

the short- and long-term health and status of some migratory bird populations. We believe that the number of light geese in the mid-continent region has exceeded long-term sustainable levels for their arctic and subarctic breeding habitats and the populations must be reduced. Authority for managing overabundant mid-continent light geese is contained in 50 CFR 21.

For management purposes, light geese found in the mid-continent region are separated into two different populations. Lesser snow and Ross' geese that primarily migrate through North Dakota, South Dakota, Nebraska, Kansas, Iowa, and Missouri, and winter in Arkansas, Louisiana, Mississippi, and eastern, central, and southern Texas and other Gulf States are referred to as the mid-continent population of light geese. Lesser snow and Ross' geese that primarily migrate through Montana, Wyoming, and Colorado and winter in New Mexico, northwestern Texas, and Chihuahua, Mexico are referred to as the western central flyway population of light geese.

States and tribes that participate in the light geese conservation order must inform and brief all participants on the requirements in 50 CFR 21.60 and conservation order conditions that apply to implementation of light geese control measures. Participating States/tribes must collect information on the number of birds taken during control efforts, the methods by which they are taken, and the dates on which they are taken. We use this information to administer the conservation order and, particularly, to monitor the effectiveness of control strategies and to protect migratory birds. Each participating State must submit an annual report by August 30 of each year summarizing the activities it conducted. We contacted some participating States to estimate burden hours for this information collection.

Title of Collection: Conservation Order for Control of Mid-Continent Light Geese, 50 CFR 21.60.

OMB Control Number: 1018-0103.

Form Number: None.

Frequency of Collection: Annually.

Description of Respondents: States and tribes participating in the conservation order.

Total Annual Burden Hours: 1,776.

Total Annual Responses: 24.

We invite comments concerning this submission on (1) whether or not the collection of information is necessary for the proper performance of our migratory bird management functions, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552 (a)).

Dated: March 2, 2005.

Hope Grey,

*Information Collection Clearance Officer,
Fish and Wildlife Service.*

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Federal Acknowledgment; Reports and Guidance Documents; Availability, etc.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Department gives notice that the Associate Deputy Secretary of the Interior is revising and clarifying certain internal procedures for managing and processing petitions for Federal acknowledgment as an Indian tribe. These revisions do not change the acknowledgment regulations, 25 CFR part 83.

DATES: *Effective Date:* The procedures defined by this notice are effective on March 31, 2005.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, MS: 34B-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240, phone (202) 513-7650.

SUPPLEMENTARY INFORMATION:

Introduction

The Department publishes this notice in the exercise of authority under 43 U.S.C. 1457, 25 U.S.C. 2 and 9, 5 U.S.C. 552(a), 5 U.S.C. 301, and under the exercise of authority which the Secretary of the Interior delegated to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 Department Manual 8.

This notice supersedes the notice published in the **Federal Register** (65 FR 7052) on February 11, 2000, entitled "Changes in the Internal Processing of Federal Acknowledgment Petitions."

By Secretary's Order No. 3259, dated February 8, 2005, the Secretary delegated to the Associate Deputy Secretary most of the duties formerly delegated to the Assistant Secretary.

(This delegation will expire upon confirmation of a new Assistant Secretary or designation of an Acting Assistant Secretary.) Among the delegated authorities is the authority to, "execute all documents, including regulations and other **Federal Register** notices, and perform all other duties relating to Federal recognition of Native American Tribes."

The acknowledgment process is based on the regulations in 25 CFR Part 83, first issued in 1978 and revised in 1994. The acknowledgment function, formerly under the Branch of Acknowledgment and Research in the Bureau of Indian Affairs (BIA), was relocated to the Office of Federal Acknowledgment in the Office of the Assistant Secretary—Indian Affairs effective July 27, 2003.

