801

The Honorable Tim Fox
Attorney General of Montana
215 North Sanders
P.O. Box 201401
Helena, MT 59620

Lineal Mikisew-Asiniwiin Ojibwa Clan Council
c/o Glen Gopher
P.O. Box 601
Great Falls, MT 59403

Interior Board of Indian Appeals
801 North Quincy Street, Suite 300
Arlington, VA 22203

EXHIBIT B

OFFICE OF THE SECRETARY
U.S. Department of the Interior

www.doi.gov
News Release

Office of the Assistant Secretary – Indian Affairs

FOR IMMEDIATE RELEASE
June 21, 2013

CONTACT: Nedra Darling
202-219-4152

Washburn Announces Consideration of Revisions to Federal Acknowledgment Regulations

Tribal Consultations and Public Meetings will Begin in July and August

WASHINGTON – As part of President Obama's commitment to strengthen the nation-to-nation relationship with Native Americans and Alaska Natives, Assistant Secretary – Indian Affairs Kevin K. Washburn today announced the availability of a discussion draft of potential changes to the Department of the Interior's Part 83 process for acknowledging certain Indian groups as federally recognized tribes. The discussion draft is intended to provide tribes and the public an early opportunity to provide input on potential changes to the Part 83 process.

The Federal recognition acknowledgment process is the Department's regulatory process by which petitioning groups that meet the regulatory criteria are "acknowledged" as federally recognized Indian tribes with a government-to-government relationship with the United States. There are currently 566 federally recognized tribes in the U.S.

"The discussion draft is a starting point in the conversation with federally recognized tribes, petitioners and the public on how to ensure that the process is fair, efficient and transparent," Washburn said. "We are starting with an open mind and no fixed agenda, and we're looking forward to getting input from all stakeholders before we move forward with a proposed rule that will provide additional certainty and timeliness to the process. In many parts of the discussion draft, we have made no fixed recommendations in order to have the benefit of that input in formulating a proposed rule."

The discussion draft maintains stringent standards for core criteria and seeks comment on objective criteria to be incorporated into the standards. The draft suggests changes to improve timeliness and efficiency by providing for a thorough review of a petitioner's community and political authority. That review would begin with the year 1934 to align with the United States repudiation of allotment and assimilation policies and eliminate the requirement that an external entity identify the group as Indian since 1900.

The discussion draft further suggests providing flexibility to the Department to issue expedited denials and approvals based on the particular facts and unique history of certain petitioners. The draft suggests streamlining the process to promote greater transparency as a petitioner's materials are evaluated by the Office of Federal Acknowledgment and the Department.

The Department is making the discussion draft available for review at http://www.bia.gov/WhoWeAre/AS-IA/Consultation/index.htm. This discussion draft is a precursor to proposed regulatory changes, but is not itself a proposed rule. The Department will accept written comments on the draft until August 16, 2013. In addition to written comments, the Department will hold tribal consultations and public meetings at the following locations:

	Tribal Consultation	**Public Meeting**		
July 23, 2013	9 a.m.– 12 p.m.	1 p.m.– 4 p.m.	Canyonville, Oregon	Seven Feathers Casino Resort 146 Chief Miwaleta Lane Canyonville, OR 97417 (541) 839-1111
July 25, 2013	9 a.m.– 12 p.m.	1 p.m.– 4 p.m.	Solvang, California	Hotel Corque 400 Alisal Road Solvang, CA 93463 (800) 624-5572
July 29, 2013	9 a.m.– 12 p.m.	1 p.m.– 4 p.m.	Petosky, Michigan	Odawa Casino Resort 1760 Lears Road Petosky, MI 49770 (877) 442-6464
July 31, 2013	9 a.m.– 12 p.m.	1 p.m.– 4 p.m.	Indian Island, Maine	Sockalexis Arena 16 Wabanaki Way Indian Island, ME 04468 (800) 255-1293
August 6, 2013	9 a.m.– 12 p.m.	1 p.m.– 4 p.m.	Marksville, Louisiana	Paragon Casino Resort 711 Paragon Place Marksville, LA 71351 (800) 946-1946

Tribal consultations will be held at each location from 9am to 12pm and public meetings will be held from 1pm to 4pm. After the close of the comment period on the discussion draft, the Department will evaluate those comments as it moves forward in the development of a proposed rule. The Department will seek additional public comment and consult further with tribes after issuing the proposed rule.

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PRELIMINARY DISCUSSION DRAFT
COMMENTS DUE AUGUST 16, 2013

TITLE 25--INDIANS

CHAPTER I--BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

PART 83 PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

Sec.

§ 83.1 Definitions.

As used in this part:

~~*Area Office* means a Bureau of Indian Affairs Area Office.~~

Assistant Secretary or *AS-IA* means the Assistant Secretary--Indian Affairs, or that officer's authorized representative.

Autonomous means the exercise of political influence or authority independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the history, geography, culture and social organization of the petitioning group.

~~*Board* means the Interior Board of Indian Appeals.~~

Bureau means the Bureau of Indian Affairs.

Community means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. Community must be understood in the context of the history, geography, culture and social organization of the group. [NOTE: This draft also incorporates the definition into criteria at § 83.7(b)].

Continental United States means the contiguous 48 states and Alaska.

Continuously or *continuous* means extending from ~~first sustained contact with non-Indians throughout the group's history~~1934 to the present substantially without interruption. [NOTE: This draft also incorporates the definition into criteria at § 83.7(b) and (c)].

Department means the Department of the Interior.

Documented petition means the detailed arguments made by a petitioner to substantiate its claim that it meets the requirements for an expedited favorable finding, meets all the mandatory criteria or has established previous federal acknowledgment and meets the criteria in § 83.8, ~~to continuous existence as an Indian tribe,~~ together with the factual exposition and all documentary evidence necessary to demonstrate ~~that~~ these arguments ~~address, that the petitioner meets the requirements for an expedited favorable finding or meets all the mandatory criteria in § 83.7(a) through (g).~~

Historically, *historical* or *history* means dating from first sustained contact with non-Indians.

Indian group or *group* means any Indian or Alaska Native aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.

Indian tribe, also referred to herein as *tribe*, means any Indian or Alaska Native tribe, band, pueblo, village, or community within the continental United States that the Secretary of the Interior presently acknowledges to exist as an Indian tribe.

