

CHER-O-CREEK,
INTRA TRIBAL INDIANS

Elizabeth Appel
Office of Regulatory Affairs and Collaborative Action
United States Department of the Interior
1849 C Street, NW
MS 4141
Washington, DC 20240

RE: Revisions to Federal Acknowledgment Regulations

Dear Mrs. Appel;

After reading and discussing the proposed changes, I have decided that the changes typed in blue ink are the ones that would best serve the American Indians. There needs to be an increased transparency of the regulations, written in easier and clearer language.

Thank you for taking this challenge problem and attempting to help the non federal recognized tribes.

Sincerely,

Tribal Chief Hamilton

Name: Cher-O-Creek, Intra Tribal Indians

Address: Mailing address: P.O. Box 9492, Dothan, Alabama 36305

1315 Northfield Circle, Dothan, Alabama 36303

Attachment

CC: file 107

All the corrections have been written in blue ink, highlighted in yellow and underlined.
Comments, questions are written only in blue.

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**PRELIMINARY DISCUSSION DRAFT
COMMENTS DUE AUGUST 16, 2013**

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TITLE 25--INDIANS

CHAPTER I--BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR
PART 83 PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP
EXISTS AS AN INDIAN TRIBE

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83.11 [Deleted].

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§ 83.1 Definitions.

As used in this part:

Area Office means a Bureau of Indian Affairs Area Office.

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

Assistant Secretary should mean the Assistant Secretary of the Indian Affairs, not an authorized representative when dealing with Federal recognition.

Autonomous means the exercise of political influence or authority independent of the control of any other Indian governing entity. *Autonomous* must be understood in the context of the history, geography, culture and social organization of the petitioning group. § 83.1 Definitions

Autonomous means the exercise of internal political influence independent of the control of any other Indian governing entity. *Autonomous* must be understood in the context of the history, geography, culture and social organization of the petitioning group, with the inclusion of the local history; where laws may have existed prohibiting the outward expression or civil legitimacy of the Indian group.

Board means the Interior Board of Indian Appeals.

Board shall mean the Interior Board of Indian Appeals. This board shall/will not consist of staff from the various departments within the Bureau of Indian Affairs, nor any former or present employees of the Bureau of Indian Affairs or Federal recognized tribes, former or present consultants associated with the Bureau of Indian Affairs or federal recognized tribes and members of Federal recognized tribes.

Bureau means the Bureau of Indian Affairs.

Community means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. Community must be understood in the context of the history, geography, culture and social organization of the group.

[NOTE: This draft also incorporates the definition into criteria at § 83.7(b)].

Community means a social, religious, occupational, or other group sharing common characteristics or interests and perceived or perceiving itself as distinct in some respect from the nonmembers. Community must be understood in the context of the history, geography, culture and social organization of the group. The people in the community must show interactions and social relationships exist within said community. This is the definition that should be used in the § 83.7(b).

Continental United States means the contiguous 48 states and Alaska.

Continental United States means the contiguous 48 states and Alaska. Hawaii and American territories shall be included for the regulations for federal acknowledgment.

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

Continuously or continuous means extending from 1934 to the present substantially without interruption. [NOTE: This draft also incorporates the definition into criteria at § 83.7(b) and (c)].

COMMENT:

The almost unique situation faced by the Southeastern Woodland Tribes needs to be taken into consideration here. The southeastern coastal were all but depopulated by the earlier settlers and shipped off as slaves to the Caribbean and Northeast. Natives from smaller tribes did their best to blend in or flee to areas that was not hostile. Later, between 1828 and 1829, Alabama, Georgia, and Mississippi passed legislation asserting that state civil and criminal laws applied to Indians, assuming that the Indians would rather remove than submit. In addition to piecemeal legislation between those years, Alabama lawmakers

passed a broader extension bill in 1832 that brought the Indians further under Alabama law. These laws were designed to usurp Indian governments and prohibiting them from violating Alabama's laws (Littlefield, 2011, P.6).

This amongst many other reasons is why it is so difficult for Tribes to get recognition under the current rules in the Southeast. Although this will be national in nature, you cannot remove negative influences of local, regional, and State law. In the southern United States the American Indians, Afro Americans and Jewish races dealt with the following issues: Jim Crowe's laws, Ku-Klux-Klan, segregation laws. Virginia tribes do not have genealogical records needed to prove their continued uninterrupted existence – a requirement for federal recognition. States actively altered records as did Indian families, many out of fear of discrimination and deportation. Virginia's Racial Integrity Act of 1924 is but one example of a law that intentionally resulted in genealogical records being destroyed during the first half of the twentieth Century. There is no way of knowing how many family records were destroyed or falsified to protect the identity of oppressed Indians in Alabama. Littlefield, D.F. (2011). Encyclopedia of American Indian removal, Santa Barbara, California: Greenwood

Currently, in Alabama birth certificates do not state the race of parents or child.

Page 2§ 83.1 Definitions

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

Documented petition means the detailed arguments made by a petitioner to substantiate its claim that it meets the requirements for an expedited favorable finding, meets four (4) of the mandatory criteria or has established previous federal acknowledgment and meets the criteria in § 83.8

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

COMMENT:

What does the first sustained contact mean? Majority of the time history is recorded as a specific name of a group of American Indian e.g. Creek, Cherokee, Apache or a village e.g. Coweta, Hitchiti, and Okmulgee.

Many Tribes after experiencing first contact and pressure from non-Indians, moved away and breaking contact for a while, from the settlers. The history of the Chickamauga

Cherokee Tribe, once recognized by the Federal government as a separate Indian Tribe, is a great example of intermittent contact versus sustained.

Further consideration needs to be made as there is an implication that the Secretary of the Interior will knowingly fail to recognize State Rights. Some states, within the guidelines of their federally accepted constitutions have seen fit to recognize Tribes within their states and have passed laws to that effect.

