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ACKNOWLEDGMENT PRECEDENT MANUAL

compiled by

Branch of Acknowledgment and Research

NOTE: This document is an incomplete working draft.
As a work in progress, it will continually change.

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Acknowledgment Precedent Manual

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Acknowledgment Precedent Manual

INTRODUCTION

This document is a reference work designed to help researchers identify and find relevant acknowledgment precedent. This manual consists of brief excerpts from past findings on petitions for Federal acknowledgment. For a full understanding of how the regulations have been interpreted or how evidence has been dealt with under the regulatory criteria, researchers should consult the complete Summary Under the Criteria for the Proposed Finding or Final Determination cited for each excerpt.

Regulations to govern the administrative process by which the executive branch of the Federal Government considers petitions from groups seeking to be acknowledged as Indian tribes with a government-to-government relationship with the United States were originally published in the *Federal Register* on September 5, 1978 (43 FR 39361). Revised acknowledgment regulations were published in the *Federal Register* on February 25, 1994 (59 FR 9293).

The acknowledgment regulations originally were codified in the *Code of Federal Regulations* as Title 25, Part 54 (25 CFR Part 54). They were reassigned as Part 83 of Title 25 (25 CFR Part 83) of the *Code of Federal Regulations* on March 30, 1982 (47 FR 13327).

Groups which seek Federal acknowledgment have the burden of proof of demonstrating that they meet the seven mandatory criteria for acknowledgment set forth in section 83.7 of the regulations. Petitioning groups submit a “letter of intent” to petition followed by a “documented petition.”

The staff of the Branch of Acknowledgment and Research (BAR) of the Bureau of Indian Affairs evaluates the evidence submitted by the petitioner and third parties, and any additional evidence discovered by its own research. The BAR staff may prepare a report that describes and analyzes that evidence, and has done so in a variety of formats in the past. The BAR prepares a recommended finding on a petition.

The Assistant Secretary - Indian Affairs of the Department of the Interior makes the acknowledgment decisions. The Assistant Secretary first makes a Proposed Finding (PF) on the merits of the petition and publishes a notice of that finding in the *Federal Register*. After a public comment period, the Assistant Secretary makes a Final Determination (FD) on the petition and publishes a notice of that determination in the *Federal Register*.

PETITIONER	#	83.8	PF (a)	PF (b)	PF (c)	PF (d)	PF (e)	PF (f)	PF (g)	PF F.R.	FD 83.8	FD (a)	FD (b)	FD (c)	FD (d)	FD (e)	FD (f)	FD (g)	FD F.R.	IBIA Date	SOI Date	RFD Date	Effective Date	+/-
Grand Traverse Band	3	NA	+	+	+	+	+	+	+	1979.10.18	NA	+	+	+	+	+	+	+	1980.03.25	NA	NA	NA	1980.05.27	Y
Jamestown Clallam	19	NA	+	+	+	+	+	+	+	1980.05.30	NA	+	+	+	+	+	+	+	1980.12.12	NA	NA	NA	1981.02.10	Y
Tunica-Biloxi	1	NA	+	+	+	+	+	+	+	1980.12.23	NA	+	+	+	+	+	+	+	1981.07.27	NA	NA	NA	1981.09.25	Y
Lower Muskogee Creek	8	NA	o	o	o	+	o	+	+	1981.02.10	NA	o	o	o	+	o	+	+	1981.10.21	NA	NA	NA	1981.12.21	N
Creeks East of the Mississippi	10	NA	?	?	?	?	?	?	?	NA	NA	o	o	o	+	o	+	+	1982.04.06	NA	NA	NA	1981.12.21	N
Munsee-Thames Delaware	26	NA	o	o	o	+	o	+	+	1982.03.12	NA	o	o	o	+	o	+	+	1982.11.04	NA	NA	NA	1983.01.03	N
Death Valley Shoshone	51	NA	+	+	+	+	+	+	+	1982.03.12	NA	+	+	+	+	+	+	+	1982.11.04	NA	NA	NA	1983.01.03	Y
Narragansett	59	NA	+	+	+	+	+	+	+	1982.08.13	NA	+	+	+	+	+	+	+	1983.02.10	NA	NA	NA	1983.04.11	Y
Poarch Band of Creeks	13	NA	+	+	+	+	+	+	+	1984.01.09	NA	+	+	+	+	+	+	+	1984.06.11	NA	NA	NA	1984.08.10	Y
Principal Creek	7	NA	o	o	o	+	+	+	+	1984.06.20	NA	o	o	o	+	+	+	+	1985.04.11	NA	NA	NA	1985.06.10	N
Kaweah	70a	NA	o	o	o	+	o	o	+	1984.07.16	NA	o	o	o	+	o	o	+	1985.04.11	NA	NA	NA	1985.06.10	N
United Lumbee	70	NA	o	o	o	+	o	o	+	1984.04.12	NA	o	o	o	+	o	o	+	1985.05.02	NA	NA	NA	1985.07.02	N
Southeastern Cherokee	29	NA	o	o	o	+	o	+	+	1985.04.01	NA	o	o	o	+	o	+	+	1985.09.26	NA	NA	NA	1985.11.25	N
Northwest Cherokee Band	29a	NA	o	o	o	+	o	+	+	1985.04.01	NA	o	o	o	+	o	+	+	1985.09.26	NA	NA	NA	1985.11.25	N
Red Clay Inter-Tribal Band	29b	NA	o	o	o	+	o	+	+	1985.04.01	NA	o	o	o	+	o	+	+	1985.09.26	NA	NA	NA	1985.11.25	N
Tchinouk	52	NA	o	o	o	+	+	+	o	1985.06.12	NA	o	o	o	+	+	+	o	1986.01.16	NA	NA	NA	1986.03.17	N
Samish	14	NA	+	o	o	+	o	+	+	1982.11.04	NA	+	o	o	+	o	+	+	1987.02.05	NA	NA	1996.04.09	1996.04.26	Y
Wampanoag of Gay Head	76	NA	+	o	o	+	+	+	+	1986.06.30	NA	+	+	+	+	+	+	+	1987.02.10	NA	NA	NA	1987.04.11	Y
MaChis Creek	87	NA	o	o	o	+	o	+	+	1987.09.10	NA	o	+	o	+	o	+	+	1988.06.23	NA	NA	NA	1988.08.22	N
San Juan Paiute	71	NA	+	+	+	+	+	+	+	1987.08.11	NA	+	+	+	+	+	+	+	1989.12.15	NA	NA	NA	1990.03.28	Y
Miami of Indiana	66	NA	+	o	o	+	+	+	+	1990.07.19	NA	+	o	o	+	+	+	+	1992.06.18	NA	NA	NA	1992.08.17	N
Mohegan	38	NA	+	o	o	+	+	+	+	1989.11.09	NA	+	+	+	+	+	+	+	1994.03.15	NA	NA	NA	1994.05.14	Y
Jena Band of Choctaw	45	no	+	+	+	+	+	+	+	1994.10.31	no	+	+	+	+	+	+	+	1995.05.31	none	none	none	1995.08.29	Y
Huron Potawatomi	9	yes	+	+	+	+	+	+	+	1995.05.31	yes	+	+	+	+	+	+	+	1995.12.21	none	none	none	1996.03.17	Y
Ramapough	58	NA	o	o	o	+	o	+	+	1993.12.08	no	+	o	o	+	o	+	+	1996.02.06	1997.07.18	1998.01.07	none	1998.01.07	N
Golden Hill Paugussett (1st)	81	?	?	?	?	?	o	?	?	1995.06.08	?	?	?	?	?	?	?	?	1996.09.26	1998.09.08	date?	date?	NA	N
Snoqualmie	20	NA	+	+	+	+	+	+	+	1993.05.06	yes	+	+	+	+	+	+	+	1997.08.29	1999.07.01	1999.10.06	none	1999.10.06	Y
MOWA Band of Choctaw	86	?	?	?	?	?	o	?	?	1995.01.05	?	?	?	?	?	o	?	?	1997.12.24	1999.08.04	1999.11.26	none	1999.11.26	N
Match-e-be-nash-she-wish	9a	yes	+	+	+	+	+	+	+	1997.07.16	yes	+	+	+	+	+	+	+	1998.10.23	1999.05.21	1999.08.23	none	1999.08.23	Y
Yuchi	121	?	?	?	?	?	?	?	?	1995.10.24	?	?	?	?	?	o	?	?	1999.12.22	none	none	none	2000.03.21	N
Cowlitz	16	yes	+	+	+	+	+	+	+	1997.02.27	yes	+	+	+	+	+	+	+	2000.02.18	2001.05.29	date?	2002.01.04	2002.01.04	Y
Chinook	57	NA	o	o	o	+	+	+	+	1997.08.22	yes	+	+	+	+	+	+	+	2001.01.06	2001.08.01	2001.11.06	2002.07.12	2002.07.12	N
Duwamish	25	NA	o	o	o	+	+	+	+	1996.06.28	NA	o	o	o	+	+	+	+	2001.10.01	2002.01.04	2002.05.08	none	2002.05.08	N
Eastern Pequot	35	no	+	+	+	+	+	+	+	2000.03.31	no	+	+	+	+	+	+	+	2002.07.01				pending	Y*
Paucatuck E. Pequot	113	no	+	+	+	+	+	+	+	2000.03.31	no	+	+	+	+	+	+	+	2002.07.01				pending	Y*
Muwekma	111	yes	o	o	o	+	+	+	+	2001.08.03	yes	o	o	o	+	+	+	+	2002.09.17				pending	N
Snohomish	21	NA	o	o	o	+	o	+	+	1983.04.11													pending	N
Houma	56	no	+	o	o	+	o	+	+	1994.12.22													pending	N
Steilacoom	11	no	o	o	o	+	o	+	+	2000.02.07													pending	N
Little Shell of Montana	31	no	+	+	+	+	+	+	+	2000.07.21													pending	Y
Nipmuc (Hassanamisco)	69a	no	o	o	o	+	o	+	+	2001.10.01													pending	N
Webster/Dudley Band	69b	no	o	o	o	+	+	+	+	2001.10.01													pending	N

KEY:
 PF : Proposed Finding
 FD : Final Determination
 RFD: Reconsidered FD

(a) : criterion (a), etc.
 83.8 : Prior Federal ack.
 F.R. : Federal Register

+ : met the criterion
 o : failed the criterion.
 ? : not decided

Previous Federal Acknowledgment

The text of section 83.8:

“(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 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.” (59 FR 9293)

“(d) To be acknowledged, a petitioner that can demonstrate previous Federal acknowledgment must show that. . . .” (59 FR 9293)

The definition in section 83.1:

“*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.” (59 FR 9293)

The regulations from 1978 to 1994:

There were no provisions of the regulations relating to previous Federal acknowledgment prior to the publication of revised acknowledgment regulations on Feb. 25, 1994.

Compilation of precedents:

Selections from petitions which have received a final determination are listed in roman type. *Selections from petitions which have received only a proposed finding are listed in italic type.*

For petitions which have received a final determination, selections have been made from the “Summary under the Criteria” or memorandum signed by the Assistant Secretary - Indian Affairs for both the final determination (FD) and the proposed finding (PF).

Selections include those which:

- ◇ Interpret the regulations;
- ▲ Provide examples of evidence which has been used to meet the criterion;
- ▼ Provide examples of evidence which has been cited as not meeting the criterion.

“substantial evidence of unambiguous Federal acknowledgment”:

- ◇ “The regulations require that acknowledgment be unambiguous.” (Snoqualmie FD 1997, 2)
- ◇ The termination policy of the 1950's “considered that Federal responsibility was limited to tribes which had Federal trust land. Consequently, after 1953, as the termination policy came fully into play, the Federal view of the status of the Snoqualmie changed, as did the status of the other non-reservation ‘public domain tribes’ in Washington State. The proposed finding [which was prepared before the provisions relating to previous acknowledgment were added to the regulations in 1994] concluded that the end of acknowledgment of the Snoqualmie was in 1955, the first date when the available documentation indicated the Snoqualmie were not recognized. For purposes of this final determination under section 83.8 . . . January 1953 is the last date when the documentation of acknowledged status is unambiguous.” (Snoqualmie FD 1997, 3)

“the date of the last such previous acknowledgment”:

- ◇ “In the case of this petitioner, the date of September 27, 1833, that of the ‘Supplementary Articles’ to the Treaty of Chicago, was used as the last date of unambiguous previous Federal acknowledgment. It is not to be taken as a determination by the Department that this was necessarily the latest date of prior Federal acknowledgment. As the petitioner had already completed the research process and had submitted a complete, documented petition at the time the revised regulations became effective, expenditure of staff time to determine the latest date of prior acknowledgment would not have reduced the research burden on the petitioner. Acceptance of the obvious date of the last in a series of treaties was sufficient to enable the petitioner to proceed under the provisions of section 83.8.” (Huron Potawatomi FD 1995, 2)

“a petitioner that can demonstrate previous Federal acknowledgment”:

- ◇ *“The Department cannot accord acknowledgment to petitioners claiming previous acknowledgment without a showing that the group is the same one as recognized in the past. The present-day group is required to demonstrate that it connects with the previously acknowledged tribe through continuous historical existence as a distinct political community.” (Cowlitz PF 1997, 4)*

Evidence:▲ Evidence which MEETS the criterion at a specific time:

- ▲ The petitioner's "members are descendants specifically of the Potawatomi of Huron, a band which signed treaties with the Federal Government from the Treaty of Greenville in 1795 through the Articles Supplementary to the Treaty of Chicago in 1833." (Huron Potawatomi PF 1995, 60 FR 28426)
- ▲ The petitioner "had unambiguous previous Federal acknowledgment through the date of the 1855 Treaty of Detroit, to which the band's chief was a signatory, and subsequently through the date of 1870 at which annuity payments under prior treaties were commuted." (Match-e-be-nash-she-wish PF 1997, 1)
- ▲ "Before the 1930's, the Snoqualmie Tribal Organization was acknowledged as part of the Snoqualmie tribe as a whole. It is not necessary to establish a specific date for initial acknowledgment of the STO as a separate Snoqualmie entity, but acknowledgment as a separate entity was clearly established by 1934. . . . That political body was clearly identified as derived from the historical treaty-signing Snoqualmie tribe." (Snoqualmie FD 1997, 2)
- ▲ "Between 1937 and 1944, agency and central office officials [of the Indian Service] developed plans to provide a reservation for the band, which they considered to be under the 1934 Indian Reorganization Act but which needed a reservation land base in order to organize its tribal government under the act. The band was not proposed for land purchase and organization as a community of Indians of one-half degree Indian blood or more, an approach used by the Indian Service to extend recognition and benefits to unrecognized tribes." (Snoqualmie FD 1997, 2-3)
- ▲ "Evidence of recognition in these years [between 1934 and 1953] includes consistent identification in documents in which the Western Washington Agency clearly identified the tribes under its jurisdiction, and in Congressional reports and reports of the central office of the Indian Service. The Snoqualmie were listed in these Federal documents as a non-reservation, 'public domain' tribe. . . ." (Snoqualmie FD 1997, 2)

▼ Evidence which does NOT meet the criterion:

- ▼ "By identifying Choctaws from LaSalle Parish, Louisiana, as Mississippi Choctaws, the Dawes Commission dealt with them as eligible for membership in a recognized tribe; not as a separate tribe. It dealt with the individual applicants directly, not through a political entity which represented them as its members." (Jena Choctaw PF 1994, 1)

- ▼ “When contemplating the removal of these families to trust lands in Mississippi about 1938, Federal officials indicated that they considered these Indians to be eligible for membership in the recognized Mississippi Choctaw tribe; not part of a continuing Louisiana tribal entity. Although the Federal Government briefly provided some Federal services to individuals in the group during the 1930's, . . . the Federal Government did not recognize the Jena Choctaw Indians as a separate tribal entity.” (Jena Choctaw PF 1994, 1)

Criterion 83.7(a)

The text of criterion 83.7(a):

“(a) 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.” (59 FR 9293)

The text of section 83.8(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.” (59 FR 9293)

The text of criterion (a) from 1978 to 1994:

“(a) A statement of facts establishing that the petitioner has been identified from historical times until the present on a substantially continuous basis, as ‘American Indian,’ or ‘aboriginal.’ A petitioner shall not fail to satisfy any criteria herein merely because of fluctuations of tribal activity during various years. Evidence to be relied upon in determining the group’s substantially continuous Indian identity shall include one or more of the following: (1) Repeated identification by Federal authorities; (2) Longstanding relationships with State governments based on identification of the group as Indian; (3) Repeated 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 records in courthouses, churches, or schools; (5) Identification as an Indian entity by anthropologists, historians, or other scholars; (6) Repeated identification as an Indian entity in newspapers and books; (7) Repeated identification and dealings as an Indian entity with recognized Indian tribes or national Indian organizations.” (43 FR 39361)

Compilation of precedents:

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Selections include those which:

- ◇ Interpret the regulations;
- ▲ Provide examples of evidence which has been used to meet the criterion;
- ▼ Provide examples of evidence which has been cited as not meeting the criterion.