The General Accounting Office (now the Government Accountability Office) published on November 2001 a report entitled "Improvements Needed in Tribal Recognition Process." In response to this report, the Department adopted a Strategic Plan, dated September 12, 2002, to identify ways to improve the timeliness and transparency of the acknowledgment process. That plan called for consideration of possible changes in the processing of acknowledgment petitions. This notice presents some of the results of that planning process.

As part of its plan, the Department also provided for a review of a notice of "Changes in the Internal Processing of Federal Acknowledgment Petitions" published by the Assistant Secretary in the **Federal Register** (65 FR 7052) on February 11, 2000. In that notice, the Assistant Secretary changed certain internal procedures and clarified other procedures, within the parameters of the regulations. That notice directed BIA to adopt certain procedural changes in order to reduce delays in reviewing petitions for acknowledgment and to make acknowledgment decisions in a more timely manner. This notice supersedes the notice of February 11, 2000.

The procedures described in this notice are based on five years of experience under the notice of February 11, 2000, and on the procedures that have been found most effective in producing the clearest decisions in an efficient manner, while giving petitioners and third parties appropriate opportunities to provide information and comment. These procedures are in accord with the commitment to the principle, stated by the Secretary in her April 1, 2004, memorandum to the Assistant Secretary, that acknowledgment decisions be based on documentation "carefully reviewed in

accordance with regulatory standards and then made available to the public in a transparent and timely manner.” The Secretary stressed the importance of “thorough and deliberate evaluations” because acknowledgment decisions “must be equitable and defensible.”

The internal procedures stated in this notice do not change the acknowledgment regulations. Rather, they provide a better means of implementing the existing regulations and managing the agency’s workload within the parameters of the regulations and available resources. These procedures apply to the Office of Federal Acknowledgment.

This **Federal Register** notice is to advise petitioners, interested parties, and the public of the internal procedural changes adopted by the Department as part of its response to the GAO report. It also provides them with certain information and guidance to promote transparency in the acknowledgment process and timeliness in the processing of acknowledgment petitions. Petitioners and interested parties will be provided a copy of this notice by first class mail.

Regulatory Procedures

Under the regulations, the petitioner has the burden to present evidence that it meets the mandatory criteria. Section 83.6(c) of the acknowledgment regulations provides that “the documented petition must include thorough explanations and supporting documentation in response to all of the criteria.” Section 83.6(d) provides that a petition can and will be turned down for lack of evidence.

The regulations, in § 83.5(c), describe the duties of the Department, in part, by stating 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 Assistant Secretary “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 additional research on the part of the Assistant Secretary discretionary and does not mandate that any additional research be carried out.

The notice of February 11, 2000, limited research by the acknowledgment staff to that needed to verify and evaluate the “materials presented by the petitioner and submitted by third parties.” This notice removes that specific limitation, while reaffirming the importance of timely reviews of the evidence by the acknowledgment staff. Consistent with that limitation,

acknowledgment staff members have performed research—including archival, library, and field research—and analysis as necessary to verify and evaluate the arguments and evidence presented by the petitioner or third parties. Such expert research shall continue to be done. The acknowledgment staff may undertake some research or analysis beyond the arguments and evidence presented by the petitioner or third parties, at the discretion of the Department, only when consistent with producing a decision within the regulatory time period. This notice clarifies that the acknowledgment staff may acquire relevant and easily accessible documents not already in the record and may interview knowledgeable informants not already interviewed for the record. Research to obtain additional information that clarifies the issues in a case can speed the evaluation of a petition. Research to acquire relevant information not accessible to the parties or overlooked by the parties by using the professional expertise of the acknowledgment staff can aid the determination of whether the petitioner meets the regulatory criteria for acknowledgment and provide a clearer basis for the decision. Petitioners and third parties, however, have no expectation that the acknowledgment staff will perform additional research or analysis to correct omissions in their submitted documentation. The burden under the regulations remains on the petitioner to demonstrate that it meets the criteria.

