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(May 1966)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

FILES

CAUTION!

Positively no papers to be added to or taken from this file, except by an employee of the Records Management Section.

FILE NO. PROPOSED REGULATIONS & COMMENTS JUNE 16, 1977

I & II

FILE NO.

U. S. GOVERNMENT PRINTING OFFICE : 1973 O - 522-225

months effective period elapses without sponsor action. The determination must then be extended, in some cases, many times. It is, therefore, proposed that, if an application for an FCC permit has been made, the effective period of a no hazard determination be 18 months. To meet this need § 77.39(d)(1) could be amended to read: "The time required to apply to the Commission for a construction permit but not more than 18 months after the effective date of the determination."

The new Subpart F would be entitled "Discretionary Review Procedures." As has already been noted, the current Subpart E would be redesignated as Subpart G. The only change would be the renumbering of its sections.

Section 77.41 would be entitled "Scope" and it would read as follows: "This subpart identifies those persons who may petition for a discretionary review of a determination issued under §§ 77.19 or 77.25, or revision or extension of a determination under § 77.39, applies to time limits within which the petition must be filed, and describes the form and manner of submittal and processing."

A new § 77.43, entitled "Petition Eligibility," would contain the text of the present § 77.37(a). A new § 77.45, entitled "Petition Submittal," would include the present § 77.37(b) redesignated subparagraph (a). Section 77.45(b) would read: "(b) A petition must contain a full statement of the aeronautical basis upon which it is made, including valid reasons why the determination, revision or extension made by the Regional Director, or his designee, should be reviewed. It should contain new information and facts not previously considered or discussed during the aeronautical study. If the petition for review of the determination, revision or extension is based on an error in procedure, application of obstruction standards or conclusion, it should be so stated."

A new § 77.47, entitled "Petition Examination and Review," would contain the text of the current § 77.37(c)(1) and (2), except that the reference to Subpart E in § 77.37(c)(2) would be changed to Subpart G. Section 77.47 would also contain a provision that acknowledgement will be made to the petitioner and to the sponsor that the petition has been received and it will be considered, and that the determination is not and will not be final pending disposition of the petition.

The current Subpart F will be redesignated Subpart H. In addition, it is recommended that the title be changed to "Antenna Farms." As has been previously discussed, the use of the word "establishment" might imply that establishing antenna farms is an FAA regulatory function when, in fact, only the Federal Communications Commission is authorized to perform this function. Therefore, it is suggested that the current § 77.71(a) be amended to reflect this.

The FAA solicits the comments of all interested persons on the foregoing proposed changes to Part 77. It also welcomes any suggestions on the need for further revision of this part.

EVALUATION OF IMPACTS

It has been determined that the regulatory impact of this proposed amendment would be minimal and that an evaluation pursuant to the policy statement published by the Secretary of Transportation (41 FR 16200) is not required.

DRAFTING INFORMATION

The principal authors of this document are William E. Broadwater, Air Traffic Service, and Richard W. Danforth, Office of the Chief Counsel.

(Secs. 313(a) and 1101 of the Federal Aviation Act of 1958 (49 U.S.C. §§ 1354, 1501); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)).)

Issued in Washington, D.C., on June 2, 1977.

RAYMOND G. BELANGER,
Director, Air Traffic Service.

[FR Doc.77-17083 Filed 6-15-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 54]

PROCEDURES GOVERNING DETERMINATION THAT INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau proposes new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

DATES: Comments must be received on or before July 18, 1977.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie N. Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and Sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 54—PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Who may petition.
54.4 Where the petition is to be filed.
54.5 Notice of receipt of the petition.
54.6 Form and content of the petition.
54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY: 5 U.S.C. 301; secs. 463 and 465 (25 U.S.C. 2 and 9); 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as "group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "Federally Recognized Tribe" means any Indian group within the United States that the Secretary of the Interior Acknowledges to have had and should continue to have the status of a domestic dependent sovereign.

§ 54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

§ 54.3 Who may petition.

Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§ 54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§ 54.5 Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall acknowl-

GHP ADD-RDD-V026-D0002

edge receipt of such petition and shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in § 54.7 of this part, if received by him within sixty days of the date of the notice.

§ 54.6 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

§ 54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and an opportunity to present oral arguments.

(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§ 54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) The Commissioner shall determine that an Indian group is a federally recognized Indian tribe whenever the group satisfies paragraphs (1-5) and (10) of § 54.7(c) so long as at least one other paragraph of that section is also satisfied.

(c) The Commissioner shall determine that an Indian group is not a federally recognized Indian tribe if the group fails to satisfy paragraphs (1)-(5) and (10 of § 54.7(b) along with at least one other paragraph of that section.

(d) A summary of the Commissioner's report and his determination as to the group's status shall be published in the FEDERAL REGISTER and shall be subject to review by the Secretary, who may, by acting within thirty days of such publication, supersede that determination. If the Secretary takes no action within such thirty-day period, the Commissioner's determination shall be final, and became effective immediately. If, after review, the Secretary reaches a conclusion contrary to that made by the Commissioner, he may supersede the Commissioner's determination. The Secretary's determination will be final and notice thereof shall be published in the FEDERAL REGISTER.

The primary author of this document is Mr. Leslie N. Gay, Jr., Chief, Branch of Tribal Relations, Bureau of Indian Affairs, (202) 343-6045.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.77-17300 Filed 6-23-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 747-3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Air Pollution Control, State of Arizona

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Through this notice EPA proposes to approve, with exception, revisions to the Arizona State Implementation Plan (SIP). These revisions include State regulations for vehicle inspection/maintenance, organic compound emissions from stationary sources definitions, particulate emissions from stationary sources, assertions of jurisdiction, ambient air quality standards, sulfur compound emissions, carbon monoxide emissions from stationary sources, nitrogen oxide emissions, and miscellaneous (general) regulations. The revisions were submitted to EPA on August 20, 1973, August 20, 1974, February 3, 1975, September 16, 1975, and January 23, 1976.

DATES: Comments by: July 18, 1977.

ADDRESSES: Send comments to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Programs Branch, Arizona-Nevada-Pacific Islands Section (A-4), EPA Region IX, 100 California Street, San Francisco, CA 94111.

Availability of documents: Copies of the State revisions, the EPA Evaluation Report, and this FEDERAL REGISTER notice are available for public inspection during normal business hours, at the EPA Region IX Library at the above address and at the following locations:

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, SW., Washington, D.C. 20460.

Arizona Department of Health Services, Bureau of Air Pollution Control, 1740 West Adams Street, Phoenix, AZ 85007.

Arizona Department of Health Services, Bureau of Air Pollution Control, Northern Regional Office, 2501 North Fourth Street, Suite 14 Flagstaff, AZ 86001.

Arizona Department of Health Services, Bureau of Air Pollution Control,

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JOSEPH E. BRENNAN
ATTORNEY GENERAL

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RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENE

Ray Butler

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 8, 1977

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cc: 100, 440

James W. Moorman
Assistant Attorney General
Land & Natural Resources Division
Department of Justice
Washington, D.C.

Leo H. Krulitz, Solicitor
Department of Interior
Washington, D.C.

Re: U.S. v. Maine - Indian Land Claims
Proposed Rulemaking; 42 C.F.R. 30647-48

Gentlemen:

Enclosed is a copy of a letter we recently sent to the Department of Interior regarding the above rules, which copy I am sending to each of you for your direct attention.

Inasmuch as the issue of tribal existence will be an issue in Maine, Mashpee and elsewhere, it would be wholly inappropriate for the Department of Interior to adopt regulations which might affect the judicial resolution of this issue. At the same time, however, it is not our desire to interfere with the distribution of federal economic assistance to the Maine tribes. I therefore urge you to amend the rules as proposed in the enclosed letter.

Sincerely,

Joseph E Brennan
JOSEPH E. BRENNAN
Attorney General

JEB:mfe

cc: Peter Taft

(13) - b

ATTORNEY GENERA

DONALD G. ALEXANDER
DEPUTY ATTORNEYS GE

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 7, 1977

Director,
Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D. C. 20245

Re: Proposed Procedures Governing Determination that Indian Group is a Federally Recognized Indian Tribe.

Dear Mr. Director:

On Thursday, June 16, 1977, the Department of Interior, Bureau of Indian Affairs, published in 42 Federal Register 30647-30648 proposed rules governing the method by which the Department of Interior would make determinations that certain Indian groups were or ought to be Federally Recognized Indian tribes. Comments on the proposed regulations are required to be submitted before July 18, 1977. We have reviewed those proposed regulations and would offer the following comments.

Officials of the State of Maine have for many years advocat Federal recognition of the Indians in Maine in order that those Indians might receive the benefit of programs which, although created to improve the social and economic condition of all Indians, have traditionally been only used for the benefit of western Indian tribes. That position by elected officials in Maine long predates the initiation of the current pending Indiar land claims litigation. The current proposed regulations insofa as they appear to provide a procedure whereby any Indian group might become Federally recognized is consistent with this long-standing position by the State of Maine. I therefore believe tl proposed regulations to be a fair and equitable approach and would in general support their adoption.

However, the regulations as drafted do create several prob which I believe can be cured without interfering with the basic objective of the Department of Interior.

As noted above, I understand that the purpose of recognition would be to make Indian groups in Maine eligible for receipt of benefits pursuant to special Indian legislation. The purpose of the regulation is not to effect or have any impact upon pending land claims or other suits by Indian tribes or groups wherever located. Nevertheless, it is possible that as currently drafted the regulations may have precisely that impact. The definition of "Federally Recognized Tribe" in § 54.1(f) is so worded that the granting of such status to a tribe might well be used as an after-the-fact argument by a tribe or group of Indians in litigation in Maine or elsewhere that for purposes unrelated to the intent of this regulation the particular tribe or group of Indians was as a matter of law entitled to particular status in litigation.

Specifically, one of the issues raised in both the Maine and Massachusetts land claim litigation is the question of whether or not the plaintiff "tribes" are tribes within the meaning of the Nonintercourse Act, 25 U.S.C. § 177. The standard by which tribal status is to be determined under the Nonintercourse Act or any other act which creates certain legal rights for the Indian groups are complicated both factually and legally. Indeed the standard for tribal status appears to have changed significantly over the last 200 or 300 years. All of these issues have yet to be resolved in any actual litigation. It is possible, however, that the extension of Federal recognition under the proposed regulations in 25 C.F.R. Part 54 might be used by an Indian group to argue that they were a tribe for purposes of the Nonintercourse Act or other similar acts.

I believe that it is appropriate to adopt a regulation which would make the Maine and Massachusetts tribes eligible for Federal programs but that it would be most unfair to promulgate a regulati which would conceivably have some effect on the pending land claim I therefore urge you to amend the definition of "Federally Recognized Tribe" by

(1) deleting the phrase "domestic dependent sovereign"

(2) inserting specific statutory references to federal Indian aid programs to which such Federal recognition would apply, and

(3) adding to the definition a proviso that:

> "provided, however, that such Indian group shall be deemed to be a tribe only for the purposes of eligibility for federally funded programs designed to provide social, economic,

edu ational or other similar sistance to such groups and that such Indian groups shall not be deemed by these regulations to constitute a tribe for any other purposes."

I believe that amendment of the proposed regulations as suggested above would achieve the end of permitting all Indian group to be eligible for federally assisted social and economic aid programs and at the same time not affecting one way or the other any pending litigation.

I would appreciate very much your direct response to these comments and your advising us whether or not you intend to implement the same and the reasons for your decision. As I am sure you can appreciate, this is a matter of great significance to th State of Maine and other states who are facing potential claims under the Nonintercourse Act or otherwise from Indian groups.

Sincerely,

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

JEB:jg

cc: Honorable James B. Longley
Maine Congressional Delegation
All East Coast Attorney's General

months effective period elapses without sponsor action. The determination must then be extended, in some cases, many times. It is, therefore, proposed that, if an application for an FCC permit has been made, the effective period of a no hazard determination be 18 months. To meet this need § 77.39(d)(1) could be amended to read: "The time required to apply to the Commission for a construction permit but not more than 18 months after the effective date of the determination."

The new Subpart F would be entitled "Discretionary Review Procedures." As has already been noted, the current Subpart E would be redesignated as Subpart G. The only change would be the renumbering of its sections.

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The FAA solicits the comments of all interested persons on the foregoing proposed changes to Part 77. It also welcomes any suggestions on the [illegible] for further revision of this part.

EVALUATION OF IMPACTS

It has been determined that the regulatory impact of this proposed amendment would be minimal and that an evaluation pursuant to the policy statement published by the Secretary of Transportation (41 FR 16200) is not required.

DRAFTING INFORMATION

The principal authors of this document are William E. Broadwater, Air Traffic Service, and Richard W. Danforth, Office of the Chief Counsel.

(Secs. 313(a) and 1101 of the Federal Aviation Act of 1958 (49 U.S.C. §§ 1354, 1501); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)).)

Issued in Washington, D.C. on June 2, 1977.

RAYMOND G. BELANGER,
Director, Air Traffic Service.

[FR Doc.77-17083 Filed 6-15-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 54]

PROCEDURES GOVERNING DETERMINATION THAT INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau proposes new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

DATES: Comments must be received on or before July 18, 1977.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enab[illegible] a uniform and objective approac[illegible] taken to their evaluation.

The authority for the Commissione[illegible] issue these regulations is containe[illegible] (5 U.S.C. 301), and Sections 463 and [illegible] of the revised statutes (25 U.S.C. 2 [illegible] 9), and 230 DM 1 and 2.

It is proposed to add a new Part 5[illegible] Subchapter G of Chapter I of Title 2[illegible] the Code of Federal Regulations to r[illegible] as follows:

PART 54—PROCEDURES GOVERNING [illegible] DETERMINATION THAT AN IND[illegible] GROUP IS A FEDERALLY RECOGNIZ[illegible] INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Who may petition.
54.4 Where the petition is to be filed.
54.5 Notice of receipt of the petition.
54.6 Form and content of the petition.
54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY: 5 U.S.C. 301; Secs. 463 and [illegible] (25 U.S.C. 2 and 9); 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary" means the Secreta[illegible] of the Interior or his authorized repr[illegible]sentative.

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(c) "Bureau" means the Bureau of I[illegible]dian Affairs.

(d) "Department" means the Depar[illegible]ment of the Interior.

(e) "Indian group," referred to al[illegible] herein as "group," means any communi[illegible] of persons of Indian, Aleut, or Eskim[illegible] extraction.

(f) "Federally Recognized Tribe" means any Indian group within th[illegible] United States that the Secretary of th[illegible] Interior Acknowledges to have had an[illegible] should continue to have the status of [illegible] domestic dependent sovereign.

§ 54.2 Purpose.

The purpose of this part is to establis[illegible] a Departmental procedure and policy fo[illegible] determining which Indian groups shoul[illegible] have the status of federally recognize[illegible] Indian tribes. These regulations shall no[illegible] apply to any group which has alread[illegible] been recognized by the Secretary of th[illegible] Interior.

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Any Indian group in the United State[illegible] which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§ 54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§ 54.5 Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall acknowl-

GHP ADD-RDD-V026-D0005 Page 1 of 2

edge receipt of such petition shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in § 54.7 of this part, if received by him within sixty days of the date of the notice.

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The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

§ 54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and an opportunity to present oral arguments.

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(c) The Commissioner's report shall deal specifically with whether the group:

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(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§ 54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) The Commissioner shall determine that an Indian group is a federally recognized Indian tribe whenever the group satisfies paragraphs (1–5) and (10) of § 54.7(c) so long as at least one other paragraph of that section is also satisfied.

(c) The Commissioner shall determine that an Indian group is not a federally recognized Indian tribe if the group fails to satisfy paragraphs (1)–(5) and (10 of § 54.7(b) along with at least one other paragraph of that section.

(d) A summary of the Commissioner's report and his determination as to the group's status shall be published in the FEDERAL REGISTER and shall be subject to review by the Secretary, who may, by acting within thirty days of such publication, supersede that determination. If the Secretary takes no action within such thirty-day period, the Commissioner's determination shall be final, and become effective immediately. If, after review, the Secretary reaches a conclusion contrary to that made by the Commissioner, he may supersede the Commissioner's determination. The Secretary's determination will be final and notice thereof shall be published in the FEDERAL REGISTER.

The primary author of this document is Mr. Leslie N. Gay, Jr., Chief, Branch of Tribal Relations, Bureau of Indian Affairs, (202) 343-4045.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.77-17200 Filed 6-15-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 747-3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Air Pollution Control, State of Arizona

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Through this notice EPA proposes to approve, with exception, revisions to the Arizona State Implementation Plan (SIP). These revisions include State regulations for vehicle inspection/maintenance, organic compound emissions from stationary sources, definitions, particulate emissions from stationary sources, assertions of jurisdiction, ambient air quality standards, sulfur compound emissions, carbon monoxide emissions from stationary sources, nitrogen oxide emissions, and miscellaneous (general) regulations. The revisions were submitted to EPA on August 20, 1973, August 30, 1974, February 1, 1975, September 16, 1975, and January 23, 1976.

DATES: Comments by: July 18, 1977.

ADDRESSES: Send comments to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Programs Branch, Arizona-Nevada-Pacific Islands Section (A-4), EPA Region IX, 100 California Street, San Francisco, Calif. 94111.

Availability of documents: Copies of the State revisions, the EPA Evaluation Report, and this FEDERAL REGISTER notice are available for public inspection during normal business hours at the EPA Region IX Library at the above address, and at the following locations:

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, SW., Washington, D.C. 20460.

Arizona Department of Health Services, Bureau of Air Pollution Control, 1740 West Adams Street, Phoenix, Ariz. 85007.

Arizona Department of Health Services, Bureau of Air Pollution Control, Northern Regional Office, 2501 North Fourth Street, Suite 14 Flagstaff, Ariz. 86001.

Arizona Department of Health Services, Bureau of Air Pollution Control

GHP ADD-RDD-V026-D0005 Page 2 of 2

Pensacola Fla
July 8. 1977

Vivian M. Williamson
Rte. 7, Box 663
Pensacola, Fla. 32506

United States Dept of Interior
Bureau of Indian Affairs
Washington DC. 20245

Dear Chief- Branch of Tribal Relations

In answer to my letter the petitioner our group. "The Lower Creek Muscogee Tribe East of the Mississippi" our office is "Tama State Indian Reservation, Cairo, Ga, my comment is, my Grand Father a full blood Creek, were left behind after the removal to Okla, suffered many hardships. my people could not go to white man schools to get an education. So please help us to be a recognized Indian Tribe East of Miss. I'm 64 years old I'm a widow disable & work need Hospital where I can go as Indian. my grand children could use help in Education. I'm Indian and proud of my heritage - my roll no — EC 11115
Thank you Chief -

Sincerely
Mrs Vivian Williamson
Rt 7, Box 663
Pensacola, Fla. 32506

(17)-1

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL INSURANCE ADMINISTRATION
WASHINGTON, D. C. 20410

440

JUL 7 1977

IN REPLY REFER TO:
IFM:
FLO-1-3

ack. 7/16/77

Director
Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N. W.
Washington, D. C. 20245

Dear Sir:

This is in response to your invitation to comment on the Bureau of Indian Affair's proposed rule concerning procedures for determining that an Indian group is a federally recognized Indian tribe.

In order to participate in the National Flood Insurance Program, a community must adopt flood plain management regulations meeting our minimum requirements. For the purpose of determining community eligibility, we have defined "community" to include "any Indian tribe or Alaska native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction."

Consequently, it is important for us to establish which tribes have this authority. We rely largely on a tribe being federally or state recognized.

We encourage your efforts to formalize the procedure for designating federally recognized tribes. Additionally, we recommend that a list be published every year of the tribes which are currently federally recognized. This would be a valuable resource in our work.

You may be interested in evaluating the effects of the enclosed, recently signed Executive Order 11988 as it pertains to federal involvement in flood plains on tribal lands.

If you have any questions, please let us know.

Sincerely,

J. Robert Hunter
Deputy Federal Insurance Administrator

Enclosure

(12).5

FOR I. DIATE RELEASE MAY 24, 1977

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER

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FLOODPLAIN MANAGEMENT

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the Uni d States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

Sec. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain -- for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with

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the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b)of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Federal Insurance Administration, and the Council on Environmental Quality, and shall update such procedures as necessary.

Sec. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and

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facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

Sec. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

Sec. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

Sec. 6. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

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(OVER)

Sec. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

Sec. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Sec. 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

JIMMY CARTER

THE WHITE HOUSE,
May 24, 1977.

# # # #

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OF COUNSEL
STEWART L. UDALL

CHICAGO OFFICE
JOSEPH V. KARAGANIS
180 NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60601

July 15, 1977

Hans Walker, Jr.
Acting Associate Solicitor
Office of the Solicitor
United States Department of Interior
18th and C Streets, N.W.
Washington, D.C.

Dear Hans:

With respect to the proposed rule making regarding recognition of Indian groups, some questions occur to me regarding the intention of the proposed regulations insofar as it relates to Alaska.

Section 54.7(c)(5) excludes groups which have been the subject of termination legislation. I think we need to know promptly whether the Department regards ANCSA as a form of "Congressional Legislation terminating the Federal relationship."

A second question concerns Section 54.7(c)(3). If political is taken in the ordinary sense, you will have excluded almost every native group in the State of Alaska regardless of whether ANCSA is a termination statute.

I hesitate to prepare comments without having some idea of your thinking on these questions. Therefore I would appreciate a reply as soon as possible. Please do not hesitate to phone me regarding this.

Kindest regards.

Sincerely yours,

Edward Weinberg

EW/kad

21

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

Tribal Government Services

MAY 11 1977

To: Ms. Cathy Clifford, Office of the Federal Register

From: Leslie N. Gay, Jr., Chief, Branch of Tribal Relations, Bureau of Indian Affairs

Subject: New summary for proposed procedures Governing the Determination that an Indian Group is a Federally Recognized Indian Tribe

Please change the SUMMARY in the document "PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE" recently submitted to you for publication as proposed rules to read as follows:

> SUMMARY: The Bureau proposes new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

Leslie N. Gay, Jr.
Chief, Branch of Tribal Relations

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

(25 CFR Part 54)

MAY 4 1977

PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Proposed Rule.

SUMMARY: The Bureau proposes ~~to add a new Part 54 to Subchapter G, Chapter I, of Title 25 of the Code of Federal Regulations. The purpose of the New Part 54 is to~~ new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

Leslie Gary 343-4045 cc

DATES: Comments must be received on or before: 30 days after date of publication of this notice in the FEDERAL REGISTER.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Street, N. W., Washington, D. C. 20245.

A * OVERSET *

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 54]

PROCEDURES GOVERNING DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

MAY 4, 1977.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed Rule.

SUMMARY: The Bureau proposes new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

DATES: Comments must be received on or before: June 15, 1977.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Street, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie N. Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 54—PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Who may petition.
54.4 Where to file the petition.
54.5 Notice of receipt of the petition.
54.6 Form and content of the petition.
54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "Federally recognized tribe" means any Indian group within the United States that the Secretary of the Interior acknowledges to have had and should continue to have the status of a domestic dependent sovereign.

§ 54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

MAY 4 1977

(25 CFR Part 54)

PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed Rule.

SUMMARY: The Bureau proposes to add a new Part 54 to Subchapter G, Chapter I, of Title 25 of the Code of Federal Regulations. The purpose of the New Part 54 is to establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe.

DATES: Comments must be received on or before: 30 days after date of publication of this notice in the FEDERAL REGISTER.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Street, N. W., Washington, D. C. 20245.

judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) Acknowledgment that an Indian group is a federally recognized Indian tribe shall be made

GHP ADD-RDD-V026-D0012 Page 3 of 5

wherever the group satisfies paragraphs 1-5 and 10 of Section 54.7(c) of this part, so long as at least one other paragraph of that section is also satisfied.

(c) Determination that an Indian group is not a federally recognized Indian tribe shall be made where a group fails to satisfy paragraphs 1-5 and 10 of Section 54.7(b) of this part, along with at least one other paragraph of that section.

(d) The Commissioner's acknowledgment that whether the Indian group has the status of a federally recognized Indian tribe, shall be subject to review by the Secretary, who may, by acting within 30 days thereof, supersede that action. Following the 30 days provided for Secretarial review, notice shall be published in the FEDERAL REGISTER that the Commissioner's acknowledgment is in effect, or there shall be published instead the Secretary's contrary determination stating the grounds on which his determination has been reached that the group is not a federally recognized Indian tribe.

Raymond V. Butler

Acting Deputy Commissioner of Indian Affairs

MAY 13 8 45 AM '77
OFFICE OF THE FEDERAL REGISTER

54.8 Action by the Commissioner.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "Federally recognized tribe" means any Indian group within the United States that the Secretary of the Interior acknowledges to have had and should continue to have the status of a domestic dependent sovereign.

§ 54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

§ 54.3 Who may petition.

Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§ 54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§ 54.5 Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall acknowledge receipt of such petition and shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in § 54.7, if received by him within sixty days of the date of the notice.

§ 54.6 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

of your members have one-half degree or more Indian blood. We should point out that even if it is found that some of your group were eligible, the taking of land in trust for them is purely discretionary under the statute.

I hope these comments have been helpful to you.

Sincerely,

/s/ F. Ferguson
Solicitor
~~CECIL D. ANDRUS~~
~~SECRETARY~~

cc: Office of Management and Budget (William Nichols)
Area Director, Eastern Area Office
Scott Keep, Rm. 6447

cc: Secretary's File
Secretary's Reading File (2)

cc: BIA's Surname
BIA's BCCO
BIA's Commr. Reading File
BIA's Chrony 440
BIA's Mailroom
BIA's Holdup:L. GAY:dlb, 4/11/77, Rtypd. 4/12/77, Cass. II-A

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

EXTENSION OF TIME FOR WRITTEN COMMENTS ON PROPOSED PROCEDURES GOVERNING DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

AGENCY: Bureau of Indian Affairs.