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

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

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

Indian tribe, also referred to herein as tribe, means any Indian or Alaska Native aggregation within the continental United States, Alaska, Hawaii and United States territories that the Secretary of the Interior acknowledges to be an Indian tribe.

~~*Indigenous means native to the continental United States in that at least part of the petitioner's territory at the time of sustained contact extended into what is now the continental United States. Indigenous [NOTE: This draft deletes this definition because concept is already in "Indian group"]*~~

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

Informed party means any person or organization, other than an interested party, who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. The petition group shall be given the contact information regarding an informed party. The informed party comments must be documented with evidence. All evidence must be sited from source, location and copies of documentation/evidence must be included and provided to the petitioning group, by the BIA/OFA.

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

Interested party means any person, organization or other entity, who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. "Interested party" includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination. The petition group shall be given the contact information regarding an interested party. All comments submitted by the interested party must include documentation along with supporting evidence, including source. All comments will be provided by the Bureau of Indian Affairs to the petitioning group that any interested party submits.

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

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

Member of an Indian group means an individual who is recognized by an Indian group as meeting its membership criteria does not belong to another Indian group or an Indian Tribe, and who consents to being listed as a member of that group.

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

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

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

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

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

§ 83.1 Definitions

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

Political influence or authority 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 affects members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the group. [NOTE: This draft also incorporates this definition into criteria at § 83.7(c)].

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

COMMENT:

This definition is completely inadequate as it fails to recognize the migratory nature of Indian Tribes that resulted from contact with non-Indian and the violet nature of the pressure that caused them to move to areas where they believed they could break contact with the non-Indian population. We do not like this statement because it cannot be defined without being subjective, biases and prejudice. Many tribes, after experiencing first contact and pressure with non-Indians, moved, breaking contact for a while. The history of the Chickamauga Cherokee Tribe, once recognized by the Federal government as a separate Indian Tribe, is a great example of intermittent contact versus sustained. Further, what records will be used to establish this contact? There were many Tribes, independent of each other, but of the same people. The records list them by names given by non-Indians and referred to the people, not the individual Tribe. They were called Creek, Choctaw, Cherokee, etc. This definition fails to address the term "Governmental presence" as many areas in the southeast fell under 6 separate national governments, territorial governments, and unincorporated frontier governments.

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

Tribal relations mean participation by an individual in a political and social relationship with an Indian tribe, upon obtaining recognition status.

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

Tribal roll, for purposes of these regulations, means a list exclusively of those individuals who have been determined by the tribe to meet the tribe's membership requirements as set forth in its governing document. In the absence of such a document, a tribal roll means a list of those recognized as members by the tribe's governing body. In either case, those individuals on a tribal roll must have affirmatively demonstrated consent to being listed as members. A notarizes statement confirming that they request to be a member of the tribe for each person 18 years and older and for ages 17 and younger a notarized statement signed by parents or guardian. If incompetent consent must be signed by their guardian agreeing that this individual is a tribal member.

§ 83.3 Scope.

- (a) This part applies only to ~~Indian groups those American Indian groups indigenous to the continental United States which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups that can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.~~
- (b) Indian tribes, organized bands, pueblos, Alaska Native villages, or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs may not be reviewed under the procedures established by these regulations. § 83.3 Scope.

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

(c) Associations, organizations, corporations or groups of any character that have been formed since 1986 may not be acknowledged under these regulations. The fact that a group that meets the criteria in § 83.7 (ab) through (g) has recently incorporated or otherwise formalized its existing autonomous political process will be viewed as a change in form and have no bearing on the Assistant Secretary's final Department's decision.

COMMENT:

The southeastern part of the United States request that no date earlier than 1986 be established for this clause as it represents the date that felicitate major changes in Tribal organization based on both Federal and state recognition.

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

(d) Splinter groups, political factions, communities or groups of any character that separate from the main body of a currently federal or state acknowledged tribe may not be acknowledged under these regulations.

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

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

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

(f) Finally, Groups that previously petitioned and were denied Federal acknowledgment under these regulations or under previous regulations in part 83 of this title, may be acknowledged under these regulations; those have maintained their tribal identity. Therefore, the petitioning groups may reapply for federal recognition. Splinter groups, spin offs, or component groups of any type that were once part of petitioners previously denied may not reapply.

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

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

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

(g) Indian groups whose documented petitions:

(1) Have not yet reached active consideration as of the effective date of these revised

regulations must proceed under these revised regulations.

(2) Are under active consideration, including those that have received a proposed finding, at the effective date of these revised regulations may choose to complete their petitioning process under the previous acknowledgment regulations in part 83 of this title, or to file a new documented petition under these regulations. This choice must be made by 60 Business Days. This option shall apply to any petition for which a determination is not final and effective.

§ 83.4 Filing a letter of intent, documented petition.

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

§ 83.4 Filing a letter of documented petition.

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

§ 83.5 Duties of the Department.

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

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

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

(b)OFA shall maintain guidelines for the preparation of documented petitions and be published annually by October 1. These guidelines will have forms available to complete along with samples of how to complete the application. These forms, guidelines, sample will be maintained on the OFA website. Also there will be a web tutorial on how to complete the forms and where to conduct research. The guidelines may be supplemented or updated as necessary.

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

(c)The OFA shall, upon written request, provide petitioners with suggestions and advice regarding preparation of the documented petition. The OFA shall not be responsible for the actual research on behalf of the petitioner. This shall be done within 45 business days of receiving the request. All request and responses shall be sent through certified, U. S. mail.

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

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

§ 83.6 General provisions for the documented petition.

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

(a) The documented petition must be typed not to exceed XX pages using Times New Romans with a font size 12, for the main body, sections must be in bold, underlined, using Times New Romans with a font size 14, with a one inch margins. This is excluding supporting documentations. This document will contain detailed, specific evidence in support of a request for acknowledgment as a tribe.

