

- (1) A signature was forged;
- (2) An individual was ineligible to sign the petition;
- (3) A petition page is inconsistent or improperly formatted; or
- (4) A petition page contains an incomplete or un-notarized declaration statement.

**§ 81.62 How is the petition validated?**

- (a) The Local Bureau Official must:
  - (1) Confirm the petition has the required number of signatures;
  - (2) Indicate any signatures appearing more than once and include only one in the count;
  - (3) Make recommendations regarding any challenge to the validity of signatures based upon the documentation provided by the challenger; and
  - (4) Verify the petitioning procedures complied with this Subpart.
  - (5) Transmit within 45 calendar days of the Official Filing Date the original petition, challenges, and recommendations to the Authorizing Official.
- (b) The Authorizing Official must within 60 calendar days of the Official Filing Date:
  - (1) Determine whether the petition complies with the requirements of this Subpart;
  - (2) Inform the spokesperson for the petitioners and the recognized tribal governing body, in writing, whether the petition is valid, the basis for that determination, and a statement that the decision of the Authorizing Official is a final agency action.
    - (i) If the petition is determined valid for the purposes of calling a Secretarial election, it will be deemed a "tribal request" for the purposes of this part, and the Authorizing Official will instruct the Local Bureau Official to call and conduct the Secretarial election in accordance with §§ 81.19 through 81.45 of subpart D.
    - (ii) If the petition is determined invalid, the Authorizing Official will notify the spokesperson for the petitioners, with a courtesy copy to the tribe's governing body, that the petition was not valid and a Secretarial election will not be called.

**§ 81.63 May the same petition be used for more than one Secretarial election?**

No. A petition may not be used for more than one Secretarial election. Each request for a Secretarial election requires a new petition.

**PART 82 [RESERVED]****PART 83—PROCEDURES FOR FEDERAL ACKNOWLEDGMENT OF INDIAN TRIBES****Subpart A—General Provisions****Sec.**

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### Subpart A—General Provisions

#### § 83.1 What terms are used in this part?

As used in this part:

*ALJ* means an administrative law judge in the Departmental Cases Hearings Division, Office of Hearings and Appeals (OHA), Department of the Interior, appointed under 5 U.S.C. 3105.

*Assistant Secretary* or *AS-IA* means the Assistant Secretary—Indian Affairs within the Department of the Interior, or that officer's authorized representative, but does not include representatives of the Office of Federal Acknowledgment.

*Autonomous* means independent of the control of any other Indian governing entity.

*Bureau* means the Bureau of Indian Affairs within the Department of the Interior.

*Continental United States* means the contiguous 48 states and Alaska.

*Department* means the Department of the Interior, including the Assistant Secretary and OFA.

*Documented petition* means the detailed arguments and supporting documentary evidence submitted by a petitioner claiming that it meets the Indian Entity Identification (§ 83.11(a)), Governing Document (§ 83.11(d)), Descent (§ 83.11(e)), Unique Membership (§ 83.11(f)), and Congressional Termination (§ 83.11(g)) Criteria and claiming that it:

(1) Demonstrates previous Federal acknowledgment under § 83.12(a) and meets the criteria in § 83.12(b); or

(2) Meets the Community (§ 83.11(b)) and Political Authority (§ 83.11(c)) Criteria.

*Federally recognized Indian tribe* means an entity listed on the Department of the Interior's list under the Federally Recognized Indian Tribe List Act of 1994, which the Secretary currently acknowledges as an Indian tribe and with which the United States maintains a government-to-government relationship.

*Historical* means before 1900.

*Indigenous* means native to the continental United States in that at least part of the petitioner's territory at the

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 479a–1; Pub. L. 103–454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

SOURCE: 80 FR 37887, July 1, 2015, unless otherwise noted.

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time of first sustained contact extended into what is now the continental United States.

*Member of a petitioner* means an individual who is recognized by the petitioner as meeting its membership criteria and who consents to being listed as a member of the petitioner.

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

*Petitioner* means any entity that has submitted a documented petition to OFA requesting Federal acknowledgment as a federally recognized Indian tribe.

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

*Roll* 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 roll means a list of those recognized as members by the tribe's governing body. In either case, those individuals on a roll must have affirmatively demonstrated consent to being listed as members.

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

*Tribe* means any Indian tribe, band, nation, pueblo, village or community.

### § 83.2 What is the purpose of the regulations in this part?

The regulations in this part implement Federal statutes for the benefit of Indian tribes by establishing procedures and criteria for the Department to use to determine whether a petitioner is an Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians. A positive determination will result in Federal recognition status and the petitioner's addition to the Department's list of federally recognized Indian tribes. Federal recognition:

(a) Is a prerequisite to the protection, services, and benefits of the Federal Government available to those that qualify as Indian tribes and possess a government-to-government relationship with the United States;

(b) Means the tribe is entitled to the immunities and privileges available to other federally recognized Indian tribes;

(c) Means the tribe has the responsibilities, powers, limitations, and obligations of other federally recognized Indian tribes; and

(d) Subjects the Indian tribe to the same authority of Congress and the United States as other federally recognized Indian tribes.