ACTION: Extension of comment period.

SUMMARY: The Bureau of Indian Affairs is extending the comment period for the proposed procedures governing the determination that an Indian group is a federally recognized Indian tribe (42 FR 30647, June 16, 1977). This extension is granted because of numerous requests from interested parties desiring more time to review this proposal.

DATES: Comments must be received by August 18, 1977.

ADDRESS: Written comments should be directed to Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: This proposed rule making is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

The deadline for comments on the proposed regulations that will govern the Department's determination that an Indian group is a federally recognized Indian tribe is hereby extended to September ~~August~~ 18, 1977. The proposed regulations were published at 42 FR 30647 on June 16, 1977.

Acting Deputy Commissioner
of Indian Affairs

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

EXTENSION OF TIME FOR WRITTEN COMMENTS ON PROPOSED PROCEDURES GOVERNING DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

AUG 10 1977

AGENCY: Bureau of Indian Affairs.

ACTION: Extension of comment period.

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DATES: Comments must be received by August 18, 1977.

ADDRESS: Written comments should be directed to Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: This proposed rule making is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

The deadline for comments on the proposed regulations that will govern the Department's determination that an Indian group is a federally recognized Indian tribe is hereby extended to September 18, 1977. The proposed regulations were published at 42 FR 30647 on June 16, 1977.

(Sgd.) Raymond V. Butler

Acting Deputy Commissioner
of Indian Affairs

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

JUL 20 1977

EXTENSION OF TIME FOR WRITTEN COMMENTS
ON PROPOSED PROCEDURES GOVERNING
DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY
RECOGNIZED INDIAN TRIBE

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

The deadline for comments on the proposed regulations that will govern the Department's determination that an Indian group is a federally recognized Indian tribe is hereby extended to August 18, 1977. The proposed regulations were published at 42 FR 30617 on June 16, 1977.

(Sgd) Raymond V. Butler
Acting Deputy Commissioner
of Indian Affairs

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

JUL 20 1977

EXTENSION OF TIME FOR WRITTEN COMMENTS
ON PROPOSED PROCEDURES GOVERNING
DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY
RECOGNIZED INDIAN TRIBE

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

The deadline for comments on the proposed regulations that will govern the Department's determination that an Indian group is a federally recognized Indian tribe is hereby extended to August 18, 1977. The proposed regulations were published at 42 FR 30617 on June 16, 1977.

(Sgd) Raymond V. Butler
Acting Deputy Commissioner
of Indian Affairs

FILE COPY
SURNAME

Tribal Government Services

Acting Deputy Commissioner of Indian Affairs

Aug 10, 1977

Director, Office of Indian Services

Request for Extension of Time for Filing Comments on Proposed Federal Recognition Regulations

We would like to request an extension of time for filing comments. We have had several requests for an extension of time for filing comments on the proposed Federal recognition regulations. We believe these requests are reasonable and therefore have drafted the attached notice for your signature and subsequent publication in the Federal Register.

Deary

Director, Office of Indian Services

cc: Code 130
Code 850

cc: Surname
BCCO
Commr. Reading File
Chrony 440
Mailroom
Holdup:JShapard:dlb:ext. 4045:8/10/77:Cass. 19-A

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

Tribal Government Services

TO : Acting Deputy Commissioner of Indian Affairs DATE:

FROM : Director, Office of Indian Services

SUBJECT: Request for Extension of Time for Filing Comments on Proposed Federal Recognition Regulations

We would like to request an extension of time for filing comments. We have had several requests for an extension of time for filing comments on the proposed Federal recognition regulations. We believe these requests are reasonable and therefore have drafted the attached notice for your signature and subsequent publication in the Federal Register.

John D. Ivey

Director, Office of Indian Services

5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

25-4

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

JUL 20 1977

EXTENSION OF TIME FOR WRITTEN COMMENTS
ON PROPOSED PROCEDURES GOVERNING
DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY
RECOGNIZED INDIAN TRIBE

This ~~notice~~ Proposed rule making is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

The deadline for comments on the proposed regulations that will govern the Department's determination that an Indian group is a federally recognized Indian tribe is hereby extended to August 18, 1977. The proposed regulations were published at 42 FR 30617 on June 16, 1977.

Raymond V. Butler
Acting Deputy Commissioner
of Indian Affairs

Comments should be mailed to
Mr. Leslie N. Cray

+ Telephone

months effective period elapses without sponsor action. The determination must then be extended, in some cases, many times. It is, therefore, proposed that, if an application for an FCC permit has been made, the effective period of a no hazard determination be 18 months. To meet this need § 77.39(d)(1) could be amended to read: "The time required to apply to the Commission for a construction permit but not more than 18 months after the effective date of the determination."

The new Subpart F would be entitled "Discretionary Review Procedures." As has already been noted, the current Subpart E would be redesignated as Subpart G. The only change would be the renumbering of its sections.

Section 77.41 would be entitled "Scope" and it would read as follows: "This subpart identifies those persons who may petition for a discretionary review of a determination issued under §§ 77.19 or 77.35, or revision or extension of a determination under § 77.39, applies to time limits within which the petition must be filed, and describes the form and manner of submittal and processing."

A new § 77.43, entitled "Petition Eligibility," would contain the text of the present § 77.37(a). A new § 77.45, entitled "Petition Submittal," would include the present § 77.37(b) redesignated subparagraph (a). Section 77.45(b) would read: "(b) A petition must contain a full statement of the aeronautical basis upon which it is made, including valid reasons why the determination, revision or extension made by the Regional Director, or his designee, should be reviewed. It should contain new information and facts not previously considered or discussed during the aeronautical study. If the petition for review of the determination, revision or extension is based on an error in procedure, application of obstruction standards or conclusion, it should be so stated."

A new § 77.47, entitled "Petition Examination and Review," would contain the text of the current § 77.37(c)(1) and (2), except that the reference to Subpart E in § 77.37(c)(2) would be changed to Subpart G. Section 77.47 would also contain a provision that acknowledgement will be made to the petitioner and to the sponsor that the petition has been received and it will be considered, and that the determination is not and will not be final pending disposition of the petition.

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The FAA solicits the comments of all interested persons on the foregoing proposed changes to Part 77. It also welcomes any suggestions on the need for further revision of this part.

EVALUATION OF IMPACTS

It has been determined that the regulatory impact of this proposed amendment would be minimal and that an evaluation pursuant to the policy statement published by the Secretary of Transportation (41 FR 16200) is not required.

DRAFTING INFORMATION

The principal authors of this document are William E. Broadwater, Air Traffic Service, and Richard W. Danforth, Office of the Chief Counsel.

(Secs. 313(a) and 1101 of the Federal Aviation Act of 1958 (49 U.S.C. §§ 1354, 1501); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)).)

Issued in Washington, D.C. on June 2, 1977.

RAYMOND G. BELANGER,
Director, Air Traffic Service.

[FR Doc.77-17083 Filed 6-15-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 54]

PROCEDURES GOVERNING DETERMINATION THAT INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau proposes new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

DATES: Comments must be received on or before July 18, 1977.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie N. Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and Sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 54—PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Who may petition.
54.4 Where the petition is to be filed.
54.5 Notice of receipt of the petition.
54.6 Form and content of the petition.
54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY: 5 U.S.C. 301; secs 463 and 465 (25 U.S.C. 2 and 9); 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as "group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "Federally Recognized Tribe" means any Indian group within the United States that the Secretary of the Interior Acknowledges to have had and should continue to have the status of a domestic dependent sovereign.

§ 54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

§ 54.3 Who may petition.

Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§ 54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§ 54.5 Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall acknowl-

GHP ADD-RDD-V026-D0021 Page 1 of 2

edge receipt of such petition and shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in § 54.7 of this part, if received by him within sixty days of the date of the notice.

§ 54.6 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

§ 54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and an opportunity to present oral arguments.

(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§ 54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) The Commissioner shall determine that an Indian group is a federally recognized Indian tribe whenever the group satisfies paragraphs (1-5) and (10) of § 54.7(c) so long as at least one other paragraph of that section is also satisfied.

(c) The Commissioner shall determine that an Indian group is not a federally recognized Indian tribe if the group fails to satisfy paragraphs (1)-(5) and (10 of § 54.7(b) along with at least one other paragraph of that section.

(d) A summary of the Commissioner's report and his determination as to the group's status shall be published in the FEDERAL REGISTER and shall be subject to review by the Secretary, who may, by acting within thirty days of such publication, supersede that determination. If the Secretary takes no action within such thirty-day period, the Commissioner's determination shall be final, and become effective immediately. If, after review, the Secretary reaches a conclusion contrary to that made by the Commissioner, he may supersede the Commissioner's determination. The Secretary's determination will be final and notice thereof shall be published in the FEDERAL REGISTER.

The primary author of this document is Mr. Leslie N. Gay, Jr., Chief, Branch of Tribal Relations, Bureau of Indian Affairs, (202) 343-4045.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affair.

[FR Doc.77-17200 Filed 6-15-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 747-3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Air Pollution Control, State of Arizona

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Through this notice EPA proposes to approve, with exception, revisions to the Arizona State Implementation Plan (SIP). These revisions include State regulations for vehicle inspection maintenance, organic compound emissions from stationary sources definitions, particulate emissions from stationary sources, assertions of jurisdiction, ambient air quality standards, sulfur compound emissions, carbon monoxide emissions from stationary sources, nitrogen oxide emissions, and miscellaneous (general) regulations. The revisions were submitted to EPA on August 20, 1973, August 30, 1974, February 3, 1975, September 16, 1975, and January 23, 1976.

DATES: Comments by: July 18, 1977.

ADDRESSES: Send comments to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Programs Branch, Arizona-Nevada-Pacific Islands Section (A-4), EPA Region IX, 100 California Street, San Francisco, CA 94111.

Availability of documents: Copies of the State revisions, the EPA Evaluation Report, and this FEDERAL REGISTER notice are available for public inspection during normal business hours at the EPA Region IX Library at the above address, and at the following locations:

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, SW., Washington, D.C. 20460.

Arizona Department of Health Services Bureau of Air Pollution Control, 1740 West Adams Street, Phoenix, AZ 85007.

Arizona Department of Health Services, Bureau of Air Pollution Control, Northern Regional Office, 2501 North Fourth Street, Suite 14 Flagstaff, AZ 86001.

Arizona Department of Health Services, Bureau of Air Pollution Control,

GHP ADD-RDD-V026-D0021 Page 2 of 2

FILE COPY
SURNAME
Shapard 8/15

Tribal Government Services

Mr. Karl Armstrong
Executive Vice President & Executive
Director
Koniag, Inc.
Harobr View Complex
P. O. Box 746
Kodiak, Alaska 99615

Dear Mr. Armstrong:

In response to your June 21 request for copies of the proposed regulations on Federal recognition, enclosed are ten copies of the proposal. Please note the deadline for comments has been extended until September 18.

Sincerely,

Leslie Hay Jr.

Chief, Branch of Tribal Relations

Enclosures

cc: Surname
Chrony 440
Mailroom
Holdup:JShapard:dlb:ext. 4045:8/12/77:Cass. 19-B

7rs 8/8

440

KONIAG, INC. HARBOR VIEW COMPLEX P.O. Box 746 (907) 486-4147 KODIAK, ALASKA 99615

June 21, 1977

Director of Indian Services
Bureau of Indian Affairs
Department of Interior
Washington, D.C. 20013

Dear Sirs:

Please send us at least one copy--preferably ten copies--of the proposed regulations on the Federal Recognition of Indian Groups.

Sincerely,

KONIAG, INC.

Karl Armstrong

Karl Armstrong
Executive Vice President &
Executive Director

KA/es

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

JUL 20 1977

EXTENSION OF TIME FOR WRITTEN COMMENTS
ON PROPOSED PROCEDURES GOVERNING
DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY
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(Sgd) Raymond V. Butler

Acting Deputy Commissioner
of Indian Affairs

Certified to be a true Copy

Fitzhugh R. Messler

Certifying Officer

Not sent. Mix up in formal by Management Services

See ind - Regulations

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

Bill
John
Pat
BJd

May 11, 1977

To: Bill Gershuny

From: Leo Krulitz

Subject: "Recognition"

I understand that regulations are now being prepared in draft form regarding the criterion for tribal recognition. I would like to review those proposed regulations prior to their being published in draft form.

Leo Krulitz

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Cowlitz Tribe of Indians
c/o Joseph E. Cloquet
Roy Wilson
2815 Dale Lane East
Tacoma, Washington 98424

Dear Messrs. Cloquet and Wilson:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

Sincerely,

Leslie M. Gay Jr.
Chief, Branch of
Tribal Relations

Enclosure

bcc: Docket's file
DIA reading files (2)
SKeep's file (2)
JTalawyma's file
BIA Surname
Chron
Mailroom
BCCO
Code 440, Attn. LGay

SOL/DIA/SKeep:jt:07/29/77:x5134:

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Jamestown Clallam Tribe
c/o Emily Mansfield
Legal Services Center
5308 Ballard Avenue, N.W.
Seattle, Washington 98107

Dear Ms. Mansfield:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

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SOL/DIA/SKeep:jt:07/29/77:x5134:

FILE COPY
SURNAME

(Sgd) Leslie N. Gay, Jr.

June 20, 1977

Dear Petitioner:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review. In conjunction with that response, we indicated that when any decision affecting "recognition" was reached you would be advised.

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Chief, Branch of Tribal Relations

Enclosure

cc: /Surmame
Chrony 440
Mailroom
Holdup:LGAY:dlb:6/20/77:Cass. VII-B

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

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Sincerely,

Lucie M. Fay, Jr.
Chief, Branch of Tribal Relations

Enclosure

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

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DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

JUL 20 1977

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SURNAME

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

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(Sgd) Raymond V. Butler

Acting Deputy Commissioner
of Indian Affairs

cc: Surname
Chrony 440
Holdup:LGay:dlb:ext. 4045:7/19/77:Cass. Tape II

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Drafting Information

The principal authors of this document are William E. Broadwater, Air Traffic Service, and Richard W. Danforth, Office of the Chief Counsel.

(Secs. 313(a) and 1101 of the Federal Aviation Act of 1958 (49 U.S.C. §§ 1354, 1501); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)).)

Issued in Washington, D.C. on June 2, 1977.

RAYMOND G. BELANGER,
Director, Air Traffic Service.

[FR Doc.77-17053 Filed 6-15-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 54]

Insert (1)

PROCEDURES GOVERNING DETERMINATION THAT INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

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54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY: 5 U.S.C. 301; secs. 463 and 465 (25 U.S.C. 2 and 9); 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as "group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "Federally Recognized Tribe" means any Indian group within the United States that the Secretary of the Interior Acknowledges to have had and should continue to have the status of a domestic dependent sovereign.

§ 54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

§ 54.3 Who may petition.

Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§ 54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§ 54.5 Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall acknowl-

GHP ADD-RDD-V026-D0033 Page 1 of 2

edge receipt of such petition and shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in § 54.7 of this part, if received by him within sixty days of the date of the notice.

§ 54.6 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

§ 54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and an opportunity to present oral arguments.

(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§ 54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) The Commissioner shall determine that an Indian group is a federally recognized Indian tribe whenever the group satisfies paragraphs (1-5) and (10) of § 54.7(c) so long as at least one other paragraph of that section is also satisfied.

(c) The Commissioner shall determine that an Indian group is not a federally recognized Indian tribe if the group fails to satisfy paragraphs (1)-(5) and (10 of § 54.7(b) along with at least one other paragraph of that section.

(d) A summary of the Commissioner's report and his determination as to the group's status shall be published in the FEDERAL REGISTER and shall be subject to review by the Secretary, who may, by acting within thirty days of such publication, supersede that determination. If the Secretary takes no action within such thirty-day period, the Commissioner's determination shall be final, and become effective immediately. If, after review, the Secretary reaches a conclusion contrary to that made by the Commissioner, he may supersede the Commissioner's determination. The Secretary's determination will be final and notice thereof shall be published in the FEDERAL REGISTER.

The primary author of this document is Mr. Leslie N. Gay, Jr., Chief, Branch of Tribal Relations, Bureau of Indian Affairs, (202) 343-4045.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affair.

[FR Doc.77-17200 Filed 6-15-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 747-3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Air Pollution Control, State of Arizona

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Through this notice EPA proposes to approve, with exception, revisions to the Arizona State Implementation Plan (SIP). These revisions include State regulations for vehicle inspection/maintenance, organic compound emissions from stationary sources definitions, particulate emissions from stationary sources, assertions of jurisdiction, ambient air quality standards, sulfur compound emissions, carbon monoxide emissions from stationary sources, nitrogen oxide emissions, and miscellaneous (general) regulations. The revisions were submitted to EPA on August 20, 1973, August 30, 1974, February 3, 1975, September 16, 1975, and January 23, 1976.

DATES: Comments by: July 18, 1977.

ADDRESSES: Send comments to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Programs Branch, Arizona-Nevada-Pacific Islands Section (A-4), EPA Region IX, 100 California Street, San Francisco, CA 94111.

Availability of documents: Copies of the State revisions, the EPA Evaluation Report, and this FEDERAL REGISTER notice are available for public inspection during normal business hours at the EPA Region IX Library at the above address and at the following locations:

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, SW., Washington, D.C. 20460

Arizona Department of Health Services, Bureau of Air Pollution Control, 1740 West Adams Street, Phoenix, AZ 85007.

Arizona Department of Health Services, Bureau of Air Pollution Control, Northern Regional Office, 2501 North Fourth Street, Suite 14 Flagstaff, AZ 86001.

Arizona Department of Health Services, Bureau of Air Pollution Control,

GHP ADD-RDD-V026-D0033 Page 2 of 2

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Snohomish Tribe
c/o Alfred Cooper
5101 - 27th Avenue, West
Everett, Washington 98203

Dear Mr. Cooper:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

Sincerely,

Lucie M. Gay Jr.
Chief, Branch of
Tribal Relations

Enclosure

bcc: Docket's file
DIA reading files (2)
SKeep's file (2)
JTalawyma's file
BIA Surname
Chron
Mailroom
BCCO
Code 440, Attn. LGay

SOL/DIA/SKeep:jt:07/29/77:x5134:

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Samish Tribe
c/o Robert Wooten
P.O. Box 217
Anacortes, Washington 98221

Dear Mr. Wooten:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

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Leslie M. Gay, Jr.
Chief, Branch of
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United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Cowlitz Tribe of Indians
c/o Joseph E. Cloquet
Roy Wilson
2815 Dale Lane East
Tacoma, Washington 98424

Dear Messrs. Cloquet and Wilson:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Jamestown Clallam Tribe
c/o Emily Mansfield
Legal Services Center
5308 Ballard Avenue, N.W.
Seattle, Washington 98107

Dear Ms. Mansfield:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

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Chief, Branch of
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United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Snohomish Tribe
c/o Alfred Cooper
5101 - 27th Avenue, West
Everett, Washington 98203

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Chief, Branch of
Tribal Relations

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United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

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c/o Robert Wooten
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SOL/DIA/SKeep:jt:07/29/77:x5134:

GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

Tribal Government Services

TO : Acting Deputy Commissioner of Indian Affairs **DATE:**

FROM : Chief, Division of Tribal Government Services

SUBJECT: Status of Federal Recognition Project

To date we have received forty-two letters commenting on the proposed regulations governing Federal recognition. The comments in general have been favorable to the concept embodied by the regulations, i.e., acknowledgment of an historic relationship with the Federal Government. Of the forty-two letters received, six opposed the entire project (one threatening court action if we attempted to recognize any new groups), two misunderstood the reason for the comment period and submitted petitions for recognition, and the rest (thirty-four) were favorable to the idea. Virtually all of the latter letters contained excellent suggestions for modifying the regulations and will have a substantial impact on the final form. A breakdown of the contributors of the comments is as follows:

A. Five from individuals including an anthropologist, a Bureau of Indian Affairs' employee and three citizens.

B. Two from the State of Maine Attorney General's office.

C. Three from other Federal Agencies (HEW, HUD, Agriculture).

D. Four from Interior Department Regional Solicitors (Salt Lake, Atlanta, Portland, and Tulsa).

E. Three from Bureau of Indian Affairs' Superintendents.

F. Eight from attorneys for tribes or groups of Indians (four-unrecognized, one-recognized, and three-not able to determine).

G. Three from Legal Aid Service institutions (NARF, California Indian Legal Services, Upper Peninsula Legal Services, Inc.).

H. Three from native associations or corporations.

5010-110

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I. Two from pan Indian groups (NTCA and AAIA).

J. One from a State reservation group.

K. Three from recognized tribes or tribal associations (directly-not through an attorney) Tlingit-Haida, 13th Regional Corporation and the Small Tribes of Western Washington (STOWW).

L. Five from unrecognized groups.

M. One from Senator Abourezk reflecting the American Indian Policy Review Commission's attitude.

The period for comments has been extended until September 18. There has been a noticeable decline in comments since the initial closing date of July 18. Publication of the extension is not expected to bring in many new comments.

Work has begun on categorizing the comments, relating each to a specific section in the regulations. A comprehensive analysis of the comments can be expected by October 3rd. A target date for a rough draft of the final regulations would be October 21.

Dennis L. Petersen

new
Letter
out

FILE COPY
SURNAME
Pennington 9/13/78

SEP 14 1978

Tribal Government Services

Enclosed is a copy of the final regulations on Federal acknowledgment of Indian tribes which were published in the Federal Register on September 5. The regulations will become effective on October 5. The Division of Tribal Government Services is currently in the process of establishing an office for the Federal Acknowledgment Project. We expect the office to be staffed and operational by October 10.

As required by Section 54.6 (b) of the regulations a list of all Indian tribes which are recognized and receiving services of Indian Affairs shall be published in the Federal Register on or before January 2, 1979.

Also, on or before January 2, as required by Section 54.6 (c), guidelines for the format of petitions will be mailed to groups interested in petitioning and others interested in the process. While use of the suggested format is not required, we believe it will speed the processing of petitions. The guidelines will also include suggestions concerning where to seek assistance in preparing a petition.

Petitions on file will be returned to groups along with the guidelines. This is to provide the petitioner with an opportunity to review, revise and supplement the petition.

We are in the process of revising our mailing list. If you desire to remain on the mailing list for Federal Acknowledgment, please let us know.

If you have any questions concerning the regulations or the petitioning process, write:

Bureau of Indian Affairs
Tribal Government Services
Federal Acknowledgment Project
Department of the Interior
18 & C Streets N. W.
Washington, D. C. 20245

Sincerely,

(Sgd) Robert Pennington

ACTING Chief, Division of Tribal Government Services

Enclosure

cc: Surname: Chrony: 440: Mailroom:
Holdup:BShapard:jm:ext.4045:9/13/78:c9i
attached is a list of the people this letter and enclosure was mailed too

"SONNY" PEACOCK
Councilman

HUGH WRIGHT
Councilman

MONT COTTER
Chief
Post Office Box 276
Grove, Oklahoma 74344
Phone: 918-786-5320
Business: 918-542-9275

JUANITA McQUISTION
Secretary-Treasurer
Route 1, Box 168
Miami, Oklahoma 74354
Phone: 918 542-5996

September 2, 1977

ack 9/9/77

Mr. Les Gay
Chief, Tribal Operations
Division of Tribal Government Services
United States Department of the Interior
Room 464
Washington, D.C. 20240

Dear Mr. Gay:

Reference is made to Federal Recognition of Indian Tribes, published in the Federal Register June 16, 1977.

Please find enclosed a copy of a letter to Chairman Abourezk from Mr. Mont Cotter, Chief of the Wyandotte Tribe of Oklahoma. We would like to use this letter as comment towards the pending legislation.

Sincerely,

Claude H. Killion
Business Manager

CHK:so

Enclosure

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

(25 CFR Part 54)

PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed Rule.

SUMMARY: The Bureau proposes to add a new Part 54 to Subchapter G, Chapter I, of Title 25 of the Code of Federal Regulations. The purpose of the New Part 54 is to establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe.

DATES: Comments must be received on or before: 30 days after date of publication of this notice in the FEDERAL REGISTER.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Street, N. W., Washington, D. C. 20245.

Tribal Government Services

Commissioner of Indian Affairs

May 3 1977

Director, Office of Indian Services

Procedures Governing the Determination that an Indian Group is a Federally Recognized Indian Tribe

We are enclosing a proposed addition of a new part to Subchapter G, Chapter I of Title 25 of the Code of Federal Regulations. It governs the determination that an Indian group is a federally recognized Indian tribe.

We recommend the enclosed proposed addition be approved and transmitted to the Federal Register Division for Publication. Interested persons will have 30 days after the date of publication in which to submit their comments and/or suggestions on the proposed addition to regulations.

May 3 John Gay
Director, Office of Indian Services

Enclosure

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie N. Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202)343-4045.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and Sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

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PART 54 -- PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Who may petition.
54.4 Where to file the petition.
54.5 Notice of receipt of the petition.
54.6 Form and content of the petition.
54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY:

§54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as "group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "FEDERALLY RECOGNIZED TRIBE" means any Indian group within the United States that the Secretary of the Interior acknowledges to have had and should continue to have the status of a

GHP ADD-RDD-V026-D0045 Page 2 of 9

domestic dependent sovereign.

§54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

§54.3 Who may petition.

Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§54.5 Notice of receipt of the petition.

Within ten days after receiving a petition,

GHP ADD-RDD-V026-D0045 Page 3 of 9

the Commissioner shall acknowledge receipt of such petition and shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in Section 54.7 of this part, if received by him within sixty days of the date of the notice.

§54.6 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and

should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

§54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and an opportunity to present oral arguments.

(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal

affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or

GHP ADD-RDD-V026-D0045 Page 7 of 9

judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) Acknowledgment that an Indian group is a federally recognized Indian tribe shall be made

wherever the group satisfies paragraphs 1-5 and 10 of Section 54.7(c) of this part, so long as at least one other paragraph of that section is also satisfied.