Identified as “an American Indian entity”:

- ◇ “Identification as a ‘tribe’ is not required under criterion 83.7(a), which specifies only identification as an ‘entity’.” (Match-e-be-nash-she-wish FD 1998, 8)
- ◇ *Criterion (a) “does not, however, require identification of the [Indian] entity as being a tribe.” (Duwamish PF 1996, 4)*
- ◇ “Historical identification by the specific tribal name currently used by a petitioner is not required by the regulations.” (San Juan Paiute FD 1989, 5)
- ◇ “The [petitioner’s historical] entity was a community of long standing, whether called the Bradley Indians, the Allegan Indians, or by other names. . . .” (Match-e-be-nash-she-wish FD 1998, 8)
- ◇ “We do not, however, find the ALJ [Administrative Law Judge]’s finding [number] 130 to be relevant to criterion (a) because it deals with the identification of individuals, while criterion (a) requires external identification of the group’s Indian identity.” (Samish amended FD 1995, 4)
- ◇ *“Criterion (a) requires identification of an Indian entity, not just Indian individuals.” (Duwamish PF 1996, 4)*
- ◇ *“. . . the [Snohomish] petitioner, and the ancestors of the current membership, are distinct from the historic Snohomish tribe based on the Tulalip Reservation. Thus identifications of the historic tribe in Bureau and other documents in different*

historical periods do not constitute identification of the petitioner. . . .” (Snohomish PF 1983, 9)

- ◇ *“When observers identified these treaty-reservation Indians as the ‘Duwamish and allied tribes,’ or as ‘Duwamish,’ they . . . were not describing a group of individuals of Duwamish descent as an Indian entity separate from the treaty reserves.” (Duwamish PF 1996, 3)*
- ◇ *“. . . criterion 83.7(a) does not require that external identifications of the petitioning group have been factually correct. . . .” (Ramapough FD 1996, 19)*
- ◇ *“Thus Swanton’s and Speck’s specific identification of the petitioner’s ancestors as Houma Indians, while historically and genealogically inaccurate, . . . provides evidence that the petitioner has been consistently identified by external sources as an American Indian entity since the early 1900’s to the present.” (Houma PF 1994, 6)*
- ◇ *The evidence “indicates that outsiders had a perception that the people living along parts of Bayou Terrebonne, and sharing particular surnames, were a distinguishable American Indian entity.” (Houma PF 1994, 3)*
- ◇ The sources “did consistently identify the RMP [Ramapough Mountain People] as a mixed tri-racial isolate group to which tradition attributed a certain amount of American Indian ancestry.” Identification “of the existencce of a distinct tri-racial entity which is generally believed to have included an Indian component in its originating population shall be regarded as minimal evidence for identification of the existence of an American Indian entity. . . .” (Ramapough FD 1996, 18, 20)

Identified on a “substantially continuous” basis:

- ◇ *“Records from each decade since 1900 confirm the existence of an American Indian entity near Jena, Louisiana.” (Jena Choctaw PF 1994, 2)*
- ◇ *“Because . . . external identifications of it [the petitioner] have been found only for the years since 1939, . . . the petitioner does not meet criterion 83.7(a).” (Duwamish PF 1996, 4)*
- ◇ *“The petitioner has only been identified as a Snohomish group since 1950 when it was formed. . . . [and] has not been historically identified . . . on a substantially continuous basis and therefore does not meet the requirements of criterion a.” (Snohomish PF 1983, 10)*
- ◇ *“The Tchinouk Indians have been identified as a group of Chinook descendants only recently, with some identification after 1957 and most after 1974, when they*

organized. The Tchinouk Indians . . . have therefore not met the criterion in 25 CFR 83.7(a).” (Tchinouk PF 1985, 8)

- ◇ “The Principal Creek Indian Nation East of the Mississippi (PCN) has only been identified as Indian and as Creek since its organization in 1969. . . . [and] does not meet the criterion in 25 CFR 83.7(a) of the acknowledgment regulations.” (Principal Creek PF 1984, 2)
- ◇ “The MaChis Lower Alabama Creek Indian Tribe has only been identified as Indian and as Creek since its incorporation as a non-profit organization in 1982. . . . [and] does not meet criterion 25 CFR 83.7(a).” (MaChis Creek PF 1987, 2)

Identified “by other than the petitioner itself or its members”:

- ◇ “Some of the [third party] comments which mentioned the ‘identity’ of the petitioner referred to the petitioner’s own self-identification, not to identification by external sources under 83.7(a).” (Match-e-be-nash-she-wish FD 1998, 7-8)

The “group’s character as an Indian entity has from time to time been denied”:

- ◇ “The materials submitted with the Navajo response in support of its contention that the Paiutes were not distinct were of a general and recent nature and were inconsistent with the large, detailed body of materials used for the proposed finding and this final determination.” (San Juan Paiute FD 1989, 4-5)

Requirements of the criterion as modified by previous Federal acknowledgment:

- ◇ “The application of section 83.8 changes the requirements for criterion 83.7(a) to require identification from the date of last Federal acknowledgment. It requires also that the identification make clear that the group is being identified as the same entity which previously had been federally acknowledged. . . . The STO [Snoqualmie Tribal Organization] since 1953 has been identified in a variety of Federal records as well as other sources as the same entity as the group known as ‘Jerry Kanim’s Band,’ as it existed before 1953.” (Snoqualmie FD 1997, 4)
- ◇ “. . . the modification in section 83.8(d)(1) extended the time period for which the CIT [Cowlitz Indian Tribe] was required to demonstrate criterion 83.7(a): not merely since 1900, but since the point of last Federal acknowledgment. In the case of the CIT, this date was determined to be . . . 1855. . . .” (Cowlitz PF 1997, 11)

- ◇ “. . . the modification in section 83.8(d)(1) extends the time period for which criterion 83.7(a) must be demonstrated: not merely since 1900, but since the point of last Federal acknowledgment. In the case of MBPI [Match-e-be-nash-she-wish Band of Pottawatomi Indians], this date was determined to be 1870. . . .” (Match-e-be-nash-she-wish PF 1997, 2) “In the case of HPI [Huron Potawatomi Inc.], this date was determined to be . . . 1833.” (Huron Potawatomi PF 1995, 2)

“Evidence to be relied upon . . . may include”:

(1) Identification as an Indian entity by Federal authorities:

- ▲ Evidence which MEETS the criterion at a specific time:
- ▲ “The petitioner has received grants from the ANA since the 1980's, based on its Indian identity.” (Jena Choctaw PF 1994, 3)
- ▲ “The Federal Government has enacted legislation implementing the 1978 land claims settlement with Rhode Island.” (Narragansett PF 1982, 8)
- ▲ “Bureau services have been provided to individual members of the group through the Sacramento Area Office since 1977.” (Death Valley PF 1982, 4)
- ▲ “The group petitioned the Bureau in 1976 for status as a ‘community of half-bloods’ under section 19 of the Indian Reorganization Act, and was determined eligible by Departmental officials in 1977.” (Death Valley PF 1982, 4)
- ▲ “. . . BIA official Harter described the band in 1973.” (San Juan Paiute PF 1987, v)
- ▲ “A Mohegan group was identified in administrative studies conducted for the Bureau of Indian Affairs by Gladys Tantaquidgeon in 1934 and by Theodore Taylor in 1972.” (Mohegan PF 1989, 2)
- ▲ The decision “made by the Indian Claims Commission in 1964, identified the Indiana Miami as an Indian entity.” (Miami PF 1990, 2)
- ▲ *“The Indian Claims Commission in 1958 concluded that the ‘newly organized’ Chinook group did not have a tribal organization recognized by the Government, but accepted its petition on behalf of Chinook descendants because it allowed any ‘identifiable group of Indians’ to enter a claim.” (Chinook PF 1997, 7)*
- ▲ *The BIA “dealt with one [Chinook] group [after 1951] for purposes of bringing a case before the Indian Claims Commission. . . .” (Chinook PF 1997, 7)*

- ▲ “In the 1950's they . . . were allowed by the Court of Claims to sue [in the Indian Claims Commission] by virtue of the fact that they were an ‘identifiable group’.” (Poarch Creek PF 1983, 3)
- ▲ “Members of the group or their ancestors, identified as Shoshone and as living in the area, were carried on BIA censuses from at least 1916 through 1940.” (Death Valley PF 1982, 3)
- ▲ “The BIA’s Holst Report on Indians in the Lower Peninsula of Michigan provided a summary description of the ‘Bradley group consisting of 23 families’ in 1939.” (Match-e-bc-nash-shc-wish PF 1997, 4)
- ▲ “Although considering them ‘non-ward Indians’ in the 1930's, the BIA. . . helped organize a council for them in 1937 and entered into an agreement with them for the use of trust funds for rehabilitation.” (Death Valley PF 1982, 3)
- ▲ “Efforts were made in the 1930's to organize Jamestown [Clallam] under the Indian Reorganization Act, based on a solicitor’s opinion that they were a recognized tribe.” (Jamestown Clallam PF 1980, 2)
- ▲ “A BIA official . . . attended the 1934 meeting at which the corporation charter was adopted. Her report identified the group as a group of Narragansett Indians.” (Narragansett PF 1982, 8)
- ▲ “The National Park Service has identified the group as Shoshones, native to the area, and has provided services and dealt with the group as an Indian community from the establishment of the [Death Valley National] Monument [in 1933] until the present.” (Death Valley PF 1982, 4)
- ▲ Historical documents “which identified the group as a distinct Paiute entity. . . included . . . Indian Agency reports between 1900 and 1925.” (San Juan Paiute FD 1989, 4)
- ▲ *“In 1919, Special Agent Charles E. Roblin identified the Cowlitz as one of only two unenrolled Washington Indian groups whom he identified as a tribe.” (Cowlitz PF 1997, 13)*
- ▲ “Federal officials took a census of Ottawa and Chippewa Indians in 1908 which specifically included the Traverse Band of Indians. . . .” (Grand Traverse Band PF 1979, 4)
- ▲ Identification appears “in Congressional legislation in 1906 appropriating money for the band. . . .” (San Juan Paiute FD 1989, 5)

- ▲ “The court records generated by this suit [in the U.S. Court of Claims] in the period 1882-1904 included numerous depositions identifying and describing the Allegan County Indian community. . . .” (Match-e-be-nash-she-wish PF 1997, 3)
- ▲ “The group’s settlement . . . was enumerated on the 1880 Federal census . . . as an ‘Indian Colony’.” (Match-e-be-nash-she-wish PF 1997, 3) On the 1880 Federal census, “the census taker wrote, ‘Here Ends the Indian Village, or Hamlet - of the “Patowatomies of Huron”’.” (Huron Potawatomi PF 1995, 4)
- ▲ “The petitioner’s predecessor group was consistently identified on BIA annuity rolls, censuses, and school records from . . . 1839 through the expiration of obligations under the 1855 Ottawa treaty.” (Match-e-be-nash-she-wish PF 1997, 3) (see also: Huron Potawatomi PF 1995, 3)
- ▼ Evidence which does NOT meet the criterion:
 - ▼ “A descendency roll, prepared by the Michigan Agency, BIA, as the result of a 1978 decision of the Indian Claims Commission, was completed in 1984. Although it included the HPI [Huron Potawatomi Inc.] population, it . . . was a Potawatomi descendency claims roll and not exclusively a description of the HPI.” (Huron Potawatomi PF 1995, 4)
 - ▼ “*Some Chinook descendants attended the Government’s Indian schools, but they did so because of their degree of Indian ancestry, not because the Indian Office recognized a Chinook tribe.*” (Chinook PF 1997, 6)
 - ▼ “*The Federal district court in 1928 agreed that the Chinook had lost their tribal organization.*” (Chinook PF 1997, 6)
 - ▼ “*While [Special Agent] Roblin’s evidence about Duwamish descendants is valuable, his [1919] report identified individuals rather than a tribal entity.*” (Duwamish PF 1996, 3)
 - ▼ “*In its report on these [Chinook] claims in 1906, the Court of Claims concluded that the Lower Band of Chinook had ‘long ceased to exist’ as a band.*” (Chinook PF 1997, 6)
 - ▼ “The Taggart Roll which was prepared by the BIA in 1904 as a consequence of the Potawatomi claims suit was not, *per se*, an identification of the Allegan County Indian settlement, although the members of the settlement with Potawatomi ancestry were included on it.” (Match-e-be-nash-she-wish PF 1997, 4) The Taggart Roll “was not a census of the Pine Creek settlement, but rather a judgment roll resulting from a U.S. Court of Claims decision and pertaining to Michigan Potawatomi other than the Pokagon Band.” (Huron Potawatomi PF 1995, 3)

(2) Relationships with a State government:

- ▲ Evidence which MEETS the criterion at a specific time:
- ▲ The Pine Creek Reservation “has been held in trust by the Governor of Michigan on behalf of the settlement as a state Indian reservation.” (Huron Potawatomi PF 1995, 5)
- ▲ “The county and state now provide a wide range of services including holding land in trust for the group.” (Grand Traverse Band PF 1979, 4)
- ▲ “In 1980 the Indiana legislature passed a joint resolution in support of the Miami petition for Federal acknowledgment.” (Miami PF 1990, 2)
- ▲ “HPI [Huron Potawatomi Inc.] has been a Michigan state-recognized tribal entity since the 1970's and is a member of the Michigan Commission on Indian Affairs.” (Huron Potawatomi PF 1995, 5)
- ▲ In 1976 “the Tribal Council was recognized by the Governor [of Massachusetts] as the governing body of the Gay Head Indians.” (Wampanoag PF 1985, [p?])
- ▲ “In 1976, the Rhode Island Commission for Indian Affairs was created by executive order which specifically designated the Narragansett Tribe, Incorporated, to name the majority of the commission members.” (Narragansett PF 1982, 8)
- ▲ “The group was recognized by Concurrent Resolution of the State of Louisiana Legislature in 1975 and is a member of the Intertribal Council of Louisiana.” (Tunica-Biloxi PF 1980, 3)
- ▲ “The petitioner was identified as Indian by the state of Louisiana by resolution in 1974. . . .” (Jena Choctaw PF 1994, 3)
- ▲ *“In 1974, Governor Evans of the State of Washington supported recognition of the Snohomish [petitioner], and the Snohomish were members of the Governor's Indian Advisory Council. No official position on recognition has been expressed by the State since then.” (Snohomish PF 1983, 9)*
- ▲ Rhode Island’s “legal relationship as guardian was ended in 1880 with the passage of the ‘detrribalization’ act. . . . State law, however, has continued recognition of the ownership of the Narragansett church and associated lot by the ‘religious society’ that has met there until the present day. This was reaffirmed by legislation in 1936.” (Narragansett PF 1982, 8)

(3) Dealings with a local government based on the group's Indian identity:

- ▲ Evidence which MEETS the criterion at a specific time:
- ▲ “Local authorities have never attempted to tax village lands whose title was quieted in an 1848 boundary dispute case.” (Tunica-Biloxi PF 1980, 2)
- ▲ “*When the Chinook Indian Tribe decided in 1976 to petition for Federal acknowledgment, it acquired statements of support for its recognition effort from the town council of Ilwaco, the board of commissioners of Pacific County, and the governor's Indian Advisory Council*” (Chinook PF 1997, 7)
- ▲ “. . . local education officials identified the petitioner's ancestral group as Indian in the late 1920's and 1930's.” (Jena Choctaw PF 1994, 2)
- ▲ “From at least 1908 onward, the group was segregated in separate Indian schools, named as such. . . .” (Poarch Creek PF 1983, 3)

(4) Identification as an Indian entity by anthropologists, historians, or scholars:

- ▲ Evidence which MEETS the criterion at a specific time:
- ▲ “In 1986 Kelly and Fowler included the San Juan Paiutes as a distinct Southern Paiute band in their article on ‘Southern Paiute’ published in Volume 11 of the Smithsonian Institution's *Handbook of North American Indians*.” (San Juan Paiute PF 1987, v)
- ▲ “More ethnographic descriptions of the San Juan Paiutes came in 1961 and 1962 with the fieldwork of Shepardson and Hammond. This was followed by the identification of the band by anthropologist Nagata in 1963. . . . In 1977 anthropologist A. Turner lived with the group and described them in subsequent publications.” (San Juan Paiute PF 1987, v)
- ▲ “The group has been identified in works of various scholars. . . . by Boissevain (1952, 1959, 1969 and 1975), Gilbert (1948), Beale (1957), and Berry (1963).” (Narragansett PF 1982, 9)
- ▲ “The group and its antecedents have been clearly identified as Shoshone or Panamint and as a specific group or groups by numerous scholars. . . . in the works of Julian Steward (1938, 1941), the foremost authority on Great Basin Indians, and by . . . Merriam (1969), Kroeber (1925), Driver (1937), Wallace and Wallace (1979) and Irwin (1980).” (Death Valley PF 1982, 4)

- ▲ *Identification as an Indian entity “includes identification by anthropologists and sociologists (e.g., Fred Kniffen in 1935 and 1987; William H. Gilbert, Jr., in 1946; and Ann Fischer in 1968), historians (e.g., Charles Gayarre in 1974; Kenneth Martin in 1984; Richebourg McWilliams in 1953), and others.” (Houma PF 1994, 5)*
- ▲ Identification appears in “ethnographic works such as Stewart (1941-42) and Kelly (1934 and 1976).” (San Juan Paiute FD 1989, 5)
- ▲ “The settlement received a brief notice in Hodge’s 1907 *Handbook*.” (Match-e-be-nash-she-wish PF 1997, 5; Huron Potawatomi PF 1995, 7)
- ▲ “Identifications in the ethnological literature have included Prince and Speck (1903), Mooney (1907), Speck (1909 and 1928), Rouse (1947), Gilbert (1948), Swanton (1952), Schusky (1957), and Simmons (1986).” (Mohegan PF 1989, 2)
- ▲ The petitioner “is discussed and treated as a distinct group of Clallam in the scholarly works of Gunther, Barnett, Lane, and others.” (Jamestown Clallam PF 1980, 2)
- ▲ The band “has repeatedly been identified by anthropologists and historians. . . .” (Grand Traverse Band PF 1979, 4)
- ▼ Evidence which does NOT meet the criterion:
- ▼ “The group is not identified in any local or regional histories of the counties in southeastern Alabama nor in any scholarly works on the Creek Nation.” (MaChis Creek PF 1987, 2)
- ▼ “Although a great deal has been written about the Delaware Indians, no evidence was found to indicate any scholars . . . have ever taken note of the [petitioning] group.” (Munsee-Delaware PF 1982, 2)
- ▼ “*Anthropologist Herbert Taylor, in a 1953 report for the Indian Claims Commission, said that while there were several hundred living descendants of Lower Chinook bands, their tribal organizations had been destroyed long ago.*” (Chinook PF 1997, 7)
- ▼ The identification of the petitioner as Indian “has been questioned . . . by the only scholarly study of the group.” (Lower Muskogee Creek PF 1981, 2)

(5) Identification as an Indian entity in newspapers and books:

- ▲ Evidence which MEETS the criterion at a specific time:
- ▲ *“The activities of the Chinook Indian Tribe, which formed in 1970, were covered by local newspapers during the 1970’s.” (Chinook PF 1997, 7)*
- ▲ *“A feature article published in 1951 . . . indicated that ‘54 Pottawatomies’ remained at Bradley as a ‘permanent population.’” (Match-e-be-nash-she-wish PF 1997, 4)*
- ▲ *“The WPA guide to the State of Michigan published in 1941 included a specific identification and description of the Bradley settlement as an Indian entity.” (Match-e-be-nash-she-wish PF 1997, 4)*
- ▲ *“The 1931 Athens Times centennial edition contained extensive articles about the group, as did a historical series published from 1946 through 1948 in the Kalamazoo Gazette.” (Huron Potawatomi PF 1995, 8)*
- ▲ *“Newspaper articles . . . identified the petitioner’s ancestral group as Indian in the late 1920’s and 1930’s.” (Jena Choctaw PF 1994, 2)*
- ▲ *“Newspapers regularly provided coverage of the annual meetings of the Cowlitz Tribal Organization from 1912 through 1939.” (Cowlitz PF 1997, 17)*
- ▲ *“A local history of Bay Center, written in 1954, noted that a ‘native settlement at Goose Point’ existed as of 1910.” (Chinook PF 1997, 6)*
- ▲ *“A Mohegan Indian group has likewise been identified in . . . local and regional histories, including . . . Fitch (1906), and Peale (1930) . . .” (Mohegan PF 1989, 2)*
- ▲ *“Local histories included Olson’s retrospective description of the Cowlitz when she was growing up in the 1890’s. . . .” (Cowlitz PF 1997, 17)*
- ▲ *“From the 1880’s through 1904, local newspapers also published both news items and feature articles which identified the settlement.” (Match-e-be-nash-she-wish PF 1997, 4) (see also: Huron Potawatomi PF 1995, 7)*
- ▲ *“The Nottawaseppi Reserve and the Pine Creek settlement were also discussed in county and local histories [in 1877 and 1913].” (Huron Potawatomi PF 1995, 8)*

▼ Evidence which does NOT meet the criterion:

- ▼ “The 109 year old *Pueblo Chieftain* newspaper made no mention of Munsee or Delaware Indians throughout the newspaper’s existence until June 1974. . . .” (Munsee-Delaware PF 1982, 2)

(6) **Relationships with Indian tribes or organizations:**

▲ Evidence which MEETS the criterion at a specific time:

- ▲ “The San Juan Paiutes are identified as a band of Southern Paiutes by the Kaibab Band of Paiutes of Arizona and the Paiute Tribe of Utah. Both have submitted resolutions supporting acknowledgment of the San Juan Paiutes. The Kaibab Band also identified the San Juan Paiutes as a Paiute group in 1969 in connection with the Southern Paiute judgment award. . . .” (San Juan Paiute PF 1987, vi)
- ▲ “In August of 1983, the recognized Muscogee (Creek) Nation of Oklahoma formally established a government-to-government relationship with the Poarch Band of Creeks and supported the group’s petition for recognition stating the PBC is ‘a distinct and separate band of Muscogee (Creek) Indians’. . . .” (Poarch Creek PF 1983, 3)
- ▲ “The group is recognized as a distinct Indian community by the Intertribal Council of California and the Owens Valley Paiute-Shoshone Band.” (Death Valley PF 1982, 8)
- ▲ “Two recognized tribes, the Bay Mills Indian Community and the Saginaw Chippewa Indian Tribe, support the group’s petition for Federal acknowledgment.” (Grand Traverse Band PF 1979, 4)
- ▲ “The petitioner . . . has been identified by and accepted for membership in both regional and national American Indian organizations.” (Snoqualmie PF 1993, 6)
- ▲ The petitioner “has been a member of NCAI since 1978.” (Narragansett PF 1982, 9)
- ▲ “The new [*Chinook Indian Tribe*] organization was accepted as a member of the *Small Tribes Organization of Western Washington (STOWW)* and the *National Congress of American Indians (NCAI)*.” (Chinook PF 1997, 7)
- ▲ “The Jamestown Band of Clallam is a founding and active member of the Small Tribes Organization of Western Washington. It was also an early member of the National Congress of American Indians.” (Jamestown Clallam PF 1980, 2)

▼ Evidence which does NOT meet the criterion:

- ▼ “The recognized Delawares now in Oklahoma deny the MTD [Munsee-Thames River Delaware] is a Delaware (or Indian) group or that it has had a continuous existence as an Indian tribe.” (Munsec-Delaware PF 1982, 2)
- ▼ “The Tribal Council of the Tule River Tribes . . . passed a resolution refusing to recognize, support or endorse the KIN [Kaweah Indian Nation] or its activities.” (Kaweah PF 1984, 1)
- ▼ *“One resolution opposing recognition was received from the Tulalip Tribes, Inc., whose membership includes more persons of Snohomish ancestry than any other tribal background.” (Snohomish PF 1983, 8)*

(+) **Other evidence of identification:**

▲ Evidence which MEETS the criterion at a specific time:

- ▲ “Elderly non-Indian residents of the area . . . recall the Choctaws as a constant presence in the community.” (Jena Choctaw PF 1994, 2-3)
- ▲ “The group is considered to be a distinct Indian community by non-Indians in the immediate vicinity of the Jamestown settlement. . . .” (Jamestown Clallam PF 1980, 2)
- ▲ “The missionary Schoff identified the band in 1969, and in 1970 the San Juan Paiutes were identified -- and described -- by DNA attorney Withers and journalist Stone. . . . DNA attorney Arthur identified the band in 1981. . . .” (San Juan Paiute PF 1987, v)
- ▲ *“Oral histories stated that during segregation, Terrebonne Parish had a tripartite system for . . . public water fountains, with the UHN [United Houma Nation] group distinguished both from white and from black.” (Houma PF 1994, 4)*
- ▲ *“During the early-20th century, some non-Indians identified Bay Center on Shoalwater Bay as the location of an Indian settlement. . . . The town’s postmaster, in 1926, observed that Bay Center always had been ‘an Indian village’.” (Chinook PF 1997, 6)*
- ▲ “The band has been identified as Indian by the Catholic, Methodist and Presbyterian churches for over a century.” (Grand Traverse Band PF 1979, 4)

- ▲ “. . . the church at Bradley which had been established in the 1880's continued to be designated as an Indian mission by the Methodist church.” (Match-e-be-nash-she-wish PF 1997, 4)
- ▼ Evidence which does NOT meet the criterion:
- ▼ “. . . the actual church records, which were available through 1918, did not identify the church as Indian, or its members as Indian.” (Ramapough FD 1996, 17)

Criterion 83.7(b)

The text of criterion 83.7(b):

“(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

(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. (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.

(2) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following: (i) More than 50 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 percent of the marriages in the group are between members of the group; (iii) At least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices; (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).” (59 FR 9293)

The definition in section 83.1:

“*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.” (59 FR 9293)

The text of section 83.8(d):

“To be acknowledged, a petitioner that can demonstrate previous Federal acknowledgment must show that: . . . (2) The group meets the requirements of the criterion in § 83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically.” (59 FR 9293)

The text of criterion (b) from 1978 to 1994:

“(b) Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.” (43 FR 39361)

Compilation of precedents:

Selections from petitions which have received a final determination are listed in roman type. *Selections from petitions which have received only a proposed finding are listed in italic type.*

For petitions which have received a final determination, selections have been made from the “Summary under the Criteria” or memorandum signed by the Assistant Secretary - Indian Affairs for both the final determination (FD) and the proposed finding (PF).

Selections include those which:

- ◇ Interpret the regulations;
- ▲ Provide examples of evidence which has been used to meet the criterion;
- ▼ Provide examples of evidence which has been cited as not meeting the criterion.

“a distinct community”:

- ◇ *social distinction*: “Demonstration of community under the regulations requires that the tribe be a social community which is distinct from other populations in the area.

This requires that they maintain a significant degree of social cohesion within the group and also that members maintain at least a minimal social distinction from non-members. Minimal social distinction means that they identify themselves as distinct and that they are identified as different by non-members. Evidence of more than a minimal distinction is not required to demonstrate that criterion (b) is met, as it can be met by directly demonstrating the existence of significant levels of social interaction and social relationships. Evidence of strong social distinctions, beyond a minimal degree of identification, such as patterns of social discrimination, is good evidence to demonstrate the existence of social cohesion within the group. Social distinction which is more than minimal may result from either externally imposed discrimination or internally defined and maintained social relationships and social pressures.” (Snoqualmie PF 1993, 21)

- ◇ *cultural differences*: “While maintenance of cultural differences is not a requirement of the acknowledgment regulations, nor a necessity to demonstrate a distinct community, the existence of such differences is, by its very nature, a good demonstration of significant social distinction. It is also strong evidence that there exists, and historically has existed, significant social cohesion as well as internal political processes which have acted to maintain distinct cultural elements within the community against pressures from non-Indian society to acculturate to non-Indian society.” (Snoqualmie PF 1993, 20)
- ◇ *cultural differences*: “To be meaningful as evidence concerning the maintenance of a cohesive, distinct social community, cultural differences should extend beyond purely symbolic expressions of identity. An example of the latter is the revival and performance of traditional style dances, in contexts such as parades or performances before non-members, as a means of affirming identity, but without the context of beliefs, worldview and supporting social and economic obligations that the dance had in its original cultural and social setting.” (Snoqualmie PF 1993, 20)
- ◇ *geographic distribution*: “The regulations require that a distinct social community be maintained . . . which is distinct from non-Indian populations in the area. They do not require that the group or substantial portions of it live in a geographic area which is exclusively or almost exclusively occupied by members, e.g., a village or neighborhood. Such exclusive geographic settlement is sufficient evidence in itself to demonstrate that a group constitutes a distinct social community which meets the requirements of criterion (b).” (Snoqualmie PF 1993, 8).
- ◇ *social institutions*: “Demonstration of social community does not require the demonstration of separate institutions, but such evidence can be used as strong support for the existence of social community.” (Mohegan FD 1994, 12)
- ◇ *membership requirements*: “A blood degree requirement for membership in a group establishes a requirement for the maintenance within the group as a whole of at least

a minimal degree of social ties, since it is a measure of how close kinship ties of a given individual are with other members of the tribe. The higher the blood degree of an individual, the higher the number of relatives that individual is likely to have within the tribe and the closer his relationship to them. While in individual instances a person of low blood degree may have established strong social ties within a group, and vice versa, blood degree is a valid measure of the overall social ties based on kinship within the membership of group. It indicates that membership requires more than simply showing descendancy, however remote, from the historic tribe. A membership criterion only requiring descendancy provides no evidence in itself for the maintenance of social community, although it does not rule out the possibility that a distinct social community has been maintained.” (Snoqualmie PF 1993, 13)

“from historical times until the present”:

- ◇ “The history and character of the family lines currently enrolled in the group indicate that they are of diverse origin and that the antecedent members of these families had been widely scattered and had had no significant association in the previous years. Thus, they do not appear to have been derived from a historical community or associated communities.” (Lower Muskogee Creek PF 1981, 3)

“Community must be understood in the context . . . of the group”:

- ◇ “Marriage outside the village and the tribe was the norm for the Snoqualmie and other Coast Salish, at least for the upper social class, creating a strong network of social and economic relationships across the region. Because of this, tribes in the Puget Sound area, including the Snoqualmie, traditionally were cohesive groupings within a broader network of kinship, social and economic relationships that made up Puget Sound Indian society. The social organization of the Coast Salish tribes, including the Snoqualmie, has retained much of this character up to the present. Evaluations under the acknowledgment regulations interpret the criteria concerning community and political influence in terms of the particular social organization and culture of the tribe in question, in this case that of the Coast Salish tribes of the Puget Sound area. This has been done throughout this evaluation and the accompanying technical reports.” (Snoqualmie PF 1993, 7)

“Significant social relationships”:

- ◇ “‘Social relationships’ refers to circumstances where the individuals within a group define themselves and are defined by others as connected with each other in a particular way, accompanied by role definitions, feelings of social attachment, obligations and expectations. Social relationships affect what interaction occurs and

social interactions help create some social relationships. Important social relationships in the Snoqualmie case include those of kinship and membership in the tribe itself. Strong social relationships can exist without being manifest in frequent day-to-day interaction.” (Snoqualmie PF 1993, 15-16)

“Significant rates of informal social interaction”:

- ◇ “‘Social interaction’ describes the actual occurrence of interaction between individuals such as at meetings, in conversation, during conflicts and the like.” (Snoqualmie PF 1993, 15)
- ◇ *social cohesion*: “This criterion does not require that social interaction and relationships be uniform within the membership, but allows for the common circumstance where the main body of a group has substantial social ties while a periphery of membership has a lesser degree of social connection.” (Snoqualmie PF 1993, 18).
- ◇ *geographic distribution*: “. . . the geographic distribution . . . is not close enough to raise any presumption of significant social interaction. However, this geographic distribution is close enough that a significant level of social interaction among most of the group is easily possible. It is close enough that it raises no question about conclusions, based on other, limited evidence, that social interaction and social ties are being maintained. A membership which was highly dispersed geographically would raise such questions and would require better and more detailed evidence to overcome a presumption against maintenance of community based on a high degree of geographic dispersion.” (Snoqualmie PF 1993, 11)

“A demonstration of historical political influence”:

- ◇ *political processes*: “Significant, noncoercive political processes such as those which occurred among the Snoqualmie in this period require and are based on the existence of social ties and communication in order for them to operate. Thus the existence of such political processes, where they are clearly established by the evidence, provides evidence for the existence of a social community. This evidence must be evaluated together with direct evidence concerning social community.” (Snoqualmie PF 1993, 14, 19)

Requirements of the criterion as modified by previous Federal acknowledgment:

- ◇ “. . . text. . . .” (... PF xxxx, p)

Evidence under 83.7(b)(1):

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ The Snoqualmie petitioner “maintained geographically distinct settlements, exclusively or almost exclusively occupied by members of the group. They maintained a distinct language and culture. There were extensive kinship ties within the group as well as within the larger network of Puget Sound Indian society. All of these characteristics are strong evidence to demonstrate the existence of the Snoqualmie as a distinct community under criterion (b).” (Snoqualmie PF 1993, 8)
- ▲ “The Snoqualmie clearly meet the minimal requirements of the regulations concerning distinction, identifying themselves and being identified by outsiders as Snoqualmie.” (Snoqualmie PF 1993, 21)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ “. . . text. . . .” (... PF xxxx, p)

(1)(i) Significant rates of marriage within the group:

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ “The Narragansetts have been a closely intermarried community for at least the last 150 years with innumerable connections between families. A comparison between 1880 and 1980 also shows that there has been a high degree of retention of family lines. The close intermarriage and the stability of composition, plus the geographic stability of the group reflect the maintenance of a socially distinct community.” (Narragansett PF 1982, 10)
- ▲ “The Snoqualmie were extensively married within their own community or within local Indian society as a whole. Marriage outside the tribe was as common as marriage inside, in the traditional manner of Snoqualmie and Coast Salish culture. There were only a few family lines, comprising a small minority of the group, that were derived from marriages of pioneer men with Indian women (in the 1850's and 1860's) whose descendants had married only non-Indians and had integrated socially into non-Indian society.” (Snoqualmie PF 1993, 9)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ *“Duwamish Indian women married pioneer men in the 1850's and 1860's. These women moved with their husbands during these two decades to non-Indian*

settlements scattered throughout Puget Sound. . . . [Some] second generation descendants married Indian spouses. This group of descendants moved primarily to the Muckleshoot reservation. . . .” Other second generation descendants married “descendants from similar backgrounds” or “non-Indians.” These “pioneer descendants’ comprise the ancestors of 93 percent of the petitioner’s current membership. While there is some evidence that . . . [these] pioneer descendants married and interacted with each other through the end of the first decade of the 20th century, there is no evidence that either such marriage patterns or other social interaction continue to the present day. Nor is there evidence that these descendants married or interacted with Duwamish Indians from the Lake Fork, Lake Washington, or the White and Green Rivers.” (Duwamish PF 1996, 6, 7)

(1)(ii) Significant social relationships connecting individual members:

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ “The out-migration was not random. Field data showed that it took place as a migration chain, in which neighbors and relatives who had moved invited other HPI members to follow and assisted them with housing and employment. A clear pattern emerged by which HPI members who left the core area settled in five specific towns or cities where, today, 20 or more other HPI members reside.” (Huron Potawatomi PF 1995, 11)
- ▲ [Prior to 1914] “There were extensive kinship ties within the [petitioning] group as well as within the larger network of Puget Sound Indian society. All of these characteristics are strong evidence to demonstrate the existence of the Snoqualmie as a distinct community under criterion (b).” “The Snoqualmie after 1914, although not having any separate settlements, were linked together by many kinship ties based on marriages existing between members in this period as well as kinship ties derived from marriages in the latter part of the 19th century.” (Snoqualmie PF 1993, 8, 8-9)
- ▲ “Marriage within the Snoqualmie was common until the 1920’s and Snoqualmie marriage within Puget Sound Indian society was common until the 1950’s. Thus there remained a considerable degree of close kinship ties within the membership between 1956 and 1981. Kinship and other social links with other Puget Sound Indians continued to be maintained by a substantial portion of the Snoqualmie. Thus there was probably a high degree of participation in the broad network of Puget Sound Indian society, based on individual kinship links.” (Snoqualmie PF 1993, 11-12)
- ▲ “Kinship ties between family groups rest on marriage ties between Snoqualmie lines created no later than the 1920’s, with some dating back to the last decades of the 19th century. [In the modern community] They are still a factor in social and political

relationships but are presumed to have diminished in significance in comparison with previous eras because they are no longer as close. Nonetheless, they provide significant supporting evidence for the more direct evidence that significant social relationships still exist within the Snoqualmie.” (Snoqualmie PF 1993, 17)

- ▲ “Strong evidence for the existence of significant social relationships among the Snoqualmie is provided by the fact that family line groupings are socially defined and known throughout the membership. Groups of related Snoqualmie are recognized by Snoqualmie in some, though not all, social and political contexts, and thus significantly define social relationships. These kinship groupings are well-known and are defined as the major families making up the tribe. They have a clear social definition which ascribes particular characteristics and histories to each family group. These social definitions carry with them a sense of a long history of interaction and relationships which are important to the Snoqualmie. Their existence indicates that regular social interaction has taken place, in order for that knowledge and history of relationships to exist. The available data concerning family groups and their social significance is particularly strong concerning how they manifest themselves in Snoqualmie political contexts. Conflicts between "families" are considered a prominent element of general council meetings, the major context in which political decisions are reached by the Snoqualmie.” (Snoqualmie PF 1993, 16)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ “. . . text. . . .” (... PF xxxx, p)

(1)(iii) **Significant rates of informal social interaction among the members:**

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ The petitioner’s “cemetery committee, which was formed after 1944, is functioning as part of the tribal council and has successfully enforced its rules regarding the burial of non-Mohegan there. This is a clear indicator that they know who their group members are.” (Mohegan FD 1994, 15)
- ▲ “The available data demonstrates that most of the present Snoqualmie members have substantial social ties with each other. For a portion of the membership, approximately 15 percent, adequate information is lacking to demonstrate the extent of social ties that may exist, although there was some limited evidence that they have maintained, at least until recently, some social relationships with the main families. Another portion of the membership has been two family lines which joined within the past ten years. These comprise approximately 15 percent of the membership list reviewed for this finding. . . . The available information concerning these lines does not indicate that they presently maintain an active social or political relationship with

the rest of the Snoqualmie. The proportion of Snoqualmie that have not demonstrated at least some social ties is not large enough to conclude, given the other evidence cited below, that the present-day Snoqualmie do not meet the requirements for community, i.e., that significant interaction and social relationships exist broadly among the membership.” (Snoqualmie PF 1993, 18)

- ▲ “New evidence presented since the 1989 PF demonstrates that two institutions that were important to the Mohegan before 1941 have continued to be important to them through the present. These two institutions are the Mohegan Congregational Church and the Mohegan burial grounds. Social and political events involving these institutions provide limited evidence of social interaction for the period of diminished activities from 1941 to 1966.” (Mohegan FD 1994, 12)
- ▲ “Tribal members meet regularly for social functions and tribal government purposes. A substantial number of the band attend the same church weekly.” (Grand Traverse Band PF 1979, 5)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ *“There is no evidence that the petitioner’s ancestors interacted with each other outside the annual meetings of the general membership, or that the present membership has done so to any significant degree from 1925 to the present.” (Duwamish PF 1996, 9)*
- ▼ *“The petition documentation includes references to the petitioner’s participation, as an organization, in commemorative events and pow-wows. . . . participation has been only by a few individual officers of the organization. Thus, participation by the organization’s leadership in pow-wows and other commemorative events is not evidence of the maintenance of internal social cohesion.” (Duwamish PF 1996, 10)*

(1)(iv) A significant degree of shared or cooperative labor or economic activity:

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ “Leader Levi Pamp organized work teams of adult men who pruned orchard trees, picked fruit, harvested corn, and performed other agricultural functions on nearby non-Indian farms. Women and children grouped together to pick berries, manufacture baskets for commercial sale, and work in small garden plots, indicating the existence of community under 83.7(b)(1)(iv).” (Huron Potawatomi PF 1995, 11)

▼ Evidence which has NOT been accepted under the criterion:

- ▼ *“Besides annual meetings that occurred during their childhoods in the 1940’s and 1950’s, the only other activities recalled by today’s members of the petitioner were shared gift giving, cooperative hunting, and summertime berry picking. These activities took place, however, among brothers, sisters, aunts, uncles, nieces, and nephews, not among members outside of their own extended families.” (Duwamish PF 1996, 9)*

(1)(v) **Strong patterns of discrimination or social distinctions by non-members:**

▲ Evidence which has been ACCEPTED in combination with other evidence:

- ▲ “The local population considered the Choctaw to be different from the rest of the population and treated them accordingly. . . . When the Choctaw arrived in town as a group on a Saturday night, they were often subject to harassment from the general population and in particular from the town marshal.” (Jena Choctaw PF 1994, 4)
- ▲ “The families in these hamlets became tightly intermarried and gradually came to be distinguished socially from other descendants of Creek half-blood families in the same area, who were no longer socially identified as Indian. . . . Around 1900, social distinction of Indians developed into a system of segregated Indian schools and churches, based in the Indian settlements.” (Poarch Creek PF 1983, 4)
- ▲ “Peshawbestown is viewed by band members and nearby communities as a distinct Indian community and is referred to as such in newspapers and county documents. State road signs mark the boundaries of the community.” (Grand Traverse Band PF 1979, 5)

▼ Evidence which has NOT been accepted under the criterion:

- ▼ “What evidence is available [for the modern community] does not indicate that there are currently strong social distinctions made by non-Indians. Snoqualmie interact extensively with non-Indians and in many contexts. There was no direct evidence to demonstrate whether there were differences in the degree and kind of interaction with Indians versus with non-Indians. Many Snoqualmie attend non-Indian churches, but a significant minority still participate in Indian religions. There are no barriers to intermarriage from the point of view of non-Indians nor do the Snoqualmie presently exhibit a preference for marriage with Indians or place a lower value on marrying a non-Indian. There are no current marriages between two Snoqualmie.” (Snoqualmie PF 1993, 21-22)

(1)(vi) Shared sacred or secular ritual activity encompassing most of the group:

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ “Several tribal institutions indicated the degree of tribal cohesion present among the Narragansetts and the strength of the ethnic boundary. Two of the most important are the Narragansett Indian Church and the annual August meeting. The Narragansett Indian Church, and the church organization, has been a significant community institution since around 1746. The church was formed as an independent community-controlled institution by members of the Narragansett community.” (Narragansett PF 1982, 11)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ “. . . text. . . .” (... PF xxxx, p)

(1)(vii) Cultural patterns shared among a significant portion of the group:

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ “The Choctaw language was used almost exclusively by members of this Indian community until the late 1930’s. The use of the Choctaw language continued in many households until the late 1950’s, sustained in part by the high degree of in-group marriage.” (Jena Choctaw FD 1995, 60 FR 28480)
- ▲ “There is strong evidence that a substantial portion of the Snoqualmie maintained the traditional culture in this period [1914-1956] or were members of the Indian Shaker church, i.e., otherwise maintained a distinct culture from non-Indians. A substantial proportion of the membership continued to speak Snoqualmie, although reportedly the generation born in the 1920’s was the last generation among which the language use was widespread. Some traditional longhouse religion ceremonies were still held in the 1930’s, at Lake Sammamish, and there is also good evidence that some individuals still sought traditional spirit powers. This level of distinct culture includes religion and language, fundamental and essential parts of the culture, and is thus strong evidence in itself that the Snoqualmie were a distinct social group.” (Snoqualmie PF 1993, 9-10)
- ▲ “[After 1956] A significant portion of the membership maintained cultural differences from non-Indians. The clearest evidence of this is Snoqualmie participation in the Shaker Church, the Indian Smokehouse religion (a modified revival of traditional religion) and probably some continued traditional religious beliefs among the oldest generation. The Snoqualmie participating in these religions were probably a significant minority of the tribe, although detailed evidence was not

available. There was no longer a separate congregation of Snoqualmie Shakers after approximately the 1940's. The Snoqualmie instead participated in intertribal Shaker congregations. The number of individuals speaking the Snoqualmie language continued to decline as the older Snoqualmie died off." (Snoqualmie PF 1993, 13)

- ▲ "There is good evidence that a substantial minority of the Snoqualmie maintain significant cultural differences from non-Indians, and some evidence that a larger proportion maintains other, more limited cultural differences. There is good evidence that such individuals have high prestige within the Snoqualmie. Approximately 15 percent of the membership participates in an Indian religion. Further, participants are drawn from several of the family lines, i.e., important cultural differences are not narrowly confined to a small portion of the membership. Cultural differences of this nature are particularly strong evidence because religion is a fundamental part of a culture's belief system. These are very strong, significant differences, even though only a minority of the population currently maintains them." (Snoqualmie PF 1993, 19-20)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ *"The petition documentation includes references to the petitioner's participation, as an organization, in commemorative events and pow-wows. Participation in public events such as these, however, does not clearly function as more than merely symbolic identification of the group or organization as Indian. It is not evidence in itself of actual differences in cultural beliefs or social organization." (Duwamish PF 1996, 10)*

(1)(viii) **A named, collective Indian identity continuously over 50 years:**

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ "... text. . . ." (... PF xxxx, p)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ "The group holds that its ancestors managed to escape forced removal from Alabama by hiding in a cave in Covington county. Federal census records indicate that most of the group's ancestors did not take up residence in Alabama until long after the period of Creek removal (1827-1837), and that none of the primary families were living in Covington County prior to the 1880s. While Federal census and county records show there has been some residential clustering and interaction among the principal families in the group from 1850 to the present at various and somewhat scattered locations in southeastern Alabama, these family enclaves have never been regarded by others as being American Indian communities. We conclude that the MaChis

Lower Alabama Creek Tribe does not meet the criterion 25 CFR 83.7(b).” (MaChis Creek PF 1987, 3)