### § 83.3 Who does this part apply to?

This part applies only to indigenous entities that are not federally recognized Indian tribes.

### § 83.4 Who cannot be acknowledged under this part?

The Department will not acknowledge:

(a) An association, organization, corporation, or entity of any character formed in recent times unless the entity has only changed form by recently incorporating or otherwise formalizing its existing politically autonomous community;

(b) A splinter group, political faction, community, or entity of any character that separates from the main body of a currently federally recognized Indian tribe, petitioner, or previous petitioner unless the entity can clearly demonstrate it has functioned from 1900 until the present as a politically autonomous community and meets § 83.11(f), even though some have regarded them as part of or associated in some manner with a federally recognized Indian tribe;

(c) An entity that is, or an entity whose members are, subject to congressional legislation terminating or forbidding the government-to-government relationship; or

(d) An entity that previously petitioned and was denied Federal acknowledgment under these regulations or under previous regulations in part 83 of this title (including reconstituted, splinter, spin-off, or component groups

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who were once part of previously denied petitioners).

### **§ 83.5 How does a petitioner obtain Federal acknowledgment under this part?**

To be acknowledged as a federally recognized Indian tribe under this part, a petitioner must meet the Indian Entity Identification (§83.11(a)), Governing Document (§83.11(d)), Descent (§83.11(e)), Unique Membership (§83.11(f)), and Congressional Termination (§83.11(g)) Criteria and must:

(a) Demonstrate previous Federal acknowledgment under §83.12(a) and meet the criteria in §83.12(b); or

(b) Meet the Community (§83.11(b)) and Political Authority (§83.11(c)) Criteria.

### **§ 83.6 What are the Department's duties?**

(a) The Department will publish in the FEDERAL REGISTER, by January 30 each year, a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians, in accordance with the Federally Recognized Indian Tribe List Act of 1994. The list may be published more frequently, if the Assistant Secretary deems it necessary.

(b) OFA will maintain guidelines limited to general suggestions on how and where to conduct research. The guidelines may be supplemented or updated as necessary. OFA will also make available examples of portions of documented petitions in the preferred format, though OFA will accept other formats.

(c) OFA will, upon request, give prospective petitioners suggestions and advice on how to prepare the documented petition. OFA will not be responsible for the actual research on behalf of the petitioner.

### **§ 83.7 How does this part apply to documented petitions submitted before August 17, 2015?**

(a) Any petitioner who has not submitted a complete documented petition as of July 31, 2015 must proceed under these revised regulations. We will notify these petitioners and provide them

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with a copy of the revised regulations by July 31, 2015.

(b) By August 31, 2015, OFA will notify each petitioner that has submitted complete documented petitions but has not yet received a final agency decision that it must proceed under these revised regulations unless it chooses by September 29, 2015 to complete the petitioning process under the previous version of the acknowledgment regulations as published in 25 CFR part 83, revised as of April 1, 1994.

(c) Any petitioner who has submitted a documented petition under the previous version of the acknowledgment regulations and chooses to proceed under these revised regulations does not need to submit a new documented petition, but may supplement its petition.

### **§ 83.8 May the deadlines in this part be extended?**

(a) The AS-IA may extend any of the deadlines in this part upon a finding of good cause.

(b) For deadlines applicable to the Department, AS-IA may extend the deadlines upon the consent of the petitioner.

(c) If AS-IA grants a time extension, it will notify the petitioner and those listed in §83.22(d).

### **§ 83.9 How does the Paperwork Reduction Act affect the information collections in this part?**

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0104. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street, NW., Washington, DC 20240.

## Subpart B—Criteria for Federal Acknowledgment

### § 83.10 How will the Department evaluate each of the criteria?

(a) The Department will consider a criterion in § 83.11 to be met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.

(1) The Department will not require conclusive proof of the facts relating to a criterion in order to consider the criterion met.

(2) The Department will require existence of community and political influence or authority 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 will not in themselves be a cause for denial of acknowledgment under these criteria.

(3) The petitioner may use the same evidence to establish more than one criterion.

(4) Evidence or methodology that the Department found sufficient to satisfy any particular criterion in a previous decision will be sufficient to satisfy the criterion for a present petitioner.

(b) When evaluating a petition, the Department will:

(1) Allow criteria to be met by any suitable evidence, rather than requiring the specific forms of evidence stated in the criteria;

(2) Take into account historical situations and time periods for which evidence is demonstrably limited or not available;

(3) Take into account the limitations inherent in demonstrating historical existence of community and political influence or authority;

(4) Require a demonstration that the criteria are met on a substantially continuous basis, meaning without substantial interruption; and

(5) Apply these criteria in context with the history, regional differences, culture, and social organization of the petitioner.