(c) Determination that an Indian group is not a federally recognized Indian tribe shall be made where a group fails to satisfy paragraphs 1-5 and 10 of Section 54.7(b) of this part, along with at least one other paragraph of that section.

(d) The Commissioner's acknowledgment that whether the Indian group has the status of a federally recognized Indian tribe, shall be subject to review by the Secretary, who may, by acting within 30 days thereof, supersede that action. Following the 30 days provided for Secretarial review, notice shall be published in the FEDERAL REGISTER that the Commissioner's acknowledgment is in effect, or there shall be published instead the Secretary's contrary determination stating the grounds on which his determination has been reached that the group is not a federally recognized Indian tribe.

Raymond Butler

Acting Commissioner of Indian Affairs

B * OVERSET *

§ 54.7 Processing of the petition.

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(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§ 54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) ~~Acknowledgment~~ that an Indian group is a federally recognized Indian tribe ~~shall be made wherever~~ the group satisfies paragraphs (1–5) and (10) of § 54.7(c), so long as at least one other paragraph of that section is also satisfied.

(c) ~~Determination~~ that an Indian group is not a federally recognized Indian tribe ~~shall be made where a~~ group fails to satisfy paragraphs (1)–(5) and (10) of § 54.7(b) at least one other paragraph of that section.

(d) The Commissioner's acknowledgment that whether the Indian group has the status of a federally recognized Indian tribe, shall be subject to review by the Secretary, who may, by acting

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group is a federally recognized Indian tribe ~~shall be made wherever~~ whenever the group satisfies paragraphs (1–5) and (10) of § 54.7(c), so long as at least one other paragraph of that section is also satisfied.

(c) ~~Determination~~ The Commissioner shall determine that an Indian group is not a federally recognized Indian tribe ~~shall be made where~~ if the group fails to satisfy paragraphs (1)–(5) along with and (10) of § 54.7(b) at least one other paragraph of that section.

(d) The Commissioner's acknowledgment that whether the Indian group has the status of a federally recognized Indian tribe, shall be subject to review by the Secretary, who may, by acting within 30 days thereof, supersede that action. Following the 30 days provided for Secretarial review, notice shall be published in the FEDERAL REGISTER that the Commissioner's acknowledgment is in effect, or there shall be published instead the Secretary's contrary determination stating the grounds on which his determination has been reached that the group is not a federally recognized Indian tribe.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.77-13900 Filed 5-13-77;8:45 am]

(d) Notwithstanding the Commissioner's ~~determination~~ letter and his determination as to the status of the Indian group shall be published in the FEDERAL REGISTER and shall be subject to review by the Secretary, who may, by acting within 30 days of such publication, supersede that determination. If the Secretary takes no action within such thirty-day period, the Commissioner's determination shall be final, and become effective immediately. If, after review, the Secretary reaches a ~~determination~~ conclusion contrary to that made by the Commissioner, he may supersede ~~that~~ the Commissioner's determination. The Secretary's determination which has ~~is~~ final and shall be published in the FEDERAL REGISTER

A * OVERSET *

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 54]

PROCEDURES GOVERNING DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

MAY 4, 1977.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed Rule.

SUMMARY: The Bureau proposes new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

DATES: Comments must be received on or before: June 15, 1977.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Street, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie N. Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 54—PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Who may petition.
54.4 Where to file the petition.
54.5 Notice of receipt of the petition.
54.6 Form and content of the petition.
54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Depart-

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "Federally recognized tribe" means any Indian group within the United States that the Secretary of the Interior acknowledges to have had and should continue to have the status of a domestic, dependent sovereign.

§ 54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

§ 54.3 Who may petition.

Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§ 54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§ 54.5 Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall acknowledge receipt of such petition and shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in § 54.7, if received by him within sixty days of the date of the notice.

§ 54.6 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

B * OVERSET *

§ 54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealth with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statments contained therein and an opportunity to present oral arguments.

(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§ 54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) Acknowledgment that an Indian group is a federally recognized Indian tribe shall be made wherever the group satisfies paragraphs (1-5) and (10) of § 54.7(c), so long as at least one other paragraph of that section is also satisfied.

(c) Determination that an Indian group is not a federally recognized Indian tribe shall be made where a group fails to satisfy paragraphs (1)-(5) and (10) of § 54.7(b) at least one other paragraph of that section.

(d) The Commissioner's acknowledgment that whether the Indian group has the status of a federally recognized Indian tribe, shall be subject to review by the Secretary, who may, by acting within 30 days thereof, supersede that action. Following the 30 days provided for Secretarial review, notice shall be published in the FEDERAL REGISTER that the Commissioner's acknowledgment is in effect, or there shall be published instead the Secretary's contrary determination stating the grounds on which his detremination has been reached that the group is not a federally recognized Indian tribe.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.77-13900 Filed 5-13-77;8:45 am]

Pensacola Fla
July 8. 1977

Vivian M. Williamson
Rte. 7, Box 663
Pensacola, Fla. 32506

United States Dept of Interior
Bureau of Indian Affairs
Washington DC. 20245

Dear Chief- Branch of Tribal Relations

In Answer to my letter the petitioner our group. "The Lower Creek Muscogee Tribe East of the Mississippi" Our Office is "Tama State Indian Reservation, Cairo, Ga, my Comment is, my Grand Father a full blood Creek & were left behind after the removal to Okla, Suffered many hard ships. my people could not go to white man schools to get an education. So please help us to be a recognized Indian Tribe East of Miss. I'm 64 years old I'm a widow disable & work need Hospital where I can go as Indian. My grand children could use help in Education. I'm Indian and proud of my heritage - My roll no — EC 11115
Thank you Chief -

Sincerely
Mrs Vivian Williamson
Rt 7, Box 663
Pensacola, Fla. 32506

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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

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17 JUL 1975

Memorandum

To: Solicitor

From: Acting Associate Solicitor, Indian Affairs

Subject: Federal "Recognition" of Indian Tribes

Attached is a memorandum approved in draft by Reid, dealing in some detail with the above subject. In view of its length, I thought that this brief summary might be helpful. */

1. The memorandum is basically informational, and not advocacy-oriented. It does not purport to deal with the merits of the specific recognition petitions pending before the Secretary, but rather is designed simply to outline existing law with respect to the concept of recognition in order to aid in a formulation of the Department's approach to those and similar petitions.

2. The law is neither definitive nor even especially clear with respect to the Department's current concerns. For the most part the cases deal with whether, in given situations, Congress or (to a lesser extent) the executive branch has "recognized" the existence of a tribe by its past actions. The opinions say, in fact, that such recognition by one of the "political branches" is virtually nonreviewable. The cases do not focus, however, on what standards or procedures may permissibly be used by those branches.

*/ Pages 23-25 of the memorandum also represent something of a summary.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

3. The recognition notion appears to have begun as an analogue in the Indian area to the diplomatic recognition of foreign governments. Treaties constitute the most significant criterion of recognition. The criteria have expanded, however, and include also congressional recognition by non-treaty means--i.e., statutes dealing with or referring to particular tribes--and even, to some extent, executive action dealing with tribes (provision of trust services, etc.). A more detailed summary of these criteria, as established by the early case law, is set out at pages 13-14 of the memorandum. There is no fixed standard for weighing such criteria.

4. A once-recognized tribe may cease to be recognized, either by action of the Government (e.g., a termination statute) or by a withering away of the tribal organization. Similarly, a non-recognized tribe may become recognized if the Government begins to take actions toward it which indicate recognition. The case law does not, however, provide any real guidance with respect to just how questions of "withering away" should be evaluated.

5. The Indian Reorganization Act confirms the notion of recognition as a general matter but is of little help in defining it. Administrative practice under the IRA generally supports the notion that the Department may administratively recognize a tribe not previously recognized as a formal matter. Such recognition is assumed, however, to be based on an assessment of past governmental action with regard to the tribe in question.

6. Two recent decisions, in particular, have challenged the entire concept of congressional and executive recognition, and suggest that the courts will intrude more into the matter than they have in prior cases. Neither of the decisions is final, however.

7. Although the matter is not clear, there would appear to be a good basis for concluding that a tribe may be recognized for one purpose (e.g., for purposes of the Nonintercourse Act's requirement of federal approval of any conveyance of tribal land) but not for others.

8. Although the recognition concept is quite murky as an intellectual matter, it is probably not now justifiable to dispense with it in view of its long entrenchment in the law. (But see paragraph 6 above.)

9. My own tentative suggestions are as follows:

The Department can and should establish uniform (though general) procedures for determining recognition questions. (The substantive criteria to be used are sufficiently clear from the case law, though how to assess those criteria is a more difficult matter.) There is an ineradicable element of discretion involved in recognizing a tribe, so that determinations probably should be made by the Secretary (on the advice of the Commissioner and the Solicitor)--or conceivably by the Commissioner--and not by the Office of Hearings and Appeals through any kind of quasi-adversary proceeding. However, certain factual questions, especially involving historical facts bearing on the "withering away" issue, could be referred to OHA. Any responsible determinations or procedures decided upon by the Department, which are consistent with the above principles, would likely be upheld. It would be inappropriate to pass the buck to Congress.

10. For the time being, at least, I have limited distribution of the memorandum to persons within the Solicitor's Office.

Alan K. Palmer

Attachment

cc: George D. Dysart
Louis E. Striegel
David E. Lindgren
Reid P. Chambers

Secretary's Files
Docket's Files
AKPalmer's Reading File
KCJohnson's Reading File
DIA Reading File

AKPalmer/kcj/7/17/75

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

12 1976 APR

IN REPLY REFER TO:

Memorandum

To: Solicitor

From: Associate Solicitor, Indian Affairs

Reid Peyton Chambers

Re: Standards for Secretarial Recognition of Indian Tribes

There are a number of alternative ways to approach this problem of setting recognition standards. I shall list them in order of my own preference (although from our discussions, it is my guess that your preference may be in reverse order to mine).

I. The One Basic Criterion Approach

My preference is that there be one basic criterion--that recognition be extended to a group of persons of common Native American ancestry organized collectively in a society exercising political authority over them. I would require that the group have historically inhabited a land area and that the federal trust relationship with it not have been terminated by Congress. In other words, I would require only tribal existence as a recognition criterion; I would not require that there be a course of dealings between the tribe and the federal government.

Succinctly stated, my reasons are as follows:

1. Much of the ambiguity in the existing criteria derives from trying precisely to state what types of dealings, or how many dealings; by whom (Congress, the BIA etc.) are required for "recognition."

2. The "course of dealings" approach has aspects of Catch 22--if a tribe hasn't been recognized, it can't be. And I can't divine why that should be so. The United States historically possessed power to initiate and enter into a relationship with a tribe. Congress never took that power away expressly. (To be sure, the power to enter into treaties was abolished, but treaty-making is not an exclusive form of "recognition.")

3. For me, recognition is a significant problem because of its equal protection, or "horizontal equity," component. There are some (albeit a few) groups in nature that are "Indian tribes" but which by historical accident have not been treated as such by the United States. The Stillaguamish are one, the Passamaquoddies another, the Wampanoags on Martha's Vineyard where I vacation in the summer a third. These groups are in all significant empirical respects similar to bands of Chippewas and Pueblos which the Department does "recognize." There is, in my view, no truly rational basis for the disparate treatment.

4. A requirement of past "dealings" with the United States causes difficulty when applied to very traditional groups. The more traditional a group is, the more apt it is to have maintained itself as a distinct and separate entity, thus satisfying one of the most important of the criteria commonly applied in the past. At the same time, however, the very traditional groups are more apt to have either rejected or simply avoided contact with the United States, viewing themselves as independent, self-sufficient sovereigns.

My preferred test is the most "generous" one in that more tribes would be "recognized" under it than under other plausible tests. No floodgates would open, however. A group of Indians lacking a common ancestry living in a subdivision in Phoenix could not organize under my standard. The subcriteria required for recognition would be:

(1) an existing social organization

(2) political authority being exercised over members

(3) Native American ancestry from a common origin

(4) a common historical area of habitation

(5) absence of legislation terminating the trust relationship

In addition, I would suggest that recognition not be extended where a majority of the group's members are members of other already recognized tribes.

II. The Two Basic Criteria Approach

My less preferred option would be to require all of the above and, in addition, that the tribal group has maintained a course of dealings with the United States by treaty, agreement, executive order, statute, or continuous contact with the BIA (as where an agent has been appointed).

The subcategories of this second basic criterion are as follows:

A. One of the following must be satisfied:

(1) the group has entered into a treaty or agreement with the United States which was ratified by Congress;

(2) the group has been denominated a tribe in an executive order or congressional statute or in the legislative history of a congressional statute;

(3) the group has been treated by the United States (or by a State) */ as having collective rights in land, water rights, rights to hunt or fish, or tribal funds;

(4) the group has received services from the United States (or a state agency) */ by virtue of being an Indian tribe or a group of Indians; or --

B. Alternatively, the group must be a "successor in interest" to a group described in "A," as determined by reference to common ancestry.

Either subcategory A or B would have to be satisfied under this approach, as would all of the subcategories in "I" above.

The four subheadings under "A" require some discussion, because some of them are obviously mutually exclusive. The first two, numbers 1 and 2, under any reasonable classification, would merit recognition. That is a "white" area. The last two (3 and 4) are shades of gray, in descending order. But some presently "recognized" tribes fit only these latter descriptions, and my view is that if some do, horizontal equity requires similar treatment for other groups.

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*/ I recognize that whether a state or a state agency has dealt with a group as a tribe may be thought to be an inappropriate standard for determining federal recognition. However, I believe the inclusion of such a standard would help us deal more equitably with the problem of long-existing eastern tribes--and it would soften a bit the Catch 22 problem I mentioned earlier.

Conclusion

I have attached alternative drafts of proposed regulations, contingent on how you recommend resolving the one or two criteria question.

I. ONE-CRITERION APPROACH

Regulations Governing Recognition of Indian Tribes.

1. Definitions.

As used in this Part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group" means any collection of persons of Indian, Aleut, or Eskimo extraction.

2. Purpose and Scope.

The purpose of this part is to establish a Departmental procedure and policy in connection with requests that the Secretary recognize a particular Indian group as a tribe.

3. Who may petition.

Any Indian group which believes that it is entitled to be recognized as a tribe by the United States may submit a petition requesting that the Secretary so recognize it.

4. Where petition is to be filed.

A petition requesting recognition as a tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C.

5. Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall have published in the Federal Register a notice of such receipt, including the name and location of the group submitting the petition and the date it was received. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with preparation of the report specified in section 7 of this part if received by him within sixty days of the date of the notice.

6. Form and content of petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to recognize the group as an Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is entitled to be recognized as an Indian tribe by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

7. Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause an investigation to be conducted within

the Bureau to determine whether the group is entitled to recognition as an Indian tribe. The investigation shall include a review of the petition and, to the extent necessary, verification of the factual statements contained therein. On the basis of this investigation the Commissioner shall, no later than 120 days following receipt of a petition, prepare a written report indicating his findings and conclusions. The Commissioner may call upon the Solicitor for legal advice in connection with the investigation and report, as he deems appropriate.

(b) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not the subject of congressional legislation terminating a trust relationship with it.

(6) Has as members principally persons who are not members of any other Indian tribe.

8. Action by Commissioner.

(a) The Commissioner's report shall embody his conclusion as to whether the petitioning group shall be recognized as a tribe.

(b) Recognition shall be extended wherever the group satisfies subsections 1-6 of section 7(b) of this part, and not otherwise.

(c) The Commissioner's determination as to whether the group shall be recognized as a tribe shall be subject to review by the Secretary, who may, by acting within 30 days thereof, supersede that determination. Absent action within such time

by the Secretary, the Commissioner's determination shall be final. The Secretary's determination, if any, shall be in writing and shall specify the grounds on which it is based. Any final Departmental determination shall be published in the Federal Register.

II. TWO-CRITERIA APPROACH

Regulations Governing Acknowledgment of Indian Groups as Recognized Tribes.

1. Definitions.

As used in this Part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group" means any collection of persons of Indian, Aleut, or Eskimo extraction.

2. Purpose and Scope.

The purpose of this part is to establish a Departmental procedure and policy in connection with requests that the Secretary acknowledge that a particular Indian group is recognized as a tribe by the United States.

3. Who may petition.

Any Indian group which believes that it has been recognized as a tribe by the United States may submit a petition requesting that the Secretary so acknowledge.

4. Where petition is to be filed.

A petition requesting acknowledgment of recognition as a tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C.

5. Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall have published in the Federal Register a notice of such receipt, including the name and location of the group submitting the petition and the date it was received. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with preparation of the report specified in section 7 of this part if received by him within sixty days of the date of the notice.

6. Form and content of petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the group is a recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is an Indian tribe which has been recognized as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

7. Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause an investigation to be conducted within

the Bureau to determine whether the group is an Indian tribe which has been recognized as such by the United States. The investigation shall include a review of the petition and, to the extent necessary, verification of the factual statements contained therein. On the basis of this investigation the Commissioner shall, no later than 120 days following receipt of a petition, prepare a written report indicating his findings and conclusions. The Commissioner may call upon the Solicitor for legal advice in connection with the investigation and report, as he deems appropriate.

(b) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not the subject of congressional legislation terminating a trust relationship with it.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was a party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress. For purposes of this subsection, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question.

(7) Has been denominated a tribe by an act of Congress, Executive Order, or judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a federal government agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

8. Action by Commissioner.

(a) The Commissioner's report shall embody his conclusion as to whether the petitioning group is an Indian tribe which has been recognized as such by the United States.

(b) Acknowledgment of such recognition shall be made wherever the group satisfies subsections 1-5 and 10 of section 7(b) of this part, so long as at least one other subsection of that section is also satisfied.

(c) Acknowledgment of such recognition shall not be made where a group fails to satisfy subsections 1-5 and 10 of section 7(b) of this part, along with at least one other subsection of that section.

(d) The Commissioner's determination as to whether the group is a recognized tribe shall be subject to review by the Secretary, who may, by acting

within 30 days thereof, supersede that determination. Absent action within such time by the Secretary, the Commissioner's determination shall be final. The Secretary's determination, if any, shall be in writing and shall specify the grounds on which it is based. Any final Departmental determination shall be published in the Federal Register.

bcc: David E. Lindgren w/attachments
Curtis Herge w/attachments
John W. Dwyer w/attachments

Docket's Files
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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

MAY 11 1977

Tribal Government Services

To: Ms. Cathy Clifford, Office of the Federal Register

From: Leslie N. Gay, Jr., Chief, Branch of Tribal Relations, Bureau of Indian Affairs

Subject: New summary for proposed procedures Governing the Determination that an Indian Group is a Federally Recognized Indian Tribe

Please change the SUMMARY in the document "PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE" recently submitted to you for publication as proposed rules to read as follows:

SUMMARY: The Bureau proposes new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

(Sgd) Leslie N. Gay, Jr.

Leslie N. Gay, Jr.
Chief, Branch of Tribal Relations

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10-4 file

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

(25 CFR Part 54)

MAY 4 1977

PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Proposed Rule.

SUMMARY: The Bureau proposes new regulations that would ~~to add a new Part 54 to Subchapter G, Chapter I, of Title 25 of the Code of Federal Regulations. The purpose of the New Part 54 is to~~ establish procedures ~~to~~ govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

Leslie Gray 343-4045 cc

DATES: Comments must be received on or before: 30 days after date of publication of this notice in the FEDERAL REGISTER.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Street, N. W., Washington, D. C. 20245.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie N. Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202)343-4045.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and Sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

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PART 54 -- PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Who may petition.
54.4 Where to file the petition.
54.5 Notice of receipt of the petition.
54.6 Form and content of the petition.
54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY:

§54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as "group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "FEDERALLY RECOGNIZED TRIBE" means any Indian group within the United States that the Secretary of the Interior acknowledges to have had and should continue to have the status of a

domestic dependent sovereign.

§54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

§54.3 Who may petition.

Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§54.5 Notice of receipt of the petition.

Within ten days after receiving a petition,

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the Commissioner shall acknowledge receipt of such petition and shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in Section 54.7 of this part, if received by him within sixty days of the date of the notice.

§54.6 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and

should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

§54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and an opportunity to present oral arguments.

(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal

affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or

judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) Acknowledgment that an Indian group is a federally recognized Indian tribe shall be made

wherever the group satisfies paragraphs 1-5 and 10 of Section 54.7(c) of this part, so long as at least one other paragraph of that section is also satisfied.

(c) Determination that an Indian group is not a federally recognized Indian tribe shall be made where a group fails to satisfy paragraphs 1-5 and 10 of Section 54.7(b) of this part, along with at least one other paragraph of that section.

(d) The Commissioner's acknowledgment ~~that~~ as to whether or not the Indian group has the status of a federally recognized Indian tribe, shall be subject to review by the Secretary, who may, by acting within 30 days thereof, supersede that action. Following the 30 days provided for Secretarial review, notice shall be published in the FEDERAL REGISTER that the Commissioner's acknowledgment is in effect, or there shall be published instead the Secretary's contrary determination stating the grounds on which his determination has been reached that the group is not a federally recognized Indian tribe.

Now proposed

Commissioner of Indian Affairs

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie N. Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202)343-4045.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and Sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

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PART 54 -- PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

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54.2 Purpose.
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(f) "FEDERALLY RECOGNIZED TRIBE" means any Indian group within the United States that the Secretary of the Interior acknowledges to have had and should continue to have the status of a

domestic dependent sovereign.

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The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

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§54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§54.5 Notice of receipt of the petition.

Within ten days after receiving a petition,

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should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

§54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and an opportunity to present oral arguments.

(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal

affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

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(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or

judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

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(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) Acknowledgment that an Indian group is a federally recognized Indian tribe shall be made

wherever the group satisfies paragraphs 1-5 and 10 of Section 54.7(c) of this part, so long as at least one other paragraph of that section is also satisfied.

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Raymond V. Butler

Acting Deputy Commissioner of Indian Affairs

Certified to be a true copy

F. Lee Messler

Certifying Officer

Copy #1

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

(25 CFR Part 54)

PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed Rule.

SUMMARY: The Bureau proposes to add a new Part 54 to Subchapter G, Chapter I, of Title 25 of the Code of Federal Regulations. The purpose of the New Part 54 is to establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe.

DATES: Comments must be received on or before: 30 days after date of publication of this notice in the FEDERAL REGISTER.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Street, N. W., Washington, D. C. 20245.

FOR FURTHER INFORMATION CONTACT:

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The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and Sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

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Within ten days after receiving a petition,

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(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal

affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. That conclusion may be appealed pursuant to the regulations set forth in 43 CFR 4.354 and 4.355. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

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§54.3 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

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wherever the group satisfies paragraphs 1-5 and 10 of Section 54.7(c) of this part, so long as at least one other paragraph of that section is also satisfied.

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(d) The Commissioner's acknowledgment that whether the Indian group has the status of a federally recognized Indian tribe, shall be subject to review by the Secretary, who may, by acting within 30 days thereof, supersede that action. Following the 30 days provided for Secretarial review, notice shall be published in the FEDERAL REGISTER that the Commissioner's acknowledgment is in effect, or there shall be published instead the Secretary's contrary determination stating the grounds on which his determination has been reached that the group is not a federally recognized Indian tribe.

Commissioner of Indian Affairs

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

JUL 8 1976

Memorandum

To: Executive Assistant to the Secretary

Through: Executive Secretariat

From: Solicitor

Subject: Report on the impact on federal responsibilities as a result of the decision in Passamaquoddy Tribe v. Morton

In paragraph (2) of your memorandum of June 3, 1976, you assigned to this office the task of preparing a report reviewing the impact on federal responsibilities as a result of the decision in Passamaquoddy Tribe v. Morton. That report is contained here.

On December 23, 1975, the United States Court of Appeals for the First Circuit affirmed the decision of Judge Gignoux in Passamaquoddy Tribe v. Morton, 528 F.2d 370, aff'g 388 F. Supp. 649 (D. Maine 1975). As you know, no petition for certiorari was filed, and that decision is therefore final.

Both courts held (1) that the Indian Nonintercourse Act (now 25 U.S.C. § 177) applies to the Passamaquoddy Tribe, (2) that that Act establishes a trust relationship (in at least some respects) between the United States and the Tribe, and (3) that the federal government, therefore, may not decline to litigate a Nonintercourse Act claim against the State of Maine, on behalf of the Tribe, on the sole ground that there is no trust relationship. 528 F.2d at 373. The Department had contended--unsuccessfully--that the Nonintercourse Act was inapplicable because the Passamaquoddy Tribe had never been specifically recognized by the federal government.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

The specific trust responsibilities owed by the United States to the Tribe were not spelled out by either court, but the appellate court did make it clear that the government is obligated to take action, if necessary, in support of the Tribe's aboriginal title:

> "That the Nonintercourse Act imposes upon the federal government a fiduciary's role with respect to protection of the lands of a tribe covered by the Act seems to us beyond question . . . . The purpose of the Act has been held to acknowledge and guarantee the Indian tribe's right of occupancy, United States v. Santa Fe Pacific R. Co., 314 U.S. at 348, 62 S. Ct. 248, and clearly there can be no meaningful guarantee without a corresponding federal duty to investigate and take such action as may be warranted in the circumstances." 528 F.2d at 379.

Whether the trust relationship created by the Nonintercourse Act imposes upon the United States the obligation to pursue the litigation requested by the Tribe is not the focus of this memorandum, however. Instead, this memorandum first examines the extent to which that trust relationship requires the Department to provide services to the Tribe and its members, and then discusses the Secretary's authority to make BIA services available to the Tribe. 1/ The legal questions

1/ Since the First Circuit's decision concerns only the Passamaquoddy Tribe, this memorandum is limited to that Tribe. It is our understanding, however, that in all relevant respects the Penobscot Nation is in a position which is indistinguishable from that of the Passamaquoddies. The Bureau of Indian Affairs is currently investigating the Penobscots' situation pursuant to the Commissioner's memorandum of May 28, 1976.

which are raised by the decision in Passamaquoddy Tribe v. Morton are many, and we do not purport to discuss all of them here. Indeed, there are certainly some issues which we have not even anticipated at this time.

