

Impact Statement will be examining the same issues that have been dealt with under the California Environmental Quality Act as well as any others that may arise.

The primary purpose of the scoping process is to identify rather than to debate the significant issues related to the proposed action. Interested persons are encouraged to provide comments on the scope of issues and alternatives addressed in the draft Environmental Impact Statement.

Dated: February 7, 2000.

**Elizabeth H. Stevens,**

*Deputy Manager, California/Nevada  
Operations Office.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Changes in the Internal Processing of Federal Acknowledgment Petitions

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Assistant Secretary—Indian Affairs (AS-IA) is changing certain internal procedures for processing petitions for federal acknowledgment as an Indian tribe, and clarifying other procedures. These revised procedures do not change the acknowledgment regulations, 25 CFR Part 83.

**DATES:** These changes are effective as of February 11, 2000. They are to apply to all future proposed findings, except for Little Shell of Montana petitioner, and to all future final determinations, except for the Cowlitz petitioner, where technical reports have been prepared already.

**FOR FURTHER INFORMATION CONTACT:** Acting Director, Duane Birdbear, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, N.W., Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research, MailStop 4660-MIB. (202) 208-3463.

#### SUPPLEMENTARY INFORMATION:

##### Introduction

This notice is published in the exercise of authority under 5 U.S.C. 552(a); 5 U.S.C. 301; 25 U.S.C. 2 and 9; 43 U.S.C. 1457; and under the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.

To reduce the current delays in reviewing petitions for acknowledgment, the AS-IA is changing certain internal procedures for processing acknowledgment petitions, and clarifying other procedures. The current acknowledgment process has a substantial backlog resulting in delays of several years before review is begun of a petition that is ready for active consideration and before there is a final resolution of a petition on its merits. It is essential to change the internal processes so that acknowledgment decisions may be made in a more timely manner.

The acknowledgment process is based on the regulations in 25 CFR Part 83, first issued in 1978 and revised in 1994. No specific legislation established the acknowledgment process. An agency may change its procedures and implementation of its own regulations where these changes do not contradict or alter the regulations. These revised procedures do not change the acknowledgment regulations. Rather, these changes provide a different means of implementing the existing regulations. This **Federal Register** notice is to advise petitioners, interested parties, and the public of these changes. Petitioners and interested parties will be provided a copy of this notice of changes in procedures by first class mail.

After issuance of a proposed finding in Little Shell and a final determination in Cowlitz, the Branch of Acknowledgment and Research (BAR) will still have five active cases awaiting completion of a proposed finding. The BAR has not started the evaluation of four cases awaiting a final determination (two of which have been ready for more than two years), and three cases which are awaiting amended or second proposed findings. In addition, there are now 11 completed petitions awaiting active consideration which have not been reviewed. Six of these have been ready for review for more than three years. New letters of intent and documented petitions are continuing to be received in substantial numbers. There is no reason to believe that the number of requests for acknowledgment received by the Department will decline in the foreseeable future.

At the same time, there are other substantial demands on the time of the BIA's staff which will continue to reduce the proportion of their time available for evaluation of petitions. For example, petitioners and third parties frequently request an independent review of acknowledgment final determinations by the Interior Board of

Indian Appeals (IBIA), requiring the BIA to prepare the record and responses to issues referred by the IBIA. In addition, the BIA is currently responding to litigation in at least five lawsuits concerning acknowledgment decisions. Finally, there are substantial numbers of Freedom of Information Act (FOIA) requests which require the BIA to copy the voluminous records of current and completed cases. There is no anticipated decrease in these types of required work in the foreseeable future.

In light of the backlog and other demands on the time of the BIA staff, it is necessary to make whatever procedural changes are possible within the framework of the existing regulations in order to resolve more expeditiously pending petitions for acknowledgment.

#### Changes in Procedures

Under the regulations, the petitioner has the burden to present evidence that it meets the mandatory criteria. Section 83.5(c) of the acknowledgment regulations, describing the duties of the Department, states that: "the Department shall not be responsible for the actual research on the part of the petitioner."

Section 83.10(a) of the regulations provides that the AS-IA may "initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status." This language makes action on the part of the AS-IA discretionary and does not mandate that any additional research be carried out. In the past, under the authority of this section, substantial additional research often has been conducted by BIA staff to supplement a petitioner's research, especially where deficiencies remained even after extensive technical assistance had been provided to the petitioner. The present demands on BIA staff time and the backlog of cases mandate that this research no longer be done.

The AS-IA is therefore directing the BIA that, in conducting its review of petitions and third party comments, it is not expected or required to locate new data in any substantial way. Staff research is to be limited to that needed to verify and evaluate the materials presented by the petitioner and submitted by third parties. The BIA's review of a petition shall be limited to evaluating the arguments presented by the petitioner and third parties and to determining whether the evidence submitted by the petitioner, or by third parties, demonstrates that the petitioner meets each of the criteria. The BIA is expected to use its expertise and

knowledge of sources to evaluate the accuracy and reliability of the submissions. In cases where petitioners or third parties submit data that they have not analyzed, the BIA shall not itself conduct extensive analysis of these data to demonstrate that the criteria have or have not been met, but shall refer the responsibility for analysis to the petitioner or third parties to be completed during the comment period.