### § 83.11 What are the criteria for acknowledgment as a federally recognized Indian tribe?

The criteria for acknowledgment as a federally recognized Indian tribe are delineated in paragraphs (a) through (g) of this section.

(a) *Indian entity identification.* 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 will 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.

(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.

(7) Identification as an Indian entity by the petitioner itself.

(b) *Community.* The petitioner comprises a distinct community and demonstrates that it existed as a community from 1900 until the present. Distinct community means an entity with consistent interactions and significant social relationships within its membership and whose members are differentiated from and distinct from nonmembers. Distinct community must be understood flexibly in the context of the history, geography, culture, and social organization of the entity. The petitioner may demonstrate that it meets this criterion by providing evidence for known adult members or by providing evidence of relationships of a reliable, statistically significant sample of known adult members.

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(1) The petitioner may demonstrate that it meets this criterion at a given point in time by some combination of two or more of the following forms of evidence or by other evidence to show that a significant and meaningful portion of the petitioner's members constituted a distinct community at a given point in time:

(i) Rates or patterns of known marriages within the entity, or, as may be culturally required, known patterned out-marriages;

(ii) Social relationships connecting individual members;

(iii) Rates or patterns of informal social interaction that exist broadly among the members of the entity;

(iv) Shared or cooperative labor or other economic activity among members;

(v) Strong patterns of discrimination or other social distinctions by non-members;

(vi) Shared sacred or secular ritual activity;

(vii) Cultural patterns shared among a portion of the entity 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 system, religious beliefs or practices, and ceremonies;

(viii) The persistence of a collective identity continuously over a period of more than 50 years, notwithstanding any absence of or changes in name;

(ix) Land set aside by a State for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period;

(x) Children of members from a geographic area were placed in Indian boarding schools or other Indian educational institutions, to the extent that supporting evidence documents the community claimed; or

(xi) A demonstration of political influence under the criterion in § 83.11(c)(1) will be evidence for demonstrating distinct community for that same time period.

(2) The petitioner will be considered to have provided more than sufficient evidence to demonstrate distinct community and political authority under

§ 83.11(c) at a given point in time if the evidence demonstrates any one of the following:

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

(ii) At least 50 percent of the members of the entity were married to other members of the entity;

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

(iv) There are distinct community social institutions encompassing at least 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or

(v) The petitioner has met the criterion in § 83.11(c) using evidence described in § 83.11(c)(2).

(c) *Political influence or authority.* The petitioner has maintained political influence or authority over its members as an autonomous entity from 1900 until the present. Political influence or authority means the entity uses a council, leadership, internal process, or other mechanism as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members, and/or representing the entity in dealing with outsiders in matters of consequence. This process is to be understood flexibly in the context of the history, culture, and social organization of the entity.

(1) The petitioner may demonstrate that it meets this criterion by some combination of two or more of the following forms of evidence or by other evidence that the petitioner had political influence or authority over its members as an autonomous entity:

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

(ii) Many of the membership consider issues acted upon or actions taken by

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entity leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication, or involvement in political processes by many of the entity's members.

(iv) The entity meets the criterion in § 83.11(b) at greater than or equal to the percentages set forth under § 83.11(b)(2).

(v) There are internal conflicts that show controversy over valued entity goals, properties, policies, processes, or decisions.

(vi) The government of a federally recognized Indian tribe has a significant relationship with the leaders or the governing body of the petitioner.

(vii) Land set aside by a State for petitioner, or collective ancestors of the petitioner, that is actively used for that time period.

(viii) There is a continuous line of entity leaders and a means of selection or acquiescence by a significant number of the entity's members.

(2) The petitioner will be considered to have provided sufficient evidence of political influence or authority at a given point in time if the evidence demonstrates any one of the following:

(i) Entity leaders or other internal mechanisms exist or existed that:

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

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

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

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

(ii) The petitioner has met the requirements in § 83.11(b)(2) at a given time.

(d) *Governing document.* The petitioner must provide:

(1) A copy of the entity's present governing document, including its membership criteria; or

(2) In the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures.

(e) *Descent.* The petitioner's membership consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity).

(1) The petitioner satisfies this criterion by demonstrating that the petitioner's members descend from a tribal roll directed by Congress or prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, providing a tribal census, or other purposes, unless significant countervailing evidence establishes that the tribal roll is substantively inaccurate; or

(2) If no tribal roll was directed by Congress or prepared by the Secretary, the petitioner satisfies this criterion by demonstrating descent from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity) with sufficient evidence including, but not limited to, one or a combination of the following identifying present members or ancestors of present members as being descendants of a historical Indian tribe (or of historical Indian tribes that combined and functioned as a single autonomous political entity):

(i) Federal, State, or other official records or evidence;

(ii) Church, school, or other similar enrollment records;

(iii) Records created by historians and anthropologists in historical times;

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body with personal knowledge; and

(v) Other records or evidence.