~~*Indigenous* means native to the continental United States in that at least part of the petitioner's territory at the time of sustained contact extended into what is now the continental United States.~~

Indigenous [NOTE: This draft deletes this definition because concept is already in "Indian group"]

Informed party means any person or organization, other than an interested party, who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner.

Interested party means any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. ``Interested party'' includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

~~*Letter of intent* means an undocumented letter or resolution by which an Indian group requests Federal acknowledgment as an Indian tribe and expresses its intent to submit a documented petition.~~

Member of an Indian group means an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group.

Member of an Indian tribe means an individual who meets the membership requirements of the tribe as set forth in its governing document or, absent such a document, has been recognized as a member collectively by those persons comprising the tribal governing body, and has consistently maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls are kept.

Office of Federal Acknowledgment or *OFA* means the Office of Federal Acknowledgement within the Office of the Assistant Secretary – Indian Affairs, Department of the Interior.

Office of Hearings and Appeals or *OHA* means the Departmental Cases Hearings Division of the Office of Hearings and Appeals, Department of the Interior.

Pages means pages containing 1-inch margins and type that is double-spaced and 12-point Times New Roman font.

Petitioner means any entity that has submitted a ~~letter of intent~~documented petition to the Secretary requesting acknowledgment that it is an Indian tribe.

Political influence or authority means a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the group. [NOTE: This draft also incorporates this definition into criteria at § 83.7(c)].

Previous Federal acknowledgment means action by the Federal government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.

Regional Office means a Bureau of Indian Affairs Regional Office.

Secretary means the Secretary of the Interior or that officer's authorized representative.

Sustained contact means the period of earliest sustained non-Indian settlement and/or governmental presence in the local area in which the historical tribe or tribes from which the petitioner descends was located historically.

Tribal relations means participation by an individual in a political and social relationship with an Indian tribe.

Tribal roll, for purposes of these regulations, means a list exclusively of those individuals who have been determined by the tribe to meet the tribe's membership requirements as set forth in its governing document. In the absence of such a document, a tribal roll means a list of those recognized as members by the tribe's governing body. In either case, those individuals on a tribal roll must have affirmatively demonstrated consent to being listed as members.

§ 83.2 Purpose.

The purpose of this part is to establish a departmental procedure and policy for acknowledging that certain American Indian groups exist as tribes. Acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes. Acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. Acknowledgment shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected.

§ 83.3 Scope.

(a) This part applies only to Indian groups ~~those American Indian groups indigenous to the continental United States which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups that can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present~~.

(b) Indian tribes, organized bands, pueblos, Alaska Native villages, or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs may not be reviewed under the procedures established by these regulations.

(c) Associations, organizations, corporations or groups of any character that have been formed in recent times may not be acknowledged under these regulations. The fact that a group that meets the criteria in § 83.7 (~~a~~b) through (g) has recently incorporated or otherwise formalized its existing autonomous political process will be viewed as a change in form and have no bearing on the ~~Assistant Secretary's final~~Department's decision.

(d) Splinter groups, political factions, communities or groups of any character that separate from the main body of a currently acknowledged tribe may not be acknowledged under these regulations. However, ~~groups~~a group that can establish clearly that ~~they have~~it has functioned ~~throughout history~~from 1934 until the present as an autonomous tribal entity may be acknowledged under this part, even though they have been regarded by some as part of or have been associated in some manner with an acknowledged North American Indian tribe.

(e) ~~Further, groups~~Groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship may not be acknowledged under this part.

(f) ~~Finally, groups~~Groups that previously petitioned and were denied Federal acknowledgment under these regulations ~~or under previous regulations in part 83 of this title~~, may not be acknowledged under these regulations~~.~~, except as provided in ~~section~~ § 83.10(r). This includes reorganized or reconstituted petitioners previously denied, or splinter groups, spin-offs, or component groups of any type that were once part of petitioners previously denied.

(g) Indian groups whose documented petitions ~~are under active consideration:~~

(1) Have not yet reached active consideration as of the effective date of these revised regulations must proceed under these revised regulations.

(2) Are under active consideration, including those that have received a proposed finding, at the effective date of these revised regulations may choose to complete their petitioning process ~~either under these regulations or~~ under the previous acknowledgment regulations in part 83 of this title~~.~~ or to file a new documented petition under these regulations. This choice must be made by ~~April 26, 1994.~~[INSERT DATE 60 DAYS AFTER PUBLICATION OF FINAL RULE]. This option shall apply to any petition for which a determination is not final and effective~~. Such petitioners may request a suspension~~ as of ~~consideration under § 83.10(g)~~the effective date of ~~not more than 180 days in order to provide additional information or argument.~~these revised regulations.

§ 83.4 Filing a ~~letter of intent.~~documented petition.

(a) Any Indian group in the continental United States that believes it should be acknowledged as an Indian tribe and that it can satisfy the criteria in ~~§ 83.7~~this part may submit a ~~letter of intent~~documented petition under this part.

(b) ~~Letters of intent~~Documented petitions requesting acknowledgment that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary--Indian Affairs, Department of the Interior, 1849 C Street, NW~~.~~, Washington, DC 20240. Attention: ~~Branch~~Office of Federal

Acknowledgment ~~and Research, Mail Stop 2611-MIB. A letter of intent may be filed in advance of, or at the same time as, a group's documented petition.~~.

~~(c) A letter of intent must be produced, dated and signed by the governing body of an Indian group and submitted to the Assistant Secretary.~~

§ 83.5 Duties of the Department.

(a) The Department shall publish in the Federal Register, ~~no less frequently than every three years~~by January 30 each year, a list of all Indian tribes entitled to receive services from the Bureau by virtue of their status as Indian tribes. The list may be published more frequently, if the Assistant Secretary deems it necessary.

(b) ~~The Assistant Secretary~~OFA shall ~~make available revised and expanded~~maintain guidelines for ~~the preparation of documented petitions by September 23, 1994. These guidelines will include an explanation of the criteria and other provisions of the regulations, a discussion of the types of evidence which may be used to demonstrate particular criteria or other provisions of the regulations, and~~ general suggestions ~~and guidelines~~ on how and where to conduct research. The guidelines may be supplemented or updated as necessary. ~~The Department's~~OFA's example of a documented petition format, while preferable, shall not preclude the use of any other format.

(c) ~~The Department~~OFA shall, upon request, provide petitioners with suggestions and advice regarding preparation of the documented petition. ~~The Department~~OFA shall not be responsible for the actual research on behalf of the petitioner.