The notice of February 11, 2000, provided that materials submitted after the start of active consideration would not be reviewed for the proposed finding, but would be reviewed for the final determination. This notice modifies that direction. In the future, when the Department notifies the petitioner and third parties that a petition will be placed on active consideration on a specific date, it also will notify them of a date by which additional material must be submitted to be considered for the proposed finding. The Department will provide a 60-day time period for such submissions. Unsolicited submissions after that date will be reviewed for the final determination and not for the proposed finding, with the following exception. Section 83.10(f)(2) of the regulations provides that 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.” A petitioner’s response to substantive comments on its petition will be considered for the proposed finding if submitted within 60 days of its notification by the Department of the receipt of any substantive comments that will be considered for the proposed finding, or within 60 days of the date by which additional materials had to be submitted to be considered for the proposed finding, whichever is later, even if active consideration has begun. The petitioner and third parties retain the opportunity under the regulations to comment on each other’s submissions during the public comment period that follows the proposed finding.

The notice of February 11, 2000, stated that the acknowledgment staff “shall not request additional information from the petitioner and third parties during the preparation of the proposed finding.” This notice modifies that limitation. Consistent with that limitation, acknowledgment researchers have requested and reviewed documents and analyses that were incomplete as submitted, available in a more usable form than that submitted, or referenced but not submitted. Acknowledgment staff may request additional information from the petitioner or third parties at any time prior to the proposed finding in order to clarify the arguments or evidence submitted by those parties, or to obtain information in the possession of the petitioner or third parties that was not submitted. The proposed finding, however, shall not be delayed to obtain this information.

The notice of February 11, 2000, directed that “technical reports such as have been prepared in the past” by the acknowledgment staff, which often consisted of multiple technical reports reflecting the approaches of different professional disciplines, should no longer be prepared to accompany the summary evaluation of the evidence under the criteria as part of the report required by § 83.10(h) of the regulations. Consistent with that limitation, new forms of charting, arranging, and describing the available evidence under each criterion have been used. This notice clarifies the notice of February 11, 2000, by providing that, in addition to a summary under the criteria, the Department may prepare a technical report, where appropriate, to memorialize the analysis of the evidence that is the basis of the summary evaluation in order to enhance the transparency of the decision. Such a report should not describe all of the evidence submitted, but should focus on the evidence most important to the decision-making process. It remains the

policy of the Department to provide a complete explanation of the basis for acknowledgment decisions.

The notice of February 11, 2000, provided that Departmental review of recommended decisions, including signature by the Assistant Secretary, "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." This notice clarifies the notice of February 11, 2000, by stating that, consistent with practice under that notice, the 6-week limitation does not apply to the processes of consultation and briefing by the Office of Federal Acknowledgment that should continue to occur with the Office of the Assistant Secretary—Indian Affairs and the Office of the Solicitor prior to the start of the Department's surname process. The timely processing of acknowledgment petitions will be improved more by such earlier consultation and briefing than by limiting the time period for Departmental review. In addition, the reorganization of the acknowledgment function into the Office of the Assistant Secretary—Indian Affairs has reduced the need for a specified time frame for the surname process and improved the timeliness of the processing of acknowledgment petitions by reducing the number of levels of Departmental review.

Certain statements about the Department's procedures contained in the notice of February 11, 2000, are clarified and reaffirmed here:

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 findings on the petition. Submissions by the petitioner and third parties during the comment period, rather than research by the acknowledgment staff, are the most appropriate and efficient means to supplement the record of the petition.

The review of a petition is to be conducted by a team of professional researchers working in consultation with each other. The acknowledgment decision is not intended to be a definitive study of the petitioning group. The acknowledgment staff is expected to use its expertise and knowledge of sources to evaluate the accuracy and reliability of the submissions, but to conduct its professional review within the constraints of time established by the regulations and the resources available.

The acknowledgment researchers are not expected to conduct extensive analysis of data that petitioners or third parties submitted but did not analyze. The acknowledgment researchers are not expected to conduct additional research and analysis in preparation for any anticipated challenge in court. The scope of the staff's professional 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.