(1)(ix) **A demonstration of historical political influence under § 83.7(c):**

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ “The Snoqualmie between 1914 and 1956 maintained strong processes through which political influence was exercised. This included a chief whose influence affected many areas of members’ lives. Political influence within the group which is as strong as this requires, and indicates the existence of, a substantial degree of social relationships between the members. Thus the demonstration of political processes which are this strong is good supporting evidence of the existence of a social community.” (Snoqualmie PF 1993, 11)
- ▲ “There is clear evidence, discussed in more detail under criterion (c), that throughout the 1970’s there were political activities within the Snoqualmie whose nature indicates they were based on an underlying social community. Political activities brought forth different views concerning changes in the form of Snoqualmie government and the addition of programs or change in focus of programs. Opinion was divided concerning maintaining traditional forms of political process versus changing them. In addition, there were differences over how to address the question of regaining fishing rights. Differences over some issues represented generational conflicts, which were evident throughout the decade as well as afterwards. These were consistent, complex differences, at times allying the oldest and youngest generation against the middle generation. These political activities provide evidence for community because they involve the mobilization of the members and expressions of differences of opinion along generational and other lines concerning a wide range of issues. They indicate social divisions along the lines of these opinions.” (Snoqualmie PF 1993, 14)
- ▲ “Aspects of present-day Snoqualmie political process which most clearly indicate the existence of supporting social processes include the expression of differences of opinion along generational and other lines concerning such issues as fishing rights and the form of leadership and the mobilization of opinion to seek the ouster of a chairman whose behavior was not acceptable.” (Snoqualmie PF 1993, 18)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ “. . . text. . . .” (... PF xxxx, p)

(1)(+) **Other evidence that the petitioner meets the definition of *community*:**▲ Evidence which has been ACCEPTED in combination with other evidence:

- ▲ *Social institutions*: “The same separate Mohegan institutions that have been important to the Mohegan since the 1800’s are still supported by the majority of the Mohegan. The Mohegan Congregational Church continues to be used by the Mohegan for religious, social, and political meetings. . . . the church’s leadership is Mohegan, and the wide majority of people who attend are Mohegan or Mohegan marital kin.” (Mohegan FD 1994, 15)
- ▲ *Social institutions*: “The group maintained distinct community social institutions and practices. As late as the 1930’s, these institutions included the traditional funeral practices and mourning periods of the Choctaws. Group activities included maintenance of the White Rock Indian Cemetery. The cemetery . . . is still used exclusively by the tribe today.” (Jena Choctaw PF 1994, 4)
- ▲ *Social institutions*: “Although there are no longer segregated schools, there are still several churches which are exclusively or largely Indian. The three settlements form a clearly identifiable “core” community at Poarch.” (Poarch Creek PF 1983, 4)
- ▲ *Geographical concentration*: “The Snoqualmie throughout the post -treaty period and into the first decade of the 20th century continued to be a highly distinct social community. They maintained geographically distinct settlements, exclusively or almost exclusively occupied by members of the group.” (Snoqualmie PF 1993, 8)
- ▲ *Geographical concentration*: “The Poarch Creeks have remained a very cohesive group to the present, with definite social distinctions between them and others in the area. Two of the nineteenth-century hamlets at Head of Perdido and Hog Fork, still exist, as does another, Poarch Switch, which formed in the 1920’s from residents of the earlier settlements.” (Poarch Creek PF 1983, 4)
- ▲ *Geographical concentration*: “Almost all of those persons listed in the ‘detrivialization rolls’ of 1880 and 1881 of individuals maintaining significant tribal ties were resident at Charlestown or in these neighboring areas. Currently, most tribal members reside in Washington County and the community of Charlestown township serves as the core of the contemporary tribe. Emigration from this area continues to be limited.” (Narragansett PF 1982, 9)
- ▲ *Geographical concentration*: “. . . a substantial number of its members live within a proximity which allows the group to meet, associate, and conduct tribal business regularly. At least a third of the current adult membership lives in Peshawbestown or in other traditional areas on the Leelanau Peninsula, and over half (54%) live within the Grand Traverse Bay area.” (Grand Traverse Band PF 1979, 5)

- ▲ *Membership requirements:* “The blood degree of the Snoqualmie membership as a whole provides evidence of maintenance of a community. A blood degree requirement for membership in a group establishes a requirement for the maintenance within the group as a whole of at least a minimal degree of social ties, since it is a measure of how close kinship ties of a given individual are with other members of the tribe.” (Snoqualmie PF 1993, 13)
- ▲ *Membership requirements:* “Through their membership requirements, the Snoqualmie maintain clear social boundaries on their membership which make them distinct from non-Indians. Membership requires more than simple demonstration of Indian ancestry from the tribe, however remote that ancestry might be. Thus membership is based on members making a significant social distinction between themselves and non-members.” (Snoqualmie PF 1993, 21)
- ▲ *Knowledgeable outside observers:* “Additional evidence that the Snoqualmie after 1914 continued to form a distinct social community is that knowledgeable outside observers characterized the Snoqualmie in various ways as a distinct social group or tribe. . . . [Indian Service agent] Roblin, based on extensive acquaintance with non-reservation populations which were Indian or of Indian descent, clearly distinguishes between the character of the Snoqualmie as having maintained a distinct social group . . . in contrast to other populations which he characterized as individuals of Indian descent who had socially and culturally assimilated into the non-Indian population. Observations by Indian agents dealing with the Snoqualmie that they were a distinct social group or tribe appeared in the record as late as 1953, when the Tulalip agency observed that assimilation of ‘this band has not been very rapid.’ These observations support and confirm the substantial direct evidence of the maintenance of a distinct social community.” (Snoqualmie PF 1993, 10)
- ▼ Evidence which has NOT been accepted under the criterion:
 - ▼ *Geographical concentration:* “Evidence that a majority of the petitioner’s membership lives in a two- or three-county area which has a higher percentage of non-Indians than Indians, and in which the Indian descendants are widely dispersed among the non-Indian population, does not fulfill the requirements of the criterion.” (Chinook PF 1997, 20)
 - ▼ *Geographical concentration:* “There is no evidence of the existence of a social core among the petitioner’s current members, either as a network of interacting individuals and families or as a geographically-defined community. . . . Even among the 10 percent of the members who reside in Seattle and Bremerton, the highly urbanized areas surrounding Puget Sound, there are no distinct settlements or areas exclusively occupied by members. In short, there are no geographical concentrations of members that could in themselves imply the existence of social interaction among members. Thus, geographical information alone provides no evidence that shows the

*significant social interaction required to demonstrate the existence of a community.”
(Duwamish PF 1996, 8-9)*

“Sufficient Evidence” under 83.7(b)(2):

(2)(i) 50 percent of the members reside in a geographical area:

▲ Evidence which MEETS the criterion at a specific time:

▲ “. . . text. . . .” (... PF xxxx, p)

▼ Evidence which does NOT meet the criterion:

▼ “. . . text. . . .” (... PF xxxx, p)

(2)(ii) 50 percent of the marriages in the group are between members of the group:

▲ Evidence which MEETS the criterion at a specific time:

▲ “In the case of the Jena Band of Choctaw Indians, 85% of the marriages of members were with other members of the group from 1820 until 1950. . . . After 1950, essentially all new marriages involved a non-Indian spouse. It would be a decade, however, before these new marriages to non-Indians outnumbered continuing marriages between Choctaws. Until 1959, 50% of the 14 marriages within the community had both Choctaw husbands and wives. . . . Therefore, the petitioner meets the criterion for community through 1959 with high evidence based on its continuing high degree of in-group marriages.” (Jena Choctaw PF 1994, 3)

▼ Evidence which does NOT meet the criterion:

▼ “. . . text. . . .” (... PF xxxx, p)

(2)(iii) 50 percent of the group members maintain distinct cultural patterns:

▲ Evidence which MEETS the criterion at a specific time:

▲ “. . . text. . . .” (... PF xxxx, p)

▼ Evidence which does NOT meet the criterion:

- ▼ “. . . text. . . .” (... PF xxxx, p)

(2)(iv) **There are distinct community social institutions:**

▲ Evidence which MEETS the criterion at a specific time:

- ▲ “. . . text. . . .” (... PF xxxx, p)

▼ Evidence which does NOT meet the criterion:

- ▼ “. . . text. . . .” (... PF xxxx, p)

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

▲ Evidence which MEETS the criterion at a specific time:

- ▲ “. . . text. . . .” (... PF xxxx, p)

▼ Evidence which does NOT meet the criterion:

- ▼ “. . . text. . . .” (... PF xxxx, p)

Criterion 83.7(c)

The text of criterion 83.7(c):

“(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

(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.

(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.” (59 FR 9293)

The definition in section 83.1:

“*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.” (59 FR 9293)

The text of section 83.8(d):

“To be acknowledged, a petitioner that can demonstrate previous Federal acknowledgment must show that: . . . (3) The group meets the requirements of the criterion in § 83.7(c) 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).” (59 FR 9293)

The text of criterion (c) from 1978 to 1994:

“(c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present.” (43 FR 39361)

Compilation of precedents:

Selections from petitions which have received a final determination are listed in roman type. *Selections from petitions which have received only a proposed finding are listed in italic type.*

For petitions which have received a final determination, selections have been made from the “Summary under the Criteria” or memorandum signed by the Assistant Secretary - Indian Affairs for both the final determination (FD) and the proposed finding (PF).

Selections include those which:

- ◇ Interpret the regulations;
- ▲ Provide examples of evidence which has been used to meet the criterion;
- ▼ Provide examples of evidence which has been cited as not meeting the criterion.

“political influence or authority over its members”:

- ◇ “Economic organization is strong evidence of significant political influence and leadership because it affects a major part of the lives of group members in ways which are intrinsically important.” (Snoqualmie PF 1993, 25)

“an autonomous entity from historical times until the present”:

- ◇ “The Grand Traverse Band of Ottawa and Chippewa Indians is the modern successor of several bands of Ottawas and Chippewas which have a documented continuous existence in the Grand Traverse Bay area of Michigan since as early as 1675. Evidence indicates these bands, and the subsequent combined band, have existed autonomously since first contact. . . .” “The Grand Traverse Band is an amalgamation of the aboriginal bands of Ottawas and Chippewas living in the Grand Traverse Bay area which initially cooperated in a loosely organized alliance and which can be considered to have become amalgamated into a single entity by the time of the Durant roll in 1908.” (Grand Traverse Band PF 1979, 1, 6)
- ◇ “The Jamestown Clallam Band and the communities from which it was formed were autonomous political units within the Clallam Tribe. The formation of the community in 1874 was through the efforts of the antecedent Clallam communities in the Dungeness area.” (Jamestown Clallam PF 1980, 3)

“a bilateral political relationship”:

- ◇ “This [example] illustrates the existence of the flow of political opinion and thus a bilateral political relationship, a requirement of criterion (c).” (Snoqualmie PF 1993, 29)

Requirements of the criterion as modified by previous Federal acknowledgment:

- ◇ “. . . text. . . .” (... PF xxxx, p)

Evidence under 83.7(c)(1):**“influencing or controlling the behavior of its members” (§83.1):**

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ The Band has “a decision-making process . . . which has and continues to effectively resolve internal problems. . . .” (Grand Traverse Band PF 1979, 6)
- ▲ “[Chief] Kanim's personal leadership also took the form of counseling members and settling disputes between individual Snoqualmie.” (Snoqualmie PF 1993, 25)

▼ Evidence which has NOT been accepted under the criterion:

- ▼ “. . . text. . . .” (... PF xxxx, p)

“making decisions for the group which substantially affect its members” (§83.1):

▲ Evidence which has been ACCEPTED in combination with other evidence:

- ▲ “Since 1874, when the Jamestown community was formed, there has been a definite leadership which was chosen by the community and acknowledged by the Government. This consisted initially of a chief and an informal group of leading men and later, after about 1910, of an elected chairman and council. These functioned on an essentially continuous basis until a written, governing document was drawn up in 1975.” (Jamestown Clallam PF 1980, 3)
- ▲ “The band's non-profit corporation, Leelanau Indians, Incorporated, is presently functioning as a tribal government until a constitutional government is installed. The corporation is administering a Federal grant for the bands; is administering the lot assignment in Peshawbestown; and is performing other substantial government functions including involvement in litigation to protect the band's fishing rights.” (Grand Traverse PF 1979, 6)
- ▲ “Between 1940 and 1951, the church was the primary organizational focus, meeting regularly, holding regular services, controlling the annual meeting and its funding and organization, and playing the major role in the building of a community meeting place known as the longhouse. . . . It also took care of funerals and helped the sick.” (Narragansett PF 1982, 14)
- ▲ In the early 1900's, elected chiefs “apportioned land among members. . . . The apportionment of the land later became a function carried out by community meeting.” (Tunica-Biloxi PF 1980, 4)

▼ Evidence which has NOT been accepted under the criterion:

- ▼ “. . . text. . . .” (... PF xxxx, p)

“representing the group in dealing with outsiders” (§83.1):

▲ Evidence which has been ACCEPTED in combination with other evidence:

- ▲ The Band has “a decision-making process . . . [which] promote[s] the band's interests outside the Indian community.” (Grand Traverse Band PF 1979, 6)

- ▲ Chief Kanim “also dealt with external authorities concerning the welfare of individuals, interceding for those in legal trouble or needing economic assistance such as employment.” (Snoqualmie PF 1993, 25)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ “. . . text. . . .” (... PF xxxx, p)

(1)(i) **The group is able to mobilize members and resources for group purposes:**

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ “Coordinated group actions include the pooling of resources for the original purchase of land when the community was formed, the building of a church and school building, the management of the group's crab fishing . . . The group currently operates the community water system. . . .” (Jamestown Clallam PF 1980, 4)
- ▲ “Snoqualmie leaders led Snoqualmie hop-picking crews. They thus organized a major form of economic activity important to the membership. . . .” (Snoqualmie PF 1993, 24)
- ▲ “The most clearcut tribal effort came in 1921, when Daniel Sekater held a large tribal meeting to protest a threat to drain the cedar swamp on the former reservation. His announcement described the meeting as ‘called by the council of the tribe’. . . . No definite evidence of any follow-up was found, although the swamp was never drained.” (Naragansett PF 1982, 13)
- ▲ “The group has acted as a community to defend its land. . . .” (Tunica-Biloxi PF 1980, 4). *Note:* The context for this conclusion was provided under in the Historical Technical Report: “In 1826 and in the 1840's the Tunicas acted as a group to prevent encroachment on land held by them in common.” (Tunica-Biloxi PF 1980, Hist. T.R., 1)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ *“From the 1940's through the mid-1970's, the Duwamish Tribal Organization's members took no collective action in commercial fishing or in fishing rights issues. Individual members . . . reported that they conducted commercial fishing, as individuals, together with Indians living on reservations. There is no evidence, however, that the Duwamish Tribal Organization's council regulated or supported these activities in any way. There is also no evidence that commercial fishing was an issue of importance among a significant portion of the membership at this time.” (Duwamish PF 1996, 16)*

(1)(ii) Members consider issues acted upon by group leaders to be of importance:

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ “Gaining land for the Snoqualmie to settle upon and the maintenance of fishing and hunting rights under the treaties were two issues that [Chief] Kanim spoke powerfully about. . . . Hunting and fishing rights were of great importance because the Snoqualmie hunted and fished extensively for subsistence purposes. Access to traditional hunting and fishing grounds was becoming increasingly limited because of competition with non-Indians and increasing restrictive game and fish laws. Land and hunting and fishing rights were thus clearly issues of significance and concern to the Snoqualmie as a whole.” (Snoqualmie PF 1993, 25)
- ▲ “There is good evidence that public opinion among the Snoqualmie up until the present has remained strong concerning the loss of fishing rights. Thus, there is good evidence that fishing rights is a political issue of substantial significance and concern among a wide portion of the Snoqualmie because the effective loss of access to these rights is recent and there is continued widespread interest among the members.” (Snoqualmie PF 1993, 30)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ “. . . text. . . .” (... PF xxxx, p)

(1)(iii) There is widespread involvement in political processes by members:

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ From at least the 1960's until the present, “The general membership meeting (general council) . . . is the final arbiter of political issues and conflicts. The general council meeting provides clear evidence that there is a bilateral political relationship between Snoqualmie members and the tribe. More particularly, it connects the tribal council and the chairmen to the membership, both by electing them and by reviewing actions which are considered critical or controversial. The expectation and experience of Snoqualmic leaders is that the general council is a forum where public opinion is brought to bear.” “Attendance at [general council] meetings ranges from 10 to 35 percent of the membership, depending in part on the importance of the issues to be discussed. The fact that not all adult Snoqualmie can be shown to be directly participating in the general councils does not conflict with this conclusion, given that a significant portion of the membership participates and that participation is broadly distributed among the membership.” (Snoqualmic PF 1993, 28-29, 29)