(d) Any notice which by the terms of these regulations must be published in the Federal Register, shall also be mailed to the petitioner, the governor of the state where the group is located, and to other interested parties.

(e) [Deleted.]~~After an Indian group has filed a letter of intent requesting Federal acknowledgment as an Indian tribe and until that group has actually submitted a documented petition, the Assistant Secretary may contact the group periodically and request clarification, in writing, of its intent to continue with the petitioning process.~~

(f) All petitioners under active consideration, including those that have received a proposed finding, shall be notified, by ~~April 16, 1994,~~[INSERT EFFECTIVE DATE OF FINAL RULE + 30 DAYS], of the opportunity under § 83.3(g) to choose whether to complete their petitioning process under the provisions of these revised regulations or the previous regulations ~~as~~ published~~,~~ on ~~September 5, 1978~~February 25, 1994, at ~~43~~59 FR ~~39361~~9293.

(g) All other groups that have submitted documented petitions ~~or letters of intent~~ shall be notified of and provided with a copy of these regulations by ~~July 25, 1994.~~[INSERT EFFECTIVE DATE OF REGULATIONS].

§ 83.6 General provisions for the documented petition.

(a) The documented petition may be in any readable form, not to exceed XX pages, that contains detailed, specific evidence in support of a request to the ~~Secretary~~Department to acknowledge tribal existence.

(b) The documented petition must include ~~a~~:

(1) A certification, signed and dated by members of the group's governing body, stating that it is the group's official documented petition~~.~~;

(2) An official membership list, separately certified by the group's governing body, of all known current members of the group, including each member's full name (including maiden name), date of birth, and current residential address;

(3) A copy of each available former list of members based on the group's own defined criteria and a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists;

(4) Thorough explanations and supporting documents in support of meeting the requirements for an expedited favorable finding or, in the absence of such evidence, thorough explanations and supporting documents in support of meeting all the mandatory criteria, except criterion (g).

(i) The Department may accept evidence the petitioner volunteers in support of criterion (g), but the petitioner is not required to provide any evidence for criterion (g).

(ii) The Department will determine whether the petitioner meets criterion (g).

(c) ~~A~~ In order for tribal existence to be acknowledged, a petitioner must ~~satisfy all of~~:

(1) Meet the mandatory criteria in paragraphs (a), (e), (f), and (g) of § 83.7 and one of the expedited favorable criteria in § 83.10(g)(3); or

(2) If neither of the expedited favorable criteria are met, meet all the mandatory criteria in paragraphs (b) through (g) of § 83.7 ~~in order for tribal existence to be acknowledged. Therefore, the documented petition must include thorough explanations and supporting documentation in response to all of the criteria. The definitions in § 83.1 are an integral part of the regulations, and the criteria should be read carefully together with these definitions.~~; or

(3) Establish previous Federal acknowledgment and meet the criteria in § 83.8.

(d) A petitioner ~~may~~will be denied acknowledgment if the evidence available ~~demonstrates that it does not meet one or more criteria. A petitioner may also be denied if there~~ is insufficient ~~evidence~~to show that it meets the requirements for an expedited favorable finding, one or more of the ~~criteria~~mandatory criteria, ~~or~~and the criteria applicable to petitioners that establish previous Federal acknowledgment.

(1) A criterion shall be considered met if ~~the available evidence establishes~~:

(i) A preponderance of the evidence supports the validity of the facts claimed when viewed in the light most favorable to the petitioner; and

(ii) The facts establish a reasonable likelihood ~~of the validity of the facts relating to~~ that the criterion~~.~~ is met.

(2) Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met.

(e) Evaluation of petitions shall take into account ~~historical~~ situations and time periods for which evidence is ~~demonstrably~~ limited or not available. The limitations inherent in demonstrating the historical existence of community and political influence or authority shall also be taken into account. Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time. Fluctuations in tribal activity during various years shall not in themselves be a cause for denial of acknowledgment under these criteria. [NOTE: This draft also incorporates this concept into criteria at § 83.7(b)(3) and (c)(4)].

(f) The criteria ~~in § 83.7 (a) through (g)~~ shall be interpreted as applying to tribes or groups that ~~have historically~~as of 1934 were combined and functioned as a single autonomous political entity.

(g) The specific forms of evidence stated in the criteria in § 83.7 (~~a) through~~b) and (c) and § 83.7(e) are not mandatory ~~requirements~~. The criteria may be met alternatively by any suitable evidence that demonstrates that the petitioner meets the requirements of the criterion statement ~~and related definitions~~.

§ 83.7 Mandatory criteria for Federal acknowledgment.

The mandatory criteria are:

(a) [Deleted]. ~~The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members:~~

~~(1) Identification as an Indian entity by Federal authorities.~~
~~(2) Relationships with State governments based on identification of the group as Indian.~~
~~(3) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.~~
~~(4) Identification as an Indian entity by anthropologists, historians, and/or other scholars.~~
~~(5) Identification as an Indian entity in newspapers and books.~~
~~(6) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.~~

(b) ~~A predominant portion~~At least XX percent of the petitioning group comprises a distinct community and has existed as a community from ~~historical times~~1934 until the present. ~~without~~ substantial interruption. Distinct community means a group of people with consistent interactions and significant social relationships within its membership and whose members are differentiated from and identified as distinct from nonmembers. Distinct community must be

understood in the context of the history, geography, culture and social organization of the group. Substantial interruption is determined on a case-by-case basis considering the history and circumstances of the petitioning group.

(1) This criterion may be demonstrated by some combination of the following evidence and/or other evidence ~~that the petitioner meets the definition of community set forth in § 83.1~~:

— (i) Significant rates of marriage within the group, and/or, as may be culturally required, patterned out-marriages with other Indian populations.

— (ii) Significant social relationships connecting individual members.

— (iii) Significant rates of informal social interaction which exist broadly among the members of a group.

— (iv) A significant degree of shared or cooperative labor or other economic activity among the membership.

—(v) Evidence of strong patterns of discrimination or other social distinctions by non-members.

— (vi) Shared sacred or secular ritual activity encompassing most of the group.

— (vii) Cultural patterns shared among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship ~~organization, or religious beliefs and practices~~system, or ceremonies.

— (viii) The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

— (ix) A demonstration of ~~historical~~ political influence under the criterion in § 83.7(c) shall be evidence for demonstrating ~~historical~~ community for that same time period.