Section 83.6(a) of the regulations states 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 from the source cited in the text submitted by the petitioner or third party. The Department may consider such materials, either in whole or in part, as not being in a "readable form" within the meaning of the regulations, and acknowledgment researchers shall not 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 clearly the source(s) for each document submitted in order for it to be given appropriate weight as evidence.

Information and Advice for Petitioners and Third Parties

In accordance with the Department's Strategic Plan of September 12, 2002, the Office of Federal Acknowledgment has created a compilation of all of the Department's acknowledgment decisions in order to promote transparency in the acknowledgment process. This compilation contains all proposed findings, final determinations, and reconsidered final determinations, including their summaries under the criteria, technical reports, charts, supporting materials, and **Federal Register** notices, plus technical assistance letters to petitioners and Departmental correspondence relating to issues referred by the Interior Board of Indian Appeals in acknowledgment cases. This compilation will be periodically updated to include future completed cases. This "Acknowledgment Decisions Compilation" is available to petitioners, third parties, and the public on compact disk (CD).

The Department's Strategic Plan also included consideration of possible changes in acknowledgment procedures. From this review, the Department has identified several ways in which the timeliness and transparency of the acknowledgment process could be improved, both by providing petitioners and third parties with a better understanding of its policies and by suggesting certain practices that could be voluntarily adopted by petitioners and third parties in the absence of changes to the regulations. In accordance with the Strategic Plan, the Department reviewed whether petition data could be entered into a computerized system, whether a standard format could be adopted for the submission of petitions, whether letters of intent should include the submission of governing documents and membership lists, whether third parties could receive non-privacy documents without invoking the Freedom of Information Act (FOIA), whether possible impediments to the orderly consideration of petitions such as extensions of time could be resolved, and whether other possible changes in procedures could improve the administration of the acknowledgment process. The following information and suggestions resulted from this review.

The Office of Federal Acknowledgment has used a computer database system (known as FAIR) as a pilot project in several cases. This system is intended to make the evidentiary record, and the Department's analysis of that evidence, more accessible to petitioners and third parties by allowing them to obtain that record on compact disk (CD). This system holds scanned images of all the documents in the administrative record for a petition and provides on-screen, computerized access to those documents. It allows the evidence for a petition to be sorted and retrieved, and thus improves the ability of petitioners and third parties to find and view specific documents cited in the Department's findings or in the submissions of other parties. The acknowledgment staff is available to provide assistance to petitioners and third parties about the use of this electronic database system.

Petitioners are encouraged to consult with the acknowledgment staff before and during preparation of a documented petition in order to improve the quality of the petition, reduce the number of deficiencies noted in a technical assistance letter, and thus improve the timeliness of the acknowledgment process. Petitioners and third parties are advised to consult with the

acknowledgment staff before using genealogical, database, or other computer software programs in order to maximize compatibility with systems in use within the Office of Federal Acknowledgment. Petitioners and other parties may submit petition materials in an electronic format, such as images of documents, and consult with the acknowledgment staff to prepare for the inclusion of their petition in the FAIR system. Consultation before preparation of petition materials will facilitate compatibility and thereby speed the review of petitions.

The acknowledgment staff is available to provide technical assistance to petitioners and third parties, but can understand the organization and composition of a petitioning group and its governing body only if the group's governing documents and membership roll are provided. Therefore, these documents should be submitted as soon as possible, preferably with the letter of intent, in order for the acknowledgment staff to provide effective and timely technical assistance. These items are required elements of a documented petition under § 83.7(d) and (e). As part of their comments on a proposed finding, petitioners should submit an updated membership roll, certified by their governing body. The petitioner should include an explanation of any changes in its membership criteria and/or enrollment procedures and any substantial changes in its membership since the proposed finding. Petitioners are reminded that, under § 83.11(b), if they are acknowledged, this list will become the group's base membership roll.