(b) The documented petition must include a:

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

(2) An official membership list, separately certified by the group's governing body, of

all known current members of the group, including each member's full name (including maiden name), date of birth, and current residential address:

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

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

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

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

(b) The documented petition must include:

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

(2) An official membership list, separately certified by the group's governing body, of all known current members of the group, including each member's full name (including maiden name), date of birth, and current residential and mailing address. Each person must sign a statement that he/she is not a member of another federal or unrecognized tribe. If a child a parent may sign the statement. If a person is ruled to be incompetent then the power of attorney may sign this statement with proper documentation showing that he/she has power of attorney.

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

(4) Thorough explanations and supporting documents in support of meeting the requirements for an expedited favorable finding or, in the absence of such evidence, thorough explanations and supporting documents in support of meeting all the mandatory criteria, except criterion (g). A tribe should be expedited with the following: state recognized and has the same or similar criteria as OFA. Own their own land and is recorded in the tribe's name, owns a tribal owned business, assist tribal families with various social programs, educational assistance.

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

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

(iii) If a tribe is recognized by a state that has similar procedures for state recognition as for federal recognition then the tribe is automatically federal recognized.

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

- (1) Meet the mandatory criteria in paragraphs (ad), (e), (f), and (g) of § 83.7 and one of the expedited favorable criteria in § 83.10(g)(3); or
- (2) If neither of the expedited favorable criteria are met, meet all the mandatory criteria in paragraphs (b) through (g) of § 83.7 in order for tribal existence to be acknowledged. Therefore, the documented petition must include thorough explanations and supporting documentation in response to all of the criteria. The definitions in § 83.1 are an integral part of the regulations, and the criteria should be read carefully together with these definitions.; or
- (3) Establish previous Federal acknowledgment and meet the criteria in § 83.8.

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

(1) Meet 4 of the mandatory criteria in paragraphs (ad), (e), (f), and (g) of § 83.7 and one of the expedited favorable criteria as follows state recognized by a state with similar or same criteria as OFA, owns land in the tribe's name and recorded in the local county courthouse, or owns a tribal business.

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

The mandatory criteria are as follows:

At least 30 percent of the petitioning group comprises a distinct community and has existed as a community from historical times 1986 until the present. Without a period greater than 25 years of interruption. Distinct community means a group of people with consistent interactions and significant social relationships within its membership and whose members are differentiated from and identified as distinct from nonmembers. Distinct community must be understood in the context of the history, geography, culture and social organization of the group.

(i) A 30 % 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 is different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization, or religious beliefs and practices system, or ceremonies.

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

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

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

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

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

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

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

d) A petitioner may be denied acknowledgment if the evidence available is insufficient evidence to show that it meets the requirements for an expedited favorable finding, four of of the mandatory criteria, or one or more of the expedite criteria applicable to petitioners that establish previous Federal acknowledgment.

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

(i) A preponderance of the evidence supports the validity of the facts claimed when viewed in the light most favorable to the petitioner. Preponderance the meaning is somewhat subjective.

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

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

Delete this entire section, too subjective.

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

(e) Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available.

§ 83.7 Mandatory criteria for Federal acknowledgment.

The mandatory criteria are:

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

~~(1) Identification as an Indian entity by Federal authorities;~~

~~(2) Relationships with State governments based on identification of the group as Indian;~~

~~(3) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity;~~

~~(4) Identification as an Indian entity by anthropologists, historians, and/or other scholars;~~

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

~~(6) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.~~

(a) Should remain deleted.

~~(b) A predominant portion~~At least ~~XX~~ percent of the petitioning group comprises a distinct community and has existed as a community from ~~historical times~~ 1934 until the present, without substantial interruption. Distinct community means a group of people with consistent interactions and significant social relationships within its membership and whose members are differentiated from and identified as distinct from nonmembers. Distinct community must be understood in the context of the history, geography, culture and social organization of the group. Substantial interruption is determined on a case-by-case basis considering the history and circumstances of the petitioning group.

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

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

(ii) Significant social relationships connecting individual members.

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

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

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

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

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

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

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

(b) At least 40 percent of the petitioning group comprises a distinct community and has existed as a community from 1986, including the regional history until the present. The petitioning tribal community had an interruption greater than 50 years. Distinct community means a social, religious, occupational, or other group sharing common characteristics or interests and perceived or perceiving itself as distinct in some respect from the nonmembers. Community must be understood in the context of the history, geography, culture and social organization of the group. The people in the community must show interactions and social relationships exist within said community. A group of people with consistent interactions and significant social relationships within its membership and whose members are differentiated from and identified as distinct from nonmembers. Distinct community must be understood in the context of the history, geography, culture and social organization of the group. Substantial interruption is determined on a case-by-case basis considering the history and circumstances of the petitioning group.

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

- (i) More than 50XX 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 50XX percent of the marriages in the group are between members of the group;
- (iii) At least 50XX percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices, system, or ceremonies;

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

- (i) More than 30 percent of the members reside in a geographical area. The balance of the group maintains consistent interaction with the tribal office and/or tribal members.
- (ii) At least 30 percent of the marriages in the group are between members of the group:

- (iii) At least 30 percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices system, or ceremonies;

COMMENTS:

This section needs to be reviewed as to its purpose. The world in which we live in is changing and employment is harder than ever to find. People need to go where the work is so they can support their families. Education opportunities and military service also cause tribal members to disperse, and this is a part of being an American citizen as well. Tribes who have had the ability to hold large reservations over time have less of an issue with this than do tribes who were not able to maintain large land holdings since the removal. The encroachment of non-Indians into Indian lands, non high Indian birth rates and high Indian infant mortality also make this requirement extremely hard to meet for tribes that do not have lands protected by the Federal government for their use and propogation.