(2) A petitioner shall be considered to have provided sufficient evidence ~~of~~to demonstrate community at a given point in time if evidence is provided to demonstrate any one of the following:

(i) More than ~~50~~XX percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community;

(ii) At least ~~50~~XX percent of the marriages in the group are between members of the group;

(iii) At least ~~50~~XX percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship ~~organization, or religious beliefs and practices~~system, or ceremonies;

(iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or

(v) The group has met the criterion in § 83.7(c) using evidence described in § 83.7(c)(2).

(3) The limitations inherent in demonstrating ~~the~~ existence as ~~an Indian~~ distinct community that has existed since 1934 without substantial interruption shall be taken into account. Petitioners may provide information and background for time periods prior to

1934, but the information and background will be considered only to the extent relevant to an analysis of the group from 1934 to the present. [NOTE: This paragraph is repeated from § 83.6(e)].

(c) The petitioner has maintained political influence or authority over its members as an autonomous ~~entity~~Indian group from ~~historical times~~1934 until the present without substantial interruption. Political influence or authority means a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the group. Substantial interruption is determined on a case-by-case basis considering the history and circumstances of the petitioning group.

(1) This criterion may be demonstrated by some combination of the evidence listed below and/or by other evidence that the petitioner meets the definition of political influence or authority in § 83.1.

(i) The group is able to mobilize significant numbers of members and significant resources from its members for group purposes.

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication and involvement in political processes by most of the group's members.

(iv) The group meets the criterion in § 83.7(b) at more than a minimal level.

(v) There are internal conflicts which show controversy over valued group goals, properties, policies, processes and/or decisions.

(2) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist or existed which:

(i) Allocate group resources such as land, residence rights and the like on a consistent basis.;

(ii) Settle disputes between members or subgroups by mediation or other means on a regular basis;

(iii) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior;

(iv) Organize or influence economic subsistence activities among the members, including shared or cooperative labor.; or

(v) Show a continuous line of group leaders and a means of selection or acquiescence by a majority of the group's members.

(3) A group that has met the requirements in paragraph 83.7(b)(2) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time.

(4) The limitations inherent in demonstrating the existence of political influence or authority that has existed since 1934 without substantial interruption shall be taken into account. Petitioners may provide information and background for time periods prior to

1934, but the information and background will be considered only to the extent relevant to an analysis of the group from 1934 to the present. [NOTE: This paragraph is repeated from § 83.6(e)].

(d) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

(e) ~~The~~At least **XX** percent of the petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.

(1) Evidence acceptable to the Secretary which can be used for this purpose includes but is not limited to:

(i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes;

(ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

~~(v~~(v) Historians' and anthropologists' conclusions drawn from historical records, and historical records created by historians and anthropologists;

(vi) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(2) The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that ~~it has functioned throughout history until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe,~~

~~and that its members have provided written confirmation of their membership in the petitioning group.~~:

(1) It has functioned from 1934 until the present as a separate and autonomous Indian tribal entity;

(2) Its members do not maintain a bilateral political relationship with the acknowledged tribe; and

(3) Its members have provided written confirmation of their membership in the petitioning group.

(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Department must determine whether the petitioner meets this criterion, and the petitioner is not required to submit evidence to meet it.

§ 83.8 Previous Federal acknowledgment.

(a) Unambiguous previous Federal acknowledgment is acceptable evidence of the tribal character of a petitioner to the date of the last such previous acknowledgment. If a petitioner provides substantial evidence of unambiguous previous Federal acknowledgment, the petitioner will then only be required to demonstrate that it meets the requirements of § 83.7 to the extent required by this section.

(b) A determination of the adequacy of the evidence of previous Federal action acknowledging tribal status shall be made during the technical assistance review of the documented petition conducted pursuant to § 83.10(b). ~~If a petition is awaiting active consideration at the time of adoption of these regulations, this review will be conducted while the petition is under active consideration unless the petitioner requests in writing that this review be made in advance.~~

(c) Evidence to demonstrate previous Federal acknowledgment includes, but is not limited to:

(1) Evidence that the group has had treaty relations with the United States.

(2) Evidence that the group has been denominated a tribe by act of Congress or Executive Order.

(3) Evidence that the group has been treated by the Federal Government as having collective rights in tribal lands or funds.

(d) To be acknowledged, a petitioner that can demonstrate previous Federal acknowledgment must show that:

~~(1) The group meets the requirements of the criterion in § 83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity.~~

(1) The group meets the criteria in paragraphs (d), (e), (f), and (g) of § 83.7, although the group is not required to produce evidence in support of (g);

(2) The group ~~meets the requirements of the criterion in § 83.7(b) to demonstrate that it~~ comprises a distinct community as defined in § 83.7(b) at present. ~~However, it need not provide evidence to demonstrate existence as a community historically.~~; and
(3) The group meets the requirements of the criterion in § 83.7(e~~c~~b) to demonstrate that political influence or authority is exercised within the group at present. ~~Sufficient evidence to meet the criterion in § 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in § 83.7(c).~~
~~(4) The group meets the requirements of the criteria in paragraphs 83.7 (d) through (g).~~
~~(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d) (1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in § 83.7 (a) through (e) from last Federal acknowledgment until the present.~~

§ 83.9 Notice of receipt of a petition.

(a) Within 30 days after receiving a ~~letter of intent, or a~~ documented petition ~~if a letter of intent has not previously been received and noticed, the Assistant Secretary~~, OFA shall acknowledge such receipt in writing and shall have published within 60 days in the Federal Register a notice of such receipt. This notice must include the name, location, and mailing address of the petitioner and such other information as will identify the entity submitting the ~~letter of intent or~~ documented petition and the date it was received. This notice shall also serve to announce the opportunity for interested parties and informed parties to submit factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment and/or to request to be kept informed of all general actions affecting the petition. The notice shall also indicate where a copy of the ~~letter of intent and the~~ documented petition may be examined.

(b) ~~The Assistant Secretary~~OFA shall notify, in writing, the governor and attorney general of the state in which a petitioner is located. ~~The Assistant Secretary~~OFA shall also notify any recognized tribe and any other petitioner which appears to have a historical or present relationship with the petitioner or which may otherwise be considered to have a potential interest in the acknowledgment determination.

(c) ~~The Assistant Secretary~~OFA shall also publish the notice of receipt of the ~~letter of intent, or~~ documented petition ~~if a letter of intent has not been previously received,~~ in a major newspaper or newspapers of general circulation in the town or city nearest to the petitioner. The notice will include all of the information in paragraph (a) of this section.

§ 83.10 Processing of the documented petition.