- ▲ “Between 1914 and 1916. . . . Kanim was sought out by the Snoqualmie to be leader and he acquired political influence over the course of several years before being put into office. Kanim was sought as chief because he was from the chiefly line of Pat Kanim and was articulate and knowledgeable about Snoqualmie traditional culture. The process of his becoming chief is in itself evidence of significant political processes because it required a major mobilization of community opinion and the existence of shared community values concerning leadership.” (Snoqualmie PF 1993, 24)
- ▲ Between 1914 and 1916, “The second stage of the reorganization was the institution of a formal governing council, with a chairman and council members elected by the members, and a general council of the members as a whole. These changes were made after a lengthy political process of meetings and discussion among a substantial portion of the membership, taking place over two weeks. They are thus in themselves strong evidence for the exercise of political influence within the Snoqualmie.” (Snoqualmie PF 1993, 24)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ “. . . text. . . .” (... PF xxxx, p)

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

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ “The political system was supported by the existence of a definite, cohesive group.” (Jamestown Clallam PF 1980, 3)
- ▲ “The Tunicas have been, historically, a cohesive and distinct group, acting together and having authority over each other within the context of the group.” (Tunica-Biloxi PF 1980, Hist. T.R., 1)
- ▼ Evidence which has NOT been accepted under the criterion:
- ▼ “. . . text. . . .” (... PF xxxx, p)

(1)(v) Internal conflicts show controversy over group goals or decisions:

- ▲ Evidence which has been ACCEPTED in combination with other evidence:
- ▲ “Generational conflicts over political issues have been evident in Snoqualmie political processes since the 1968 election. . . . Several examples were evident during

the 1970's, involving representation on the council, the form of governance, and the approach to seeking restoration of fishing rights. These conflicts have taken a form which indicates that a broad spectrum of public opinion among the Snoqualmie is involved rather than just the actions and opinions of particular individuals.”
(Snoqualmie PF 1993, 29)

- ▲ “The community has suffered from a severe factional division, partly corresponding to family and tribal lines, since the 1920's. The conflict appears to be one within the political system of a community rather than a break in the community. In the past, orderly transitions of chieftainship and also the appointment at times of a subchief, have been used to deal with the factional problem.” (Tunica-Biloxi PF 1980, Anthro. T.R., 3)

▼ Evidence which has NOT been accepted under the criterion:

- ▼ “. . . text. . . .” (... PF xxxx, p)

(1)(+) Other evidence that the petitioner meets the definition of political influence:

▲ Evidence which has been ACCEPTED in combination with other evidence:

- ▲ *Knowledgeable external identification:* “Strong evidence for political process among the Snoqualmie during Jerry Kanim's tenure is that external authorities recognized his political influence. The BIA, which dealt with the Snoqualmie as a recognized tribe in this period, consistently recognized and dealt with Kanim as a leader who represented the concerns and interests of the Snoqualmie members and exercised influence among those members. These external authorities were knowledgeable about the Snoqualmie tribe and dealt with it regularly on a variety of matters.”
(Snoqualmie PF 1993, 26)

▼ Evidence which has NOT been accepted under the criterion:

- ▼ “. . . text. . . .” (... PF xxxx, p)

“Sufficient Evidence” under 83.7(c)(2):

(2)(i) Allocates group resources on a consistent basis:

▲ Evidence which MEETS the criterion at a specific time:

- ▲ “. . . text. . . .” (... PF xxxx, p)

▼ Evidence which does NOT meet the criterion:

- ▼ “. . . text. . . .” (... PF xxxx, p)

(2)(ii) **Settles disputes between members on a regular basis:**

▲ Evidence which MEETS the criterion at a specific time:

- ▲ “. . . text. . . .” (... PF xxxx, p)

▼ Evidence which does NOT meet the criterion:

- ▼ “. . . text. . . .” (... PF xxxx, p)

(2)(iii) **Exerts strong influence on the behavior of individual members:**

▲ Evidence which MEETS the criterion at a specific time:

- ▲ “. . . text. . . .” (... PF xxxx, p)

▼ Evidence which does NOT meet the criterion:

- ▼ “. . . text. . . .” (... PF xxxx, p)

(2)(iv) **Organizes or influences economic subsistence activities among members:**

▲ Evidence which MEETS the criterion at a specific time:

- ▲ “. . . text. . . .” (... PF xxxx, p)

▼ Evidence which does NOT meet the criterion:

- ▼ “. . . text. . . .” (... PF xxxx, p)

“sufficient evidence” under 83.7(c)(3):

(3) A group that has met § 83.7(b)(2) at a given time meets this criterion at that time:

- ▲ Evidence which MEETS the criterion at a specific time:
- ▲ “. . . text. . . .” (... PF xxxx, p)

Criterion 83.7(d)

The text of criterion 83.7(d):

“(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.” (59 FR 9293)

The text of section 83.8(d):

“(4) The group meets the requirements of the criteria in paragraphs 83.7(d) through (g).” (59 FR 9293)

The text of criterion (d) from 1978 to 1994:

“(d) A copy of the group’s present governing document, or in the absence of a written document, a statement describing in full the membership criteria and the procedures through which the group currently governs its affairs and its members.” (43 FR 39361)

Compilation of precedents:

Selections from petitions which have received a final determination are listed in roman type. *Selections from petitions which have received only a proposed finding are listed in italic type.*

For petitions which have received a final determination, selections have been made from the “Summary under the Criteria” or memorandum signed by the Assistant Secretary - Indian Affairs for both the final determination (FD) and the proposed finding (PF).

Selections include those which:

- ◇ Interpret the regulations;
- ▲ Provide examples of evidence which has been used to meet the criterion;
- ▼ Provide examples of evidence which has been cited as not meeting the criterion.

The group’s “present governing document”:

- ◇ “Criterion d only requires a description of the petitioning group’s governing processes and membership criteria.” (San Juan Paiute FD 1989, 10)

- ◇ “. . . other group documents, verbal accounts by members of the group, and observations by Federal Acknowledgment staff researchers, indicate that the way in which the group functions, in fact, substantially differs from the requirements in the [petitioner’s] constitution and corporate documents. Notwithstanding this, we conclude that the group technically meets the criteria [sic]. . . .” (Lower Muskogee Creek PF 1981, 3)

The group’s “membership criteria”:

- ◇ “The Federal regulations for acknowledgment do not compel a petitioner to meet prescribed standards regarding membership or to follow its own membership criteria and governing procedures.” (Ramapough FD 1996, 27)
- ◇ “Although it is not clear how the membership criteria is [sic] applied, we conclude that technically the petitioner meets criterion d.” (Ramapough PF 1993, 18).
- ◇ “While the group has technically complied with 83.7(d) of the regulations by providing a current governing document which describes membership criteria, it must be pointed out that the Samish organization has not adequately explained how eligibility is in fact being determined, given the fact that rolls cited do not exist and tribal elders are no longer constitutionally required to certify membership eligibility.” (Samish PF 1982, 19)
- ◇ The petitioner “indicates that affairs and membership of the group are currently governed pursuant to a constitution and by-laws submitted to the Bureau. This document was furnished with the petition. It does not, however, describe the membership criteria. . . . Notwithstanding this, we conclude the group has technically met the criteria [sic]. . . .” (Munsee-Delaware PF 1982, 4)

“In the absence of a written document”:

- ◇ “The San Juan Paiute Southern Tribe has no written governing document.” “The San Juan Southern Paiute petition has presented an adequately complete and accurate description of its present governing practices and membership criteria. We conclude therefore that the San Juan Southern Paiute Tribe meets the requirements of criterion 83.7(d).” (San Juan Paiute FD 1989, 10) “The petitioner has provided detailed statements and evidence concerning how the current group governs its affairs and the criteria for membership.” (San Juan Paiute PF 1987, xii)

Evidence:

- ▲ Evidence which MEETS the criterion:
- ▲ “The group has furnished a copy of its constitution and by-laws, . . . which includes a statement of its membership requirements and tribal governing procedures.” (Jamestown Clallam PF 1980, 4)
- ▲ “Tribal affairs and membership are currently governed pursuant to the Articles of Incorporation of the Tunica-Biloxi Indians of Louisiana. . . . This document was furnished with the petition.” (Tunica-Biloxi PF 1980, 4)
- ▲ “Copies of the Corporate Charter of Leelanau Indians, Inc. and the proposed constitution were included with the petition for Federal acknowledgment. Both include statements describing in full the membership criteria and the governing procedures. . . . The corporation, in fact, . . . administers the band’s affairs based on the membership criteria in the proposed constitution.” (Grand Traverse Band PF 1979, 6)
- ▲ “. . . a statement concerning membership submitted with the petition provides a more accurate description of the current membership [than does the group’s governing document].” (MaChis Creek PF 1987, 4)
- ▲ The petitioner “has submitted the corporate charter of the Narragansett Indian Tribe, Incorporated, dated December 4, 1934, as well as a set of bylaws evidently adopted at the same time, which are its current governing documents. . . . A [1979] memorandum . . . [from] the elected chief, stated the requirements for full membership in the Narragansett Tribe, Inc., as descent from the ‘Detribalization Rolls of 1880-1884.’ This is a revision of the membership provision in the original bylaws of the corporation. . . . The standards in the memorandum were, as far as could be determined, used to compile the tribal membership list and are the current tribal membership requirement.” (Narragansett PF 1982, 15)
- ▲ “. . . an additional ratified document. . . . contradicts the UHN [United Houma Nation, Inc.] constitution.” (Houma PF 1994, 24)
- ▲ “We conclude that the KIN [Kaweah Indian Nation, Inc.] has met the criterion in 83.7(d) by the submission of several governing documents. We note, however, that the document submitted by Webber is virtually the same document that he submitted when he petitioned under the name of the United Lumbee Nation of North Carolina and America, Inc.” (Kaweah PF 1984, 3)

- ▲ “Changes in the governing documents, at least since 1983, suggest that the council has added as well as deleted items affecting eligibility for membership without consulting the membership.” (Miami PF 1990, 14)
- ▲ “No copy of the by-laws referred to in the 1979 constitution was received or located: BAR’s review of HPI [Huron Potawatomi Inc.] minutes led to the conclusion that no by-laws were ever formally adopted.” (Huron Potawatomi PF 1995, 20)
- ▼ Evidence which does NOT meet the criterion:

No petitioner has failed to meet criterion (d).

Criterion 83.7(e)

The text of criterion 83.7(e):

“(e) 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) 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.” (59 FR 9293)

The text of section 83.8(d):

“(4) The group meets the requirements of the criteria in paragraphs 83.7(d) through (g).” (59 FR 9293)

The text of criterion (e) from 1978 to 1994:

“(e) A list of all known current members of the group and a copy of each available former list of members based on the tribe’s own defined criteria. The membership must consist of individuals who have established, using evidence acceptable to the Secretary, descendancy from a tribe which existed historically or from historical tribes which combined and functioned as a single autonomous entity. Evidence acceptable to the Secretary of tribal membership for this purpose includes but is not limited to:

(1) Descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes; (2) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being an Indian descendant and a member of the petitioning group; (3) Church, school, and other similar enrollment records indicating the person as being a member of the petitioning entity; (4) Affidavits of recognition by tribal elders, leaders, or the tribal governing body, as being an Indian descendant of the tribe and a member of the petitioning entity; (5) Other records or evidence identifying the person as a member of the petitioning entity.” (43 FR 39361)

Compilation of precedents:

Selections from petitions which have received a final determination are listed in roman type. *Selections from petitions which have received only a proposed finding are listed in italic type.*

For petitions which have received a final determination, selections have been made from the “Summary under the Criteria” or memorandum signed by the Assistant Secretary - Indian Affairs for both the final determination (FD) and the proposed finding (PF).

Selections include those which:

- ◇ Interpret the regulations;
- ▲ Provide examples of evidence which has been used to meet the criterion;
- ▼ Provide examples of evidence which has been cited as not meeting the criterion.

“individuals who descend from a historical Indian tribe”:

- ◇ “Neither the petitioner nor BIA staff researchers were able to identify the ancestors of the earliest known RMI [Ramapough Mountain Indians] progenitors or to trace them to a historical 18th century tribe with a continuous existence in southeastern New York or northeastern New Jersey from the colonial period until the present. This situation offered a clear contrast to other petitioners from the eastern United States that have received Federal acknowledgment through the 25 CFR Part 83 process, such as the Narragansett, the Gay Head Wampanoag, or the Mohegan. In those cases, a clear historical and genealogical record tied the petitioner’s modern membership to a specific historical tribe.” (Ramapough FD 1996, 32)
- ◇ The petitioners’ membership “is open to persons of at least 1/16th Indian blood of any recognized American Indian tribe. Although Cherokee is the predominant Indian ancestry claimed by members, ancestry is also claimed in as many as 37 other recognized and unrecognized tribes and groups.” The petitioners’ “memberships consist of individuals who have not established their descendancy from a tribe which

existed historically or from historical tribes which combined and functioned as a single autonomous entity.” Therefore, the petitioners “do not meet criterion 83.7(e). . . .” (Southeastern Cherokee PF 1985, 8)

- ◇ *“Based on our research, 59 percent of the petitioner’s membership have established Snohomish Indian ancestry; 33 percent are found to be Indian descendants of other tribes; 8 percent are of undetermined Indian ancestry. . . . The group’s practice of citing earlier membership rolls which also contained significant numbers of ‘other Indian descendants’ as evidence of Snohomish ancestry has weakened -- and continues to weaken -- the group’s claim to descent from a historical tribe. When viewed in conjunction with the group’s vague and loosely applied membership criteria, the presence of a large number of non-Snohomish members is not consistent with the concept of an Indian tribe as anticipated in 83.7(a-g) of the regulations. We conclude that the organization as a whole is a collection of Indian descendants of Snohomish as well as Clallam, Snoqualmie, and other Indian ancestry and that the petitioner, therefore, does not meet 83.7(e).” (Snohomish PF 1983, 26)*
- ◇ The petitioner’s membership criterion requires that members descend from an individual “who appears on a census of the inhabitants of Gay Head, Massachusetts, published in 1871. Although the group has not attempted to trace their ancestry any further back than the 1871 census, there is documentary evidence to establish ancestry from the 1871 ancestor back to Gay Head Indians who appear on a list prepared in 1792. Evidence to connect the group’s 1871 ancestors with the Gay Head Indians of 1792 was found in the personal notes of Richard L. Pease who was appointed by the Commonwealth of Massachusetts in 1866 to determine the boundaries of severalty-owned and common land at Gay Head. . . . This evidence also suggests that several of the 1792 ancestors were descendants of the aboriginal inhabitants of the area at the time of English colonization.” (Wampanoag PF 1985, 7)
- ◇ “The Federal regulations for the acknowledgment of a tribe of American Indians do not permit acknowledgment on the basis of the petitioner’s assertion that the group’s unknown and unnamed 18th century ancestors were Indian. Beyond ‘Indian’ ancestry, which in itself has not been shown to exist for the RMI [Ramapough Mountain Indians], the petitioner has not demonstrated specific tribal ancestry as required by the Federal regulations in order to meet criterion 83.7(e).” (Ramapough FD 1996, 31)
- ◇ “None of the outside observers cited in the RMI [Ramapough Mountain Indians] Response provided documentation of actual tribal descent. Statements of generically ‘Indian’ characteristics are not equivalent under the 25 CFR Part 83 regulations to documented descent from ‘a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.’ Statements concerning more general ‘Indian’ descent are not in themselves adequate to meet

criterion 83.7(e), and must also be evaluated in the full context of the available evidence.” (Ramapough FD 1996, 32)

- ◇ “The presence of large numbers of Indian descendants scattered throughout a given region does not necessarily mean that these descendants constitute an Indian tribe within the meaning of the regulations.” (Lower Muskogee Creek FD 1981, 2)
- ◇ “. . . Federal law imposes no general blood degree requirement for tribal membership. Moreover, Federal regulations for determining eligibility for acknowledgment as a tribe (25 CFR Part 83) do not contain a blood quantum requirement.” (Poarch Creek FD 1984, 49 FR 24083)