(f) *Unique membership.* The petitioner's membership is composed principally of persons who are not members of any federally recognized Indian tribe. However, a petitioner 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, a federally recognized Indian tribe, if the petitioner demonstrates that:

(1) It has functioned as a separate politically autonomous community by

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satisfying criteria in paragraphs (b) and (c) of this section; and

(2) Its members have provided written confirmation of their membership in the petitioner.

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

### § 83.12 What are the criteria for a previously federally acknowledged petitioner?

(a) The petitioner may prove it was previously acknowledged as a federally recognized Indian tribe, or is a portion that evolved out of a previously federally recognized Indian tribe, by providing substantial evidence of unambiguous Federal acknowledgment, meaning that the United States Government recognized the petitioner as an Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians with which the United States carried on a relationship at some prior date including, but not limited to, evidence that the petitioner had:

(1) Treaty relations with the United States;

(2) Been denominated a tribe by act of Congress or Executive Order;

(3) Been treated by the Federal Government as having collective rights in tribal lands or funds; or

(4) Land held for it or its collective ancestors by the United States.

(b) Once the petitioner establishes that it was previously acknowledged, it must demonstrate that it meets:

(1) At present, the Community Criterion; and

(2) Since the time of previous Federal acknowledgment or 1900, whichever is later, the Indian Entity Identification Criterion and Political Authority Criterion.

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### Subpart C—Process for Federal Acknowledgment

#### DOCUMENTED PETITION SUBMISSION AND REVIEW

#### § 83.20 How does an entity request Federal acknowledgment?

Any entity that believes it can satisfy the criteria in this part may submit a documented petition under this part to: Department of the Interior, Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, Mail Stop 4071 MIB, 1849 C Street NW, Washington, DC 20240.

[83 FR 33826, July 18, 2018]

#### § 83.21 What must a documented petition include?

(a) The documented petition may be in any readable form and must include the following:

(1) A certification, signed and dated by the petitioner's governing body, stating that it is the petitioner's official documented petition;

(2) A concise written narrative, with citations to supporting documentation, thoroughly explaining how the petitioner meets each of the criteria in § 83.11, except the Congressional Termination Criterion (§ 83.11 (g))—

(i) If the petitioner chooses to provide explanations of and supporting documentation for the Congressional Termination Criterion (§ 83.11 (g)), the Department will accept it; but

(ii) The Department will conduct the research necessary to determine whether the petitioner meets the Congressional Termination Criterion (§ 83.11 (g)).

(3) Supporting documentation cited in the written narrative and containing specific, detailed evidence that the petitioner meets each of the criteria in § 83.11;

(4) Membership lists and explanations, including:

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



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(ii) A statement describing the circumstances surrounding the preparation of the current membership list;

(iii) A copy of each available former list of members based on the petitioner's own defined criteria; and

(iv) A statement describing the circumstances surrounding the preparation of the former membership lists, insofar as possible.

(b) If the documented petition contains any information that is protectable under Federal law such as the Privacy Act and Freedom of Information Act, the petitioner must provide a redacted version, an unredacted version of the relevant pages, and an explanation of the legal basis for withholding such information from public release. The Department will not publicly release information that is protectable under Federal law, but may release redacted information if not protectable under Federal law.

### § 83.22 What notice will OFA provide upon receipt of a documented petition?

When OFA receives a documented petition, it will do all of the following:

(a) Within 30 days of receipt, acknowledge receipt in writing to the petitioner.

(b) Within 60 days of receipt:

(1) Publish notice of receipt of the documented petition in the FEDERAL REGISTER and publish the following on the OFA Web site:

(i) The narrative portion of the documented petition, as submitted by the petitioner (with any redactions appropriate under § 83.21(b));

(ii) The name, location, and mailing address of the petitioner and other information to identify the entity;

(iii) The date of receipt;

(iv) The opportunity for individuals and entities to submit comments and evidence supporting or opposing the petitioner's request for acknowledgment within 120 days of the date of the Web site posting; and

(v) The opportunity for individuals and entities to request to be kept informed of general actions regarding a specific petitioner.

(2) Notify, in writing, the following:

(i) The governor of the State in which the petitioner is located;

(ii) The attorney general of the State in which the petitioner is located;

(iii) The government of the county-level (or equivalent) jurisdiction in which the petitioner is located; and

(iv) Notify any recognized tribe and any petitioner that appears to have a historical or present relationship with the petitioner or that may otherwise be considered to have a potential interest in the acknowledgment determination.

(c) Publish the following additional information to the OFA Web site:

(1) Other portions of the documented petition, to the extent feasible and allowable under Federal law, except documentation and information protectable from disclosure under Federal law, as identified by Petitioner under § 83.21(b) or otherwise;

(2) Any comments or materials submitted by third parties to OFA relating to the documented petition;

(3) Any substantive letter, proposed finding, recommended decision, and final determination issued by the Department;

(4) OFA's contact list for each petitioner, including the point of contact for the petitioner; attorneys, and representatives; and

(5) Contact information for any other individuals and entities that request to be kept informed of general actions regarding the petitioner.