~~(a) Upon receipt of a documented petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe.~~ The (a) OFA's review shall include consideration of the documented petition and the factual

statements contained therein. ~~The Assistant Secretary~~ as well as consideration of interested parties' and informed parties' factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment. OFA may also initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status. ~~The Assistant Secretary~~OFA may likewise consider any evidence which may be submitted by interested parties or informed parties.

(b) Technical Assistance Review. Prior to active consideration of the documented petition, ~~the Assistant Secretary~~OFA shall conduct a preliminary review of the petition for purposes of technical assistance.

(1) This technical assistance review does not constitute ~~the Assistant Secretary's~~OFA 's review to determine if the petitioner ~~is entitled to be acknowledged~~meets the criteria for acknowledgement as an Indian tribe. It is a preliminary review for the purpose of providing the petitioner an opportunity to supplement or revise the documented petition prior to active consideration. Insofar as possible, technical assistance reviews under this paragraph will be conducted in the order of receipt of documented petitions. However, technical assistance reviews will not have priority over active consideration of documented petitions.

(2) After the technical assistance review, ~~the Assistant Secretary~~OFA shall notify the petitioner by letter of any obvious deficiencies or significant omissions apparent in the documented petition and provide the petitioner with an opportunity to withdraw the documented petition for further work or to submit additional information and/or clarification.

(3) If a petitioner's documented petition ~~claims previous Federal acknowledgment and/or~~ includes evidence of previous Federal acknowledgment, the technical assistance review will also include a review to determine whether that evidence is sufficient to meet the requirements of previous Federal acknowledgment as defined in § 83.1.

(c) Petitioners have the option of responding in part or in full to the technical assistance review letter or of requesting, in writing, that ~~the Assistant Secretary~~OFA proceed with the active consideration of the documented petition using the materials already submitted.

(1) If the petitioner requests that the materials submitted in response to the technical assistance review letter be again reviewed for adequacy, ~~the Assistant Secretary~~OFA will provide the additional review. However, this additional review will not be automatic and will be conducted only at the request of the petitioner.

(2) If the assertion of previous Federal acknowledgment under § 83.8 cannot be substantiated during the technical assistance review, the petitioner must respond by providing additional evidence. A petitioner claiming previous Federal acknowledgment who fails to respond to a technical assistance review letter under this paragraph, or whose response fails to establish the claim, shall have its documented petition considered on the same basis as documented petitions submitted by groups not claiming previous Federal acknowledgment. Petitioners that fail to demonstrate previous Federal acknowledgment after a review of materials submitted in response to the technical assistance review shall be so notified. Such petitioners may submit additional materials concerning previous acknowledgment during the course of active consideration.

(d) [NOTE: This draft moves current paragraph (d) ("The order of consideration…" to a new (h), with edits to address changes in process]. ~~The order of consideration of documented petitions shall be determined by the date of the Bureau's notification to the petitioner that it considers that the documented petition is ready to be placed on active consideration. The Assistant Secretary shall establish and maintain a numbered register of documented petitions which have been determined ready for active consideration. The Assistant Secretary shall also maintain a numbered register of letters of intent or incomplete petitions based on the original date of filing with the Bureau. In the event that two or more documented petitions are determined ready for active consideration on the same date, the register of letters of intent or incomplete petitions shall determine the order of consideration by the Assistant Secretary.~~

~~(e) Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicates that there is little or no evidence that establishes that the group can meet the mandatory criteria in paragraph (e), (f) or (g) of § 83.7.~~

~~(1) If this review finds that the evidence clearly establishes that the group does not meet the mandatory criteria in paragraph (e), (f) or (g) of § 83.7, a full consideration of the documented petition under all seven of the mandatory criteria will not be undertaken pursuant to paragraph (a) of this section. Rather, the Assistant Secretary shall instead decline to acknowledge that the petitioner is an Indian tribe and publish a proposed finding to that effect in the Federal Register. The periods for receipt of comments on the proposed finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner's status shall follow the timetables established in paragraphs (h) through (l) of this section.~~

~~(2) If the review cannot clearly demonstrate that the group does not meet one or more of the mandatory criteria in paragraph (e), (f) or (g) of § 83.7, a full evaluation of the documented petition under all seven of the mandatory criteria shall be undertaken during active consideration of the documented petition pursuant to paragraph (g) of this section.~~

The petitioner and interested parties shall be notified when the documented petition comes under active consideration.

(1) They shall also be provided with the name, office address, and telephone number of the staff member with primary administrative responsibility for the petition; the names of the researchers conducting the evaluation of the petition; and the name of their supervisor.

(2) The petitioner shall be notified of any substantive comment on its petition received prior to the beginning of active consideration or during the preparation of the proposed finding, and shall be provided an opportunity to respond to such comments.

(ge) Once active consideration of the documented petition has begun, ~~the Assistant Secretary~~OFA shall continue the review ~~and publish~~ unless the petitioner withdraws or OFA suspends consideration.

(1) At any time before OFA publishes the proposed findings ~~and a final determination~~ in the Federal Register ~~pursuant to these regulations, notwithstanding any requests by~~, the petitioner ~~or interested parties to~~may withdraw its petition and OFA will cease consideration~~. The Assistant Secretary~~ of the petition until such time as the petition is resubmitted, but such petition will be placed at the bottom of the numbered register of documented petitions upon re-submission and may not regain its initial priority number.
(2) OFA has the discretion~~, however,~~ to suspend active consideration of a documented petition, either conditionally or for a stated period of time, upon a showing to the petitioner that there are technical problems with the documented petition or administrative problems that temporarily preclude continuing active consideration. ~~The Assistant Secretary shall also consider requests by petitioners for suspension of consideration and has the discretion to grant such requests for good cause.~~ Upon resolution of the technical or administrative problems that are the basis for the suspension, the documented petition will have priority on the numbered register of documented petitions insofar as possible. ~~The Assistant Secretary~~
(3) OFA shall notify the petitioner and interested parties when active consideration of ~~the~~a documented petition is resumed. The timetables in succeeding paragraphs shall begin anew upon the resumption of active consideration.