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

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

(3) The limitations inherent in demonstrating the existence as an Indian distinct community that has existed since 1934 without substantial interruption shall be taken into account. Petitioners may provide information and background for time periods prior to 1934, but the information and background will be considered only to the extent relevant to an analysis of the group from 1934 to the present. [NOTE: This paragraph is repeated from § 83.6(e)].

(3) The limitations inherent in demonstrating the existence as an Indian distinct community that has existed since 1986 without interruption greater than 50 years shall be taken into account. Petitioners may provide information and background for time periods prior to 1986, but the information and background will be considered only to the extent relevant to an analysis of the group from 1986 to the present. [NOTE: This paragraph is repeated from § 83.6(e)].

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

(c) The petitioner has maintained political influence over its members as an autonomous Indian group from 1986 considering the local history as relating to American Indians until the present without substantial interruption. Also, the tribal council, leadership, internal process or other mechanism representing the group possess the power of 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.

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

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

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

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

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

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

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

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

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

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

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

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

(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 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;

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

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

(4) The limitations inherent in demonstrating the existence of political influence or authority that has existed since 1934 without substantial interruption shall be taken into account. Petitioners may provide information and background for time periods prior to 1934, but the information and background will be considered only to the extent relevant to an analysis of the group from 1934 to the present. [NOTE: This paragraph is repeated from § 83.6(e)].

(4) The limitations inherent in demonstrating the existence of political influence or authority that has existed since 1986 depending on the local history where the tribe is located without substantial interruption shall be taken into account. Petitioners may provide information and background for time periods prior to 1986, but the information and background will be considered only to the extent relevant to an analysis of the group from 1986 to the present. [NOTE: This paragraph is repeated from § 83.6(e)].

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

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

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

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

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

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

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

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

(e) At least 40 percent of the petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes from the region the tribe is located which combined and functioned as a single autonomous political entity. History recordings usually recorded tribe as Creek, Cherokee, and Apache or by name of villages. (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) Historians' and anthropologists' conclusions drawn from historical records, and historical records created by historians and anthropologists. The historians and anthropologist cannot be a member of petitioning tribe, member of a Federal recognized tribe nor have performed work for another tribe, OFA (BAR), as an employee, or consultant.

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

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

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

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

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

(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 and mailing address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible,

the circumstances surrounding the preparation of former lists.

(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that its members have provided written confirmation of their membership in the petitioning group.:

(1) It has functioned from 1986 (depending on the local history where the tribe is located without substantial interruption shall be taken into account), until the present as a separate and autonomous Indian tribal entity;

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

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

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

This section does not require any changes.

§ 83.8 Previous Federal acknowledgment.

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

(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 previous Federal acknowledgment, such as

signing treaty by one of the ancestors the petitioner will then only be required to demonstrate that it meets the requirements of § 83.7 to the extent required by this section.

(b) A determination of the adequacy of the evidence of previous Federal action acknowledging tribal status shall be made during the technical assistance review of the documented petition conducted pursuant to § 83.10(b). If a petition is awaiting active consideration at the time of adoption of these regulations, this review will be conducted while the petition is under active consideration unless the petitioner requests in writing that this review be made in advance. There is no need for changes in this section.

(b) There is no need for changes in this section.

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

- (1) Evidence that the group has had treaty relations with the United States.
- (2) Evidence that the group has been denominated a tribe by act of Congress or Executive Order.

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

(1) Evidence that the group has had treaty relations with the United States. An ancestor that the group comes from could be a signature on the treaty.

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

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

(3) Evidence that the group has been treated by the Federal or State Government as having collective rights in tribal lands or funds. This could involve class action lawsuits e.g. Keepseagle Farmers and Ranchers Lawsuits, Docket claims, Etc.

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

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

(1) The group meets the 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 group that was previously acknowledged or as a portion that has evolved from that group. Historical recordings usually recorded tribes as a large group Creek, Cherokee or Apache, etc or name of a village.

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

There is no changes need for (1).

(2) The group meets the requirements of the criterion in § 83.7(b) to demonstrate that it comprises a distinct community as defined in § 83.7(b) at present. However, it need not provide evidence to demonstrate existence as a community historically.; and

(2) The group meets the requirements of the criterion in § 83.7(b) to demonstrate that it comprises a distinct community at present. Distinct community means a social, religious, occupational, or other group sharing common characteristics or interests and perceived or perceiving itself as distinct in some respect from the nonmembers. Community must be understood in the context of the history, geography, culture and social organization of the group. The people in the community must show interactions and social relationships exist within said community. This is the definition that should be used in the § 83.7(b). However, it need not provide evidence to demonstrate existence as a community historically; and

(3) The group meets the requirements of the criterion in § 83.7(ccb) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in § 83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in § 83.7(c).

(4) The group meets the requirements of the criteria in paragraphs 83.7 (d) through (g).

(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d) (1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in § 83.7 (a) through (c) from last Federal acknowledgment until the present.

There is no need to make changes to (3-5).

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§ 83.9 Notice of receipt of a petition.

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

(a) Within 30 business days after receiving a documented petition the Assistant Secretary shall acknowledge such receipt in writing and shall have published within 60 business days in the Federal Register a notice of such receipt. This notice must include the name, location, and mailing address of the petitioner and such other information as will identify the entity submitting the documented petition and the date it was received. This notice shall also serve to announce the opportunity for interested parties and informed parties to submit factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment and/or to request to be kept informed of all general actions affecting the petition. The notice shall also indicate where a copy of the documented petition may be examined.

(b) The Assistant SecretaryOFA shall notify, in writing, the governor and attorney general of the state in which a petitioner is located. The Assistant SecretaryOFA shall also notify any recognized tribe and any other petitioner which appears to have a historical or present

relationship with the petitioner or which may otherwise be considered to have a potential interest in the acknowledgment determination.