In order to promote timeliness and transparency in the acknowledgment process, especially during the period between a determination that a documented petition is ready for active consideration and publication of a proposed finding, petitioners are encouraged to provide a copy of the non-privacy materials in their submissions to the Department directly to the State Attorney General's Office and any recognized tribe that is an interested party in their petition, and third parties are encouraged to provide a copy of their submissions to the Department directly to the petitioner, the State Attorney General's Office, and any recognized tribe that is an interested party. This request does not change the regulatory requirement, in § 83.10(i), that third parties who submit arguments and evidence to the Assistant Secretary on the proposed finding must provide a copy of their submissions to the petitioner. This guidance does not create any rights in petitioners or third

parties to obtain information or respond to it. Such voluntary, reciprocal exchanges with other parties may improve the ability of those parties to submit timely comments. If the Department is able to include an evaluation of such submissions in a proposed finding, then all parties will be able to reply to that evaluation during the comment period. These reciprocal exchanges also would improve the ability of all parties to comment after a proposed finding on any materials submitted too late to be considered for the proposed finding. If such exchanges eliminate a need for parties to submit FOIA requests, they should reduce the collateral duties of the acknowledgment staff and thus speed the Department's processing of acknowledgment petitions.

The regulations provide, in § 83.10(i), that the comment period that follows a proposed finding "may be extended for up to an additional 180 days at the Assistant Secretary's discretion upon a finding of good cause." The Department has interpreted the regulations as providing for more than one extension. It has been the policy of the Department that the finding of "good cause" for any extension will depend on the specificity of the description of work that will be done if additional time is permitted, the explanation for why the research and analysis were not completed during the initial comment period or prior extension, and the amount of additional time requested. Any requests for extensions should be made appropriately in advance of the expiration of the initial or extended comment period, and petitioners and third parties should not assume that such extensions will be granted either in whole or in part. While extensions of the comment period will be granted on a showing of good cause, if, because of such an extension, a petition is not ready for evaluation for a final determination when the acknowledgment staff is available to be assigned to it, the Department will proceed to evaluate another petition. The Department cannot allow delay on one petition to cause delay on other petitions.

The Department advises petitioners, third parties, and their representatives not to contact the Associate Deputy Secretary or any other Department official who may have been delegated authority to decide matters concerning the acknowledgment petition during the last 60 days of the regulatory time period provided for the issuance of a proposed finding or final determination. During the active consideration of a petition, the petitioner and third parties

may contact the supervisor of the acknowledgment staff (see the contact information above) regarding the status of the petition.

Under § 83.5 of the regulations, the Associate Deputy Secretary, or the Assistant Secretary, as appropriate, shall supplement or update the acknowledgment guidelines as necessary. The advice in this notice supersedes the existing guidelines for preparation of documented petitions where they may be in conflict.

These revised procedures and guidance are effective on March 31, 2005.

Dated: March 10, 2005.

James E. Cason,

Associate Deputy Secretary.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-068-03-1610-DR-241E]

Notice of Availability of Record of Decision for the Imperial Sand Dunes Recreation Area Management Plan (RAMP)/Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management.

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the Endangered Species Act (ESA), and the Bureau of Land Management (BLM) management policies, the BLM announces the availability of the RAMP Record of Decision for the Imperial Sand Dunes located mainly in the Western Colorado Desert Planning Area and partly in the Northern and Eastern Colorado Desert Planning area. The California State Director will sign the Record of Decision for the Imperial Sand Dunes RAMP which becomes effective immediately.

ADDRESSES: Copies of the Imperial Sand Dunes RAMP/Record Of Decision are available upon request from the Field Manager, El Centro Field Office, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243 or via the Internet at <http://www.ca.blm.gov>.

FOR FURTHER INFORMATION CONTACT: Lynnette Elser, Resource Staff Chief, El Centro Field Office, El Centro, CA 92243, phone: 760-337-4400, e-mail: lelser@ca.blm.gov.