(~~h~~)f) Expedited Negative Finding. Upon beginning active consideration, OFA shall investigate whether the group meets the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7.
(1) If this review finds that that the group does not meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, a full consideration of the documented petition under the remaining mandatory criteria will not be undertaken. Rather, OFA shall instead decline to acknowledge that the petitioner is an Indian tribe and publish a proposed finding to that effect in the Federal Register. The periods for receipt of comments on the proposed finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner's status shall follow the timetables established in paragraphs (i) through (n) of this section.
(2) If the review finds that the group meets the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, and petitioners assert that they qualify for an expedited favorable review, OFA will proceed to the expedited favorable review under paragraph (g) of this section.
(3) If the review finds that the group meets the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, and the petitioners do not assert that they qualify for an expedited favorable review, OFA will conduct a full evaluation of the documented petition under the remaining mandatory criteria.

(g) Expedited Favorable Finding. If the petitioner meets the mandatory criteria at paragraphs (e), (f), and (g) of § 83.7 and the petitioner asserts that it is eligible for an expedited favorable finding, OFA will next conduct an expedited favorable review. If the petitioner provides the information required by criterion (d) of § 83.7 and meets either of the criteria in paragraph (3) of this section, OFA will issue an expedited favorable proposed finding in the Federal Register summarizing its findings.

(1) The periods for receipt of comments on the proposed finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner's status shall follow the timetables established in paragraphs (i) through (n) of this section.

(2) If the petitioner does not meet either of the criteria in paragraph (3) or provide the information required by criterion (d) of § 83.7, OFA will undertake a full evaluation of the documented petition under the mandatory criteria.

(3) The expedited favorable criteria are:

(i) The petitioner has maintained since 1934 a reservation recognized by the State and continues to hold a reservation recognized by the State ; or

(ii) The United States has held land for the group at any point in time since 1934.

(h) The order of consideration of documented petitions for which OFA is undertaking a full evaluation under all the mandatory criteria shall be determined by either the date OFA determines that the petitioner will not receive an expedited negative finding or the date OFA determines the petitioner is not eligible for an expedited positive finding, if the petitioner asserts the latter. OFA shall establish and maintain a numbered register of documented petitions awaiting a full evaluation under all the mandatory criteria by OFA. OFA shall also maintain a numbered register of any prior letters of intent or incomplete petitions based on the original date of filing with the Bureau. In the event that two or more documented petitions receive priority of the same date, the register of any prior letters of intent or incomplete petitions shall determine the order of consideration by OFA.

(i) Within six months after notifying the petitioner that active consideration of the documented petition has begun pursuant to paragraph (d), if OFA has determined the petition meets the criteria for an expedited negative finding or an expedited favorable finding, OFA shall publish proposed findings on the expedited criteria, not to exceed **XX** pages, in the Federal Register. OFA may not extend that period. Within one year after notifying the petitioner that active consideration of the documented petition has begun, ~~the Assistant Secretary~~ pursuant to paragraph (d), OFA shall publish proposed findings on all the mandatory criteria, not to exceed **XX** pages, in the Federal Register. ~~The Assistant Secretary~~OFA has the discretion to extend that period up to an additional 180 days. The petitioner and interested parties shall be notified of the time extension. In addition to the proposed findings, ~~the Assistant Secretary~~OFA shall prepare a report, not to exceed XX pages, summarizing the evidence, reasoning, and analyses that are the basis for the proposed ~~decision~~finding. Copies of the report shall be provided to [OHA or AS-IA?], the petitioner, interested parties, and informed parties and made available to others upon written request.

(ij) Upon publication of the proposed findings, the petitioner or any individual or organization wishing to challenge or support the proposed findings shall have 180 days to submit arguments, not to exceed **XX** pages, and evidence to ~~the Assistant Secretary~~[OHA or AS-IA?] to rebut or support the proposed finding.

(1) The period for comment on a proposed finding may be extended for up to an additional 180 days at ~~the Assistant Secretary's~~[OHA or AS-IA?]'s discretion upon a finding of good cause. The petitioner and interested parties shall be notified of the time

extension. ~~Interested and informed parties who submit arguments and evidence to the Assistant Secretary must provide copies of their submissions to the petitioner.~~
(2) Interested and informed parties who submit arguments and evidence to [OHA or AS-IA?] must provide copies of their submissions to the petitioner.

~~(k~~
~~(j)(1)~~ During the response period, ~~the Assistant Secretary~~OFA shall provide technical advice concerning the factual basis for the proposed finding, the reasoning used in preparing it, and suggestions regarding the preparation of materials in response to the proposed finding. ~~The Assistant Secretary~~OFA shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law, to assist the petitioner in challenging or supporting the proposed finding and preparing for any requested hearing.
~~(2) In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary~~
~~(] in reaching a final determination.~~

~~(k~~) The petitioner shall have a minimum of 60 days to respond to any submissions by interested and informed parties during the response period~~.~~ with arguments, not to exceed **XX** pages, and evidence. This may be extended at ~~the Assistant Secretary's~~[OHA or AS-IA?]'s discretion if warranted by the extent and nature of the comments. The petitioner and interested parties shall be notified by letter of any extension. No further comments from interested or informed parties will be accepted after the end of the regular response period.

(~~l~~m) At the end of the period for comment on a proposed finding, ~~the Assistant Secretary shall consult with~~[OHA or AS-IA?] will automatically issue a final determination acknowledging the petitioner ~~and interested parties to determine~~as an ~~equitable timeframe for consideration of written~~Indian tribe if the following are met:
(1) The proposed finding is positive, and
(2) [OHA or AS-IA?] does not receive timely arguments and evidence ~~submitted during~~challenging the ~~response~~proposed finding from the State or local government where the petitioner's office is located or from any federally recognized Indian tribe within the State.

(n) If the conditions of paragraph (m) are not met at the end of the period~~.~~ for comment on a proposed finding, [OHA or AS-IA?] shall make its final determination by considering all the evidence in the petition record, including any evidence that arises from a hearing, if requested. The petitioner and interested parties shall be notified of the date such consideration begins.
(1) Unsolicited comments submitted after the close of the response period established in § 83.10(i) and § 83.10(k~~),~~) will not be considered in preparation of a final determination. ~~The Assistant Secretary~~[OHA or AS-IA?] has the discretion ~~during the preparation of the proposed finding~~, however, to request additional explanations and information from the

petitioner or from commenting parties to support or supplement their comments on a proposed finding. ~~The Assistant Secretary~~[OHA or AS-IA?] may also ~~conduct~~require such additional research as is necessary to evaluate and supplement the record. In either case, the additional materials will become part of the petition record.