(d) All subsequent notices that the Department provides under this part will be provided via the most efficient means for OFA to:

(1) The governor of the State in which the petitioner is located;

(2) The attorney general of the State in which the petitioner is located;

(3) The government of the county-level (or equivalent) jurisdiction in which the petitioner is located;

(4) Any recognized tribe and any petitioner that appears to have a historical or present relationship with the petitioner or that may otherwise be considered to have a potential interest in the acknowledgment determination; and

(5) Any individuals and entities that request to be kept informed of general actions regarding a specific petitioner.

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### REVIEW OF DOCUMENTED PETITION

#### **§ 83.23 How will OFA determine which documented petition to consider first?**

(a) OFA will begin reviews of documented petitions in the order of their receipt.

(1) At each successive review stage, there may be points at which OFA is waiting on additional information or clarification from the petitioner. Upon receipt of the additional information or clarification, OFA will return to its review of the documented petition as soon as possible.

(2) To the extent possible, OFA will give highest priority to completing reviews of documented petitions it has already begun to review.

(b) OFA will maintain a numbered register of documented petitions that have been received.

(c) OFA will maintain a numbered register of any letters of intent, which were allowable prior to July 31, 2015, or incomplete (*i.e.*, not fully documented) petitions and the original dates of their filing with the Department. If two or more documented petitions are ready for review on the same date, this register will determine the order of consideration.

#### **§ 83.24 What opportunity will the petitioner have to respond to comments before OFA reviews the petition?**

Before beginning review of a documented petition, OFA will provide the petitioner with any comments on the petition received from individuals or entities under § 83.22(b) and provide the petitioner with 90 days to respond to such comments. OFA will not begin review until it receives the petitioner's response to the comments or the petitioner requests that OFA proceed without its response.

#### **§ 83.25 Who will OFA notify when it begins review of a documented petition?**

OFA will notify the petitioner and those listed in § 83.22(d) when it begins review of a documented petition and will provide the petitioner and those listed in § 83.22(d) with:

(a) The name, office address, and telephone number of the staff member

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with primary administrative responsibility for the petition;

(b) The names of the researchers conducting the evaluation of the petition; and

(c) The name of their supervisor.

#### **§ 83.26 How will OFA review a documented petition?**

(a) *Phase I.* When reviewing a documented petition, OFA will first determine if the petitioner meets the Governing Document Criterion (§ 83.11(d)), Descent Criterion (§ 83.11(e)), Unique Membership Criterion (§ 83.11(f)), and Termination Criterion (§ 83.11(g)), in accordance with the following steps.

(1)(i) OFA will conduct a Phase I technical assistance review and notify the petitioner by letter of any deficiencies that would prevent the petitioner from meeting the Governing Document, Descent, Unique Membership, or Termination Criteria. Upon receipt of the letter, the petitioner must submit a written response that:

(A) Withdraws the documented petition to further prepare the petition;

(B) Submits additional information and/or clarification; or

(C) Asks OFA to proceed with the review.

(ii) If the documented petition claims previous Federal acknowledgment and/or includes evidence of previous Federal acknowledgment, the Phase I technical assistance review will include a review to determine whether that evidence meets the requirements of previous Federal acknowledgment (§ 83.12).

(2) Following the receipt of the petitioner's written response to the Phase I technical assistance review, OFA will provide the petitioner with:

(i) Any comments and evidence OFA may consider that the petitioner does not already have, to the extent allowable by Federal law; and

(ii) The opportunity to respond in writing to the comments and evidence provided.

(3) OFA will publish a negative proposed finding if it issues a deficiency letter under paragraph (a)(1)(i) of this section, and the petitioner:

(i) Does not withdraw the documented petition or does not respond with information or clarification sufficient to address the deficiencies; or

(ii) Asks OFA in writing to proceed with the review.

(4) OFA will publish a positive proposed finding and proceed to Phase II if it determines that the petitioner meets the Governing Document, Descent, Unique Membership, and Termination criteria.

(b) *Phase II.* If the petitioner meets the Governing Document, Descent, Unique Membership, and Termination criteria, OFA will next review whether the petitioner meets the Indian Entity Identification Criterion (§83.11(a)), the Community Criterion (§83.11(b)), and the Political Influence/Authority Criterion (§83.11(c)). If the petitioner claims previous Federal acknowledgment, the Department will also review whether petitioner proves previous Federal acknowledgment and, if so, will review whether the petitioner meets the criteria under §83.12(b).