Furthermore, our study of these questions indicates that although a few conclusions can be stated with confidence, in many areas the answers are simply not clear. Basically, this is because the First Circuit's decision puts the Passamaquoddies in a sui generis situation that neither statutory nor regulatory law contemplates. Where we believe federal responsibilities to be clear, we have so indicated. On the other hand, where doubt remains as to the scope of the government's authority, we have stated the contrasting legal arguments, listed any factual determinations which must be made prior to decision-making, and described some of the consequences which may result from a given decision. In such cases future events may provide a better perspective from which to offer a definitive opinion.

As mentioned, the appellate court held that the Indian Nonintercourse Act imposed trust responsibilities on the United States "with respect to protection of the lands of a tribe covered by the Act . . . ." Id. Beyond that holding the court noted only that "[i]t was left to the Secretary to translate the finding of a 'trust relationship' into concrete duties." Id. at 375. It appears as an initial matter that most of the Passamaquoddy lands which may be covered by the Act are no longer in Indian possession. At most, the Department's responsibilities with regard to those lands now pertain only to recovery of the lands--or compensation for their loss--on behalf of the Tribe. But the Tribe does retain a land base of several thousand acres on two "state" reservations in Washington County, Maine. We understand those lands to be among those which were subject to the Nonintercourse Act upon its enactment in 1790. At the very least, the First Circuit's decision requires the conclusion that that Act prohibits the alienation of those lands without

the consent of Congress. They are therefore "restricted lands"--i.e., lands whose alienation is "restricted"--as that phrase has come to be used in the field of Indian law. Kenny v. Miles, 250 U.S. 58, 61 (1919); see generally F. Cohen, Handbook of Federal Indian Law (1942 ed.) at pp. 320-25.

Various provisions of both the United States Code and Departmental regulations may be read as imposing obligations on the Department with respect to such restricted lands. Perhaps foremost among these are the statutes authorizing the leasing and permitting of tribal lands. See, e.g., 25 U.S.C. §§ 323 and 415. Those statutes give the Secretary the power to approve rights-of-way over, and leases of, tribally held restricted lands. Note also that the regulations affecting leasing and permitting (25 C.F.R. Part 131) and those governing forestry (25 C.F.R. Part 141) apply by their terms to tribal lands "subject to restrictions against alienation." If the Secretary were to exercise no responsibility in this regard, the lands would remain inalienable because of the Nonintercourse Act, and any potential leasing income would be lost to the Tribe. A fairly persuasive argument can be made that this would be a breach of the Secretary's trust responsibility to the Tribe regarding those lands. And if this responsibility were denied on the ground that the Passamaquoddy Tribe is not yet "recognized," a court would probably hold, in light of the First Circuit's decision, that the Secretary has once again imposed an arbitrary and unsanctioned limitation on the authority given him by statute. Needless to say, these statutes and regulations make no distinction based on federal recognition, but refer only to "restricted Indian lands." It is our view that they would be held applicable to Passamaquoddy lands.

Other statutes in Title 25 also arguably apply to lands covered by the Nonintercourse Act. Section 81 refers to "any tribe of Indians," and goes on to deal with tribal contracts "in consideration of services for said Indians relative to their lands." It requires the approval of the Secretary before such contracts may be consummated.

Otherwise they are null and void. Again, this statute makes no reference to, nor does it depend for its applicability upon, federal recognition. Like the Nonintercourse Act, it refers only to Indian tribes in general. If it is applicable, Secretarial approval would be required before the Tribe could enter into a contract to build housing, for instance, on Passamaquoddy lands. Perhaps more importantly, section 81 applies to attorney contracts with Indian tribes. Udall v. Littell, 366 F.2d 668, 670 (D.C. Cir. 1966), cert. denied 385 U.S. 1007 (1967); see also 25 U.S.C. § 82.

In addition, the Indian Mineral Leasing Act of 1938 (25 U.S.C. § 396a et seq.) applies to "unalloted lands within any Indian reservation or lands owned by any tribe, group, or band of Indians under federal jurisdiction . . . ." Since the Nonintercourse Act evidently imposes upon the United States trust responsibilities with regard to Passamaquoddy tribal lands, the Tribe may well be seen as one "under federal jurisdiction." Indeed, in United States v. 9,345.53 Acres of Land, 256 F. Supp. 603 (W.D.N.Y. 1966), it was held that the 1938 act gave the Seneca Nation the "right" to lease lands in accordance with its provisions. Id. at 607. The considerable involvement of the State of New York in the affairs of the New York Indians was there held not to undermine the guardian/ward relationship between those Indians and the federal government.

In light of the above, we think it clear that the Department has an obligation to provide BIA realty management services to the Passamaquoddy Tribe in exercise of its trust responsibilities under the Indian Nonintercourse Act. Otherwise, the Tribe would appear to be precluded by the restrictions in the Act from developing its natural resources in a manner which might accrue to the benefit of its members.

It would follow that for the Secretary to discharge his responsibility to the Tribe with regard to tribal lands and to protect himself against future allegations of breach of duty, he may have an independent obligation

to determine to whom he owes this responsibility and through whom he may act to discharge it. This may well require a determination as to what persons, or at least what classes of persons, are considered members of the Tribe, and a determination of who has the necessary authority to act on behalf of the Tribe and how those representatives are to be selected. Indeed, 25 U.S.C. § 396a authorizes mineral leasing of tribal lands "by authority of the tribal council or other authorized spokesmen for such Indians." Thus, we contemplate the need for some involvement by BIA Tribal Government Services prior to the provision of any other services to the Tribe.

There are several other areas in which the Secretary may have a duty as a result of the decision in this case. The court held that the Nonintercourse Act applies to the Passamaquoddy Tribe and that the purpose of the Act was to "acknowledge and guarantee the Indian tribes' right of occupancy." Such right of occupancy--that is, aboriginal title--no doubt includes aboriginal hunting and fishing rights. Thus, at least as to those lands which are still in the Tribe's possession, the Secretary's duty to protect the Tribe's right of occupancy would include an independent duty to protect its aboriginal hunting and fishing rights. 2/

The Secretary's obligation to protect the occupancy of the Tribe may similarly give rise to a duty to determine what water rights the Tribe may have. Although water rights may seldom be the vital issue in the eastern states that they are in the West, the Secretary arguably

2/ The State of Maine apparently acknowledges the existence of these aboriginal rights since it already prohibits hunting and fishing on either of the Passamaquoddy reservations without the permission of the Tribe. 12 M.R.S.A. § 2401-B7C. There is, of course, no guarantee that the State will not change this law.

could not fulfill his responsibility of guaranteeing the Tribe's right of occupancy unless the Tribe is also guaranteed a supply of water of adequate quality and quantity.

The provision of other, non-realty-related services to the Passamaquoddy Tribe does not depend directly on the trust relationship created by the Nonintercourse Act. We note that the decision in Passamaquoddy Tribe v. Morton was expressly limited to a discussion of those federal responsibilities encompassed in the Act. 528 F.2d at 379. The First Circuit observed,

> "Congress or the executive branch may at a later time recognize the Tribe for other purposes within their powers, creating a broader set of federal responsibilities; and we of course do not rule out the possibility that there are statutes or legal theories not now before us which might create duties and rights of unforeseen, broader dimension." Id.

Nonetheless, we think the reasoning behind the Passamaquoddy decision throws some light on whether the Secretary has the authority to provide the Tribe and its members with other services. And since the Tribe is now poised to apply for those services, and the Maine Congressional delegation is apparently prepared to support the necessary appropriations to fund such services, it seems appropriate to discuss such questions of legal authority here. Please note, however, that the following discussion should not be read as a determination as regards the Passamaquoddies' eligibility for any non-realty-related services. That is properly a policy decision to be made outside of the Solicitor's Office. Our role in that regard is solely to determine whether the Department's criteria for eligibility are legally sufficient.

Two recent Acts of Congress appear to provide some authority for the provision of certain services to the Passamaquoddy Tribe as an indirect result of the First Circuit decision. These are the Indian Financing Act (25 U.S.C. § 1451 et seq.) and the Indian Self-Determination Act (25 U.S.C. § 450 et seq.). These Acts define "Indian tribe" similarly. The Financing Act defines it to mean "any tribe . . . which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs." 25 U.S.C. § 1452(c). The Self-Determination Act refers to "any Indian tribe . . . which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. § 450b(b). Unlike the Nonintercourse Act and other statutes applying generally to Indians, these laws base their application on some form of federal recognition. Accordingly, the argument could be made that since the Passamaquoddy Tribe had not received, nor had been deemed eligible for, any BIA services at the time those laws were enacted, the Secretary then had no authority to make Financing Act or Self-Determination Act benefits available to the Tribe or its members. Indeed, the legislative history of the Self-Determination Act suggests just such a conclusion. In a March 22, 1974 letter to Senator Henry Jackson from Assistant Secretary John H. Kyl, an amendment to the subject bill's definition of "Indian tribe" was discussed. Apparently the amendment was suggested by a Senate subcommittee staff member. It stated:

> "'Indian tribe' shall also mean any organized tribe, band, or group of Indians a majority of the members of which reside on or near an Indian reservation established under the laws of a State, but which has not heretofore been recognized as an Indian tribe by the Secretary."

This letter advised against the inclusion of such an amendment, and of course, the proposal does not appear in the Act. While the legislative history of the Financing Act contains no similar discussion, that law was enacted during the same session of Congress (93d Cong., 2d Sess.), and the similarity of the definitions in the two Acts provides support for interpreting their provisions in pari materia. Thus, it is fair to say that Congress did not intend to make the two Acts' benefits available to "state" Indian tribes which had not been "recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs" (the language of the Financing Act definition). Therefore, it appeared that the Passamaquoddies fell outside the definition of "Indian tribe" in those Acts.

However, the subsequent decision in Passamaquoddy Tribe v. Morton put the issue in an entirely new light. As we have indicated, the First Circuit's ruling leads invariably to the conclusion that the Department has an obligation to make realty management services available to the Tribe. Once the Department decides to do so, it would appear that the Tribe "is recognized as eligible" for federal Indian services--albeit limited services. Neither the Self-Determination Act nor the Financing Act suggests how many services or what services a tribe might be recognized as eligible for before it can be considered an "Indian tribe" for purposes of application of those Acts. And as might be expected, the legislative histories of the Acts do not suggest how to deal with the definition of "Indian tribe" in this context. Apparently the concept of federal recognition was regarded as an all-or-nothing proposition. At any rate, the Passamaquoddy Tribe would appear to be an "Indian tribe" under a strictly literal reading of the Acts' definitions--once it is determined

to be eligible for realty-related services. 3/ Such an argument is not unpersuasive, and we therefore cannot predict that a Departmental claim of lack of authority to make those Acts' benefits available to the Tribe would be upheld in the courts. Of course, Congressional appropriations under the Acts which are earmarked for the Maine Tribes would resolve the question of authority in the affirmative.

No doubt the bulk of BIA services are authorized by two broadly-worded statutes: the Snyder Act (25 U.S.C. § 13) and the Johnson-O'Malley Act (25 U.S.C. § 452 et seq.). The former provides the Secretary with the authority to "direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States" for health, education, welfare, law enforcement, and countless other purposes. Having been blessed with but finite appropriations, the Department has through the years attempted to establish criteria which would limit and define the eligibility of Indian people for the benefits available under the Act. For some time the Department had tried to confine BIA general assistance to Indian residents of reservations. This policy was overturned in Morton v. Ruiz, 415 U.S. 199 (1974). There the Supreme Court held

3/ An additional argument can be made with regard to application of the Indian Financing Act. Since the Nonintercourse Act renders the Passamaquoddy lands inalienable, it operates to deprive the Tribe of a potential source of security for loans for economic development. The Financing Act was intended to assist tribes and their members to obtain capital because of a chronic lack of the credit and capital resources necessary for the development of Indian resources. H. Rep. 93-907, 2 U.S. Code Cong. & Adm. News (1974) at p. 2874. Thus a refusal to make the benefits of the Financing Act available to the Passamaquoddies could be regarded as in violation of the purpose as well as the terms of that Act.

that entitlement to such benefits extended, at least, to Indians on or near reservations. The Court reached that conclusion upon a reading of Congressional intent in the making of appropriations under the Act. However, the Court expressly declined to rule on the question whether the statute's reference to "Indians throughout the United States" precluded the Department from establishing any eligibility standards based on residency. Id. at 211. That had been the apparent thrust of the Ninth Circuit decision from which the Department had appealed. 462 F.2d 818 (1972). Thus, the true scope of Indian eligibility under the Act remains uncertain.

Nevertheless, as we said above, we are not here concerned with determining the eligibility of the Passamaquoddy Tribe or its members for non-realty-related BIA services. Rather, we hope to clarify the Secretary's authority to make such services available to the Passamaquoddies. And it appears to us that the Secretary does have adequate authority under the Snyder Act to make services authorized by the Act available to the Tribe and its members. This conclusion is based first of all on the terms of the Act. There could hardly be a more expansive word than "throughout," and there is no language in the Act which would subtract from its broad meaning. Needless to say, nothing in the Act suggests that the authority delegated to the Secretary is limited to the provision of services to members of "federally recognized tribes." Nor does the legislative history of the Snyder Act suggest limited authority. The Supreme Court examined that history in the Ruiz case:

> "The Snyder Act . . . provides the underlying congressional authority for most BIA activities . . . . Prior to the Act, there was no such general authorization. As a result, appropriation requests made by the House Committee on Indian Affairs were frequently stricken on the House floor by point-of-order

> objections. [citation] The Snyder Act was designed to remedy this situation. It is comprehensively worded for the apparent purpose of avoiding these point-of-order motions to strike." 415 U.S. at 205-06.

Thus, we think it clear that the Secretary has adequate authority to request appropriations for the provision of BIA Snyder Act services to the Passamaquoddy Tribe.

The authority for entering into contracts pursuant to the Johnson-O'Malley Act appears to be similarly broad. It provides in pertinent part:

> "The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, . . . for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory . . . and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory." 25 U.S.C. § 452.

The term "Indians" is not defined in the Act. Nor is there any other language in the Act which begins to define those classes of persons to be benefited by the Act. Our review of the legislative history of the Act is incomplete, but we have yet to find any reference to "federally recognized tribes" or any distinctions made

on the basis of tribal affiliation. If anything, it appears that the legislation was aimed primarily at assisting the States to provide educational and other assistance to Indians regarded as beyond the reach of BIA services, whether because they reside "in widely scattered communities" or because they "are so definitely a part of the general population." February 26, 1934 letter of John Collier, Commissioner of Indian Affairs, to House Committee on Indian Affairs, H. Rep. 864 (73d Cong., 2d Sess.) at pp. 2-3. While Collier's letter should not necessarily be taken to mean that the Department was seeking authority to contract for the provision of services to members of Indian tribes which had not theretofore received any BIA services, neither does it begin to suggest that the exclusion of such tribes from Johnson-O'Malley benefits was contemplated.

As a matter of administrative practice, "Indian" was first defined in 1974 as "an individual of 1/4 or more degree of Indian blood and a member of a tribe, band, or other organized group of Indians, including Alaska Natives, which is recognized by the Secretary of the Interior as being eligible for Bureau of Indian Affairs services." 39 F.R. 30114 (Aug. 21, 1974); 25 C.F.R. § 33.1(g) (1975). From 1939 until 1974 Departmental regulations provided that payments under the Johnson-O'Malley Act be made to state and local educational agencies for pupils having one-quarter Indian ancestry without reference to tribal affiliation. 4 F.R. 1631 (April 10, 1939); 25 C.F.R. § 46.11 (1949). Before 1939 reference was made solely to "Indian school children." 25 C.F.R. § 46.11 (1938). Of course, such regulations are persuasive only on questions of eligibility, rather than statutory authority. Nonetheless, the paucity

of administrative standards suggests that the original congressional authorization was regarded as broad. 4/

On the other hand, the Passamaquoddy Tribe had received little or no federal services at the time the Johnson-O'Malley Act passed Congress; and it might be contended that Congress did not contemplate the inclusion of the Passamaquoddies--or any other eastern Indians who had been the recipients of state-administered benefits only--in that class of Indians who were to be benefited by the Act. 5/ As mentioned, however, there is no indication of such a Congressional intent in the legislative history of the Act. And legislative silence is often regarded as among the weakest indicators of legislative intent. Indeed, one might as easily argue that Congress intended to provide broad authority so that the Secretary could "in his discretion" (in the terms of the Act) supplement such state Indian services when he determined it to be in the best interest of the Indians. Again, the law is far from clear, and we are not in a position to predict whether a Secretarial denial of authority to regard the Passamaquoddies as potential beneficiaries of the Johnson-O'Malley Act would be sustained by the courts.

4/ It might also be noted that the Department has by regulation authorized the Commissioner of Indian Affairs to negotiate contracts "to provide welfare services [under JOM] for Indians residing . . . on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs." 25 C.F.R. § 21.1 (1975). Once BIA realty services are made available to the Passamaquoddies, those residing on Nonintercourse Act restricted lands would appear to fall within the scope of this regulation.

5/ The same argument can be advanced to deny Secretarial authority under the Snyder Act. But the language of that Act, viz., "Indians throughout the United States," renders such an argument considerably weaker.

Other statutes dealing with government services to Indians can be read as supplying the necessary authority to provide those services to the Passamaquoddies, but they also fall short of the desired clarity. For example, the term "Indian reservation roads and bridges" is defined in 23 U.S.C. § 101(a) as roads or bridges located within or providing access to reservations, trust lands, or "restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government on which Indians reside whom the Secretary of the Interior has determined to be eligible for services generally available to Indians under Federal laws specifically applicable to Indians." [Emphasis added.] In a February 11, 1971 letter to the Chief Counsel of the Federal Highway Administration (attached), Deputy Solicitor Raymond C. Coulter interpreted the quoted language to include the New York State reservations. He relied on language in House Report 91-1554 (October 2, 1970) stating that the definition was specifically intended to include state Indian reservations. The letter then suggests in passing that the Maine Indian reservations, among others, should not be included within the scope of the definition because the Indians residing there had never been regarded as eligible for BIA services. Here again, however, since the First Circuit's decision evidently means that the Passamaquoddy Tribe is entitled to some Bureau services, the statute and the Coulter opinion could be read to indicate that the Tribe might also be eligible for federal road construction funds.

Section 309 of Title 25 provides for a vocational training program "[i]n order to help adult Indians who reside on or near Indian reservations to obtain reasonable and satisfactory employment . . . ." This 1956 statute does not define either "Indians" or "Indian reservations." But the New York State case of People ex rel. Cusick v. Daly, 105 N.E. 1048 (1914), did define the term "Indian reservation," as used in a federal criminal statute, as including state as well as federal Indian reservations. The age of that opinion and the fact that it was not a

federal decision might normally permit us to give it little weight. However, it appears to have been cited approvingly by the U.S. Supreme Court in its recent decision in Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 673-74, n.8 (1974). In any event, the current regulations implementing that program define eligibility broadly. 25 C.F.R. § 34.3 provides that the program "is primarily available to adult Indians of one-fourth or more degree of blood . . . who reside within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs." [Emphasis added.] If we assume that the BIA is going to provide realty management services or other services to the Passamaquoddies, then the Tribe's restricted lands may well be regarded as "lands under the jurisdiction of the Bureau of Indian Affairs." Of course, it is a simple task to amend these regulations. But their implementation, even as a matter of past practice, could suggest that the Department has acknowledged the existence of broad statutory authority to provide for vocational training programs to Indians.

On the basis of the above discussion, our conclusions are as follows. We believe that the First Circuit's decision requires a conclusion that the lands currently held by the Passamaquoddy Tribe are restricted Indian lands. That conclusion in turn means, we believe, that the Secretary is obligated to exercise responsibility for the permitting and leasing of those lands, and for the protection of the natural resources, fish, and wildlife on those lands, consistent with Indian use and occupancy of the lands. Beyond this point the questions become more difficult. Suffice to say, the First Circuit's decision has opened the door to a number of plausible arguments that can be made for the proposition that the Secretary has the necessary statutory authority to provide a variety of services to the Passamaquoddies under federal statutes authorizing the provision of services to Indians because of their status as Indians.

Solicitor

Department of Transportation
Washington, D. C. 20591

Dear Mr. Wells:

Your letter of January 21, 1971, inquires about the scope of Section 130 of the Federal-Aid Highway Act of 1970 (P.L. 91-605, 84 Sec. 1713, December 31, 1970) with respect to state Indian reservatio

Section 130 amended the definition of "Indian reservation roads and bridges" contained in 23 U.S.C. § 101(a) in the following manner (deleted language is lined through, new language is underscored):

> The term "Indian reservation roads and bridges" means roads and bridges that are located within an Indian reservation or that provide access to an Indian reservation or Indian trust land ~~---and that are jointly designated by the Secretary of the Interior and the Secretary as a part of the Indian Bureau road system.~~ or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government or which Indians reside when the Secretary of the Interior has determined to be eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

We understand that the amendatory language was developed by Mr Clifton Enfield, Minority Counsel of the House Committee on Public Wo at the request of Representative McEwen of New York, a member of the Committee. It was informally discussed with representatives of the Bureau of Indian Affairs, who had no objections, but a review of our files has not indicated that this Department ever formally reported o the bill.

Your letter pointed out that the Conference Report on the bill (H.R. Rep. No. 91-1780, December 17, 1970) states that "This action broadens the definition of Indian reservation roads and bridges in 23 S.C. 101(a) to include roads and bridges on State controlled Indian reservations, trust lands and restricted Indian lands, as well as roa and bridges on such lands under Federal control."

Although we see no inaccuracy in the conference language, we suggest that the report of the House Committee on Public Works (H.R. Rep. No. 91-1554, October 2, 1970) is perhaps more illuminating:

This section amends the definition of roads and bridges to eliminate the requirement that such roads be built only for Indian reservations and lands subject to designation as part of the "Indian Bureau road system." The revised definition will include State Indian reservations as long as the Secretary of the Interior determines the Indians residing thereon are eligible for services generally available to Indians under Federal law.

On a literal basis, as explained by H.R. Rep. No. 91-1554, supra, we believe that the amendment will now permit the expenditure of Federal aid highway funds on certain state Indian reservations in New York (Allegany, Cattaraugus, Tonawanda, Tuscarora, Onondaga, Oneida and St. Regis) not formerly eligible because they contained no roads constituting a part of the Indian Bureau road system. They are eligible now, however, because their lands cannot be alienated without approval of the Federal Government and because the Indian residents on these reservations are considered eligible for services generally available to Indians under Federal laws specifically applicable to Indians. There are other state reservations in New York, as well as in Maine, Connecticut, Delaware, Virginia, and Texas, but the Indians residing thereon have never been regarded as eligible for Federal Indian services. However, if a question should arise with respect to state reservations other than those specifically named in New York, we should like to consider their eligibility on a case-by-case basis.

We suggest also, that the amended definition may well permit the expenditure of Federal-aid highway funds for roads and bridges serving certain native communities in Alaska. Again, we would prefer to consider those situations on an individual case basis.

Sincerely yours,

Raymond C. Coulter
Deputy Solicitor

cc: Commissioner of Indian Affairs, Att'n: Mr. Gajarsa

U. S. GOVERNMENT PRINTING OFFICE: 1973 594-510

IDENTIFICATION	DEPARTMENT OF THE INTERIOR EXECUTIVE SECRETARIAT ACTION SLIP	17793
TO: Ex. Ass't to the Secretary FROM: Solicitor	SUBJECT Report on the impact on federal responsibilities as a result of the decision in Passamaquoddy Tribe v. Morton	
INCOMING DATE 7-5 / TO		
ACTION Assigned To	DUE DATE XXX	INFORMATION BIA, U/S, ES
PREPARE FOR SIGNATURE OF ✓ Comr. B. Office	REMARKS	
FOR DIRECT REPLY Rec'd 7-12-76		
FOR APPROPRIATE ACTION #400	STAFFING 7-9 to Rivard	
FINAL ACTION 1001, 1000		
RETURN SLIP TO ES WHEN COMPLETED	Bryson / ES STAFF — 7-8 / DATE — 6960 / EXTENSION	

IDENTIFICATION	DEPARTMENT OF THE INTERIOR EXECUTIVE SECRETARIAT ACTION SLIP	12626
OMB/Nichols, Wm.	SUBJECT ltr. forwarded from Chief Neal McCormick-tribal recognition-Lower Muscogee Creek Trib	
INCOMING DATE 2/10 / TO S		
ACTION Assigned To: [redacted] SOL	DUE DATE 2/25	INFORMATION BIA, S-Krulitz, S-Joseph, ES
X PREPARE FOR SIGNATURE OF SECRETARY	REMARKS Please prepare interim response. 2. Krulitz 4/25 3. WD 4. CJ	
FOR DIRECT REPLY		
FOR APPROPRIATE ACTION	STAFFING 1. Wade 4/29	
FINAL ACTION	2 22 To S For Sig	
RETURN SLIP TO ES WHEN COMPLETED	Gil Jacobs 2/15 7571 ES STAFF DATE EXTENSION	

2. SOL/Keep

3.

4. Secretary Andrus

Remarks: Partial Response for Chief Neal McCormick, Lower Muscogee Creek Tribe, re tribal recognition.

Special Instructions: Approve Sigmac

FILE COPY
Surname:

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE ~~SECRETARY~~ Solicitor
WASHINGTON, D.C. 20240

Butler 4/19
K 4/19
4/19
4/19
4/19

Mr. Neal McCormick
Route 1
TAMA Reservation
Cairo, Georgia 31728

April 26, 1977
(chgd from Secy to Sol. sig.)