“historical Indian tribes which combined”:

- ◇ “We conclude that the membership of the Tunica-Biloxi Indian Tribe consists of individuals who have established descendancy from historical tribes which combined and functioned as a single autonomous entity and that the tribe has met” criterion (e). (Tunica-Biloxi PF 1980, 5). *Note:* The context for this finding was discussed in the PF under “general conclusions”: “The contemporary Tunica-Biloxi Indian Tribe is the successor of the historical Tunica, Ofo, and Avoyel tribes, and part of the Biloxi tribe. These have a documented existence back to 1698. The component tribes were allied in the 18th century and became amalgamated into one in the 19th century through common interests and outside pressures from non-Indian cultures.” (Tunica-Biloxi PF 1980, 1)
- ◇ “. . . the membership of the Death Valley Timba-Sha Shoshone Band of Indians consists of individuals who have established descendancy from historical Shoshone bands in the Death Valley area which combined and functioned as a single autonomous entity, and that the band has met” criterion (e).” (Death Valley Timbi-Sha Shoshone PF 1982, 7)
- ◇ “Collectively, the petitioner’s members descend from the Potawatomi bands resident on the Nottawaseppi Reserve as they existed at the time of the signing of the Treaty of Chicago in 1833. Previous acknowledgment decisions have allowed for the movement of families between bands and tribes, as well as the formal or informal merger of bands and tribes. This phenomenon is allowed for in this finding by discussing both families descended from the original settlers at Pine Creek, 1842-1843, and families descended from other Indians who joined the Pine Creek settlement later in the nineteenth century.” (Huron Potawatomi PF 1995, 21)
- ◇ *“The process by which non-Cowlitz métis families became associated with the Cowlitz Indians was carefully analyzed by the BIA. It was concluded that descent from such associated métis families constituted descent from the historical tribe*

within the meaning of criterion 83.7(e) for the following reasons: (1) inter-tribal marriages were customary in the Pacific Northwest; (2) the associated families have consistently lived among and intermarried with families of documented Cowlitz descent since the 1830's; (3) Roman Catholic church records indicated that the process of association had been completed prior to 1855, the date of unambiguous prior Federal acknowledgment being used for this Proposed Finding; and (4) the descendants of these families had been consistently accepted and identified as Cowlitz by the Federal government and the BIA." (Cowlitz PF 1997, 46)

“an official membership list”:

- ◇ “Tribal membership and corporation membership are not considered to be the same. Corporation membership is and has been more limited. While some partial lists of corporation members did exist, no recent official and complete list of tribal members had been prepared prior to the lists . . . which were prepared for acknowledgment purposes.” (Narragansett PF 1982, 15-16)

Evidence:

▲ Evidence which MEETS the criterion:

- ▲ All members descend from a historical tribe *and* meet the group's membership criteria (Narragansett PF 1982, 18)
- ▲ All members descend from a historical tribe (Match-e-be-nash-she-wish PF 1997, 18-19)
- ▲ “virtually all” members descend from a historical tribe (San Juan Paiute PF 1987, xii)
- ▲ 99+ percent of members descend from a historical tribe (Huron Potawatomi PF 1995, 22)
- ▲ 99+ percent of members descend from a historical tribe (Mohegan FD 1994, 31)
- ▲ *99 percent of members descend from a historical tribe (Cowlitz PF 1997, 46)*
- ▲ *99 percent of members descend from a historical tribe (Duwamish PF 1996, 19)*
- ▲ 98 percent of members descend from a historical tribe *and* meet the group's membership criteria (Grand Traverse Band PF 1979, 7)

- ▲ 98 percent of members descend from a historical tribe *and* meet the group's membership criteria (Poarch Creek PF 1983, Geneal. T.R., 7)
- ▲ 98 percent of members descend from a historical tribe *and* meet the group's membership criteria (Wampanoag PF 1985, 7)
- ▲ 98 percent of members descend from a historical tribe (Miami PF 1990, 15)
- ▲ 97 percent of members descend from a historical tribe *and* meet the group's membership criteria (Death Valley PF 1982, Geneal. T.R., 11)
- ▲ 96 percent of members descend from a historical tribe (Snoqualmie PF 1993, 32)
- ▲ 94 percent of members descend from a historical tribe (Tchinouk PF 1985, 11)
- ▲ 93 percent of members descend from a historical tribe (Tunica-Biloxi PF 1980, Geneal. T.R., 5)
- ▲ 88 percent of members descend from a historical tribe (Jena Choctaw PF 1994, 12)
- ▲ 86 percent of members descend from a historical tribe *and* meet the group's membership criteria (Jamestown Clallam PF 1980, 4)
- ▲ *85 percent of members descend from a historical tribe (Chinook PF 1997, 39)*
- ▲ 81 percent of members descend from a historical tribe (Principal Creek PF 1984, 4)
- ▲ 80 percent of members descend from a historical tribe (Samish amended FD 1995, 14)
- ▼ Evidence which does NOT meet the criterion:
- ▼ *59 percent of members descend from a historical tribe (Snohomish PF 1983, 18, 26)*
- ▼ 38 percent of members descend from a historical tribe (Lower Muskogee Creek PF 1981, 4). Note: FD includes: Creeks East of the Mississippi.
- ▼ 4 percent of members descend from a historical tribe (United Lumbee Nation PF 1984, 6)
- ▼ 1 percent of members have Indian ancestry [but not in the claimed historical tribe] (MOWA Band of Choctaw FD, 62 FR 67399)
- ▼ 0 percent of members descend from a historical tribe (Munsee-Delaware PF 1982, 4)

- ▼ 0 percent of members descend from a historical tribe (Kaweah PF 1984, 4)
- ▼ 0 percent of members descend from a historical tribe (Southeastern Cherokee PF 1985, 8). Note: FD includes: Northwest Cherokee Wolf Band and Red Clay Inter-tribal Band.
- ▼ 0 percent of members descend from a historical tribe (MaChis Creek PF 1987, 5)
- ▼ 0 percent of members descend from a historical tribe (Ramapough FD 1996, 32)
- ▼ “. . . with the exception of one individual, none of the [petitioner’s] founding Indian ancestors can be traced to any particular tribal origin.” Although 84 percent of the petitioner’s members have “Indian ancestry, . . . this ancestry could not be reliably identified as descending from a specific historical tribe, nor from historical tribes which combined. . . .” (Houma PF 1994, 25, 26)

Sources:

- ▲ Evidence which has been ACCEPTED as evidence of tribal descent:
- ▲ “The work of anthropologists in the late 1800’s and early 1900’s and a list prepared by a representative of the Bureau in the 1930’s were used in conjunction with other recorded documents, the 1900 Federal Population census, and testimony from a 1915 civil court suit to establish Indian ancestry in the historical tribes.” (Tunica-Biloxi PF 1980, 4)
- ▲ “Evidence of this descent is based on the applications made by Mohegan Indians in 1901 to share in the monetary judgment award in the New York Indian’s Court of Claims suit, and a manuscript genealogy of the Mohegan Indians prepared in 1861 by a Mohegan. Other Federal, State, and local records, such as Federal population census schedules, 19th century petitions to the State and County made by Mohegans, probate records, and vital records, corroborate this descent.” (Mohegan PF 1989, 11)
- ▼ Evidence which has NOT been accepted as evidence of tribal descent:
- ▼ The petitioner “did not provide the genealogical information or documentation needed to establish the Indian ancestry of its members.” (Kaweah PF 1984, 4)
- ▼ “Virtually all of this Indian ancestry appears to be unverifiable. Little if any documentary evidence could be found to document a member’s Indian heritage.” (Southeastern Cherokee PF 1985, 8)

- ▼ “A list of current members was provided to the Bureau. . . . which only lists names and ages of members, [but] no genealogical information was submitted with the petition.” (Munsee-Delaware PF 1982, 4)
- ▼ “Without documentation, the BIA cannot make an assumption, on the basis of late 19th-century and early 20th century ascriptions, that these unknown RMI [Ramapough Mountain Indians] ancestors were members of a historical North American Indian tribe. . . .” (Ramapough FD 1996, 32)
- ▼ “. . . the membership of the LMC [Lower Muskogee Creek] consists of individuals, most of whom cannot, using customary genealogical and enrollment procedures, establish descendancy from the historical Creek Tribe. . . .” (Lower Muskogee Creek PF 1981, 4)

(1)(i) Rolls prepared by the Secretary on a descendancy basis:

- ▲ Evidence which has been ACCEPTED as evidence of tribal descent:
 - ▲ Two other more recent Federal sources are available which identify PBC [Poarch Band of Creek] members as eastern Creek descendants, namely two descendancy rolls prepared by the Bureau of Indian Affairs to distribute judgment funds awarded to Creeks under Indian Claims Commission (ICC) dockets 21 and 275. (Poarch Creek PF 1983, Geneal. T.R., 9) [verify quote]
 - ▲ “Individual family history charts submitted by [the petitioner’s] members show that they can establish Ottawa and Chippewa ancestry by tracing to the 1908 Durant payment roll.” (Grand Traverse Band PF 1979, 7)
- ▼ Evidence which has NOT been accepted as evidence of tribal descent:
 - ▼ Appendix R of the petition is a copy of the Schedule of Clallam Indians of the State of Washington signed in 1926, (8) erroneously labeled ‘1928 Clallam distribution roll.’ This schedule does include the name, genealogical data, and blood degree for each of the 1225 applications submitted for payment under the Act of 1925. . . . However, because the schedule does not indicate the Clallam band in which each of the applicants claimed membership, it cannot be used as the basis for determining Jamestown Clallam ancestry as required by the group’s constitution. (Jamestown Clallam PF 1980, Geneal. T.R., 5) [verify quote]

(1)(ii) State, Federal, or other official records:

- ▲ Evidence which has been ACCEPTED as evidence of tribal descent:
- ▲ “Eighty-five percent of the petitioner’s members can trace to ancestors who are identified as Snoqualmie, and either appeared on the Schedule of the Unenrolled Indians of Western Washington, prepared by the Office of Indian Affairs in 1919, or made an application to be listed on the 1919 schedule. Another 11 percent of the membership can trace to ancestors who are identified as Snoqualmie in allotment lists or other Bureau records.” (Snoqualmie PF 1993, 32)
- ▲ *“Two BIA-generated lists, the 1919 ‘Roblin Schedule of Unenrolled Indians of Western Washington’ and the 1971 ‘Judgment Roll’ of Duwamish descendants who were paid the award of the Indian Claims Commission, were used to confirm the Duwamish ancestry of the petitioner’s membership.” (Duwamish PF 1996, 19)*
- ▼ Evidence which has NOT been accepted as evidence of tribal descent:
- ▼ The one-time identification of Richard DeGroat (b. 1845) as ‘Indian’ by the [New York State] census enumerator in 1875 is not acceptable evidence of Indian tribal ancestry for this individual on its face because other identifications in census records differed. (Ramapough FD 1996, T.R., 97) [verify quote]
- ▼ The Proposed Finding indicated repeatedly that the terms ‘mulatto’ and ‘colored’ in census and other records were sometimes used to identify individuals who were part Indian. The Proposed Finding also indicated that ‘mulatto’ and ‘colored’ were not always synonymous with Indian ancestry. In the absence of other reliable evidence, it cannot be assumed that the census taker meant to imply Indian ancestry when employing these racial designations. These two terms were also used generally for people of mixed race, with no necessary implication that the person was an Indian descendant. Thus, while being labeled ‘mulatto’ or ‘colored’ by the census taker does not rule out Indian ancestry, it does not clearly demonstrate it in the absence of other supporting evidence. (Ramapough FD 1996, T.R., 117) [verify quote]
- ▼ The LMC [Lower Muskogee Creek] argues that continued existence of the tribe is evidenced by Calhoun County, Florida, voting records which purport to show Creek Indians voted in State elections in 1920 and later. A page was submitted from an October 9, 1920 voter registration roll, listing two individuals designated as ‘C.I.’, apparently an abbreviation for Creek Indian. According to current county officials, this was probably self-identification. Subsequent research could not identify these two individuals as Creek Indians or as being related to the current LMC membership without further documentation. (Lower Muskogee Creek FD 1982, 4)

(1)(iii) **Church, school, and other similar enrollment records:**

- ▲ Evidence which has been ACCEPTED as evidence of tribal descent:
- ▲ The very nature of the baptism, marriage, and burial records in defining the individual's relationship to the church, through having received the necessary sacraments, also identified their family relationships ('child of,' 'wife of,' etc.) or ethnic origins ('a woman of the country,' 'Chinook,' 'child of infidel parents,' etc.), thus distinguishing them from someone of a similar name or origins. (Chinook PF 1997, [Geneal. T.R.?, 4]) [verify quote]
- ▼ Evidence which has NOT been accepted as evidence of tribal descent:
- ▼ "... text. . . ." (... PF xxxx, p)

(1)(iv) **Affidavits of recognition:**

- ▲ Evidence which has been ACCEPTED as evidence of tribal descent:
- ▲ "... text. . . ." (... PF xxxx, p)
- ▼ Evidence which has NOT been accepted as evidence of tribal descent:
- ▼ "... text. . . ." (... PF xxxx, p)

(1)(v) **Other records or evidence:**

- ▲ Evidence which has been ACCEPTED as evidence of tribal descent:
- ▲ "... text. . . ." (... PF xxxx, p)
- ▼ Evidence which has NOT been accepted as evidence of tribal descent:
- ▼ "Personal affidavits submitted were insufficient as evidence of Indian heritage since they were of recent origin and unsupported by other corroborating evidence. Vital records and corrections thereto were of recent origin, based in unsupported personal affidavits and, thus, were insufficient as evidence in the context within which they were used." (Southeastern Cherokee FD 1985, 50 FR 39047)
- ▼ "Thus, the Vineland Study was carefully reviewed and quoted in the Proposed Finding. It was evaluated and it was found wanting as a reliable source of evidence for documenting descent from a historical tribe. The Vineland Study's assertions

about supposed Indian ancestry of the ‘Jackson Whites’ were not based on primary source evidence.” “The occasional references to some of the RMI [Ramapough Mountain Indians] ancestors as being of ‘Indian type’ were either based on notions of phenotype . . . or stereotypical social behaviors attributed to Indians by many non-Indians at that time. . . .” (Ramapough FD 1996, T.R., 91, 92-93)

- ▼ A list which contained 35 names and was entitled ‘Frinley Creeks’ was included to demonstrate the existence of an historical tribe. However, no information was provided regarding the origins of the list, its purpose, its author, or the date when it was prepared. Based solely on identification by name, nine of the 35 names appear to be similar to those of established Eastern Creek ancestors. Any connection between the names on this list and the LMC [Lower Muskogee Creek] ancestors, however, is impossible to substantiate without further information. For this reason, the list of ‘Frinley Creeks’ cannot be used to prove Creek ancestry or to document the historical existence of a covert Creek group. (Lower Muskogee Creek FD 1982, 5)

Criterion 83.7(f)

The text of criterion 83.7(f):

“(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.” (59 FR 9293)

The text of section 83.8(d):

“(4) The group meets the requirements of the criteria in paragraphs 83.7(d) through (g).” (59 FR 9293)

The text of criterion (f) from 1978 to 1994:

“(f) The membership of the petitioning group is composed principally of persons who are not members of any other North American Indian tribe.” (43 FR 39361)

Compilation of precedents:

Selections from petitions which have received a final determination are listed in roman type. *Selections from petitions which have received only a proposed finding are listed in italic type.*

For petitions which have received a final determination, selections have been made from the “Summary under the Criteria” or memorandum signed by the Assistant Secretary - Indian Affairs for both the final determination (FD) and the proposed finding (PF).

Selections include those which:

- ◇ Interpret the regulations;
- ▲ Provide examples of evidence which has been used to meet the criterion;
- ▼ Provide examples of evidence which has been cited as not meeting the criterion.