(1) OFA will conduct a Phase II technical assistance review and notify the petitioner by letter of any deficiencies that would prevent the petitioner from meeting these criteria. Upon receipt of the letter, the petitioner must submit a written response that:

- (i) Withdraws the documented petition to further prepare the petition;
- (ii) Provides additional information and/or clarification; or
- (iii) Asks OFA to proceed with the review.

(2) Following receipt of the petitioner's written response to the Phase II technical assistance review, OFA will provide the petitioner with:

- (i) Any comments and evidence OFA may consider in preparing the proposed finding that the petitioner does not already have, to the extent allowable by Federal law; and
- (ii) The opportunity to respond in writing to the comments and evidence provided.

(3) OFA will then review the record to determine:

- (i) For petitioners with previous Federal acknowledgment, whether the criteria at §83.12(b) are met; or
- (ii) For petitioners without previous Federal acknowledgment, whether the Indian Entity Identification (§83.11(a)), Community (§83.11(b)) and Political Authority (§83.11(c)) Criteria are met.

(4) OFA will publish a negative proposed finding if it issues a deficiency letter under paragraph (a)(1) of this section, and the petitioner:

- (i) Does not withdraw the documented petition or does not respond with information or clarification sufficient to address the deficiencies; or
- (ii) Asks OFA in writing to proceed with the review.

(5) OFA will publish a positive proposed finding if it determines that the petitioner meets the Indian Entity Identification (§83.11(a)), Community (§83.11(b)) and Political Authority (§83.11(c)) Criteria or, for petitioners with previous Federal acknowledgment, that the petitioner meets the criteria at §83.12(b).

#### **§ 83.27 What are technical assistance reviews?**

Technical assistance reviews are preliminary reviews for OFA to tell the petitioner where there appear to be evidentiary gaps for the criteria that will be under review in that phase and to provide the petitioner with an opportunity to supplement or revise the documented petition.

#### **§ 83.28 When does OFA review for previous Federal acknowledgment?**

(a) OFA reviews the documented petition for previous Federal acknowledgment during the Phase II technical assistance review of the documented petition.

(b) If OFA cannot verify previous Federal acknowledgment during this technical assistance review, the petitioner must provide additional evidence. If a petitioner claiming previous Federal acknowledgment does not respond or does not demonstrate the claim of previous Federal acknowledgment, OFA will consider its documented petition on the same basis as documented petitions submitted by petitioners not claiming previous Federal acknowledgment.

#### **§ 83.29 What will OFA consider in its reviews?**

(a) In any review, OFA will consider the documented petition and evidence submitted by the petitioner, any comments and evidence on the petition received during the comment period, and

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petitioners' responses to comments and evidence received during the response period.

(b) OFA may also:

(1) Initiate and consider other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status; and

(2) Request and consider timely submitted additional explanations and information from commenting parties to support or supplement their comments on the proposed finding and from the petitioner to support or supplement their responses to comments.

(c) OFA must provide the petitioner with the additional material obtained in paragraph (b) of this section, and provide the petitioner with the opportunity to respond to the additional material. The additional material and any response by the petitioner will become part of the record.

### § 83.30 Can a petitioner withdraw its documented petition?

A petitioner can withdraw its documented petition at any point in the process but the petition will be placed at the end of the numbered register of documented petitions upon re-submission and may not regain its initial priority number.

### § 83.31 Can OFA suspend review of a documented petition?

(a) OFA can suspend review of a documented petition, either conditionally or for a stated period, upon:

(1) A showing to the petitioner that there are technical or administrative problems that temporarily preclude continuing review; and

(2) Approval by the Assistant Secretary.

(b) Upon resolution of the technical or administrative problems that led to the suspension, the documented petition will have the same priority on the numbered register of documented petitions to the extent possible.

(1) OFA will notify the petitioner and those listed in § 83.22(d) when it suspends and when it resumes review of the documented petition.

(2) Upon the resumption of review, OFA will have the full six months to issue a proposed finding.

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### PROPOSED FINDING

### § 83.32 When will OFA issue a proposed finding?

(a) OFA will issue a proposed finding as shown in the following table:

| OFA must  | within . . .   |
|---|--|
| (1) Complete its review under Phase I and either issue a negative proposed finding and publish a notice of availability in the FEDERAL REGISTER, or proceed to review under Phase II. | six months after notifying the petitioner under § 83.25 that OFA has begun review of the petition. |
| (2) Complete its review under Phase II and issue a proposed finding and publish a notice of availability in the FEDERAL REGISTER.   | six months after the deadline in paragraph (a)(1) of this section.                                 |

(b) The times set out in paragraph (a) of this section will be suspended any time the Department is waiting for a response or additional information from the petitioner.

(c) OFA will strive to limit the proposed finding and any reports to no more than 100 pages, cumulatively, excluding source documents.

### § 83.33 What will the proposed finding include?

The proposed finding will summarize the evidence, reasoning, and analyses that are the basis for OFA's proposed finding regarding whether the petitioner meets the applicable criteria.