Dear Mr. McCormick:

This is in further response to your letter to President Carter concerning the Lower Muscogee Creek Tribe East of the Mississippi, Inc., which was referred to us by the General Counsel of the Office of Management and Budget.

You have asked for a Presidential proclamation extending Federal recognition to your people as a tribe. The term "recognition" has been used to mean different things by different people at different times in our nation's history. For example, not all Indian groups which are "recognized" by state governments are "recognized" by the Federal Government.

Federal "recognition" carries with it generally the acknowledgement that a government to government relationship exists. While the tribal entity is not fully sovereign, it is one that possesses its historic sovereignty to the extent that such sovereignty has not been limited by Congress. Often one hears the status of federally recognized Indian tribes described as that of "dependent domestic sovereigns."

In recent years, the term "recognition" has been used to mean that a group of Indians was eligible for the full range of Bureau of Indian Affairs services. A finding that a tribal entity exists is a prerequisite to any obligation of the Bureau to an Indian group. We certainly appreciate the fact that President Carter while serving as Governor of Georgia in 1973 did "officially recognize" your group as "a tribe of people." Such "recognition" by a state government is not, however, conclusive as to the Federal Government since different laws are involved. Before this Department could acknowledge that your group constitutes one that should have the status of a federally recognized Indian tribe, certain factual information about its historic origins, past relationships with the Federal Government, activities and membership would be needed.

We understand that a number of the Indian people living in the vicinity of Cario can trace their ancestry to individuals whose names appear on the final rolls of the Creek Nation of Oklahoma and have shared in distributions made of the Nation's assets. In the eventuality that the Creeks of Oklahoma adopt a constitution and their membership rolls are opened,

FROM SOLICITOR

APR 21 1977

FOR SIGNATURE

COPY FOR THE SECRETARY'S OFFICE

Mr Messler,

Suggested style for compliance for returned document.

AGENCY: Bureau of Indian Affairs Interior

ACTION: Extension of comment period.

SUMMARY: The Indian Affairs Bureau is extending the comment period for the proposed procedures governing the determination that an Indian group

is a Federally recognized Indian tribe. (42 FR 30647 June 16, 1977) This extension is granted because of numerous requests from interested parties desiring more time to review this proposal.

DATES: Comments must received by Aug 16, 1977

~~ADDRESSES: as appropriate~~

FOR FURTHER INFORMATION contact LESLIE H BAH J at

SUPPLEMENTARY INFORMATION:

* Rest of document.

Hope this help,

Mike Lean

of your members have one-half degree or more Indian blood. We should point out that even if it is found that some of your group were eligible, the taking of land in trust for them is purely discretionary under the statute.

I hope these comments have been helpful to you.

Sincerely,

/s/ F. Ferguson
Solicitor
~~CECIL D. ANDRUS~~
~~SECRETARY~~

cc: Office of Management and Budget (William Nichols)
Area Director, Eastern Area Office
Scott Keep, Rm. 6447

cc: Secretary's File
Secretary's Reading File (2)

cc: BIA's Surname
BIA's BCCO
BIA's Commr. Reading File
BIA's Chrony 440
BIA's Mailroom
BIA's Holdup:L. GAY:dlb, 4/11/77, Rtypd. 4/12/77, Cass. II-A

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

EXTENSION OF TIME FOR WRITTEN COMMENTS ON PROPOSED PROCEDURES GOVERNING DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

AGENCY: Bureau of Indian Affairs.

ACTION: Extension of comment period.

SUMMARY: The Bureau of Indian Affairs is extending the comment period for the proposed procedures governing the determination that an Indian group is a federally recognized Indian tribe (42 FR 30647, June 16, 1977). This extension is granted because of numerous requests from interested parties desiring more time to review this proposal.

DATES: Comments must be received by August 18, 1977.

ADDRESS: Written comments should be directed to Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: This proposed rule making is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

The deadline for comments on the proposed regulations that will govern the Department's determination that an Indian group is a federally recognized Indian tribe is hereby extended to September ~~August~~ 18, 1977. The proposed regulations were published at 42 FR 30647 on June 16, 1977.

Acting Deputy Commissioner
of Indian Affairs

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

EXTENSION OF TIME FOR WRITTEN COMMENTS ON PROPOSED PROCEDURES GOVERNING DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

AUG 10 1977

AGENCY: Bureau of Indian Affairs.

ACTION: Extension of comment period.

SUMMARY: The Bureau of Indian Affairs is extending the comment period for the proposed procedures governing the determination that an Indian group is a federally recognized Indian tribe (42 FR 30647, June 16, 1977). This extension is granted because of numerous requests from interested parties desiring more time to review this proposal.

DATES: Comments must be received by August 18, 1977.

ADDRESS: Written comments should be directed to Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: This proposed rule making is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

The deadline for comments on the proposed regulations that will govern the Department's determination that an Indian group is a federally recognized Indian tribe is hereby extended to September 18, 1977. The proposed regulations were published at 42 FR 30647 on June 16, 1977.

(Sgd.) Raymond V. Butler

Acting Deputy Commissioner
of Indian Affairs

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

JUL 20 1977

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(Sgd) Raymond V. Butler
Acting Deputy Commissioner
of Indian Affairs

FILE COPY
SURNAME

Tribal Government Services

Acting Deputy Commissioner of Indian Affairs

Aug 10, 1977

Director, Office of Indian Services

Request for Extension of Time for Filing Comments on Proposed Federal Recognition Regulations

We would like to request an extension of time for filing comments. We have had several requests for an extension of time for filing comments on the proposed Federal recognition regulations. We believe these requests are reasonable and therefore have drafted the attached notice for your signature and subsequent publication in the Federal Register.

Deary

Director, Office of Indian Services

cc: Code 130
Code 850

cc: Surname
BCCO
Commr. Reading File
Chrony 440
Mailroom
Holdup:JShapard:dlb:ext. 4045:8/10/77:Cass. 19-A

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

Tribal Government Services

TO : Acting Deputy Commissioner of Indian Affairs DATE:

FROM : Director, Office of Indian Services

SUBJECT: Request for Extension of Time for Filing Comments on Proposed Federal Recognition Regulations

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John D. Ezeny

Director, Office of Indian Services

5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

JUL 20 1977

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Raymond V. Butler
Acting Deputy Commissioner
of Indian Affairs

Comments should be mailed to
Mr. Leslie N. Cray

+ Telephone

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The new Subpart F would be entitled "Discretionary Review Procedures." As has already been noted, the current Subpart E would be redesignated as Subpart G. The only change would be the renumbering of its sections.

Section 77.41 would be entitled "Scope" and it would read as follows: "This subpart identifies those persons who may petition for a discretionary review of a determination issued under §§ 77.19 or 77.35, or revision or extension of a determination under § 77.39, applies to time limits within which the petition must be filed, and describes the form and manner of submittal and processing."

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The current Subpart F will be redesignated Subpart H. In addition, it is recommended that the title be changed to "Antenna Farms." As has been previously discussed, the use of the word "establishment" might imply that establishing antenna farms is an FAA regulatory function when, in fact, only the Federal Communications Commission is authorized to perform this function. Therefore, it is suggested that the current § 77.71(a) be amended to reflect this.

The FAA solicits the comments of all interested persons on the foregoing proposed changes to Part 77. It also welcomes any suggestions on the need for further revision of this part.

EVALUATION OF IMPACTS

It has been determined that the regulatory impact of this proposed amendment would be minimal and that an evaluation pursuant to the policy statement published by the Secretary of Transportation (41 FR 16200) is not required.

DRAFTING INFORMATION

The principal authors of this document are William E. Broadwater, Air Traffic Service, and Richard W. Danforth, Office of the Chief Counsel.

(Secs. 313(a) and 1101 of the Federal Aviation Act of 1958 (49 U.S.C. §§ 1354, 1501); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)).)

Issued in Washington, D.C. on June 2, 1977.

RAYMOND G. BELANGER,
Director, Air Traffic Service.

[FR Doc.77-17083 Filed 6-15-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 54]

PROCEDURES GOVERNING DETERMINATION THAT INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau proposes new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

DATES: Comments must be received on or before July 18, 1977.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie N. Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and Sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 54—PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Who may petition.
54.4 Where the petition is to be filed.
54.5 Notice of receipt of the petition.
54.6 Form and content of the petition.
54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY: 5 U.S.C. 301; secs 463 and 465 (25 U.S.C. 2 and 9); 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as "group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "Federally Recognized Tribe" means any Indian group within the United States that the Secretary of the Interior Acknowledges to have had and should continue to have the status of a domestic dependent sovereign.

§ 54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

§ 54.3 Who may petition.

Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§ 54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§ 54.5 Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall acknowl-

GHP ADD-RDD-V026-D0069 Page 1 of 2

edge receipt of such petition and shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in § 54.7 of this part, if received by him within sixty days of the date of the notice.

§ 54.6 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

§ 54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and an opportunity to present oral arguments.

(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§ 54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) The Commissioner shall determine that an Indian group is a federally recognized Indian tribe whenever the group satisfies paragraphs (1-5) and (10) of § 54.7(c) so long as at least one other paragraph of that section is also satisfied.

(c) The Commissioner shall determine that an Indian group is not a federally recognized Indian tribe if the group fails to satisfy paragraphs (1)-(5) and (10 of § 54.7(b) along with at least one other paragraph of that section.

(d) A summary of the Commissioner's report and his determination as to the group's status shall be published in the FEDERAL REGISTER and shall be subject to review by the Secretary, who may, by acting within thirty days of such publication, supersede that determination. If the Secretary takes no action within such thirty-day period, the Commissioner's determination shall be final, and become effective immediately. If, after review, the Secretary reaches a conclusion contrary to that made by the Commissioner, he may supersede the Commissioner's determination. The Secretary's determination will be final and notice thereof shall be published in the FEDERAL REGISTER.

The primary author of this document is Mr. Leslie N. Gay, Jr., Chief, Branch of Tribal Relations, Bureau of Indian Affairs, (202) 343-4045.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affair.

[FR Doc.77-17200 Filed 6-15-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 747-3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Air Pollution Control, State of Arizona

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Through this notice EPA proposes to approve, with exception, revisions to the Arizona State Implementation Plan (SIP). These revisions include State regulations for vehicle inspection/maintenance, organic compound emissions from stationary sources definitions, particulate emissions from stationary sources, assertions of jurisdiction, ambient air quality standards, sulfur compound emissions, carbon monoxide emissions from stationary sources, nitrogen oxide emissions, and miscellaneous (general) regulations. The revisions were submitted to EPA on August 20, 1973, August 30, 1974, February 3, 1975, September 16, 1975, and January 23, 1976.

DATES: Comments by: July 18, 1977.

ADDRESSES: Send comments to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Programs Branch, Arizona-Nevada-Pacific Islands Section (A-4), EPA Region IX, 100 California Street, San Francisco, CA 94111.

Availability of documents: Copies of the State revisions, the EPA Evaluation Report, and this FEDERAL REGISTER notice are available for public inspection during normal business hours at the EPA Region IX Library at the above address, and at the following locations:

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, SW., Washington, D.C. 20460.

Arizona Department of Health Services, Bureau of Air Pollution Control, 1740 West Adams Street, Phoenix, AZ 85007.

Arizona Department of Health Services, Bureau of Air Pollution Control, Northern Regional Office, 2501 North Fourth Street, Suite 14, Flagstaff, AZ 86001.

Arizona Department of Health Services, Bureau of Air Pollution Control,

GHP ADD-RDD-V026-D0069 Page 2 of 2

FILE COPY
SURNAME
Shapard 8/15

Tribal Government Services

Mr. Karl Armstrong
Executive Vice President & Executive
Director
Koniag, Inc.
Harobr View Complex
P. O. Box 746
Kodiak, Alaska 99615

Dear Mr. Armstrong:

In response to your June 21 request for copies of the proposed regulations on Federal recognition, enclosed are ten copies of the proposal. Please note the deadline for comments has been extended until September 18.

Sincerely,

Leslie Gay Jr.

Chief, Branch of Tribal Relations

Enclosures

cc: Surname
Chrony 440
Mailroom
Holdup:JShapard:dlb:ext. 4045:8/12/77:Cass. 19-B

75-
440

KONIAG, INC. HARBOR VIEW COMPLEX P.O. Box 746 (907) 486-4147 KODIAK, ALASKA 99615

June 21, 1977

Director of Indian Services
Bureau of Indian Affairs
Department of Interior
Washington, D.C. 20013

Dear Sirs:

Please send us at least one copy--preferably ten copies--of the proposed regulations on the Federal Recognition of Indian Groups.

Sincerely,

KONIAG, INC.

Karl Armstrong

Karl Armstrong
Executive Vice President &
Executive Director

KA/es

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

JUL 20 1977

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(sgd) Raymond V. Butler

Acting Deputy Commissioner
of Indian Affairs

Certified to be a true Copy

Fitzhugh R. Messler

Certifying Officer

Not part of file up in department by Management Services

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

May 11, 1977

To: Bill Gershuny

From: Leo Krulitz

Subject: "Recognition"

I understand that regulations are now being prepared in draft form regarding the criterion for tribal recognition. I would like to review those proposed regulations prior to their being published in draft form.

Leo Krulitz

GHP ADD-RDD-V026-D0073 Page 1 of 1

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Cowlitz Tribe of Indians
c/o Joseph E. Cloquet
Roy Wilson
2815 Dale Lane East
Tacoma, Washington 98424

Dear Messrs. Cloquet and Wilson:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

Sincerely,

Leslie M. Gay Jr.
Chief, Branch of
Tribal Relations

Enclosure

bcc: Docket's file
DIA reading files (2)
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BIA Surname
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Mailroom
BCCO
Code 440, Attn. LGay

SOL/DIA/SKeep:jt:07/29/77:x5134:

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Jamestown Clallam Tribe
c/o Emily Mansfield
Legal Services Center
5308 Ballard Avenue, N.W.
Seattle, Washington 98107

Dear Ms. Mansfield:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

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SOL/DIA/SKeep:jt:07/29/77:x5134:

FILE COPY
SURNAME

(Sgd) Leslie N. Gay, Jr.

June 20, 1977

Dear Petitioner:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review. In conjunction with that response, we indicated that when any decision affecting "recognition" was reached you would be advised.

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Chief, Branch of Tribal Relations

Enclosure

cc: /Surname
Chrony 440
Mailroom
Holdup:LGAY:dlb:6/20/77:Cass. VII-B

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

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Dear Petitioner:

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Sincerely,

Lucie M. Gray, Jr.
Chief, Branch of Tribal Relations

Enclosure

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

June 20, 1977

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DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

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Acting Deputy Commissioner
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FILE COPY

SURNAME

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Bureau of Indian Affairs

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Acting Deputy Commissioner
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cc: Surname
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The FAA solicits the comments of all interested persons on the foregoing proposed changes to Part 77. It also welcomes any suggestions on the need for further revision of this part.

Evaluation of Impacts

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Drafting Information

The principal authors of this document are William E. Broadwater, Air Traffic Service, and Richard W. Danforth, Office of the Chief Counsel.

(Secs. 313(a) and 1101 of the Federal Aviation Act of 1958 (49 U.S.C. §§ 1354, 1501); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)).)

Issued in Washington, D.C. on June 2, 1977.

RAYMOND G. BELANGER,
Director, Air Traffic Service.

[FR Doc.77-17053 Filed 6-15-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 54]

PROCEDURES GOVERNING DETERMINATION THAT INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau proposes new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

DATES: Comments must be received on or before July 18, 1977.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie N. Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and Sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 54—PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Who may petition.
54.4 Where the petition is to be filed.
54.5 Notice of receipt of the petition.
54.6 Form and content of the petition.
54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY: 5 U.S.C. 301; secs. 463 and 465 (25 U.S.C. 2 and 9); 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as "group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "Federally Recognized Tribe" means any Indian group within the United States that the Secretary of the Interior Acknowledges to have had and should continue to have the status of a domestic dependent sovereign.

§ 54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

§ 54.3 Who may petition.

Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§ 54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§ 54.5 Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall acknowl-

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edge receipt of such petition and shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in § 54.7 of this part, if received by him within sixty days of the date of the notice.

§ 54.6 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

§ 54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and an opportunity to present oral arguments.

(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group:

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§ 54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) The Commissioner shall determine that an Indian group is a federally recognized Indian tribe whenever the group satisfies paragraphs (1-5) and (10) of § 54.7(c) so long as at least one other paragraph of that section is also satisfied.

(c) The Commissioner shall determine that an Indian group is not a federally recognized Indian tribe if the group fails to satisfy paragraphs (1)-(5) and (10 of § 54.7(b) along with at least one other paragraph of that section.

(d) A summary of the Commissioner's report and his determination as to the group's status shall be published in the FEDERAL REGISTER and shall be subject to review by the Secretary, who may, by acting within thirty days of such publication, supersede that determination. If the Secretary takes no action within such thirty-day period, the Commissioner's determination shall be final, and become effective immediately. If, after review, the Secretary reaches a conclusion contrary to that made by the Commissioner, he may supersede the Commissioner's determination. The Secretary's determination will be final and notice thereof shall be published in the FEDERAL REGISTER.

The primary author of this document is Mr. Leslie N. Gay, Jr., Chief, Branch of Tribal Relations, Bureau of Indian Affairs, (202) 343-4045.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affair.

[FR Doc.77-17200 Filed 6-15-77,8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 747-3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Air Pollution Control, State of Arizona

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Through this notice EPA proposes to approve, with exception, revisions to the Arizona State Implementation Plan (SIP). These revisions include State regulations for vehicle inspection/maintenance, organic compound emissions from stationary sources definitions, particulate emissions from stationary sources, assertions of jurisdiction, ambient air quality standards, sulfur compound emissions, carbon monoxide emissions from stationary sources, nitrogen oxide emissions, and miscellaneous (general) regulations. The revisions were submitted to EPA on August 20, 1973, August 30, 1974, February 3, 1975, September 16, 1975, and January 23, 1976.

DATES: Comments by: July 18, 1977.

ADDRESSES: Send comments to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Programs Branch, Arizona-Nevada-Pacific Islands Section (A-4), EPA Region IX, 100 California Street, San Francisco, CA 94111.

Availability of documents: Copies of the State revisions, the EPA Evaluation Report, and this FEDERAL REGISTER notice are available for public inspection during normal business hours at the EPA Region IX Library at the above address and at the following locations:

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, SW., Washington, D.C. 20460.

Arizona Department of Health Services, Bureau of Air Pollution Control, 1740 West Adams Street, Phoenix, AZ 85007.

Arizona Department of Health Services, Bureau of Air Pollution Control, Northern Regional Office, 2501 North Fourth Street, Suite 14 Flagstaff, AZ 86001.

Arizona Department of Health Services, Bureau of Air Pollution Control,

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United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Snohomish Tribe
c/o Alfred Cooper
5101 - 27th Avenue, West
Everett, Washington 98203

Dear Mr. Cooper:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

Sincerely,

Lucie M. Gay Jr.
Chief, Branch of
Tribal Relations

Enclosure

bcc: Docket's file
DIA reading files (2)
SKeep's file (2)
JTalawyma's file
BIA Surname
Chron
Mailroom
BCCO
Code 440, Attn. LGay

SOL/DIA/SKeep:jt:07/29/77:x5134:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Samish Tribe
c/o Robert Wooten
P.O. Box 217
Anacortes, Washington 98221

Dear Mr. Wooten:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

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Leslie M. Gay, Jr.
Chief, Branch of
Tribal Relations

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United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Cowlitz Tribe of Indians
c/o Joseph E. Cloquet
Roy Wilson
2815 Dale Lane East
Tacoma, Washington 98424

Dear Messrs. Cloquet and Wilson:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

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Chief, Branch of
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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Jamestown Clallam Tribe
c/o Emily Mansfield
Legal Services Center
5308 Ballard Avenue, N.W.
Seattle, Washington 98107

Dear Ms. Mansfield:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

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Leslie M. Gay, Jr.
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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Snohomish Tribe
c/o Alfred Cooper
5101 - 27th Avenue, West
Everett, Washington 98203

Dear Mr. Cooper:

In response to your request that the Secretary of the Interior designate your group a federally recognized Indian tribe, you were advised that the question of "recognition" was under review.

We have now proposed regulations which, when finalized, will enable us to proceed to act upon requests for "recognition." In the event you missed the publication of these proposed regulations in the Federal Register, we are enclosing a copy for your information. The original comment deadline of July 18 has been extended to August 18. Meanwhile, should you have any questions, the regulations indicate where I may be reached.

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Chief, Branch of
Tribal Relations

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United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

JUL 29 1977

Samish Tribe
c/o Robert Wooten
P.O. Box 217
Anacortes, Washington 98221

Dear Mr. Wooten:

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GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

Tribal Government Services

TO : Acting Deputy Commissioner of Indian Affairs DATE:

FROM : Chief, Division of Tribal Government Services

SUBJECT: Status of Federal Recognition Project

To date we have received forty-two letters commenting on the proposed regulations governing Federal recognition. The comments in general have been favorable to the concept embodied by the regulations, i.e., acknowledgment of an historic relationship with the Federal Government. Of the forty-two letters received, six opposed the entire project (one threatening court action if we attempted to recognize any new groups), two misunderstood the reason for the comment period and submitted petitions for recognition, and the rest (thirty-four) were favorable to the idea. Virtually all of the latter letters contained excellent suggestions for modifying the regulations and will have a substantial impact on the final form. A breakdown of the contributors of the comments is as follows:

A. Five from individuals including an anthropologist, a Bureau of Indian Affairs' employee and three citizens.

B. Two from the State of Maine Attorney General's office.

C. Three from other Federal Agencies (HEW, HUD, Agriculture).

D. Four from Interior Department Regional Solicitors (Salt Lake, Atlanta, Portland, and Tulsa).

E. Three from Bureau of Indian Affairs' Superintendents.

F. Eight from attorneys for tribes or groups of Indians (four-unrecognized, one-recognized, and three-not able to determine).

G. Three from Legal Aid Service institutions (NARF, California Indian Legal Services, Upper Peninsula Legal Services, Inc.).

H. Three from native associations or corporations.

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I. Two from pan Indian groups (NTCA and AAIA).

J. One from a State reservation group.

K. Three from recognized tribes or tribal associations (directly-not through an attorney) Tlingit-Haida, 13th Regional Corporation and the Small Tribes of Western Washington (STOWW).

L. Five from unrecognized groups.

M. One from Senator Abourezk reflecting the American Indian Policy Review Commission's attitude.

The period for comments has been extended until September 18. There has been a noticeable decline in comments since the initial closing date of July 18. Publication of the extension is not expected to bring in many new comments.

Work has begun on categorizing the comments, relating each to a specific section in the regulations. A comprehensive analysis of the comments can be expected by October 3rd. A target date for a rough draft of the final regulations would be October 21.

Dennis L. Petersen

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Post Office Box 462
Pensacola, Florida 32592

Herbert White, Chairman
Kickapoo Tribe of Oklahoma
Post Office Box 52
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Mr. Tukemas
or Mr. Nas'Naga
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Mr. Arthur Turner
Post Office Box 201
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Mrs. Harriett Crippen Gumps
Post Office Box 1286
Southampton, New York 11958

Captain O. Nelson

Indian Neck, Virginia 23077

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Samish Tribe of Indians
& Superintendent
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Choctaw-Apache Indian
% Governor
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% Sacramento Area Director
Bureau of Indian Affairs
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Sacramento, California 95813

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Box 178
West Point, Virginia 23181

Jamestown Tribal Council
Route 2
Sequim, Washington 98392

Barry Margolin
Native American Rights Fund
10 Post Office Square
Room 551
Boston, Massachusetts 92109

Mr. John McGeshick
Post Office Box 118
Watersmeet, Michigan 49969

Mr. Dennis F. Gerlt
187 Spring Street West
Friday Harbor, Washington 98250

William Youpee, Executive Director
National Tribal Chairmen's Association
Suite 207
1701 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Mr. B. E. Xingayham
Post Office Box 126
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"SONNY" PEACOCK
Councilman

HUGH WRIGHT
Councilman

MONT COTTER
Chief
Post Office Box 276
Grove, Oklahoma 74344
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JUANITA McQUISTION
Secretary-Treasurer
Route 1, Box 168
Miami, Oklahoma 74354
Phone: 918 542-5996

September 2, 1977

ack 9/9/77

Mr. Les Gay
Chief, Tribal Operations
Division of Tribal Government Services
United States Department of the Interior
Room 464
Washington, D.C. 20240

Dear Mr. Gay:

Reference is made to Federal Recognition of Indian Tribes, published in the Federal Register June 16, 1977.

Please find enclosed a copy of a letter to Chairman Abourezk from Mr. Mont Cotter, Chief of the Wyandotte Tribe of Oklahoma. We would like to use this letter as comment towards the pending legislation.

Sincerely,

Claude H. Killion
Business Manager

CHK:so

Enclosure

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Chief

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August 29, 1977

James Abourezk
Chairman
Senate Select Committee
on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Abourezk:

Reference is made to your letter of August 4, 1977, concerning the Act (Legislation) "The American Indian Restoration Act."

Mr. Chariman, as Chief of the Wyandotte Tribe of Oklahoma, I would appreciate giving my views on this legislation.

The Wyandotte Tribe of Oklahoma is neither a "terminated" Tribe nor a "non-federally recognized" Tribe. The Wyandotte Tribe of Oklahoma is an Indian Tribe which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

The Act of August 1, 1956, 70 Stat. 893, which supposedly made the Wyandotte Tribe subject to termination was never consumated. The Act, so far as the Wyandotte Tribe was concerned became null and void because the Secretary was unable to fulfill the requirements of the Act. One of the requirements of the Act was that the Secretary dispose of a tract of tribal land located in Kansas City, Kansas known as the Huron Cemetery. Due to several technicalities and problems, this cemetery acreage was not sold. The Huron Cemetery still remains the property of the Wyandotte Tribe of Oklahoma.