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

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

(c) The Assistant Secretary shall also publish the notice of receipt of the documented petition if a in a major newspaper or newspapers of general circulation in the town or city nearest to the petitioner. The notice will include all of the information in paragraph (a) of this section. This shall be done within 60 business days.

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§ 83.10 Processing of the documented petition.

(a) Upon receipt of a documented petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe. The (a) OFA's review shall include consideration of the documented petition and the factual statements contained therein. The Assistant Secretary as well as consideration of interested parties' and informed parties' factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment. OFA may also initiate other research for any purpose

relative to analyzing the documented petition and obtaining additional information about the petitioner's status. **The Assistant SecretaryOFA** may likewise consider any evidence which may be submitted by interested parties or informed parties.

(a) Upon receipt of a documented petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe. This review will occur within 180 business days. The (a) OFA's review shall include consideration of the documented petition and the factual statements contained therein. The Assistant Secretary as well as consideration of interested parties' and informed parties' factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment.

The interested and informed parties' information must be documented with name of source and location, and be verified by OFA. All information, documentation, field notes will be provided to the petitioning group by OFA within 60 business days of reviewing. The petitioning group has 180 business days to respond to the documentation, information provided by interested or informed parties. The Assistant Secretary may likewise consider any evidence if factual which may be submitted by interested parties or informed parties. Interested or informed parties should not interfere with a positive finding.

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

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

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

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

(b) Technical Assistance Review. Prior to active consideration of the documented petition, the OFA shall conduct a preliminary review of the petition for purposes of technical assistance. This review will be done within 180 business days of the receipt the documented petition.

(1) This technical assistance review does not constitute the OFA 's review to determine if the petitioner is entitled to be acknowledged meets the criteria for acknowledgement as an Indian tribe. It is a preliminary review for the purpose of providing the petitioner an opportunity to supplement or revise the documented petition prior to active consideration.
(2) After the technical assistance review, the OFA shall notify the petitioner by letter of any obvious deficiencies or significant omissions apparent in the documented petition and provide the petitioner with an opportunity to withdraw the documented petition for further work or to submit additional information and/or clarification. This written review will be conducted with 60 business days after completion of the technical review process.
(3) If a petitioner's documented petition claims previous Federal acknowledgment and/or includes evidence of previous Federal acknowledgment, the technical assistance review will also include a review to determine whether that evidence is sufficient to meet the requirements of previous Federal acknowledgment as defined in § 83.1. This review will occur within 180 days of receipt of documented petition.

(4) The petitioning group will be assigned a liaison to advise the petitioning group on appropriate actions to take to clarify deficits in petition. All correspondence will be done through certified United States Mail or email with verification of reading.

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

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

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

(c) Petitioners have the option of responding in part or in full to the technical assistance review letter or of requesting, in writing, that the OFA proceed with the active consideration of the documented petition using the materials already submitted. The Petitioners must respond in 45 business days that they will be or will not be responding to the technical review. If the petitioning group decides to respond to the technical review they have 365 business days to respond from the date the request to respond is received by OFA.

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

the request of the petitioner. This review will occur within 180 business days from the date the additional review request was received.

(2) If the assertion of previous Federal acknowledgment under § 83.8 cannot be substantiated during the technical assistance review, the petitioner must respond by providing additional evidence. This response must be done within 365 business days. A petitioner claiming previous Federal acknowledgment who fails to respond to a technical assistance review letter under this paragraph, or whose response fails to establish the claim, shall have its documented petition considered on the same basis as documented petitions submitted by groups not claiming previous Federal acknowledgment. Petitioners that fail to demonstrate previous Federal acknowledgment after a review of materials submitted in response to the technical assistance review shall be so notified. Such petitioners may submit additional materials concerning previous acknowledgment during the course of active consideration. The additional materials must be sent within 180 business days from receiving notification that the petitioning group failed to prove previous federal recognition.

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

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

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

(d) The petitioner and interested parties shall be notified when the documented petition comes under active consideration, within 45 business days prior to active consideration.

(1) They shall also be provided with the name, office address, and telephone number of the staff member with primary administrative responsibility for the petition; the names of the researchers conducting the evaluation of the petition; and the name of their supervisor. The researchers for genealogy must be a certified genealogist in American Indian

Genealogy, The Historian, and anthropologist shall have a background in the region that is being researched. The research team shall not have done any work in the region for another tribe, a member of a tribe in the region, or worked for a federal recognized tribe as an employee, volunteer or consultant.

(2) The petitioner shall be notified of any substantive comment on its petition received 90 business days prior to the beginning of active consideration or during the preparation of the proposed finding, and shall be provided an opportunity to respond to such comments. The petitioning group will have 180 business days to respond to the any substantive comments.

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

suspends consideration.

(ge) Once active consideration of the documented petition has begun, the OFA shall continue the review and publish unless the petitioner withdraws or OFA suspends consideration. This will occur within 545 business days.

(1) At any time before OFA publishes the proposed findings and a final determination in the Federal Register pursuant to these regulations, notwithstanding any requests by, the petitioner or interested parties to may withdraw its petition and OFA will cease consideration. The Assistant Secretary of the petition until such time as the petition is resubmitted, but such petition will be placed at the bottom of the numbered register of documented petitions upon re-submission and may not regain its initial priority number.

(1) At any time before OFA publishes the proposed findings and a final determination in the Federal Register pursuant to these regulations, notwithstanding any requests by, the petitioner may withdraw its petition and OFA will cease consideration. The Assistant Secretary will cease review of the petition until such time as the petition is resubmitted, but such petition will be placed at the bottom of the numbered register of documented petitions upon re-submission and may not regain its initial priority number.