(a) A Phase I negative proposed finding will address that the petitioner fails to meet any one or more of the following criteria: Governing Document (§ 83.11(d)), Descent (§ 83.11(e)), Unique Membership (§ 83.11(f)), or Congressional Termination (§ 83.11(g)).

(b) A Phase II proposed finding will address whether the petitioner meets the following criteria: Indian Entity Existence (§ 83.11(a)), Community (§ 83.11(b)), and Political Influence/Authority (§ 83.11(c)).

### § 83.34 What notice of the proposed finding will OFA provide?

In addition to publishing notice of the proposed finding in the FEDERAL REGISTER, OFA will:

(a) Provide copies of the proposed finding and any supporting reports to the petitioner and those listed in § 83.22(d); and

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(b) Publish the proposed finding and reports on the OFA Web site.

### PROPOSED FINDING—COMMENT AND RESPONSE PERIODS, HEARING

#### § 83.35 What opportunity to comment will there be after OFA issues the proposed finding?

(a) Publication of notice of the proposed finding will be followed by a 120-day comment period. During this comment period, the petitioner or any individual or entity may submit the following to OFA to rebut or support the proposed finding:

(1) Comments, with citations to and explanations of supporting evidence; and

(2) Evidence cited and explained in the comments.

(b) Any individual or entity that submits comments and evidence must provide the petitioner with a copy of their submission.

#### § 83.36 What procedure follows the end of the comment period on a favorable proposed finding?

(a) At the end of the comment period for a favorable proposed finding, AS-IA will automatically issue a final determination acknowledging the petitioner as a federally recognized Indian tribe if OFA does not receive a timely objection with evidence challenging the proposed finding that the petitioner meets the acknowledgment criteria.

(b) If OFA has received a timely objection and evidence challenging the favorable proposed finding, then the petitioner will have 60 days to submit a written response, with citations to and explanations of supporting evidence, and the supporting evidence cited and explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

#### § 83.37 What procedure follows the end of the comment period on a negative proposed finding?

If OFA has received comments on the negative proposed finding, then the petitioner will have 60 days to submit a written response, with citations to and explanations of supporting evidence, and the supporting evidence cited and

explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

#### § 83.38 What options does the petitioner have at the end of the response period on a negative proposed finding?

(a) At the end of the response period for a negative proposed finding, the petitioner will have 60 days to elect to challenge the proposed finding before an ALJ by sending to the Departmental Cases Hearings Division, Office of Hearings and Appeals, with a copy to OFA a written election of hearing that lists:

(1) Grounds for challenging the proposed finding, including issues of law and issues of material fact; and

(2) The witnesses and exhibits the petitioner intends to present at the hearing, other than solely for impeachment purposes, including:

(i) For each witness listed, his or her name, address, telephone number, and qualifications and a brief narrative summary of his or her expected testimony; and

(ii) For each exhibit listed, a statement confirming that the exhibit is in the administrative record reviewed by OFA or is a previous final determination of a petitioner issued by the Department.

(b) The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this period.

#### § 83.39 What is the procedure if the petitioner elects to have a hearing before an ALJ?

(a) If the petitioner elects a hearing to challenge the proposed finding before an ALJ, OFA will provide to the Departmental Cases Hearings Division, Office of Hearings and Appeals, copies of the negative proposed finding, critical documents from the administrative record that are central to the portions of the negative proposed finding at issue, and any comments and evidence and responses sent in response to the proposed finding.

## § 83.40

(1) Within 5 business days after receipt of the petitioner's hearing election, OFA will send notice of the election to each of those listed in § 83.22(d) and the Departmental Cases Hearings Division by express mail or courier service for delivery on the next business day.

(2) OFA will retain custody of the entire, original administrative record.

(b) *Hearing process.* The assigned ALJ will conduct the hearing process in accordance with 43 CFR part 4, subpart K.

(c) *Hearing record.* The hearing will be on the record before an ALJ. The hearing record will become part of the

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record considered by AS-IA in reaching a final determination.

(d) *Recommended decision.* The ALJ will issue a recommended decision and forward it along with the hearing record to the AS-IA in accordance with the timeline and procedures in 43 CFR part 4, subpart K.

### AS-IA EVALUATION AND PREPARATION OF FINAL DETERMINATION

#### § 83.40 When will the Assistant Secretary begin review?

(a) AS-IA will begin his/her review in accordance with the following table:

| If the PF was:     | And:   | AS-IA will begin review upon:  |
|--------------------|--|--|
| (1) Negative ..... | The petitioner did not elect a hearing ..... | Expiration of the period for the petitioner to elect a hearing.                        |
| (2) Negative ..... | The petitioner elected a hearing .....       | Receipt of the ALJ's recommended decision.   |
| (3) Positive ..... | No objections with evidence were received    | Expiration of the comment period for the positive PF.                                  |
| (4) Positive ..... | Objections with evidence were received ..... | Expiration of the period for the petitioner to respond to comments on the positive PF. |

(b) AS-IA will notify the petitioner and those listed in § 83.22(d) of the date he/she begins consideration.