Therefore, as I stated previously, the Wyandotte Tribe of Oklahoma is neither "terminated" nor "non-recognized" Tribe of Indians.

It is my conviction Mr. Chairman, that one can not restore that which has not been taken away. I believe the situation might be repaired through repeal of the Act however, thus affording the Tribe full respect and reputation

James Abourezk
Chairman

as an Indian Tribe. Common terminology used with the Wyandotte Tribe today is that the Tribe is in "limbo status". Some federal and state agencies maintain that the Wyandotte Tribe is terminated; others manintain only partial termination while others maintain that the Tribe is a recognized Indian Tribe which was never subject to termination. This Mr. Chairman, as you can see places the Wyandotte Tribe of Oklahoma in a rather dubious situation. Hopefully you, and your committee will be able to correct this undue hardship on the Wyandotte Tribe.

I do have one comment which I would like to make concerning the "Federal Recognition Act". It is my opinion that tribes which had not treaty or other relationships with the Federal Government in the past should not ride in on the buckskins of Indians who lost so much and have got so far to go to repossess their loses both tangible and intangible. It is my opinion that Indians or Indian groups who had no treaty relationships with the government, should not be entitled to funds or services which would delete the present under funded status of the First American.

Thank you.

Sincerely,

Mont Cotter,
Chief, Wyandotte Tribe of Oklahoma

MC:so

Solomon McCombs
Vice-Chief

Creek Nation
Office of the Principal Chief
Claude A. Cox

August 25, 1977

acknowledged 9/9/77

In Reply Reference:
FC:100.0 (10(A)
BIA

Commissioner of Indian Affairs
Bureau of Indian Affairs
Department of the Interior
Washington, D. C.

SUBJECT; Previously Unrecognized Tribes (Proposed 25 CFR 54)

Dear Commissioner:

Because of the rigid and quantifiable requirements which your office has proposed, I can support the proposed 25 CFR 54: Procedures governing determination that Indian groups is a federally recognized Indian tribe.

I have two comments. First, an annual publication of federally recognized tribes in the Federal Register is necessary. This should include the date and method of recognition. For example:

Creek Nation	Treaty	August 7, 1790

This is required by all tribes who engage in federal relations outside of the Department of Interior, or in private business concerns. Updated and republished annually, the annual publication could be of great benefit to each tribe. I propose that you add a new section to the proposed 25 CFR 54 on an annual publication of all recognized tribes, and a new publication each time a new relation is established.

Second, 54.8 (d) needs to be expanded to include a statement that the Secretary will receive comments during the consideration period (which should perhaps be expanded to 90 days). I am sure that the comments of neighboring tribes would be of great use to the Secretary in his determination.

If I can be of further assistance in this manner, do not hesitate to contact me personally.

Sincerely,

Claude A. Cox

Claude A. Cox
Principal Chief

CAC:lw
cc: Division of Tribal Affairs, Executive Office, Executive Archives

Creek Nation Tribal Capitol Complex – Highway 75 at Lock 56 – P. O. Box 1114 – Okmulgee, Oklahoma 74447 – 918 756-8500

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STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF COMMUNITY AFFAIRS
921 Tenth Street
Sacramento, CA 95814
(916) 445-0836

ack 9/9/77

August 10, 1977

N 8/30

The Director
Office of Indian Services,
Bureau of Indian Affairs
U.S. Department of the Interior
Washington, D.C. 20245

Dear Sir,

We are aware that the date for comments on the Bureau's draft regulations on federal recognition of tribes (25 CFR Part 54) has long past, but we hope that you will nevertheless receive and consider our comments. The Department's connection with Indians is through its responsibility for the California Indian Assistance Program which provides technical assistance and a range of services to Indian tribes and groups, whether or not federally recognized, throughout the State.

We are concerned that the draft regulations will, if promulgated, serve to exclude many California tribes from formal federal recognition. We should add that because of the non-ratification of California's Indian treaties many of California's tribes have been deprived of recognition and a land base for over a century. The lack of recognition has not only prevented this eligibility for Bureau programs and services but also their eligibility for programs and services administered by other federal agencies (notably the Indian Health Service, the Department of Housing and Urban Development, the Economic Development Administration and the Employment and Training Administration) which have adopted the Bureau's standards.

In particular we are concerned about subparagraph (3) of paragraph 54.7(c) which requires that to be formally recognized by the federal government a group must "exercise political authority over its members." Many of the California Indian groups who were deprived of federal recognition by the non-ratification of the California Indian treaties have as a result no land base over which they can be said to exercise political authority. Without that land base, they may have moral, suasive or contractual authority over their members but they cannot have political

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authority. We strongly urge that the requirement for political authority be deleted from the regulations.

We are also concerned about subparagraph (5) of paragraph 54.7 (c) which prohibits terminated tribes from seeking recognition under these regulations. While we are prepared to concede that these regulations are not the appropriate method to extend recognition to terminated tribes, we believe that subparagraph (5) reflects an attitude inconsistent with the federal government's repudiation of the termination policy and with Congress's "commitment to the maintenance of the federal government's unique and continuing relationship with, and responsibility to, the Indians."

Finally, regulation 54.6 states requirements for an Indian group's petition for recognition. We believe that the Bureau should make technical assistance available to those Indian groups to enable them to compile the required documents. Funds for this purpose could appropriately be provided out of the self-determination program.

Sincerely,

Arnold C. Sternberg
Director

BUREAU OF INDIAN AFFAIRS - PROPOSED RULES

1. Preference in Employment (25 C.F.R. Part 258)

The proposed rules establish a new definition of the term "Indian" to determine eligibility for employment preference with the Bureau. Section 258.2 provides that eligible persons are entitled to preference in initial hiring, reinstatement, transfer, reassignment and promotion.

Section 258.1 provides for five categories of persons of Indian descent who are eligible for this preference.

(a) Members of any recognized tribe now under federal jurisdiction.

The term "recognized" apparently includes state-recognized as well as federally-recognized tribes, but the paragraph does not include members of Indian groups in California which have never been formally recognized by the federal government or which have lost that status by termination.

(b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation.

This ambiguous paragraph includes, according to an opinion of the Associate Solicitor for Indian Affairs, persons born on or before June 1, 1934, who are descended from a member of any recognized tribe now under federal jurisdiction who has resided on any Indian reservation. However, the intent of the paragraph is apparently to give eligibility to persons of Indian descent whose antecedents were living within the present boundaries of any Indian reservation. The term "present" has the effect of excluding descendants of residents of terminated reservations and rancherias. The paragraph should be amended to resolve the ambiguity and the relevant boundaries should be the 1934 boundaries and not the present ones.

(c) All others of one half or more Indian blood of tribes indigenous to the United States.

If the other paragraphs remain unamended, members of non-recognized or terminated tribes will be eligible for preference only under this paragraph. Such members who have less than one-half Indian blood will not be eligible, although a lesser blood quantum, normally one-quarter but sometimes as low as one-sixteenth, may qualify a person for membership of a tribe. If none of the other paragraphs are amended to provide for the eligibility of members of non-recognized or terminated tribes, this paragraph should be

amended by reducing the required blood quantum to one-quarter.

(d) Eskimos and other aboriginal people of Alaska.

(e) Until (a date three years from the effective date of final publication of the regulations) a descendant of at least one-quarter degree Indian ancestry of a currently federally-recognized tribe whose rolls have been closed by an act of Congress.

This paragraph, according to the supplementary information published with the proposed rules, deals only with the Choctaw, Creek, Chickasaw, and Osage tribes whose rolls have been closed and who have not reorganized so as to establish current membership standards.

Conclusion

California contains at least 36 terminated tribes and several Indian groups who because of the non-ratification of the California Indian treaties and the consequent loss of their land base are not recognized by the federal government. The usual requirement for membership of a recognized tribe is one-half Indian ancestry and may be as low as one-sixteenth. The regulations, as presently drafted, discriminate against a large number of California Indians of less than one-half Indian ancestry,

because they are not members of recognized tribes. This loss of eligibility for BIA preference may lead to loss of eligibility for other federal programs benefiting Indians because of the adoption of BIA standards by other federal agencies. The regulations should be amended so as to remove this discrimination.

2. Procedures Governing Determination that Indian Group is a Federally Recognized Indian Tribe (25 C.F.R. Part 54)

The proposed regulations are intended to establish procedures and criteria so that a uniform and objective approach may be taken to the increased number of requests by Indian groups for federal recognition as Indian tribes. For the purposes of the regulations, federal recognition means that the Secretary of the Interior recognizes that groups concerned have had and continue to have the status of a domestic dependent sovereign (§ 54.1(f)) The regulations do not apply to groups already so recognized (§ 54.2).

Any Indian group which believes that it has the status of a federally recognized Indian tribe has one year from the effective date of the regulations to petition the Secretary for recognition (§ 54.3). The petition is to be filed with the Commissioner for Indian Affairs, who is required to acknowledge receipt of the petition within ten days and to publish a notice of the petition in the Federal Register. The notice is to indicate where a copy

of the petition can be inspected locally and to invite comments. The Commissioner is required to consider any comments received by him within sixty days of the publication of the notice (§§ 54.4 and 54.5).

On receiving the petition, the Commissioner is required to conduct a review which must include consideration of the petition, verification, if necessary, of any factual statements made, and an opportunity for oral arguments. The Commissioner may require that additional information be provided but must make his report within three years of the effective date of the regulations (§ 54.7). The report is to determine whether or not the group is a federally recognized tribe and is to be published in the Federal Register. The Secretary has thirty days from the date of publication in which he may supersede the Commissioner's determination but if he takes no action within that time, the Commissioner's determination shall be final and immediately effective (§ 54.8).

The following chart illustrates the procedure:

Date of Regulations

1 year — Indian groups may file petition with Commissioner.

Date of Petition

10 days - Commissioner must publish notice in Federal Register.

Date of Notice

60 days - Comments received in this period must be considered by Commissioner

5 years — Commissioner must dispose of petition by notice in Federal Register.

Date of Notice

30 days - Secretary may supersede Commissioner's determination - if not it becomes final and effective.

§ 54.6 requires that an Indian group's petition contains at least:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized tribe which has been and should continue to be dealt with as such by the United States.

(b) A list of all current members of the group and a copy of the available former list of members, and

(c) A copy of the group's governing document or, in the absence of such a written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

Some groups may well need financial and/or technical assistance, or both, in preparing their petitions, especially with regard to membership lists and governing documents requested by Indian group This assistance should be provided by the BIA, possibly through Self-determination Grants under PL 93-638.

Section 54.7(c) sets out ten criteria with which the Commissioner report is to deal. Section 54.8(b) and (c) provide that an Indian group will be federally recognized as a tribe if, and only if, it satisfies subparagraphs (1)-(5), (10) and one other subparagraph of § 54.7(c). Those criteria are therefore crucial in determining eligibility for federal recognition. The group must:

(1) Manifest a sense of social solidarity.

(2) Have as members principally persons of common ethnolo[illegible] origins.

(3) Exercise political authority over its members.

If narrowly interpreted, this paragraph could pose a [illegible] to some California groups without a land base, since [illegible] form of organization binding the members of such gr[illegible] likely to be a corporation whose authority is more [illegible] than political. The requirement for political auth[illegible] should not operate to exclude such groups.

(4) Has a specific area which the group either presently [illegible] or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the federal relationship.

This paragraph excludes groups representing the members of formerly recognized tribes terminated by the federal government. There are 36 of these tribes in California, and their members have been neglected by federal programs since their termination. Since the policy of termination is now generally accepted as having been unjust and since it has been repudiated by Congress, the regulations should allow terminated tribes which have maintained or re-forged their group identity to receive, once again, the federal government's recognition.

The paragraph also excludes groups which might otherwise be recognized but which contain some terminated members. It is unjust that terminated members should have to be expelled to allow these groups to achieve formal recognition or alternatively that these groups be denied recognition because they contain some terminated members.

(10) Has as members principally persons who are not members of any other tribe.

The group must also meet one of the criteria contained in in subparagraphs (6)-(9), but this requirement should not

cause any difficulty as most groups would have "received services from any federal or state agency" (§ 58.7 (c) (7).

Conclusions

The regulations exclude from federal recognition Indians of the 36 California tribes which have been terminated by the federal government in prusuance of a policy now repudiated as wrongful. The regulations also may operate to exclude from federal recognition several California Indian groups which lack a land-base and therefore political authority over their member or which have members who were formerly terminated. Amendments should be made to prevent these exclusions.

(c) The food additive may be used as a component of food-contact surfaces in accordance with good manufacturing practice.

(d) The ingredient is used directly in food, as served, not to exceed the following maximum levels:

Maximum usage levels permitted

Food categories	Parts per million	Function
Breakfast cereals (dry only), § 170.3(n)(4) of this chapter.	50.0	Antioxidant, § 170.3(o)(3) of this chapter.
Chewing gum base (softeners), § 172.615 of this chapter.	1,000.0	Do.
Defoaming agents (used in processing beet sugar and yeast), § 173.310(a)(3) of this chapter.	1,000.0	Do.
Fats and oils, § 170.3(n)(12) of this chapter	200.0	Do.
Potatoes, dehydrated flakes, shreds, § 172.115(b) of this chapter.	50.0	Do.
Potatoes, granules, § 172.115(b) of this chapter	10.0	Do.
Sweetpotatoes, flakes, § 172.115(b) of this chapter	50.0	Do.
All other categories [1]	200.0	Antioxidant, 170.3(o)(3) of this chapter; flavoring agent and adjuvant, § 170.3(o)(12) of this chapter.

[1] Total content of antioxidants not over 200 p/m of fat or oil content, including essential (volatile) oil content of the food.

(e) To assure safe use of the additive in addition to other information required by the act:

(1) The label of the additive and any intermediate mix shall bear:

(i) The name of the additive.

(ii) A statement of the concentration of the additive, expressed as "Butylated hydroxytoluene", "BHT", etc., in any intermediate mix; or other information to permit a food processor to determine independently that use of the ingredient will comply with this section.

(iii) Adequate directions for use to provide a final food product that complies with the provisions of this section.

(2) The label of any finished food product containing the additive shall bear the name of the additive, e.g., "Butylated hydroxytoluene" or "BHT" unless exempted by specific regulation.

(f) In accordance with § 180.1, adequate and appropriate feeding studies shall be undertaken for this food additive. Interested persons shall agree in writing to undertake those studies by (60 days after date of final regulation). Continued use of BHT is contingent upon the timely filing of adequate progress reports of such tests and no indication of an increased risk to public health during the test period.

PART 181—PRIOR-SANCTIONED FOOD INGREDIENTS

10. Part 181 is amended in § 181.24 by revising the entry for butylated hydroxytoluene in the listing to read as follows:

§ 181.24 Antioxidants.

* * * * *

Butylated hydroxytoluene, interim food additive regulation § 180.20 of this chapter.

* * * * *

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.3173 [Revoked]

11. Part 182 is amended by revoking § 182.3173 Butylated hydroxytoluene.

The Commissioner gives notice that he is unaware of any prior sanction for the use of BHT in foods under conditions different from those identified in this proposal. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulation proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act (21 U.S.C. 342), and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on such sancation at any later time. This notice also constitutes a proposal to establish a regulation under Part 181, incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before July 26, 1977, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments (four copies), identified with the Hearing Clerk Docket number found in brackets in the heading of this document, regarding this proposal. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107. A copy of the inflation impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

NOTE.—Incorporation by reference approved by the Director of the Office of the Federal Register on July 10, 1973, and it is on file in the Federal Register library.

Dated: May 12, 1977.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.77-15028 Filed 5-20-77,8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 258]

PREFERENCE IN EMPLOYMENT

Issuance of New Part

MAY 20, 1977.

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau proposes to add a new part to its regulations. The purpose of this addition is to establish a definition of the term "Indian" for eligibility for a preference in employment in the Bureau of Indian Affairs. Because there could be two standards in defining the term, discretion is being exercised with respect to the Indian Reorganization Act to establish a uniform standard.

DATE: Comments must be received on or before: July 15, 1977.

ADDRESS: Written comments should be directed to: Acting Commissioner, Bureau of Indian Affairs, Attention: Division of Personnel Management, 1951 Constitution Avenue NW., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:

Mr. Louis Bayhylle, Division of Personnel Management, telephone 202-343-5547.

SUPPLEMENTARY INFORMATION: This proposal represents a change from the previous eligibility standard for a Schedule A excepted appointment, 5 CFR 213.3112(a)(7). Where necessary a preference in employment is extended by conferring a Schedule A excepted appointment on the Indian. Previously, the authority applied only to an Indian of one-quarter degree Indian ancestry of a Federally recognized tribe. On September 24, 1976, the Civil Service Commission, at the request of the Secretary of the Interior, modified the excepted appointment authority by deleting the quarter-degree standard and imposing on the Secretary the responsibility of defining the term "Indian."

This change is necessitated by an opinion of the Associate Solicitor for Indian Affairs dated April 9, 1975, which concluded that the definition of "Indian" in the Indian Reorganization Act had to be applied to the preference provision of that same act in appointments to vacant positions in the Bureau of Indian Affairs. The preference conferred in 25 U.S.C. 472 must be applied in the filing of every vacant position in the Bureau of Indian Affairs. *Freeman v. Morton*, 499 F. 2d 432 (D.C. Cir. 1974). Since there is no Civil Service regulation of appointment actions beyond initial hiring, i.e., promotions, transfers and reassignments, on April 20, 1976, the Commissioner of Indian Affairs extended the statutorily defined standards in 25 U.S.C. 479 to the filing of vacant positions by way of pro-

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motion, transfer and reassignment. Because of the Civil Service Commission standards for initial appointments where Schedule A excepted appointments are conferred, no action was taken to modify the quarter-degree standard. However, on March 18, 1976, the Secretary of the Interior had requested the Civil Service Commission to modify the Schedule A authority to adopt the statutory standards of 25 U.S.C. 479 plus an additional standard for tribes whose rolls have been closed by act of Congress and who have not as yet organized. Rather than accepted the Secretary's proposed standards, the Commission in the notice published on September 24, 1976, conferred on the Secretary the authority to define an Indian for Schedule A excepted appointments.

The proposed definition below varies from the statutorily set standards in two respects. Section 258.1(c) adds the requirement that persons of one-half or more Indian ancestry must be of tribes indigenous to the United States. This addition is merely to make clear that, apart from Federal recognition, aboriginal persons of tribes which were never a part of the United States are not eligible for preference. The second variance is the addition of a fifth criterion, as mentioned above. Ostensively, this criterion would apply to three of the Five Civilized Tribes of Oklahoma (Choctaw, Creek, and Chickasaw Tribes) and the Osage Tribe whose rolls were closed by acts of Congress and who have not as yet reorganized so as to establish current membership standards. Many such persons have received preference based on the quarter-degree standard. In order that they are not now deprived of that eligibility and made to meet the half-degree standard, it is proposed that the quarter-degree standard remain applicable for three years from the final date of publication so that they may formally organize and establish membership standards.

The second criterion—descendancy of members who were residing on reservations on June 1, 1934—posed an ambiguity which was resolved in an opinion of the Associate Solicitor for Indian Affairs on March 24, 1976. A person qualifying under this criterion must have been born on or before June 1, 1934, and must be descended from a member who resided on any Indian reservation.

Persons who are employed by the Bureau of Indian Affairs on the date these regulations become effective and who received preference in any previous appointment will continue to be preference eligibles so long as they are continuously employed.

The authority for the Commissioner to issue these regulations is contained in Section 9 of the Act of June 30, 1834 (4 Stat. 737, 25 U.S.C. 43), Section 6 of the Act of May 17, 1882 (22 Stat. 88, 25 U.S.C. 46), Section 10 of the Act of August 15, 1894 (28 Stat. 313, 25 U.S.C. 44), Section 5 of the Act of February 8, 1887 (24 Stat. 389, 25 U.S.C. 348), and Sections 12 and 19 of the Act of June 18, 1934 (48 Stat. 986, 25 U.S.C. 472 and 479), and 230 DM 1 and 2.

It is proposed to add a new Part 258 to Subchapter W, Miscellaneous Activities, Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 258—PREFERENCE IN EMPLOYMENT

Sec.
258.1 Definitions.
258.2 Appointment actions.
258.3 Application procedure for preference eligibility.

AUTHORITY: 4 Stat. 737, 25 U.S.C. 43; 22 Stat. 88, 25 U.S.C. 46; 28 Stat. 313, 25 U.S.C. 44; 24 Stat. 389, 25 U.S.C. 348; and 48 Stat. 986, 25 U.S.C. 472 and 479.

§ 258.1 Definitions.

For purposes of making appointments to vacancies in all positions in the Bureau of Indian Affairs a preference will be extended to persons of Indian descent who are:

(a) Members of any recognized Indian tribe now under Federal jurisdiction;

(b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;

(c) All others of one-half or more Indian blood of tribes indigenous to the United States;

(d) Eskimos and other aboriginal people of Alaska; and

(e) Until _____ ____, 198__ (three years from effective date of final publication) a descendant of at least one-quarter degree Indian ancestry of a currently Federally-recognized tribe whose rolls have been closed by an act of Congress.

§ 258.2 Appointment actions.

(a) Preference will be afforded a person meeting any one of the standards of § 258.1 whether the appointment involves initial hiring, reinstatement, transfer, reassignment or promotion.

(b) Preference eligibles may be given a Schedule A excepted appointment under 5 CFR 213.3112(a)(7). However, if the individuals are within reach on a Civil Service Register, they may be given a competitive appointment.

§ 258.3 Application procedure for preference eligibility.

(a) Proof of eligibility must be submitted with the person's application for a position.

(b) In order for a person to be considered a preference eligible according to the standards of § 258.1, they must submit proof of membership, descendancy or degree of Indian ancestry as indicated on rolls or records acceptable to the Secretary.

RAYMOND V. BUTLER,
Deputy Acting Commissioner of Indian Affairs.

[FR Doc 77-15404 Filed 5-27-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Arbitrage Bonds

MAY 20, 1977.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to arbitrage bonds. The regulations are intended to control certain practices that have been used to defeat the purposes of the arbitrage regulations. They affect purchasers and governmental issuers of tax-exempt bonds.

DATES: Written comments and requests for a public hearing must be delivered or mailed by July 15, 1977. The proposed regulations apply to bonds sold after May 25, 1977.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Benjamin J. Cohen of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3458).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 103(c) of the Internal Revenue Code of 1954. These amendments are to be issued under the authority contained in sections 103(c)(6) and 7805 of the Internal Revenue Code of 1954 (83 Stat. 656 and 68A Stat. 917; 26 U.S.C. 103, 7805).

PREVIOUS NOTICES OF PROPOSED RULEMAKING

On May 3, 1973, the FEDERAL REGISTER published proposed Income Tax Regulations (26 CFR Part 1) under section 103 of the Internal Revenue Code of 1954 (38 FR 10944). The proposed regulations were revised by notices of proposed rulemaking published in the FEDERAL REGISTER for December 1, 1975 (40 FR 56488) and October 29, 1976 (41 FR 47679) and corrected by notices published in the FEDERAL REGISTER for May 11, 1973 (38 FR 12405), December 18, 1975 (40 FR 58656), and November 24, 1976 (41 FR 51840). This notice of proposed rulemaking further revises the proposed regulations.

GROSS REFUNDINGS

In 1969, Congress enacted section 103(c) of the Internal Revenue Code. Sec-

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months effective period elapses without sponsor action. The determination must then be extended, in some cases, many times. It is, therefore, proposed that, if an application for an FCC permit has been made, the effective period of a no hazard determination be 18 months. To meet this need § 77.39(d)(1) could be amended to read: "The time required to apply to the Commission for a construction permit but not more than 18 months after the effective date of the determination."

The new Subpart F would be entitled "Discretionary Review Procedures." As has already been noted, the current Subpart E would be redesignated as Subpart G. The only change would be the renumbering of its sections.

Section 77.41 would be entitled "Scope" and it would read as follows: "This subpart identifies those persons who may petition for a discretionary review of a determination issued under §§ 77.19 or 77.35, or revision or extension of a determination under § 77.39, applies to time limits within which the petition must be filed, and describes the form and manner of submittal and processing."

A new § 77.43, entitled "Petition Eligibility," would contain the text of the present § 77.37(a). A new § 77.45, entitled "Petition Submittal," would include the present § 77.37(b) redesignated subparagraph (a). Section 77.45(b) would read: "(b) A petition must contain a full statement of the aeronautical basis upon which it is made, including valid reasons why the determination, revision or extension made by the Regional Director, or his designee, should be reviewed. It should contain new information and facts not previously considered or discussed during the aeronautical study. If the petition for review of the determination, revision or extension is based on an error in procedure, application of obstruction standards or conclusion, it should be so stated."

A new § 77.47, entitled "Petition Examination and Review," would contain the text of the current § 77.37(c)(1) and (2), except that the reference to Subpart E in § 77.37(c)(2) would be changed to Subpart G. Section 77.47 would also contain a provision that acknowledgement will be made to the petitioner and to the sponsor that the petition has been received and it will be considered, and that the determination is not and will not be final pending disposition of the petition.

The current Subpart F will be redesignated Subpart H. In addition, it is recommended that the title be changed to "Antenna Farms." As has been previously discussed, the use of the word "establishment" might imply that establishing antenna farms is an FAA regulatory function when, in fact, only the Federal Communications Commission is authorized to perform this function. Therefore, it is suggested that the current § 77.71(a) be amended to reflect this.

The FAA solicits the comments of all interested persons on the foregoing proposed changes to Part 77. It also welcomes any suggestions on the need for further revision of this part.

EVALUATION OF IMPACTS

It has been determined that the regulatory impact of this proposed amendment would be minimal and that an evaluation pursuant to the policy statement published by the Secretary of Transportation (41 FR 16200) is not required.