“members of any acknowledged North American Indian tribe”:

- ◇ “The definition of membership in a recognized tribe (in section 83.1(k)), has two parts, each with two subparts. To meet the definition of ‘member of an Indian tribe,’ the individual must meet at least one subpart in each of the two halves of the definition. . . .” (San Juan Paiute FD 1989, 12)
- ◇ “Since the 1940 census [of Indians on the Navajo reservation] does not constitute a tribal roll within the meaning and intent of the regulations and the petitioners have not been maintaining tribal relations with the Navajo Tribe, the petitioners cannot satisfy, as to the Navajo Tribe, the second element of the definition of tribal member. . . . they are not maintaining tribal relations with the Navajo Tribe and are not on a tribal membership list. We conclude that the 119 Paiutes with ‘Navajo census numbers (64%)’ do not meet the definition of membership in a recognized tribe set forth in the Acknowledgment regulations.” (San Juan Paiute FD 1989, 28)
- ◇ “A general principle concerning membership in an Indian tribe is that a bilateral political relationship between the members and the tribe is fundamental (Cohen 1934, 1941).” “. . . Navajo political leaders and institutions have not exercised political influence over internal decisions among the San Juan Paiute membership. While there has been some occasional involvement of the Paiutes in Navajo tribal political institutions in the past 15 to 20 years, the available evidence indicates this was not of a nature and extent that could be considered to indicate the continuous maintenance of tribal relations. . . . Therefore, a bilateral political relationship, which is fundamental to tribal membership, does not now exist and has not existed in the past between the San Juan Paiutes and the Navajo Tribe.” (San Juan Paiute FD 1989, 21, 22)
- ◇ “The ‘official roll’ [of the Navajo Tribe] referred to is a BIA census of the Navajo Reservation. . . . The fact that this was a census enumeration and not a membership process, is well documented. No applications were taken.” “The forms now being given out by the Tribe’s Vital Statistics Office to ‘persons wishing to enroll’ are BIA information collection forms. . . . These forms do not resemble application forms whereon an individual makes a clear statement about his intent to apply for membership. In fact, there is no evidence to show that the forms are ever completed by the individual. . . .” “. . . although the [Navajo] Tribe has had legally established membership criteria and an enrollment application process which provides for a formal review by Tribal officials, there is virtually no evidence to show that they have ever been used to determine membership eligibility. . . . The Navajo Tribe’s governing body has not acted to determine the Tribe’s membership. . . .” “We conclude that the defacto ‘Navajo Tribal Roll’ (i.e., the BIA census) is not a tribal roll of members of the Navajo Tribe as intended by the Acknowledgment regulations.” (San Juan Paiute FD 1989, 22, 24, 26, 26-27)

- ◇ “The MBPI [Match-e-be-nash-she-wish Band of Pottawatomi Indians] members as a group relinquished their membership in HPI [Huron Potawatomi Inc.] before HPI received Federal acknowledgment. . . . Former membership in other unacknowledged Indian groups is not prohibited by criterion 83.7(f).” (Match-e-be-nash-she-wish FD 1998, 20) “The prohibition under 83.7(f) does not apply to prior enrollment with another non-recognized Indian group.” (Match-e-be-nash-she-wish PF 1997, 20)
- ◇ “The comments [on the proposed finding] also stated that many MBPI [Match-e-be-nash-she-wish Band of Pottawatomi Indians] members were leaving MBPI and enrolling elsewhere, specifically with the Little River Band of Ottawa Indians. . . . However, because the persons who had disenrolled with MBPI since 1994 are no longer on the current MBPI membership list, by definition their status does not impact the analysis under criterion 83.7(f), which concerns membership in the petitioner.” (Match-e-be-nash-she-wish FD 1998, 20)
- ◇ “These relinquishments [of membership in the petitioner’s organization between the proposed finding and final determination] resolved any problem caused by dual enrollment in another federally-recognized tribe.” (Huron Potawatomi FD 1995, 60 FR 66316)
- ◇ “At the time the HPI [Huron Potawatomi, Inc.] petition was submitted, the Potawatomi of Michigan and Indiana, Inc., aka Pokagon Potawatomi Band, was not a federally acknowledged tribe, so dual listing on the rolls of both groups did not represent a problem under the requirements of section 83.7(f). The Pokagon Potawatomi Band was legislatively acknowledged during 1994, while the HPI petition was under active consideration in the administrative process. BAR researchers have identified 171 persons (out of a total membership roll of 819) . . . who were as of 1994 carried on the rolls of both groups. . . . this situation will need to be clarified before issuance of the HPI Final Determination, with those persons eligible for enrollment in both tribes making a choice.” (Huron Potawatomi PF 1995, 24).
- ◇ “By identifying Choctaws from LaSalle Parish, Louisiana, as Mississippi Choctaws, the Dawes Commission dealt with them as eligible for membership in a recognized tribe, not as members of that tribe.” (Jena Choctaw PF 1994, 13)

Evidence:

- ▲ Evidence which MEETS the criterion:
- ▲ “. . . members of the Poarch Band of Creeks are not eligible for membership in the Muscogee (Creek) Nation of Oklahoma.” (Poarch Creek PF 1983, 7)

- ▲ “The members have no Indian ancestry that would make them eligible for membership in any federally recognized Indian tribe.” (Wampanoag PF 1985, 7)
- ▲ “One current Tchinouk member is also currently enrolled with the Rosebud Sioux Tribe.” (Tchinouk PF 1985, 11)
- ▲ *“Five names on the petitioner’s membership roll . . . appeared on the rolls of the recognized Tulalip or Suquamish tribes.” (Duwamish PF 1996, 20)*
- ▲ *“Less than one percent of the Snohomish membership appears to be dually enrolled at this time.” (Snohomish PF 1983, 26)*
- ▲ “Less than 1 percent of the Indiana Miami membership of 4,381 could be identified as members of recognized tribes. . . .” (Miami PF 1990, 15)
- ▲ *“. . . 5 percent of the petitioner’s members are also enrolled in the Quinault tribe. . . .” (Chinook PF 1997, 39)*
- ▲ “. . . 9 percent of the total Samish membership” are now enrolled in other North American Indian tribes. (Samish PF 1982, 26)
- ▲ “. . . the names of 23 of them (12%) appear on the rolls of one of three other recognized tribes.” (San Juan Paiute FD 1989, 28)
- ▲ “. . . 14 percent of the members on the revised membership roll . . . are also enrolled in recognized tribes.” (Snoqualmie FD 1997, 17) Note: 20 percent accepted for PF.
- ▲ 28 of the petitioner’s 143 members [about 20 percent] are enrolled in federally-recognized tribes. (Match-e-be-nash-she-wish FD 1998, 20-21)
- ▼ Evidence which does NOT meet the criterion:
- ▼ “. . . 85 percent of the 327 YTO [Yuchi Tribal Organization] members, and 93 percent of the adult YTO members, . . . are members of the federally-recognized MCN [Muscogee (Creek) Nation].” (Yuchi FD 1999, 16)

“. . . 92 percent [of the petitioner’s members] were confirmed to be members of the Muscogee (Creek) Nation of Oklahoma (MCN), a federally recognized tribe.” (Yuchi PF 1995, 8)
- ▼ The KIN [Kaweah Indian Nation] “is composed of individuals who claim membership in or descendance from a variety of recognized and unrecognized Indian tribes and groups. . . . Because no personal information was provided for KIN members, it was impossible to verify or determine the extent to which KIN members

were or were not enrolled in other tribes. . . .” (Kaweah PF 1984, 5) (see also: United Lumbee Nation PF 1984, 7)

Conditions:

(1) The **first condition** requires that the petitioning GROUP “has functioned throughout history until the present as a separate and autonomous Indian tribal entity”:

◇ “. . . for the purposes of the first condition the petitioner must demonstrate that . . . [it] as a group has been an autonomous entity throughout history, which includes the recent past and the present.” (Yuchi FD 1999, 15)

▼ “Because the [Yuchi Tribal Organization] petitioner says that it is not now the governing body of a Yuchi tribe, and because the available evidence does not show that the YTO organization is an autonomous entity at present, the available evidence is insufficient to demonstrate that the YTO petitioner has been an autonomous tribal entity throughout history. . . .” (Yuchi FD 1999, 15-16)

(2) The **second condition** requires that the petitioner’s individual MEMBERS “do not maintain a bilateral political relationship” with an acknowledged tribe:

◇ “The acknowledgment regulations . . . require an analysis of whether or not a petitioner’s individual ‘members’ maintain a bilateral political relationship with an acknowledged tribe.” (Yuchi FD 1999, 15)

◇ The evidence indicated that “individuals gave their consent to be on the MCN [Muscogee (Creek) Nation] roll by applying for membership, and that a MCN Citizenship Board acted to accept individuals as members.” “. . . for the purposes of criterion 83.7(f) a bilateral political relationship with a federally-recognized tribe is presumed to exist when it can be demonstrated that reciprocal consent was involved in the process by which an individual came to be included on the tribal roll of a federally-recognized tribe. Because, as a recognized tribe, the MCN has a functioning political process, a presumption can be made that a member of the MCN participates in a bilateral political relationship with a recognized tribe.” (Yuchi FD 1999, 14)

▼ “Because the evidence shows that YTO [Yuchi Tribal Organization] members who are also members of the MCN [Muscogee (Creek) Nation] have consented to participate, and do participate, in a bilateral political relationship with a federally-recognized tribe, the YTO petitioner does not meet a condition of the regulations.” (Yuchi FD 1999, 15)

(3) The **third condition** requires that the petitioner’s MEMBERS must have provided “written confirmation of their membership in the petitioning group”:

- ◇ “These signatures [on genealogical charts] are not explicit confirmation of an individual’s willingness to belong to the petitioning group.” (Yuchi FD 1999, 13)
- ▼ “The YTO [Yuchi Tribal Organization] and the commenters have not responded in any way to the third condition. . . . Because sufficient confirmations have not been supplied by the YTO, it clearly does not satisfy one of the three conditions of the regulations. . . .” (Yuchi FD 1999, 13)

Criterion 83.7(g)

The text of criterion 83.7(g):

“(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.” (59 FR 9293)

The text of section 83.8(d):

“(4) The group meets the requirements of the criteria in paragraphs 83.7(d) through (g).” (59 FR 9293)

The text of criterion (g) from 1978 to 1994:

“(g) The petitioner is not, nor are its members, the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship.” (43 FR 39361)

Compilation of precedents:

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Selections include those which:

- ◇ Interpret the regulations;
- ▲ Provide examples of evidence which has been used to meet the criterion;
- ▼ Provide examples of evidence which has been cited as not meeting the criterion.

“legislation that has expressly terminated or forbidden the Federal relationship”:

- ◇ “The Navajo response argues that the 1974 Hopi-Navajo Settlement Act, which provides for individual allotments for Paiutes ‘not now members of the Navajo Tribe,’ terminates the Paiutes. . . . The act makes no reference to, nor provisions for or against, the San Juan Paiutes as a tribal entity and thus does not forbid their acknowledgment as a tribe.” (San Juan Paiute FD 1989, 29)

- ◇ The Western Oregon Termination Act of August 13, 1954 “terminated any ‘tribe, band, group or community of Indians west of the Cascade Mountains of Oregon’. . . . Although the act did not specifically refer to the petitioner, the inclusive character of this language, and the inclusive intent of the act . . . indicates this language would forbid the Federal relationship as Indians to members of the Tchinouk group.”
 “Based on the inclusive language of the act and BIA policies and legislative records concerning the act, we conclude that the Western Oregon Termination Act applies to the Tchinouk even though they were not previously recognized as a distinct tribe.”
 (Tchinouk PF 1985, 12)
- ◇ *“Because the [western Oregon termination] act [of 1954] listed the historical tribes of western Oregon, not just the tribes which were currently recognized by the Federal Government, the act not only terminated any existing relationships, but also prohibited the establishment of a Federal relationship with any of those historical tribes.” (Chinook PF 1997, 40)*
- ◇ *“The Lower Band of Chinook was always identified as a historical tribe or band north of the Columbia River in modern Washington State. . . . Because the 1954 western Oregon termination act was applicable only to tribes, bands, or groups of Indians located in the state of Oregon, that act’s reference to the ‘Chinook’ did not refer to the historical Lower Band of Chinook of Washington State, or to its descendants. Therefore, the act did not prohibit a Federal relationship with the Lower Band of Chinook.” (Chinook PF 1997, 40)*
- ◇ *“The Clatsop Tribe, however, was always identified as a historical tribe or band south of the Columbia River in the modern state of Oregon. . . . Therefore, a Federal relationship with the Clatsop Tribe was prohibited by the western Oregon termination act of 1954. In addition, the act clearly stated that its intent was to prohibit Federal services to the individual members of such a tribe. Therefore, those members of the petitioning group whose Indian descent is exclusively from the historical Clatsop Tribe cannot receive Federal services because of their status as Indians.” “Thus, with the reservation that, if acknowledged, a few of the petitioner’s current members who trace their ancestry only to the historical Clatsop Tribe would be forbidden Federal services as Indians, the petitioner meets criterion (g).” (Chinook PF 1997, 40, 41)*
- ◇ An 1897 opinion by the Department of the Interior’s Assistant Attorney General Willis Van Devanter “effectively resulted in a loss of administrative recognition” of the Indiana Miami. However, “The 1872 and 1881 acts cited by Van Devanter do not explicitly sever the tribal relations of the Indiana Miami. . . . In regard to the General Allotment Act of 1887, the Supreme Court has rejected the doctrine that allotment and citizenship under that act imply the termination of tribal existence.” “Therefore, we conclude that the petitioner meets criterion 25 CFR 83.7(g).” (Miami PF 1990, 17)

- ◇ “. . . the general ending of treaty negotiations in 1871 has not been interpreted by the Department of Interior as legislation specifically terminating the Federal acknowledgment of a specific American Indian tribe.” (Match-e-be-nash-she-wish PF 1997, 21)

Evidence:

▲ Evidence which MEETS the criterion:

- ▲ “. . . a search of the Federal statutes did not reveal any legislation terminating or forbidding the Federal relationship.” (Grand Traverse Band PF 1979, 8)
- ▲ “Research revealed no legislation terminating or forbidding the Federal relationship with the group or members of it.” (Death Valley PF 1982, 7)
- ▲ The petitioner has “not been the subject of congressional legislation which expressly terminated a previous Federal relationship.” (Narragansett PF 1982, 18)
- ▲ The petitioner “does not appear on the current list of ‘Indian Tribes Terminated from Federal Supervision’ prepared by the Bureau of Indian Affairs. . . .” (Poarch Creek PF 1983, 7)
- ▲ “Although the group’s name was included in a rough draft of termination legislation prepared by the Bureau in September 1953, the draft was marked ‘For Discussion Purposes Only’ and it was not even enacted into law. The Samish are, therefore, determined to meet Section 83.7(g) of the regulations.” (Samish PF 1982, 27) (see also: *Snohomish PF 1983, 26*)
- ▲ “The Navajo response argues that the 1922 executive branch action restoring the reservation established in 1907 for the San Juan Paiutes to the public domain constituted ‘termination’ of them as a tribe. There was no executive branch action taken indicating that the tribe was no longer recognized. Correspondence immediately subsequent to the 1922 reservation withdrawal clearly indicated that the BIA considered the San Juan Paiutes a tribe under its jurisdiction.” (San Juan Paiute FD 1989, 28-29)

▼ Evidence which does NOT meet the criterion:

- ▼ “. . . . the Western Oregon Termination Act applies to the Tchinouk. . . . The Tchinouk are the subject of legislation forbidding the Federal relationship and therefore do not meet the requirements of the criterion. . . .” (Tchinouk PF 1985, 12)

- ▼ “Many of the petitioning group’s members were given termination services under Section 13 of the [Western Oregon] termination act, although many had not received services previously and many if not most do not appear on the available rolls of Southwestern Oregon Indians. . . . It is clear the act was viewed by the BIA as applying to these individuals even though they were not part of a distinct recognized tribe.” (Tchinouk PF 1985, 12)