(2) OFA has the discretion, however, to suspend active consideration of a documented petition, either conditionally or for a stated period of time, upon a showing to the petitioner that there are technical problems with the documented petition or administrative problems that temporarily preclude continuing active consideration. The Assistant Secretary shall also consider requests by petitioners for suspension of consideration and has the discretion to grant such requests for good cause. Upon resolution of the technical or administrative problems that are the basis for the suspension, the documented petition will have priority on the numbered register of documented petitions insofar as possible. The Assistant Secretary

(2) OFA has the discretion, however, to suspend active consideration of a documented petition, either conditionally or for a stated period of time, upon a showing to the petitioner that there are technical problems with the documented petition or administrative problems that temporarily preclude continuing active consideration. The Assistant Secretary shall also consider requests by petitioners for suspension of consideration and has the discretion to grant such requests for good cause. Upon resolution of the technical or administrative problems that are the basis for the suspension, the documented petition will have priority on the numbered register of documented petitions insofar as possible. The Assistant Secretary

(2) OFA has the discretion, however, to suspend active consideration of a documented petition, either conditionally or for a stated period of time, upon a showing to the petitioner that there are technical problems with the documented petition or administrative problems that temporarily preclude continuing active consideration. The

Assistant Secretary shall also suspend the review of a petition if requested by a petitioning group leadership and the request shows just cause for suspension of consideration and has the discretion to grant such requests for good cause. Upon resolution of the technical or administrative problems that are the basis for the suspension, the documented petition will have priority on the numbered register of documented petitions insofar as possible.

(3) OFA shall notify the petitioner and interested parties when active consideration of The documented petition is resumed. The timetables in succeeding paragraphs shall begin anew upon the resumption of active consideration.

(h)f Expedited Negative Finding. Upon beginning active consideration, OFA shall investigate whether the group meets the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7.

(1) If this review finds that that the group does not meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, a full consideration of the documented petition under the remaining mandatory criteria will not be undertaken. Rather, OFA shall instead decline to acknowledge that the petitioner is an Indian tribe and publish a proposed finding to that effect in the Federal Register. The periods for receipt of comments on the proposed finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination.

regarding the petitioner's status shall follow the timetables established in paragraphs (i) through (n) of this section.

(2) If the review finds that the group meets the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, and petitioners assert that they qualify for an expedited favorable review, OFA will proceed to the expedited favorable review under paragraph (g) of this section.

(3) If the review finds that the group meets the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, and the petitioners do not assert that they qualify for an expedited favorable review, OFA will conduct a full evaluation of the documented petition under the remaining mandatory criteria.

(h) (f) Expedited Negative Finding. Upon beginning active consideration, OFA shall investigate whether the group meets the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7. (1) If this review finds that that the group does not meet the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, a full consideration of the documented petition under the remaining mandatory criteria will not be undertaken. Rather, OFA shall instead decline to acknowledge that the petitioner is an Indian Tribe and publish a proposed finding to that effect in the Federal Register. The periods for receipt of comments on the proposed finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner's status shall be 90 business days.

(2) If the review finds that the group meets the mandatory criteria in paragraphs (e), (f) or (g) of § 83.7, and petitioners assert that they qualify for an expedited favorable review, OFA will proceed to the expedited favorable review under paragraph (g) of this section. The petitioning group has 60 business days to respond.

(3) If the review finds that the group meets the mandatory criteria in

paragraphs (e), (f) or (g) of § 83.7, and the petitioners do not assert that they qualify for an expedited favorable review, within 60 business days. OFA will conduct a full evaluation of the documented petition under the remaining mandatory criteria.

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

(g) Expedited Favorable Finding. If the petitioner meets the mandatory criteria at paragraphs (e), (f), and (g) of § 83.7 and the petitioner asserts that it is eligible for an expedited favorable finding, OFA will next conduct an expedited favorable review. If the petitioner provides the information required by criterion (d) of § 83.7 and meets either of the criteria in paragraph (3) of this section, OFA will issue an expedited favorable proposed finding in the Federal Register summarizing its findings. This will be done within 90 business days.

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

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

(3) The expedited favorable criteria are:

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

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

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

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

(3) The expedited favorable criteria are:

(i) The petitioner has maintained a reservation recognized by the State or is owned by the tribe and is recorded in the name of the tribe at the local courthouse, owns a tribal business or is state recognized by a state that has criteria same or similar to OFA.

(ii) The United States has held land for the group at any point in time since 1986.

(h) The order of consideration of documented petitions for which OFA is undertaking a full

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

(h) The order of consideration of documented petitions for which OFA is undertaking a full evaluation under all the mandatory criteria shall be determined by either the date OFA determines that the petitioner will not receive an expedited negative finding or the date OFA determines the petitioner is not eligible for an expedited positive finding, if the petitioner asserts the latter. OFA shall establish and maintain a numbered register of documented petitions awaiting a full evaluation under all the mandatory criteria by OFA. OFA shall also maintain a numbered register of any prior letters of intent or incomplete petitions based on the original date of filing with the Bureau. In the event that two or more documented petitions receive priority of the same date, the register of any prior letters of intent or incomplete petitions shall determine the order of consideration by OFA. The full review must occur within 545 business days.

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

(i) Within 180 business days after notifying the petitioner that active consideration of the documented petition has begun pursuant to paragraph (d), if OFA has determined the petition meets the criteria for an expedited negative finding or an expedited favorable finding, OFA shall publish proposed findings on the expedited criteria, not to exceed 50 pages, in the Federal Register, within 60 business days. OFA may not extend that period. Within 545 business days after notifying the petitioner that active consideration of the documented petition has begun, the Assistant Secretary pursuant to paragraph (d), OFA shall publish proposed findings on all the mandatory

criteria, not to exceed 50 pages, in the Federal Register. The Assistant Secretary has the discretion to extend that period up to an additional 180 business days. The petitioner and interested parties shall be notified of the time extension. In addition to the proposed findings, OFA shall prepare a report, not to exceed 50 pages, summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision. Copies of the report shall be provided to ASIA, the petitioner, interested parties, and informed parties and made available to others upon written request.