DRAFTING INFORMATION

The principal authors of this document are William E. Broadwater, Air Traffic Service, and Richard W. Danforth, Office of the Chief Counsel.

(Secs. 313(a) and 1101 of the Federal Aviation Act of 1958 (49 U.S.C. §§ 1354, 1501); Sec. 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)).)

Issued in Washington, D.C. on June 2, 1977.

RAYMOND G. BELANGER,
Director, Air Traffic Service.

[FR Doc.77-17083 Filed 6-15-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 54]

PROCEDURES GOVERNING DETERMINATION THAT INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau proposes new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

DATES: Comments must be received on or before July 18, 1977.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie N. Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and Sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 54—PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Who may petition.
54.4 Where the petition is to be filed.
54.5 Notice of receipt of the petition.
54.6 Form and content of the petition.
54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY: 5 U.S.C. 301; secs. 463 and 465 (25 U.S.C. 2 and 9); 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as "group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "Federally Recognized Tribe" means any Indian group within the United States that the Secretary of the Interior Acknowledges to have had and should continue to have the status of a domestic dependent sovereign.

§ 54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

§ 54.3 Who may petition.

Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§ 54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§ 54.5 Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall acknowl-

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edge receipt of such petition, and shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in § 54.7 of this part, if received by him within sixty days of the date of the notice.

§ 54.6 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

§ 54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and an opportunity to present oral arguments.

(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group:

1) Manifests a sense of social solidarity.

2) Has as members principally persons of common ethnological origins.

3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§ 54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) The Commissioner shall determine that an Indian group is a federally recognized Indian tribe whenever the group satisfies paragraphs (1-5) and (10) of § 54.7(c) so long as at least one other paragraph of that section is also satisfied.

(c) The Commissioner shall determine that an Indian group is not a federally recognized Indian tribe if the group fails to satisfy paragraphs (1)-(5) and (10 of § 54.7(b) along with at least one other paragraph of that section.

(d) A summary of the Commissioner's report and his determination as to the group's status shall be published in the FEDERAL REGISTER and shall be subject to review by the Secretary, who may, by acting within thirty days of such publication, supersede that determination. If the Secretary takes no action within such thirty-day period, the Commissioner's determination shall be final, and become effective immediately. If, after review, the Secretary reaches a conclusion contrary to that made by the Commissioner, he may supersede the Commissioner's determination. The Secretary's determination will be final and notice thereof shall be published in the FEDERAL REGISTER.

The primary author of this document is Mr. Leslie N. Gay, Jr., Chief, Branch of Tribal Relations, Bureau of Indian Affairs, (202) 343-4045.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affair.

[FR Doc.77-17200 Filed 6-15-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 747-3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Air Pollution Control, State of Arizona

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Through this notice EPA proposes to approve, with exception, revisions to the Arizona State Implementation Plan (SIP). These revisions include State regulations for vehicle inspection/maintenance, organic compound emissions from stationary sources, definitions, particulate emissions from stationary sources, assertions of jurisdiction, ambient air quality standards, sulfur compound emissions, carbon monoxide emissions from stationary sources, nitrogen oxide emissions, and miscellaneous (general) regulations. The revisions were submitted to EPA on August 20, 1973, August 30, 1974, February 3, 1975, September 16, 1975, and January 23, 1976.

DATES: Comments by: July 18, 1977.

ADDRESSES: Send comments to Regional Administrator, Attn: Air and Hazardous Materials Division, Air Programs Branch, Arizona-Nevada-Pacific Islands Section (A-4), EPA Region IX, 100 California Street, San Francisco, CA 94111.

Availability of documents: [illegible] the State revisions, the EPA [illegible] Report, and this FEDERAL REGISTER [illegible] are available for public inspection [illegible] normal business hours at the [illegible] IX Library at the above address [illegible] the following locations:

Public Information Reference [illegible] Room 2922 (EPA Library) [illegible] Street, SW., Washington, D.C. [illegible]

Arizona Department of [illegible] ices, Bureau of Air Pollution [illegible] 1740 West Adams Street, Phoenix [illegible] 85007.

Arizona Department of [illegible] ices, Bureau of Air Pollution [illegible] Northern Regional Office [illegible] Fourth Street, Suite 14, Flagstaff [illegible] 86001.

Arizona Department of Health Services, Bureau of Air Pollution [illegible]

GHP ADD-RDD-V026-D0096 Page 2 of 2

Fo: 440

2720 Ordway Street, N. W. #6
Washington, D. C. 20008

Ack
9/6/77

July 18, 1977

Director, Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D. C. 20245

Dear Sir,

Thank you for requesting comments on the proposed "Procedures Governing Determination that Indian Group is a Federally Recognized Indian Tribe." On the basis of my experience with unrecognized tribes and my work in this policy area at the American Indian Policy Review Commission, I feel that the proposed regulations fall short of their objective, and I am very pleased to have this opportunity to register my concern.

Federal Indian law quite often addresses "Indians" and "Indian tribes" generically for purposes of affecting the conditions which all Indians face and in acknowledgement of the special historical circumstances common to all Indian people. Except in the specific cases of legislative termination, there has never been any official policy which said that the rights of some Indians should be ignored or that the Interior Department should fail to serve some tribes as it does others. Indian policy should not arbitrarily define "Indian" without regard for the numerous undeniably genuine Indian communities. The Department of Interior's repeated neglect of over 100 tribes is neither supported by law nor morality. The Department's obligation to recognize its responsibility to all Indian tribes has been asserted by Congress and continually affirmed by federal courts.

The need for a clear and legitimate set of procedures governing the determination of the status of Indian groups is not, as you say, due to "the recent increase in the number of such requests [for determination] before the Department." Tribes currently requesting recognition have done so for decades, as a look at the Central Correspondence Files of the Bureau demonstrates. In many cases, the Bureau has already investigated the histories of non-federally recognized tribes sufficiently to justify the extension of desperately needed services to these tribes. For decades, many unrecognized tribes lacked the resources, political connections, and education to fight for their rights. It has only been in recent years that they have begun to receive national attention for their long-standing claims. There is, now as ever, an administrative

need for a legal procedure which will determine the eligibility of genuine Indian tribes for Federal Indian programs. That need remains because the unrecognized tribes continue to exist as Indian communities which both need and deserve the Federal programs which other tribes receive. Unfortunately, the proposed regulations will not satisfy the tribes' needs or the Bureau's needs for such a legal procedure for recognition.

The proposed regulations do not meet these needs precisely because they fail to take into account the situations unrecognized tribes face. There are severe educational, financial, and organizational problems in unrecognized Indian communities. If policy regarding recognition of these tribes is to be corrected, these factors must be taken into consideration. This is especially true because the educational, financial, and organizational problems facing unrecognized tribes are, in large measure, a result of federal inaction. Segregated school systems often failed to afford Indians an education, and Federal officials usually failed to admit unrecognized Indian students to Indian schools, so many unrecognized Indians, particularly in the Southeast, were unable to obtain an education. The failure of Federal officials to enforce laws regarding Indian lands similarly left many unrecognized tribes with no resource base for their economies, and these tribes are now poor. Tribal governmental dissolution among unrecognized tribes was, likewise, the result of jurisdictional disputes with local authorities which were decided in favor of non-Indians without the intervention of Federal authorities. Now, when unrecognized tribes remain undereducated, impoverished, and poorly organized, it is cruel irony to establish guidelines which purport to address the policy issue these people raise but fail to acknowledge the policy effects these people have experienced. The overriding approach which these proposed guidelines exemplify is one which requires the tribes to accept the responsibility for winning recognition from the Bureau, rather than one which envisions the Bureau extending recognition and services to meet the tribes' needs. It is this approach which undermines the proposed regulations.

Without a full-scale, well-operated program of contact with the known communities of unrecognized Indians, one year (Sec. 54.3) will not be enough time for all unrecognized communities to submit petitions for recognition to the Department. It will take that long for many communities to learn of the procedures. More importantly, however, it will be impossible for many tribes to present a petition meeting your minimum requirements in that period of time.

Most unrecognized tribes will not be able to file the necessary petition without substantial technical assistance, for three reasons.

First, your requirements include that a group present, "a statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States." There are a number of ways which many presently-unrecognized tribes could effectively use this requirement in presenting their petitions, since many unrecognized tribes

have been and should continue to be dealt with as Indian tribes by the United States. If being dealt with "by the United States" can be evidenced by Congressional actions, administrative memoranda, or federal court records, the phrase is wide enough to include most tribes which are not now officially recognized by the Secretary of the Interior. I take your requirement that non-recognized tribes (Sec. 54.2) prove that they are recognized (Sec. 54.3 and 54.6(a)), to mean that you observe that the status of Indian tribes is inherent and that federal recognition is simply the official recognition of that inherent status. Requiring that an unrecognized tribe present evidence of having a relationship with the United States at this point in the petition process, however, is premature and unwarranted. Moreover, it is a requirement which will be confusing to a number of tribes, and which will require a significant investment in terms of reliable researchers, lawyers, and historians. It is a requirement which many genuine Indian tribes will find prohibitively costly.

Second, a petitioning group is required to submit "a list of all current members of the group, and a copy of each available former list of members." Some tribes, such as the Tunicas, will find this requirement difficult but not impossible; other tribes, such as the Schagticokes, find membership-determination their most divisive issue. For the vast majority of unrecognized tribes, membership rolls will be extremely difficult to construct, and probably costly. Even if the known members of a tribe can be enumerated within the year in which a tribe has to submit a petition, the tribe is likely to face years of internal fighting and probably litigation if it fails to identify any of its members. It is worthwhile to note that most recognized tribes do not have accurate membership lists, and have never been required to draw them up; yet this is a fundamental requirement imposed on unrecognized communities at the outset of their petitioning process.

Third, you require a copy of the group's governing document or "a statement describing fully the procedures which govern the affairs of the group and its membership standards." Acting on the advice of NCAI, CENA, AAIA, AIO, and IDIL, a number of unrecognized tribes have formed formal organizational structures which have been incorporated in various states. This requirement will not be difficult for these tribes. Why you should feel entitled to demand such information from a tribe seeking recognition of its status is, however, questionable. Particularly where you require information regarding "membership standards," I cannot help but feel that you are motivated solely by a desire to make unrecognized tribes bear a difficult burden now which you do not want to bear administratively at a later time. Once again you are imposing standards for unrecognized tribes which have never been met by recognized tribes. I can only hope that the courts will clarify that unrecognized tribes have the same rights to determine their memberships which recognized tribes have exercised in determining theirs.

In this first phase of your procedure, the petitioning process, you will clearly frustrate a number of tribes' legitimate desires to have their Indian tribal status officially recognized by the United States. This will perpetuate, if not aggravate, the problem you hope to alleviate.

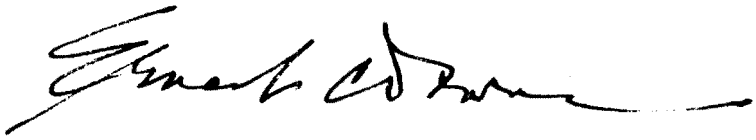
In the second phase of your procedure, the Commissioner's analysis, you would have the Commissioner of Indian Affairs file a report of his findings on the petitioning group's status, utilizing a number of topics which you have chosen. The topics for the Commissioner's report are not poorly chosen, since they could be used by the Bureau in constructing an assessment of the tribe's needs at a later date. But since these topics are to be used as criteria which will determine whether a tribe is eligible for Indian programs, they deserve very detailed scrutiny. As criteria, they are poorly-written, lack clear legal authority, and have no reasonable basis for utilization. They have not been derived from a study of the historical circumstances characteristic to unrecognized tribes and are not, therefore, "definitional factors" which could be used to identify such groups. They have not been derived from law, expressions of congressional intent, or judicial decisions, so they cannot be seen as authoritative criteria which may be imposed on Indian tribes which desire recognition of their status. They are far more restrictive than Cohen's cautious "considerations" which he said were often used in determining whether a group was an Indian tribe or band. Why these particular items are now being proposed as a basis for the identification of the Bureau's future service population is unclear. Without definitional merit, legal authority, or administrative precedent, they appear as a strange aggregation of arbitrary requirements which might make administration of policy to newly-recognized tribes easier than it was to the prior-recognized. For example, what now-recognized tribes have ever been subjected to the test of "social solidarity?" Social solidarity would appear to make administration easier, but is it a necessary element of a tribe's eligibility for Federal recognition? The other paragraphs also need redrafting. Tribes are required to have "political authority" over their members, exactly what U.S. policy sought to destroy for many years, and exactly what was most difficult for unrecognized tribes to assert. Territorial stability is required, even though tribes without reservations protected by the Federal Government have had the greatest difficulty retaining joint areas. Finally, you require that petitioning tribes must have "as members principally persons who are not members of other Indian tribes." Since many unrecognized tribes are amalgamations of two or more previously distinct tribes which were often compelled to band together against common threats, this criterion will eliminate a number of genuine present-day unrecognized tribes, depending on how it is interpreted.

In conclusion, this proposal will not give unrecognized tribes the proper procedure for the clarification and recognition of their status. It would not have avoided and will not resolve any of the recognition questions which have been raised in the last decade, including the Passamaquoddy and Stillaguamish examples. If carried into effect in their present form, these regulations may make official recognition of almost all remaining unrecognized tribes a matter of controversy for another decade. The conflicting claims to resources, jurisdiction, and services which unrecognized tribes have with their non-Indian neighbors will not be resolved. Additionally, since they fail to present a fair and equitable procedure for the Lumbees to pursue in winning recognition of their status, the regulations can only continue to heighten the rift inside the national Indian community.

I realize that these regulations are the result of a great deal of serious and well-motivated debate at the Bureau of Indian Affairs. The Bureau's attempt toward establishing a clearly-defined procedure for recognition is a significant, highly creditable, and welcome move. However disappointing I find these regulations to be, I would like to extend my congratulations and appreciation to Mr. Les N. Gay, Jr. and to Acting Deputy Commissioner Raymond V. Butler for their attention to this area of policy. Unrecognized tribes present an important question for national Indian policy which cannot be ignored, and which can only be resolved with a great deal of attention and investigation.

I hope that my comments will be of constructive assistance as you finalize these regulations. Thank you for this opportunity to comment.

Sincerely,



Ernest C. Downs

copies made available to interested
individuals and organizations.

JAMES ABOUREZK, S. DAK., CHAIRMAN
HOWARD M. METZENBAUM, OHIO
JOHN MELCHER, MONT.
DEWEY F. BARTLETT, OKLA.
MARK O. HATFIELD, OREG.
ERNEST L. STEVENS, STAFF DIRECTOR

United States Senate

SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, D.C. 20510

8587

July 18, 1977

Mr. Ted Krenzke, Director
Office of Indian Services
Bureau of Indian Affairs
Room 4058
18th & C Streets, N.W.
Washington, D. C. 20245

Dear Mr. Krenzke:

On June 16, 1977, the Bureau of Indian Affairs (BIA) published proposed regulations to govern determination that an Indian group is a federally recognized tribe. (42 Fed. Reg. No. 116, pp. 30617-18). Comments were invited by July 18, 1977.

As you know, the American Indian Policy Review Commission (AIPRC) received a significant amount of testimony on the matter of Indian tribes which have been denied recognition by the Department of the Interior. It appears there has been no procedure or guidelines whatever in the past to govern extension of federal recognition.

To the extent the Bureau is now proposing a formal policy in favor of extending recognition to tribes presently lacking a formal relationship with the Federal Government, I applaud your effort. However, I find numerous problems in the regulations. Among other things, the proposed regulations consistently refer to tribes which believe they "have" the status of federally-recognized tribes. What is really at issue here are tribes which have not previously been accorded federal recognition. It is not a question of whether they "have" recognition, but whether they are "entitled" to recognition.

The proposed regulations would allow presently unrecognized tribes only one year in which to file a petition for recognition. These proposed regulations are premised on statutory authority of considerable age; the introductory remarks indicate that there has been an ongoing problem for a number of years in determining whether a tribe is entitled to recognition; testimony before the AIPRC indicated that with many of the less sophisticated tribes a considerably greater period of time would be required for them to collect their evidence and prepare their petitions. In short, the one year time period is not dictated by the legal authority

you rely upon and is definitely too short a time period for most unrecognized tribes to comply.

The requirement that presently unrecognized tribes include in their petitions "a list of all current members of the group" (§ 54.6(b)) and that they be prepared to provide additional information, including but not limited to age, Indian ancestory, nature of tribal affiliation, and addresses of individual members (§ 54.7(b)) -- this requirement is one which many if not most presently recognized tribes could not supply. Certainly, this is a prohibitive requirement to set up as a condition precedent to recognition. It may well be reasonable to require once a tribe has been recognized, is beginning to organize, and has access to federal aid.

The definitional guidelines set forth in § 54.7(c) appear in considerable measure to track the recommendations of the AIPRC report. However, they are not as broad as AIPRC's recommendations. But the most limiting feature appears in § 54.8(b) which requires that a petitioning tribe must meet paragraphs 1 through 5 and paragraph 10 of the definitional requirements plus one of the remaining paragraphs (6 through 9) which require that such tribe (1) has been or is descended from a tribe that was a party to a treaty with the United States; (2) has been designated a tribe by an Act of Congress, Executive Order or judicial decision; and (3) has been treated by a state or another Federal agency as having collective rights in land, water, funds or hunting and fishing rights; or (4) has received services from a state or federal agency. While this procedure will undoubtedly qualify some tribes for recognition which have not previously been recognized, it is still far too limiting and will cut out some of the smaller tribes in the greatest need of recognition. Worse yet, the limitations prescribed are actually more restrictive than those presently available to the Bureau as described in the letter of Acting Commissioner LaFollette Butler to Senator Henry Jackson dated June 7, 1974 (See Report of Task Force #9, Vol. II, pg. 306).

Thus, it seems that what first appears to be a step forward turns out to be a step backward. As you know, the Select Committee on Indian Affairs is presently formulating legislation to provide for federal recognition of tribes not now recognized. I do not suggest that you refrain from your present effort to extend recognition to presently unrecognized tribes. I do, however, recommend that you revise your proposed regulations in light of the comments supplied in this letter. At the very least, new regulations should not be more restrictive than past Bureau policy and practices.

Very truly yours,

James Abourezk
Chairman

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON D. C. 20245

IN REPLY REFER TO:
Tribal Government Services
BCCO 8587

Honorable James Abourezk
Chairman, Select Committee on Indian
Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Thank you for your letter of July 18, commenting on the proposed regulations governing Federal recognition. Your comments are appreciated and will be helpful as we consider improvement of the regulations.

Paragraph three of your letter, however, indicates that there is some misunderstanding as to the scope of the proposed regulations. The Secretary of the Interior does not have the unilateral authority to recognize previously unrecognized Indian groups. That authority rests with Congress. The procedure initiated through the publication of the proposed regulations is intended to locate those tribal groups which at one point had in some manner been given recognition, but are not presently acknowledged as recognized by the Federal Government, in order that such Indian groups may receive the services to which they are entitled.

Indian groups which cannot establish a historical relationship would have to seek legislation before recognition or services would be extended from the Bureau of Indian Affairs. We are aware of the consideration given this problem by the AIPRC, but interpret it as a much broader approach wherein the Congress becomes involved.

Again, we thank you for your interest and comments. We hope that your staff and ours can establish a working relationship to insure that those Native Americans who are entitled, receive the benefits and services which are due them.

Sincerely,

Acting Deputy Commissioner
of Indian Affairs

CONSERVE
AMERICA'S
ENERGY

HALE AND DORR
COUNSELLORS AT LAW
28 STATE STREET
BOSTON, MASSACHUSETTS 02109

TELEPHONE
(617) 742-9100
TELEX 94-0472

August 11, 1977

Director
Bureau of Indian Affairs
18th and C Street, N.W.
Washington, DC 20245

Re: Proposed Regulations Governing Determination That Indian Group Is A Federally Recognized Indian Tribe

Dear Sir:

We are counsel to the Town of Mashpee in litigation involving a group of Indians claiming to be the Mashpee Tribe. We have reviewed the proposed regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe, as published by the Department of Interior, Bureau of Indian Affairs, in 42 Federal Register 30647-30648 on Thursday, June 16, 1977. We offer the following comments.

One of the substantial issues in the case of Mashpee Tribe v. Town of Mashpee, et al is the plaintiff the alleged Mashpee Tribe's claim that it presently constitutes a "tribe" of Indians within the meaning of the Nonintercourse Act. 25 U.S.C. §177 (1963). Judge Skinner of the District Court for the District of Massachusetts consequently requested that the parties in that litigation submit memoranda of law detailing the applicable legal standards for determining tribal status under the Nonintercourse Act. The analysis of the many federal decisions concerning the attributes and characteristics of a "tribe" made in the memoranda submitted on behalf of the defendants support the prerequisites to tribal status set forth in Proposed Regulations §54.7-54.8. Copies of those memoranda are attached for your review.

(44) 52

We believe that the proposed regulations accurately reflect the current state of the law and, properly describe those groups of Indians to which the federal government owes a unique fiduciary duty. The proposed regulations properly emphasize the independent semi-sovereign political and legal nature of an Indian "tribe" within the power of Congress. U.S. v. Antelope, 45 U.S.L.W. 4361, 4362-63 (1977). We consequently support the proposed regulations in their published form.

We hope you find the attached memoranda useful. If we can provide any further elaboration on any particular issue discussed in the memoranda, please let us know.

Thank you for your time and attention.

Sincerely,

James D. St. Clair

JDS:plm
Encs.
cc: Mr. George Benway
Morris Kirsner, Esq.
Allan van Gestel, Esq.
Andrew J. McElaney, Esq.

LAW SUIT IN FOLDER — ATTACHMENT TO THIS

440

State of Connecticut

CARL R. AJELLO
ATTORNEY GENERAL

Area Code: 203
566 2090

Office of The Attorney General
30 TRINITY STREET
HARTFORD 06115

August 8, 1977

Director, Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N. W.
Washington, D. C. 20245

Re: Proposed Procedures Governing Determination that Indian Group is a Federally Recognized Indian Tribe.

Dear Mr. Director:

The State of Connecticut is in receipt of a letter dated July 7, 1977, from the Honorable Joseph E. Brennan, Attorney General of the State of Maine, addressed to you offering comments and specific changes and reasons therefor to the proposed rules governing the method by which the Department of Interior would make determinations that certain Indian groups were, or ought to be, federally recognized Indian tribes.

Our belated receipt of the information regarding this matter made it impossible for us to offer our comments by the July 18, 1977, deadline, but I respectfully request that it be noted for the record that the State of Connecticut concurs with the recommendations of the Attorney General of the State of Maine for substantially the same reasons as therein set forth.

Very truly yours,

Carl R. Ajello,
Attorney General

CRA:g/p

ack. 8/17
to note that deadline for comments to extended 9/18

(43)-1

KAWERAK, INC.

BERING STRAITS NATIVE ASSOCIATION

440

Acknowledged
8/19 w/ letter
of 9/18 extension

August 5, 1977

Director
Office of Indian Services
Bureau of Indian Affairs
18th & C St., N.W.
Washington, D. C. 20245

Dear Sir:

After petitioning Senator Ted Stevens, R-Alaska and Wallace Green of the Department of Interior for an extension of time past the July 18, 1977 deadlines, the response of the Bering Straits Native Association and Kawerak, Inc. to the proposed rules for recognition of tribes set forth by the Bureau of Indian Affairs (BIA) is that first the timing of the publication and the short period for response makes us believe that the intent of these rules is to solidify the control of the BIA over the affairs of the Alaska Natives. It is clear that these proposed rules are a reaction to the legislation proposed by the Alaska Federation of Natives Human Resources Committee which would clarify the tribal definition status of Alaska Natives by making regional tribes the primary contracting authority. Why the limit of one year for gaining recognition? The proposed rules are clearly an effort to undermine this effort, for under these rules, no regional group can qualify as a tribe. The rules would in effect, maintain the status quo in Alaska, allowing the BIA to continue to circumvent the intent of Public Law 93-638.

Specifically under Section 45.8(b) and (c) stating that the group must satisfy paragraph (1)-(5) and (10) of Section 54.7(b) and at least one other paragraph blocks formation of Alaska Regional Tribes. Paragraph (10) states that the groups "Has as members principally persons who are not members of any other Indian tribe". This paragraph effectively eliminates any regional body in Alaska wishing to gain tribal status, for under the Alaska Land Claims Act and the Self-Determination Act, Alaska Natives are already members of from one to five tribes -- these being the regional profit corporation, village profit corporation, village IRA council, village traditional council, and in the case of Southeast Alaska, the

(4)-2

Tlingit and Haida Central Council. The multiplicity of tribes in Alaska and these proposed rules will continue the BIA dominance over Alaska Natives by effectively blocking any consolidation into regional tribes.

Additionally, paragraph (3) of Section 54.7(b) eliminates Alaska Natives from forming regional tribes by requiring that the group "exercises political authority over its members". This paragraph might apply to a situation where the regional body bowned a reservation and everything on it, but that is not the case in Alaska. Every regional group has within its boundaries, different municipalities in which these members reside. Many of these are state instruments, such as second class cities, where the political process eliminates those outside of its boundaries. In most of these situations, the non-Native residents control the political power and this alone would eliminate the Natives of that locality from gaining tribal status.

Paragraph (5) of Section 74.(b) which requires that the group "is not, nor are its members the subject of congressional legislation terminating the Federal relationship" further clouds the issue in the case of Alaska, for under the Alaska Claims Act, the special federal relationship for Alaska Natives may end in 1991.

For these reasons we believe the proposed rules are ill advised and definitely not in the best interest of Alaska Natives or other American Indian groups seeking recognition as a tribe. We urge the Department of Interioir not to adopt these regulations.