A proposed finding represents the agency's conclusions at the time that finding is made, based on the evidence in the record. One purpose of the comment period on the proposed finding is to give the petitioner and third parties an opportunity to present additional evidence in response to the deficiencies and weaknesses in the petition which were defined by the proposed finding. Submissions by the petitioner and third parties during the comment period, rather than BIA research, is the appropriate means to remedy such deficiencies.

Once the regulatory time frame for active consideration has begun on a proposed finding, the BIA will not consider additional materials submitted by petitioners or third parties. Any such materials received from the petitioner or third parties will be held for review during preparation of the final determination. The staff members evaluating the petition shall not request additional information from the petitioner and third parties during the preparation of the proposed finding. If necessary information and analysis are lacking, the petitioner or third parties may supply it in response to the proposed finding.

The review of a petition is to be conducted by a team of professional BIA researchers working in consultation with each other. The acknowledgment decision is not intended to be a definitive scholarly study of the petitioning group. The scope of the review shall be limited to that necessary to establish whether the petitioner has met its burden to establish by a reasonable likelihood of the validity of the facts that it meets all seven regulatory criteria. Although professional standards of BIA researchers will be applied to the review, these standards shall be applied within the constraints of time established by these procedures and the resources available, and as appropriate to the role of the Government in these procedures, which is to evaluate whether the petitioner has met its burden as defined in the regulations. In conducting its review and preparing its report and recommendation for the decision makers, it is not possible or

reasonable to expect the BIA researchers to anticipate all possible court challenges. A court challenge is a reasonable expectation, and anticipating such challenges may require that extensive additional research or analysis be conducted beyond that necessary for the Department to reach a decision.

Therefore, the AS-IA is directing the BIA to limit such research and analysis to that necessary for the decision.

The regulations (83.6(a)) state that a petition may be "in any readable form that contains detailed, specific evidence . . ." In some instances, materials submitted by the petitioner or a third party are poorly organized, do not identify the sources or even the nature of the documents provided, or cannot be identified with the source cited in the text submitted by the petitioner or third party. Where documents or exhibits are not, in whole or in part, in a "readable form," BIA researchers shall no longer expend more than a reasonable amount of time attempting to identify the source or sources of documentary materials submitted without such information. Therefore, it is important for the petitioner and third parties to cite the source(s) for each document submitted in order for it to be given appropriate weight as evidence.

The acknowledgment regulations require that the AS-IA "prepare a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision" (83.10(h)). In most instances in the past, one or more technical reports have been prepared in addition to the summary evaluation of the evidence under the criteria. A similar approach has been used for final determinations where there has been a substantial challenge to the proposed finding. The AS-IA is directing that, except for current cases where the technical reports have already been drafted, technical reports such as have been prepared in the past shall no longer be prepared to accompany the summary under the criteria.

Henceforth, the report on the proposed finding called for under the regulations, which is prepared for review by the decision makers, shall consist of a detailed summary evaluation of the arguments and evidence presented by the petitioner and any third parties. The summary evaluation report may be supplemented by a chart, or charts, listing the evidence under each criterion, describing how the evidence has been weighed, and indicating the sections of the regulations and the precedents from past decisions that have been applied to that evidence. The acknowledgment process will

continue to apply the precedents established in past decisions, including precedents under 83.6(e). Indeed, the existence of a substantial body of established precedents now makes possible this more streamlined review process.

The AS-IA is directing that the departmental review of recommended decisions, including signature by the AS-IA, is to take no more than six weeks from the time the draft recommendation leaves the Branch of Acknowledgment and Research office and enters the surname process.

#### Advice to Petitioners

In view of these changes, petitioners are reminded that the petitioner has the burden to show it meets the criteria and the requirements established by the regulations. Under section 83.6(c), a petitioner "must satisfy all of the criteria in paragraphs (a) through (g) of section 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*" (emphasis added). Section 83.6(a) states that the petition must contain "detailed specific evidence in support of a request to the Secretary to acknowledge tribal existence." While section 83.6(a) also provides that the "documented petition may be in any readable form," this does not relieve the petitioner of the burden of providing adequate evidence that it meets all seven mandatory criteria. Petitioners are reminded that a petition can and will be turned down for lack of evidence (83.6(d)).

The regulations at 83.5(b) provide that the guidelines for preparation of documented petitions may be updated as necessary. The changes the AS-IA is here making will require minor revisions of the guidelines. Until revised guidelines are issued, petitioners are advised by this notice that the policies and procedures in this memorandum supersede the existing guidelines where they may be in conflict.

Dated: February 7, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

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