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

(1) The period for comment on a proposed finding may be extended for up to an additional 180 days at the Assistant Secretary's [OHA or AS-IA?]'s discretion upon a finding of good cause. The petitioner and interested parties shall be notified of the time extension. Interested and informed parties who submit arguments and evidence to the Assistant Secretary must provide copies of their submissions to the petitioner.

(2) Interested and informed parties who submit arguments and evidence to [OHA or ASIA?] must provide copies of their submissions to the petitioner.

(ij) Upon publication of the proposed findings, the petitioner or any individual or organization wishing to challenge or support the proposed findings shall have 180 business days to submit arguments, not to exceed 200 pages, and evidence to the Assistant Secretary to rebut or support the proposed finding.

(1) The period for comment on a proposed finding may be extended for up to an additional 180 business days at the Assistant Secretary's discretion upon a finding of good cause. The petitioner and interested parties shall be notified of the time extension. Interested and informed parties who submit arguments and evidence to the Assistant Secretary. The Assistant Secretary or designee shall provide copies of their submissions to the petitioner. The Assistant Secretary or designee has 30 business days to provide comments and documentation to the petitioning group.

(2) Interested and informed parties who submit arguments and evidence to [OHA or ASIA?] must provide copies of their submissions to the petitioner. The Assistant Secretary or designee will make sure that these copies are provided to the petitioning group. The Assistant Secretary shall provide copies of their submissions to the petitioner, if interested or informed parties did not provide copies to the petitioning group. The Assistant Secretary or designee has 30 business days to provide comments and documentation to the petitioning group.

(j)(1) During the response period, the Assistant Secretary OFA shall provide technical advice concerning the factual basis for the proposed finding, the reasoning used in preparing it, and suggestions regarding the preparation of materials in response to the proposed finding. The Assistant Secretary OFA shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by

Federal law, to assist the petitioner in challenging or supporting the proposed finding and preparing for any requested hearing.

(2) In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary

(1 in reaching a final determination.

(j)(1) During the response period, OFA shall provide technical advice concerning the factual basis for the proposed finding, the reasoning used in preparing it, and suggestions regarding the preparation of materials in response to the proposed finding. OFA shall make available to the petitioner in a timely any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law, to assist the petitioner in challenging or supporting the proposed finding and preparing for any requested hearing. These records shall be made available within 60 business days.

(2) In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary in reaching a final determination. This meeting shall be held in the county that the petitioning group office is located.

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

(lm) At the end of the period for comment on a proposed finding, the Assistant Secretary shall consult with [OHA or AS-IA?] will automatically issue a final determination acknowledging the petitioner and interested parties to determineas an equitable timeframe for consideration of writtenIndian tribe if the following are met:

(1) The proposed finding is positive, and

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

(n) If the conditions of paragraph (m) are not met at the end of the period. for comment on a proposed finding, [OHA or AS-IA?] shall make its final determination by considering all the evidence in the petition record, including any evidence that arises from a hearing, if requested. petitioner or from commenting parties to support or supplement their comments on a proposed finding. The Assistant Secretary [OHA or AS-IA?] may also conductrequire such additional research as is necessary to evaluate and supplement the record. In either case, the additional materials will become part of the petition record

The petitioner and interested parties shall be notified of the date such consideration begins.

(1) Unsolicited comments submitted after the close of the response period established in

§ 83.10(i) and § 83.10(k,) will not be considered in preparation of a final determination. The Assistant Secretary [OHA or AS-IA?] has the discretion during the preparation of the proposed finding, however, to request additional explanations and information from the

(k) The petitioner shall have a minimum of 90 business days to respond to any submissions by interested and informed parties during the response period, with arguments, not to exceed 300 pages and evidence. This may be extended at the Assistant Secretary's discretion if warranted by the extent and nature of the comments. The petitioner and interested parties shall be notified by letter of any extension. No further comments from interested or informed parties will be accepted after the end of the regular response period.

(lm). At the end of the period for comment on a proposed finding, the Assistant Secretary shall consult with OFA will automatically issue a final determination acknowledging the petitioner and interested parties to determine as an equitable timeframe for consideration of written Indian tribe if the following are met:

(1) The proposed finding is positive, and

(2) The OFA or Assistant Secretary does not receive timely arguments and evidence submitted during challenging the response proposed finding from the State or local government where the petitioner's office is located or from any federally recognized Indian tribe within the State. Interested or informed parties should not delay a positive finding for federal recognition.

(n) If the conditions of paragraph (m) are not met at the end of the period for comment on a proposed finding, [OHA or AS-IA?] shall make its final determination by considering all the evidence in the petition record, including any evidence that arises from a hearing, if requested. This shall be done within 180 business days.

The petitioner and interested parties shall be notified of the date such consideration begins.

(1) Unsolicited comments submitted after the close of the response period established in § 83.10(i) and § 83.10(k), will not be considered in preparation of a final determination.

The Assistant Secretary has the discretion during the preparation of the proposed finding, however, to request additional explanations and information from the petitioner or from commenting parties to support or supplement their comments on a proposed finding. The Assistant Secretary [OHA or AS-IA?] may also require such additional research as is necessary to evaluate and supplement the record. In either case, the additional materials will become part of the petition record. The petitioning group will receive a certified copy of all documents, comments, petition field notes, interviews, hearing if requested.

Associated with the petitioning group within 90 business days if a positive outcome. If the decision is an unfavorable the Assistant Secretary or designee has 30 business days to send a certified copy of all documents, comments, petition field notes, interviews, hearing if requested associated with the petitioning group petition.

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

(2) After consideration of the(i) [OHA or AS-IA?] may require testimony from OFA

staff involved in preparing the proposed finding. Any such testimony shall be subject to cross-examination by the petitioner.