(2) [OHA or AS-IA?] shall, if requested by the petitioner or any interested party, hold a hearing on the reasoning, analyses, and factual bases for the proposed finding, comments, and responses. The proceedings of this hearing shall be on the record. The hearing record shall be available to any participating party and become part of the record considered by [OHA or AS-IA?] in reaching a final determination.

~~(2) After consideration of the~~(i) [OHA or AS-IA?] may require testimony from OFA staff involved in preparing the proposed finding. Any such testimony shall be subject to cross-examination by the petitioner.

(ii) The petitioner may provide such evidence at the hearing as the petitioner considers appropriate.

(3) After [OHA or AS-IA?] holds the hearing, if any, and considers written arguments and evidence rebutting or supporting the proposed finding and the petitioner's response to the comments of interested parties and informed parties, ~~the Assistant Secretary~~[OHA or AS-IA?] shall make a final determination regarding the petitioner's status. A summary of this determination shall be published in the Federal Register within 60 days from the date on which the consideration of the written arguments and evidence rebutting or supporting the proposed finding begins.

~~(3) The Assistant Secretary~~(4) [OHA or AS-IA?] has the discretion to extend the period for the preparation of a final determination if warranted by the extent and nature of evidence and arguments received during the response period. The petitioner and interested parties shall be notified of the time extension.

(45) The final determination will become effective 90 days from publication ~~unless a request for reconsideration is filed pursuant to § 83.11~~.

~~(m) The Assistant Secretary~~o) [OHA or AS-IA?] shall ~~acknowledge~~issue a final determination acknowledging the existence of the petitioner as an Indian tribe when ~~it is determined~~[OHA or AS-IA?] finds that the group ~~satisfies all of~~ meets the mandatory criteria in paragraphs (d), (e), (f), and (g) of § 83.7 and one of the expedited favorable criteria in § 83.~~7. The Assistant Secretary~~10(g)(3); meets all the mandatory criteria in paragraphs (b) through (g) of § 83.7; or establishes previous Federal acknowledgment and meets the criteria in § 83.8. [OHA or AS-IA?] shall ~~decline~~issue a final determination declining to acknowledge that a petitioner is an Indian tribe ~~if it fails to satisfy~~when [OHA or AS-IA?] finds that the group does not meet any ~~one of the criteria in § 83.7,~~of the above. The Assistant Secretary is bound by an acknowledgment determination by [OHA or AS-IA?].

~~(n~~

(p) If ~~the Assistant Secretary~~[OHA or AS-IA?] declines to acknowledge that a petitioner is an Indian tribe, [OHA or AS-IA?] shall inform the petitioner ~~shall be informed~~ of alternatives, if any, to acknowledgment under these procedures. These alternatives may include other means through which the petitioning group may achieve the status of an acknowledged Indian tribe or

through which any of its members may become eligible for services and benefits from the Department as Indians, or become members of an acknowledged Indian tribe.

(e) The) [OHA or AS-IA?]'s determination to acknowledge or decline to acknowledge that the petitioner is an Indian tribe shall be final for the Department.

(pr) A petitioner that has petitioned under this part or under the acknowledgment regulations previously effective and that has been denied Federal acknowledgment may not re-petition under this part. The term "to OFA under this part unless its request for re-petitioning proves, by a preponderance of the evidence, that a change from the previous version of the regulations to the current version of the regulations warrants reversal of the final determination. The term "petitioner" here includes previously denied petitioners that have reorganized or been renamed or that are wholly or primarily portions of groups that have previously been denied under these or previous acknowledgment regulations. [OHA or AS-IA?]'sOFA's decision whether to allow re-petitioning shall be final for the Department.

§ 83.11 Independent review, reconsideration and final action.[Deleted.]

(a)(1) Upon publication of the Assistant Secretary's determination in the Federal Register, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals. Petitioners which choose under § 83.3(g) to be considered under previously effective acknowledgment regulations may nonetheless request reconsideration under this section.

(2) A petitioner's or interested party's request for reconsideration must be received by the Board no later than 90 days after the date of publication of the Assistant Secretary's determination in the Federal Register. If no request for reconsideration has been received, the Assistant Secretary's decision shall be final for the Department 90 days after publication of the final determination in the Federal Register.

(b) The petitioner's or interested party's request for reconsideration shall contain a detailed statement of the grounds for the request, and shall include any new evidence to be considered.

(1) The detailed statement of grounds for reconsideration filed by a petitioner or interested parties shall be considered the appellant's opening brief provided for in 43 CFR 4.311(a).

(2) The party or parties requesting the reconsideration shall mail copies of the request to the petitioner and all other interested parties.

(c)(1) The Board shall dismiss a request for reconsideration that is not filed by the deadline specified in paragraph (a) of this section.

(2) If a petitioner's or interested party's request for reconsideration is filed on time, the Board shall determine, within 120 days after publication of the Assistant Secretary's final determination in the Federal Register, whether the request alleges any of the grounds in paragraph (d) of this section and shall notify the petitioner and interested parties of this determination.

~~(d) The Board shall have the authority to review all requests for reconsideration that are timely and that allege any of the following:~~

~~(1) That there is new evidence that could affect the determination; or~~

~~(2) That a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value; or~~

~~(3) That petitioner's or the Bureau's research appears inadequate or incomplete in some material respect; or~~

~~(4) That there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the criteria in § 83.7 (a) through (g).~~

~~(e) The Board shall have administrative authority to review determinations of the Assistant Secretary made pursuant to § 83.10(m) to the extent authorized by this section.~~

~~(1) The regulations at 43 CFR 4.310-4.318 and 4.331-4.340 shall apply to proceedings before the Board except when they are inconsistent with these regulations.~~

~~(2) The Board may establish such procedures as it deems appropriate to provide a full and fair evaluation of a request for reconsideration under this section to the extent they are not inconsistent with these regulations.~~

~~(3) The Board, at its discretion, may request experts not associated with the Bureau, the petitioner, or interested parties to provide comments, recommendations, or technical advice concerning the determination, the administrative record, or materials filed by the petitioner or interested parties. The Board may also request, at its discretion, comments or technical assistance from the Assistant Secretary concerning the final determination or, pursuant to paragraph (e)(8) of this section, the record used for the determination.~~

~~(4) Pursuant to 43 CFR 4.337(a), the Board may require, at its discretion, a hearing conducted by an administrative law judge of the Office of Hearings and Appeals if the Board determines that further inquiry is necessary to resolve a genuine issue of material fact or to otherwise augment the record before it concerning the grounds for reconsideration.~~