#### § 83.41 What will the Assistant Secretary consider in his/her review?

(a) AS-IA will consider all the evidence in the administrative record, including any comments and responses on the proposed finding and any the hearing transcript and recommended decision.

(b) AS-IA will not consider comments submitted after the close of the comment period in § 83.35, the response period in § 83.36 or § 83.37, or the hearing election period in § 83.38.

#### § 83.42 When will the Assistant Secretary issue a final determination?

(a) AS-IA will issue a final determination and publish a notice of availability in the FEDERAL REGISTER within 90 days from the date on which he/she begins its review. AS-IA will also

(1) Provide copies of the final determination to the petitioner and those listed in § 83.22(d); and

(2) Make copies of the final determination available to others upon written request.

(b) AS-IA will strive to limit the final determination and any reports to

no more than 100 pages, cumulatively, excluding source documents.

#### § 83.43 How will the Assistant Secretary make the determination decision?

(a) AS-IA will issue a final determination granting acknowledgment as a federally recognized Indian tribe when AS-IA finds that the petitioner meets the Governing Document (§ 83.11(d)), Descent (§ 83.11(e)), Unique Membership (§ 83.11(f)), and Congressional Termination (§ 83.11(g)) Criteria and:

(1) Demonstrates previous Federal acknowledgment under § 83.12(a) and meets the criteria in § 83.12(b); or

(2) Meets the Indian Entity Identification (§ 83.11(a)), Community (§ 83.11(b)) and Political Authority (§ 83.11(c)) Criteria.

(b) AS-IA will issue a final determination declining acknowledgement as a federally recognized Indian tribe when he/she finds that the petitioner:

(1) In Phase I, does not meet the Governing Document (§ 83.11(d)), Descent (§ 83.11(e)), Unique Membership (§ 83.11(f)), or Congressional Termination (§ 83.11(g)) Criteria; or

(2) In Phase II, does not:

(i) Demonstrate previous Federal acknowledgment under § 83.12(a) and meet the criteria in § 83.12(b); or

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(ii) Meet the Indian Entity Identification (§83.11(a)), Community (§83.11(b)) and Political Authority (§83.11(c)) Criteria.

### § 83.44 Is the Assistant Secretary's final determination final for the Department?

Yes. The AS-IA's final determination is final for the Department and is a final agency action under the Administrative Procedure Act (5 U.S.C. 704).

### § 83.45 When will the final determination be effective?

The final determination will become immediately effective. Within 10 business days of the decision, the Assistant Secretary will submit to the FEDERAL REGISTER a notice of the final determination to be published in the FEDERAL REGISTER.

### § 83.46 How is a petitioner with a positive final determination integrated into Federal programs as a federally recognized Indian tribe?

(a) Upon acknowledgment, the petitioner will be a federally recognized Indian tribe entitled to the privileges and immunities available to federally recognized Indian tribes. It will be included on the list of federally recognized Indian tribes in the next scheduled publication.

(b) Within six months after acknowledgment, the appropriate Bureau of Indian Affairs Regional Office will consult with the newly federally recognized Indian tribe and develop, in cooperation with the federally recognized Indian tribe, a determination of needs and a recommended budget. These will be forwarded to the Assistant Secretary. The recommended budget will then be considered with other recommendations by the Assistant Secretary in the usual budget request process.

(c) While the newly federally acknowledged Indian tribe is eligible for benefits and services available to federally recognized Indian tribes, acknowledgment as a federally recognized Indian tribe does not create immediate access to existing programs. The newly federally acknowledged Indian tribe may participate in existing programs after it meets the specific program requirements, if any, and upon appropriation

of funds by Congress. Requests for appropriations will follow a determination of the needs of the newly federally acknowledged Indian tribe.

## PART 84—ENCUMBRANCES OF TRIBAL LAND—CONTRACT APPROVALS

Sec.

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84.002 What terms must I know?

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84.004 Are there types of contracts and agreements that do not require Secretarial approval under this part?

84.005 Will the Secretary approve contracts or agreements even where such approval is not required under this part?

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84.008 What is the effect of the Secretary's disapproval of a contract or agreement that requires Secretarial approval under this part?

AUTHORITY: 25 U.S.C. 81, Pub. L. 106-179.

SOURCE: 66 FR 38923, July 26, 2001, unless otherwise noted.

### § 84.001 What is the purpose of this part?

The purpose of this part is to implement the provisions of the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106-179, which amends section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

### § 84.002 What terms must I know?

The *Act* means the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106-179, which amends section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

*Encumber* means to attach a claim, lien, charge, right of entry or liability to real property (referred to generally as encumbrances). Encumbrances covered by this part may include leasehold mortgages, easements, and other contracts or agreements that by their