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

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

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

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

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

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

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

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

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

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

(m) The Assistant Secretary (o) [OHA or AS-IA?] shall acknowledge issue a final determination acknowledging the existence of the petitioner as an Indian tribe when it is determined [OHA or AS-IA?] finds that the group satisfies all of meets the mandatory criteria in paragraphs (d), (e), (f), and (g) of § 83.7 and one of the expedited favorable criteria in § 83.7. The Assistant

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

(m) The Assistant Secretary shall acknowledge a final determination acknowledging the existence of the petitioner as an Indian tribe when it is determined OHA finds that the group satisfies the mandatory criteria in paragraphs (d), (e), (f), and (g) of § 83.7 and one of the expedited favorable criteria in § 83.7. The Assistant Secretary 10 (g) (3); meets all the mandatory criteria in paragraphs (b) through (g) of § 83.7; or establishes previous Federal acknowledgment and meets the criteria in § 83.8. The Assistant Secretary shall decline a final determination to acknowledge that a petitioner is an Indian tribe if it fails to meet 4 of the criteria or one of the expedite criteria in § 83.7 of the above. The Assistant Secretary is bound by an acknowledgment determination by the Assistant Secretary.

(p) If the Assistant Secretary [OHA or AS-IA?] declines to acknowledge that a petitioner is an Indian tribe, [OHA or AS-IA?] shall inform the petitioner shall be informed of alternatives, if any, to acknowledgment under these procedures. These alternatives may include other means through which the petitioning group may achieve the status of an acknowledged Indian tribe or through which any of its members may become eligible for services and benefits from the Department as Indians, or become members of an acknowledged Indian tribe.

(p) If the Assistant Secretary declines to acknowledge that a petitioner is an Indian tribe, the Assistant Secretary shall inform the petitioner shall be informed of alternatives, if any, to acknowledgment under these procedures. These alternatives may include other means through which the petitioning group may achieve the status of an acknowledged Indian tribe or through which any of its members may become eligible for services and benefits from the Department as Indians, or become members of an acknowledged Indian tribe.

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

(o) The Assistant Secretary's determination to acknowledge or decline to acknowledge that the petitioner is an Indian tribe shall be final for the Department.

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

previous acknowledgment regulations. [OHA or AS-IA?]'sOFA's decision whether to allow repititioning shall be final for the Department.

(pr) A petitioner that has maintained its identity that has petitioned under this part or under the acknowledgment regulations previously effective and that has been denied Federal acknowledgment may re-petition under this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

83.7 (a) through (g):

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

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

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

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

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

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

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

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

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

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

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

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

~~(2) If the Board affirms the Assistant Secretary's decision under § 83.11(e)(9) but finds~~

~~that the petitioner or interested parties have alleged other grounds for reconsideration, the Board shall send the requests for reconsideration to the Secretary. The Secretary shall have the discretion to request that the Assistant Secretary reconsider the final determination on those grounds.~~

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

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

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

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

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

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

~~(2) If the Secretary declines to request reconsideration under paragraph (f)(2) of this section, the Assistant Secretary's decision shall become effective and final for the Department as of the date of notification to all parties of the Secretary's decision.~~

~~(3) If a determination is reconsidered by the Assistant Secretary because of action by the Board remanding a decision or because the Secretary has requested reconsideration, the reconsidered determination shall be final and effective upon publication of the notice of this reconsidered determination in the Federal Register.~~

§ 83.11 Independent review, reconsideration and final action.

(a)(1) Upon publication of the Assistant Secretary's determination in the Federal Register, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals; this must occur within 90 business days. Petitioners which choose under § 83.3(g) to be considered under previously effective acknowledgment regulations may nonetheless request reconsideration under this section.

(2) A petitioner's or interested party's request for reconsideration must be received by the

Board no later than 90 business days after the date of publication of the Assistant Secretary's determination in the Federal Register. If no request for reconsideration has been received, the Assistant Secretary's decision shall be final for the Department 90 business days after publication of the final determination in the Federal Register.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The Board, at its discretion, may request experts not associated with the Bureau, the petitioner, or interested parties to provide comments, recommendations, or technical advice concerning the determination, the administrative record, or materials filed by the petitioner or interested parties. The experts cannot be a member of a federal recognized tribe in the state that the petitioning group is located, been an employee, volunteer, and consultant for OFA (BAR), or a Federal recognized tribe in the region. The regions are as follows: Northeast, East, Southeast, South, Southwest, West, Northwest, Plains, Midwest, Alaska, Hawaii, and Pacific Islands, Puerto Rico. The Board may also request, at its discretion, comments or technical assistance from the Assistant Secretary concerning the

final determination or, pursuant to paragraph (e)(8) of this section, the record used for the determination.

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

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

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

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

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

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

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

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

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

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

(4) Where the Board has sent the Secretary a request for reconsideration under paragraph

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

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

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

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

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

(2) If the Secretary declines to request reconsideration under paragraph (f) (2) of this section, the Assistant Secretary's decision shall become effective and final for the Department as of the date of notification to all parties of the Secretary's decision.

(3) If a determination is reconsidered by the Assistant Secretary because of action by the Board remanding a decision or because the Secretary has requested reconsideration, the reconsidered determination shall be final and effective upon publication of the notice of this reconsidered determination in the Federal Register.

The petitioning group that is denied federal recognition shall seek federal recognition through

1. United States Court System
2. Congressional
3. Executive Order

COMMENTS:

The OFA team needs to have clear direction with evaluation criteria that will be used to determine if the petitioning tribe meets the criteria for federal recognition. The evaluation criteria and evidence must not be changed from petitioning group; it must stay the same. The petitioning tribe must receive a copy of the evaluation criteria. There needs to be a committee of both federal and non federal American Indians to observe the evaluation teams and make sure that they are following the set criteria guidelines for evaluating the petitions.

All subjective criteria and subjective evaluation tools will not be used by OFA.