~~(5) The detailed statement of grounds for reconsideration filed by a petitioner or interested parties pursuant to paragraph (b)(1) of this section shall be considered the appellant's opening brief provided for in 43 CFR 4.311(a).~~

~~(6) An appellant's reply to an opposing party's answer brief, provided for in 43 CFR 4.311(b), shall not apply to proceedings under this section, except that a petitioner shall have the opportunity to reply to an answer brief filed by any party that opposes a petitioner's request for reconsideration.~~

~~(7) The opportunity for reconsideration of a Board decision provided for in 43 CFR 4.315 shall not apply to proceedings under this section.~~

~~(8) For purposes of review by the Board, the administrative record shall consist of all appropriate documents in the Branch of Acknowledgment and Research relevant to the determination involved in the request for reconsideration. The Assistant Secretary shall designate and transmit to the Board copies of critical documents central to the portions of the determination under a request for reconsideration. The Branch of Acknowledgment~~

and Research shall retain custody of the remainder of the administrative record, to which the Board shall have unrestricted access.

(9) The Board shall affirm the Assistant Secretary's determination if the Board finds that the petitioner or interested party has failed to establish, by a preponderance of the evidence, at least one of the grounds under paragraphs (d)(1)--(d)(4) of this section.

(10) The Board shall vacate the Assistant Secretary's determination and remand it to the Assistant Secretary for further work and reconsideration if the Board finds that the petitioner or an interested party has established, by a preponderance of the evidence, one or more of the grounds under paragraphs (d)(1)--(d)(4) of this section.

--(f)(1) The Board, in addition to making its determination to affirm or remand, shall describe in its decision any grounds for reconsideration other than those in paragraphs (d)(1)--(d)(4) of this section alleged by a petitioner's or interested party's request for reconsideration.

(2) If the Board affirms the Assistant Secretary's decision under § 83.11(e)(9) but finds that the petitioner or interested parties have alleged other grounds for reconsideration, the Board shall send the requests for reconsideration to the Secretary. The Secretary shall have the discretion to request that the Assistant Secretary reconsider the final determination on those grounds.

(3) The Secretary, in reviewing the Assistant Secretary's decision, may review any information available, whether formally part of the record or not. Where the Secretary's review relies upon information that is not formally part of the record, the Secretary shall insert the information relied upon into the record, together with an identification of its source and nature.

(4) Where the Board has sent the Secretary a request for reconsideration under paragraph (f)(2), the petitioner and interested parties shall have 30 days from receiving notice of the Board's decision to submit comments to the Secretary. Where materials are submitted to the Secretary opposing a petitioner's request for reconsideration, the interested party shall provide copies to the petitioner and the petitioner shall have 15 days from their receipt of the information to file a response with the Secretary.

(5) The Secretary shall make a determination whether to request a reconsideration of the Assistant Secretary's determination within 60 days of receipt of all comments and shall notify all parties of the decision.

--(g)(1) The Assistant Secretary shall issue a reconsidered determination within 120 days of receipt of the Board's decision to remand a determination or the Secretary's request for reconsideration.

(2) The Assistant Secretary's reconsideration shall address all grounds determined to be valid grounds for reconsideration in a remand by the Board, other grounds described by the Board pursuant to paragraph (f)(1), and all grounds specified in any Secretarial request. The Assistant Secretary's reconsideration may address any issues and evidence consistent with the Board's decision or the Secretary's request.

(h)(1) If the Board finds that no petitioner's or interested party's request for reconsideration is timely, the Assistant Secretary's determination shall become effective and final for the Department 120 days from the publication of the final determination in the Federal Register.

~~(2) If the Secretary declines to request reconsideration under paragraph (f)(2) of this section, the Assistant Secretary's decision shall become effective and final for the Department as of the date of notification to all parties of the Secretary's decision.~~
~~(3) If a determination is reconsidered by the Assistant Secretary because of action by the Board remanding a decision or because the Secretary has requested reconsideration, the reconsidered determination shall be final and effective upon publication of the notice of this reconsidered determination in the Federal Register.~~

§ 83.12 Implementation of decisions.

(a) Upon final determination that the petitioner exists as an Indian tribe, it shall be considered eligible for the services and benefits from the Federal government that are available to other federally recognized tribes. The newly acknowledged tribe shall be considered a historic tribe and shall be entitled to the privileges and immunities available to other federally recognized historic tribes by virtue of their government-to-government relationship with the United States. It shall also have the responsibilities and obligations of such tribes. Newly acknowledged Indian tribes shall likewise be subject to the same authority of Congress and the United States as are other federally acknowledged tribes.

(b) Upon acknowledgment as an Indian tribe, the list of members submitted as part of the petitioners documented petition shall be the tribe's complete base roll for purposes of Federal funding and other administrative purposes. For Bureau purposes, any additions made to the roll, other than individuals who are descendants of those on the roll and who meet the tribe's membership criteria, shall be limited to those meeting the requirements of § 83.7(e) and maintaining significant social and political ties with the tribe (i.e., maintaining the same relationship with the tribe as those on the list submitted with the group's documented petition).

(c) While the newly acknowledged tribe shall be considered eligible for benefits and services available to federally recognized tribes because of their status as Indian tribes, acknowledgment of tribal existence shall not create immediate access to existing programs. The tribe may participate in existing programs after it meets the specific program requirements, if any, and upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly acknowledged tribe.

(d) Within six months after acknowledgment, the appropriate Area Office shall consult with the newly acknowledged tribe and develop, in cooperation with the tribe, a determination of needs and a recommended budget. These shall be forwarded to the Assistant Secretary. The recommended budget will then be considered along with other recommendations by the Assistant Secretary in the usual budget request process.

§ 83.13 Information collection.

~~(a)~~ The collections of information contained in § 83.7 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076-0104. ~~The information will be used to establish historical existence as a tribe, verify family~~

~~relationships and the group's claim that its members are Indian and descend from a historical tribe or tribes which combined, that members are not substantially enrolled in other Indian tribes, and that they have not individually or as a group been terminated or otherwise forbidden the Federal relationship. Response is required to obtain a benefit in accordance with 25 U.S.C. 2.~~

~~(b) Public reporting burden for this information is estimated to average 1,968 hours per petition, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.~~ Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to ~~both~~ the Information Collection Clearance Officer~~,~~ ~~Bureau of~~ – Indian Affairs, Mail Stop ~~336-SIB~~4141, 1849 C Street, ~~NW.~~, Washington, DC 20240~~; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503~~.