Very truly yours,

KAWERAK, INC./BERING STRAITS NATIVE ASSOCIATION

Charles H. Johnson,
Executive Vice President

CHJ/ap

Enclosure (1)

cc: Senator Ted Stevens
Senator Mike Gravel
Congressman Donald E. Young
Wallace Green, Department of Interior

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 54]

PROCEDURES GOVERNING DETERMINATION THAT INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Issuance of New Part

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau proposes new regulations that would establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

DATES: Comments must be received on or before July 18, 1977.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie N. Gay, Jr., Division of Tribal Government Services, Branch of Tribal Relations, Telephone: (202) 343-4045.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States, thinking it in their best interest, have requested the Secretary of the Interior to "recognize" them as an Indian tribe. Heretofore, the sparsity of such requests permitted an acknowledgment of a group's status to be at the discretion of the Secretary or representatives of the Department. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable that a uniform and objective approach be taken to their evaluation.

The authority for the Commissioner to issue these regulations is contained in (5 U.S.C. 301), and Sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 230 DM 1 and 2.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 54—PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Who may petition.
54.4 Where the petition is to be filed.
54.5 Notice of receipt of the petition.
54.6 Form and content of the petition.
54.7 Processing of the petition.
54.8 Action by the Commissioner.

AUTHORITY: 5 U.S.C. 301; secs. 463 and 465 (25 U.S.C. 2 and 9); 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Department" means the Department of the Interior.

(e) "Indian group," referred to also herein as "group," means any community of persons of Indian, Aleut, or Eskimo extraction.

(f) "Federally Recognized Tribe" means any Indian group within the United States that the Secretary of the Interior Acknowledges to have had and should continue to have the status of a domestic dependent sovereign.

§ 54.2 Purpose.

The purpose of this part is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

§ 54.3 Who may petition.

Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

§ 54.4 Where the petition is to be filed.

A petition requesting acknowledgment that an Indian group has the status of a federally recognized Indian tribe shall be filed with the Commissioner of Indian Affairs in Washington, D.C. 20245.

§ 54.5 Notice of receipt of the petition.

Within ten days after receiving a petition, the Commissioner shall acknowledge receipt of such petition and shall have published in the FEDERAL REGISTER a notice of such receipt, including the name and location of the Indian group submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined locally. The notice shall invite comments concerning the petition, which comments shall be considered by the Commissioner in connection with his review as specified in § 54.7 of this part, if received by him within sixty days of the date of the notice.

§ 54.6 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge that the Indian group has the status of a federally recognized Indian tribe. It shall include at least the following:

(a) A statement of the facts and arguments which the petitioners believe will establish that their group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States.

(b) A list of all current members of the group, and a copy of each available former list of members.

(c) A copy of the group's governing document or, in the absence of such written document, a statement describing fully the procedures which govern the affairs of the group and its membership standards.

§ 54.7 Processing of the petition.

(a) Upon receipt of a petition, the Commissioner shall cause a review to be conducted to determine whether the group is a federally recognized Indian tribe which has been and should continue to be dealt with as such by the United States. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and an opportunity to present oral arguments.

(b) The Commissioner may require that the group provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal affiliation, and addresses of individual members. On the basis of this review the Commissioner shall make a written report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status. All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(c) The Commissioner's report shall deal specifically with whether the group

(1) Manifests a sense of social solidarity.

(2) Has as members principally persons of common ethnological origins.

(3) Exercises political authority over its members.

(4) Has a specific area which the group either presently inhabits or has inhabited historically.

(5) Is not, nor are its members, the subject of congressional legislation terminating the Federal relationship.

(6) Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect. For purposes of this paragraph, "successor in interest" to a tribe means an Indian group whose members are principally descendants of the tribe in question, which has evolved from the tribe by a continuous process of social evolution, and which has, as an entity, assumed at least some of the rights, obligations, and traditions of the tribe in question. If the group has been a party to a treaty or agreement with the United States, which treaty or agreement was not ratified by Congress, the Commissioner's report shall indicate, to the extent possible, the reasons for nonratification.

(7) Has been designated a tribe by an Act of Congress, Executive Order, or judicial decision, or in the legislative history of a bill which was subsequently enacted into law.

(8) Has, or has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

(9) Has received services from any Federal or state agency (the report shall specify the exact nature and extent of such services, whether incidental or otherwise).

(10) Has as members principally persons who are not members of any other Indian tribe.

§ 54.8 Action by Commissioner.

(a) The Commissioner's report shall state his conclusion as to whether the petitioning group has had the status of a federally recognized Indian tribe and should continue to be dealt with as such by the United States.

(b) The Commissioner shall determine that an Indian group is a federally recognized Indian tribe whenever the group satisfies paragraphs (1)–(5) and (10) of § 54.7(c) so long as at least one other paragraph of that section is also satisfied.

(c) The Commissioner shall determine that an Indian group is not a federally recognized Indian tribe if the group fails to satisfy paragraphs (1)–(5) and (10 of § 54.7(b) along with at least one other paragraph of that section.

(d) A summary of the Commissioner's report and his determination as to the group's status shall be published in the FEDERAL REGISTER and shall be subject to review by the Secretary, who may, by acting within thirty days of such publication, supersede that determination. If the Secretary takes no action within such thirty-day period, the Commissioner's determination shall be final, and become effective immediately. If, after review, the Secretary reaches a conclusion contrary to that made by the Commissioner, he may supersede the Commissioner's determination. The Secretary's determination will be final and notice thereof shall be published in the FEDERAL REGISTER.

The primary author of this document is Mr. Leslie N. Gay, Jr., Chief, Branch of Tribal Relations, Bureau of Indian Affairs, (202) 343-4045.

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc 77-17200 Filed 6-15-77;8:45 am]

United States Department of the Interior

OFFICE OF THE SOLICITOR
Office of the Field Solicitor
686 Federal Building, Fort Snelling
Twin Cities, Minnesota 55111

IN REPLY REFER TO:

DEPT. 12 2439
JUL 27 1977
SOLICITOR'S SOL
DOCKET

Rec'd - See last page for comments

July 25, 1977

Memorandum

To: Solicitor
Attention: Associate Solicitor, Indian Affairs

From: Field Solicitor, Twin Cities, MN

Subject: Proposed Regulations Governing the Determination that an Indian Group is a Federally Recognized Indian Tribe

Thank you for bringing to our attention the proposed regulations governing Federal Recognition for Indian groups, and we apologize for being so tardy about forwarding comments to you.

While a desire to determine with finality which Indian tribes, bands or communities are or are not federally recognized is commendable, we fail to see either the need or the authority for the one year cut off appearing in § 54.3. The implication, though not stated in the regulation, is that, should an Indian group fail either purposefully or through procrastination to file the indicated petition within the time limit, acknowledgment of federal recognition would either be denied the group or would need to be obtained through some method other than that provided by the regulation. Neither result seems appropriate or authorized, and if neither result is intended, there is no purpose for stating a cut off for the filing of the petition.

Further, we see no purpose, and in fact a potential harm, in publication of the petitions in the Federal Register inviting comments which, according to the regulation, must be considered in acting on the petition. Whether or not a particular Indian group is acknowledged as federally recognized is not a matter of wide general concern to the public as a whole, and mandatory consideration of comments, even from persons wholly unknowledgeable and with no conceivable legitimate interest in the subject matter of the petition, could easily jeopardize full and fair consideration of the contests of the petition. Publication of the results of the Commissioner's review is undoubtedly appropriate, but we do not believe that publication of the petition and an invitation to comment can be justified. Perhaps, as an alternative, consideration should be given

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to publication of a proposed finding along with the petition and additional data on which the proposed finding is based and seeking comments thereon. This would permit comments on a full assembly of documents and data rather than solely on a petition which may be inartfully drawn and may be missing much vital information. The only other alternative which we would consider appropriate would be publication of a notice that a petition has been received and an indication of the tribal official from whom further information could be obtained.

The criteria for the Commissioner's determination seem thorough and appropriate with the possible exception of the tenth--§ 54.7(c)(10). The standard as worded would deny recognition to a group principally made up of persons whose ancestors were members of more than one Indian tribe or community and who are enrolled elsewhere for the sole purpose of maintaining enrollment in a tribe with acknowledged federal recognition, even though such persons may have indicated willingness to relinquish enrollment elsewhere in favor of enrollment with the petitioning group. Expansion of § 54.7(c)(10) should be considered to include persons who have indicated willingness to relinquish membership in any other Indian tribe or group.

Thank you for the opportunity to comment on these proposed regulations even though the time for receipt of comments has expired.

Mariana R. Shulstad
For the Field Solicitor

cc: MAO,BIA

440

ROBERT J. NORDHAUS
DONALD B. MOSES
THOMAS J. DUNN
JAMES F. BECKLEY
LEONARD G. ESPINOSA
B. REID HALTOM
JON H. TUTHILL

JOHN P. VIEBRANZ
LESTER K. TAYLOR
TERRY D. FARMER

NORDHAUS, MOSES & DUNN
ATTORNEYS AT LAW
800 AMERICAN BANK OF COMMERCE COMPLEX
200 LOMAS BOULEVARD, N.W.
ALBUQUERQUE, NEW MEXICO 87102

TELEPHONE
(505) 843-9440

ack
8/3/77

July 27, 1977

Director
Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D. C. 20245

Re: Procedures Governing Determination that Indian Group is a Federally Recognized Indian Tribe, 25 CFR Part 54

Dear Sir:

This firm represents the Tiwa Indian Pueblo of San Juan de Guadalupe, Tortugas, New Mexico, in their effort to obtain federal recognition as an Indian tribe. In this regard, we are submitting the following comments to be considered in the proposed regulations concerning federal recognition of Indian tribes.

We believe that Sections 54.7(3) and (4) are vague as they are presently written. Section 54.7(3) should have more detailed information as to what constitutes "political authority over its members". This becomes particularly apparent when dealing with a group of people who, because they have not been federally recognized, as individuals have had to travel away from their tribal group in order to become self-sufficient. Once a tribe is federally recognized, the individuals in the tribe tend to stay together to reinforce their tribal heritage, but without federal recognition, it has not been economically feasible to maintain such an alliance. With regard to Section 54.7(4), it is not stated whether the group is required to own the land which they inhabit or whether the area simply has to be one in which the group has lived continuously for a long time. The group should not have to own the land but simply have lived there historically.

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With regard to Section 54.8 Action by Commissioner, it should be mandatory for him to federally recognize a tribe when fulfilling paragraphs 1-5 and 10 with at least one other paragraph of that section. However, it should be discretionary with the Commissioner to find whether a group should be federally recognized if the group fails to satisfy paragraphs 1-5 and 10 with at least one other paragraph of that section. Because of these people's hardships in overcoming social and economic prejudice through the years, which has resulted in abject poverty to most, a group could fulfill portions of different paragraphs without fulfilling the entire paragraph, but in an overall picture, the group could meet standards which should allow it to be federally recognized.

Yours very truly,

NORDHAUS, MOSES & DUNN

By _____
B. Reid Haltom

cc: President Charles Madrid
Mr. Victor E. Roybal, Jr.
Mr. Carlos Sanchez, III
Mr. Louis Roybal

Sept. 18, 1978

Cecil D. Andrus
Secretary of Interior
18 and C Streets
North West
Room 61-51
Washington, DC. 20240

Dear Mr. Cecil Andrus,

On March 3, 1976 the Honorable Ella Grasso designated our tribe as a unit of local government within the State of Connecticut,[1] and eligible for General Revenue Sharing Funds.

Our Reservation contains 212.9 acres and is located within the town of Ledyard, Connecticut. At the present time we have one house, six mobile homes and a 10X55 mobile home that is used for a tribal/IHA office. The present population on the Reservation (Mashantucket) is 20 individuals.[2]

On May 11, 1978 we received notification from the U.S. Dept. of Housing and Urban Development that our application for 15 units of new housing had been approved.[3] The housing should be completed some time in the summer or fall of 1979. After completion of the housing the population will be approximently 70 persons.

With the increasing population at Mashantucket and the continuing progress being made in Economic Development projects, we feel a great need for a law enforcement program, to protect the people and property of Mashantucket and to enforce the tribes Laws and Ordinances.

We are therefore asking that you certify our tribe as a Unit of General Government, so that we can apply for L.E.A.A. funding under the Dept. of Justice. Attached is a tribal Resolution that was passed on Sept 17, 1978 at a meeting of the tribal council asking for such certification from your department.[4]

Sincerely,

Richard A. Hayward

Richard A. Hayward, Chairman
Mashantucket Pequot Tribal Council

Tom Turen
Senator Abraham Ribicoff
Delegation

ATTACHMENTS

1.) G.R.S. Certification

2.) Map of Reservation

3.) I.H.A. Notification of Application Approval

4.) Tribal Resolution

5.) Copy of H.B. 5556 which the Mashantucket (Western) Pequot Tribe developed along with the State Attorney General's office and Tribal Attoneys.

6.) Tribal Constitution

3279

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North West
Room 61-51
Washington, DC. 20240

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Richard A. Hayward

Richard A. Hayward, Chairman
Mashantucket Pequot Tribal Council

Tom Turner
Senator Abraham Ribicoff
Delivered

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Richard A. Hayward

Richard A. Hayward, Chairman
Mashantucket Pequot Tribal Council

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COMMENTS ON PROPOSED REGULATIONS GOVERNING
FEDERAL RECOGNITION OF INDIAN TRIBES 42 F.R. 30647

7/25/77

GENERAL COMMENTS

On June 16, 1977, the Department of the Interior published proposed regulations to govern the determination of whether an Indian group is a Federally Recognized Indian Tribe. Interested parties were given until July 18 (30 days) to respond. The regulations will affect the rights and status of many Indian tribes which have not, as yet, had the already existing fact of their tribal existence recognized by the United States government.

The development of a specific policy regarding recognition of Indian tribes which have heretofore not been recognized is a step forward in federal/tribal relations. Clear guidelines governing federal recognition policy have long been needed. For years, many tribes in the Northwest, as well as other parts of the country, have struggled to maintain their existence as tribes. They have continued to exist as viable social & political entities in spite of a total lack of financial support from the federal government, in spite of lack of a land base in many cases, and in spite of the U.S.'s refusal to acknowledge their sovereign status as tribes. Likewise, their members have been denied [illegible] which other Indian people are entitled.

The U.S. has "recognized" a number of tribes in the past several decades, but the factors it has weighed in making those determinations have been inconsistent and unclear. The result [illegible] confusion and mistrust by tribes which desperately [illegible] indeed have been attempting for years, to affirm [illegible] tribal status in the official eyes of the federal government. A clear set of regulations guiding federal policy would [illegible] offer these tribes the opportunity they have waited [illegible] years. The proposed BIA regulations in general are a [illegible] in this direction. However, as we point out in "Specific [illegible]" below, numerous changes are needed before they [illegible] address the problems of unrecognized tribes.

The proposed BIA regulations have been issued at approx[illegible] the same time as the American Indian Policy Review Commission (hereafter referred to as AIPRC) Final Report Summary of its recommendations regarding unrecognized tribes. The AIPRC recommendations are the result of months of hearings and research carried out by the Commission's Task Force X on the un-recognized and terminated tribes. They incorporate input solicited by the Task Force from tribes and Indian groups throughout the United States.

The AIPRC recommendations vary in some significant respects (set forth in "Specific Comments" below) from the BIA's proposed regulations. On the whole, the AIPRC's recommendations are more responsive to the needs of Indian people and more ideally suited to meet the practical problems unrecognized tribes are likely to encounter in preparing and presenting their petitions for federal recognition.

39-a

GHP ADD-RDD-V026-D0109 Page 1 of 9

Because of the importance of federal recognition to thousands of Indian people, we strenuously urge the BIA to reconsider its proposed regulations in light of the recommendations made by AIPRC and to delay taking action on the proposed regulations until tribes and the Bureau can study the AIPRC report more fully. We have not yet seen the AIPRC's complete report; we have had access only to the Summary. In order to examine the interplay between the AIPRC recommendations and the BIA's proposal, both the BIA and tribal groups must have access to the complete AIPRC report. The AIPRC recommendations could also be more fully examined if the Bureau delays action until after the Senate Select Committee hearings on non-recognized and terminated tribes, scheduled for September, at which time the additional information presented could be utilized by the BIA.

For the reasons which are set forth below, we believe the BIA's proposed regulations can be improved upon by incorporating certain aspects of the AIPRC's Summary recommendations and we urge consideration of those changes. We believe that the most comprehensive, well-reasoned guidelines will result from incorporating the AIPRC proposals and we believe that this can only be accomplished if the Bureau allows itself and tribal groups more time to consider the Commission's complete report.

SPECIFIC COMMENTS

Who May Petition - §54.3

Although the stated purpose of the BIA regulations is to establish a policy for determining "which Indian groups should have the status of federally recognized Indian tribes" (§54.2), it appears, through other sections, that the regulations are geared to a determination of which tribes already have the status of a federally recognized tribe because they have been dealt with as such by the federal government. Section 54.3 permits any Indian group which believes it "has the status of a federally recognized Indian tribe" to petition (Emphasis added). "Federally recognized tribe" is defined in §54.1(f) as an Indian group "...which the Secretary of Interior acknowledges to have had... the status of a domestic dependent sovereign." (Emphasis added) The effect of these two sections is, as stated in §54.6(a), that the petitioner must show that it is a federally recognized tribe - i.e., that the Secretary of Interior has acknowledged its status as a domestic dependent sovereign...and that it "has been...dealt with as such by the United States."

The approach of the proposed regulations is too narrow. They only address the question "which unrecognized tribes have actually been recognized defacto through some action by the federal government" rather than the broader, more appropriate question "which Indian groups are tribes and therefore should be entitled to an affirmation of their sovereign status as well as the federal services which accompany that status.

The narrow focus of the proposed BIA regulations means that tribes which have been ignored by the U.S. may never achieve the status of "federally recognized" tribes under these guidelines. The U.S.' past negligence in refusing or failing to deal with such tribes may become, through these regulations, a legitimate basis for dealing the final administrative death blow to tribes which have miraculously survived thus far in spite of the fact that the U.S. Government has not dealt with them in the past.

Several changes are needed in the BIA's proposed approach in order to address the appropriate question. First, the

substantive criteria used to determine which tribes should be recognized must be changed. These changes are discussed below on page 7.

Second, there must be a change in emphasis to comport with the changes in the substantive criteria so that the facts are amassed to prove that an Indian group is a tribe rather than to prove that it has heretofor been dealt with by the federal government as a recognized tribe.

In contrast to the emphasis of the BIA regulations, the AIPRC recommendations envision a procedure whereby all tribes can have the opportunity to "establish a formal relationship with the Federal Government." AIPRC Summary ¶¶164-166. The recommendations are premised on the right of all Indian tribes to a unique relationship with the United States. AIPRC Summary ¶164. The issue, therefore, is "which Indian groups are tribes?" The AIPRC procedure is designed to address that question.

The BIA's proposed regulations should adopt the AIPRC approach. This could be achieved by changing the substantive criteria, as discussed below, and by amending the wording in the following sections:

> §54.3 & §54.6 Add: "...has or should have the status of a federally recognized Indian tribe..."
>
> §54.6(a) & 54.7(a) Add: "...Indian tribe which has been and/or should be dealt with as such by the U.S."
>
> §54.8 "...has had or should have had the status of a federally recognized Indian tribe and should be dealt with as such by the United States."

Time Limits - §§54.3, 54.7(b)

The time limits in the proposed regulations should be greatly extended because of the unreasonably short periods involved and the hardship they will impose on the petitioning tribes in meeting these deadlines. As written, the proposed regulations allow the Commissioner up to three years to act upon the petitions, but require petitioning tribes to have their petitions submitted within one year from the effective date of the regulations. The time period of a year seems entirely too short when compared to the task that must be accomplished. As the proposed criteria is they are presently drafted, they will require for many petitioning tribes extensive research into anthropological, historical and legal material. This task could easily take more than a year to finish for even the most well-organized group. The task could certainly take even longer than that for those tribes and bands with limited access to legal and technical assistance. While many tribes have already submitted petitions or are working on them, the research will be exceedingly difficult to do in a year for those tribes that have not begun.

Having a longer period of time to submit petitions would thus allow for the preparation of better petitions so as to more adequately represent each Tribe's case. Given the trust responsibility owed to Indian tribes by the United States, it is assumed that it is the United States' desire, as trustee, to have the best case put before it so that it can determine more accurately the parties to whom it owes a duty.

We propose a more reasonable time limit of ten years so as

to allow adequate time for the preparation of the petitions. A shorter period for the Commissioner to take final action on them would also seem appropriate. An adequate job of analyzing and ruling on the petitions could undoubtedly be done in less than three years.

All of these suggestions are consistent with the recommendations of the AIPRC. The Commission recommends that tribes be given ten years to submit petitions and that the Special Office must act upon them within one year. AIPRC Summary, supra, §166.

Assistance to Petitioning Tribes - §§54.3, 54.6

A major deficiency in the proposed regulations is their failure to require the Commissioner to notify the Tribes of the regulations' existence and to require him to provide technical and financial assistance in preparing the petitions. These duties should be imposed in addition to lengthening the time limits involved.

Because of the continuing obligation of the United States to all Indians and Indian Tribes, the United States should accept a responsibility to provide assistance to Tribes that may not otherwise be able to afford the costly expert assistance required. Such assistance could include not only money to hire anthropologists, but also assistance in obtaining historians, researchers and attorneys. In a manner similar to this, the United States recently provided money to hire Dr. Barbara Lane to protect Indian treaty fishing rights. The United States could in this situation provide help in hiring anthropologists to demonstrate a tribe's origins and continuing existence.

Precedent has also been established for this type of assistance in actions before the Indian Claims Commission. 25 U.S.C. §70n-1 et seq. That statute provided that the United States set up a revolving fund from which loans could be made to Indians litigating before the Claims Commission for purposes of obtaining expert assistance. This policy should not be abandoned now. Many potential petitioners could use similar assistance.

As mentioned above, the United States should also be required to serve actual written notice of these regulations upon all unrecognized Indian Tribes, bands and groups that it can locate. Such notice would protect them by insuring that all knew their rights under the regulations and the time limits involved. In fact, in fairness, the time limits for submitting petitions should not begin to run until the tribe has actually been contacted and its rights explained to it. This requirement is only given the relative ease with which many unrecognized bands or tribes of Indians may be located and the relative importance of these regulations to the rights of many Indian bands and groups around the country. The Indian Claims Commission Act has also set a precedent for this type of notice. cf. 25 U.S.C.A. §70 [illegible]

In conclusion, we urge that these regulations be amended to impose an affirmative duty upon the Commissioner to provide technical and financial assistance to a tribe in documenting and preparing its petition and to serve notice of the regulations upon all affected groups. Additional appropriations should be requested from Congress if necessary. These proposed amendments are similar to recommendations of the American Indian Policy Review Commission. AIPRC Summary, §166. The Commission has recommended that a Special Office be set up to contact all known unrecognized tribes and to inform them of their right to establish a full relationship with

the United States Government. The recommendations also call for technical assistance to the tribes in preparing their petitions.

Membership Rolls - §54.6

While we do not object to a membership roll being required in conjunction with the petition, the membership roll should be examined in light of the problems involved in preparing it. The expense and difficulty that even the Bureau of Indian Affairs has experienced in preparing rolls for fully recognized tribes demonstrates the type of problems that are present.

Procedure for Processing Petitions Following Submission - §§54.7, 54.8

As delineated in the proposed regulations, the procedure for adjudicating whether a Tribe has the status of a "Federally Recognized Tribe" raises a serious question as to whether the petitioner's Fifth Amendment Due Process rights will be denied when these regulations are applied. Following the submission of the Tribe's petition, the regulations simply provide that the Commissioner shall "to the extent necessary" verify the factual statements therein, provide "an opportunity to present oral argument," and, at his discretion, require the submission of additional information before he issues his findings and conclusions as to a group's status. Proposed Regs. §54.7(a), (b). Similarly, after the Commissioner issues his report the regulations only provide that by acting within 30 days the Secretary of the Interior may supersede the Commissioner's determination. Proposed Regs. §54.9(d). At neither time is any clear opportunity provided to the petitioning tribe to examine and rebut evidence used by the Commissioner beyond that presented in the petition. Oral argument, by itself, does not imply full access to the evidence used by the Commissioner in evaluating the petition.

This denial of an opportunity to examine all evidence used by the Commissioner and to offer a contrary presentation of its meaning clearly violates the petitioner's due process rights to a fair adjudication of its petition. Bowman Transportation, Inc. v. Arkansas-Best Freight Systems, Inc., 419 U.S. 281, 288, fn. 4 (1974); Ohio Bell Telephone Co. v. Public Utilities Commission, 301 U.S. 292, 302-304 (1937); North American Van Lines, Inc. v. United States, 412 F.Supp. 792, 805 (N.D. Ind., 1976); Koniag, Inc. v. Kleppe, 405 F.Supp. 1360, 1371 (D.D.C. 1975). In the latter administrative review by the Secretary, the petitioner is entitled to offer its own findings and conclusions, and rebut the Commissioner's report. Koniag, Inc., supra at 1370-1371.

To correct those due process deficiencies, the Commissioner must provide the petitioner access to all letters, all comments received pursuant to public notice under §54.5, and any and all new reports, documents or testimonial evidence collected while investigating the petition along with a chance to rebut the above. To remedy this problem, we propose the following specific changes:

1. An affirmative duty be placed on the Commissioner to provide to the petitioner all additional documentation or other evidence which could affect the tribe's position. This should be provided at the same time a preliminary report is issued for comment by the BIA. This duty should include the divulging of all historical documents and comments received by the Commissioner from interested third parties under §54.5. The Commissioner should be

required to divulge all evidence within eight months after receipt of the petition. (This is consistent with the suggestion of AIPRC that the petitions be acted on within a year.)

The petitioner should have sixty days to refute this evidence and/or preliminary findings and conclusions following their issuance.

This right of rebuttal should include the opportunity to present oral argument and testimony.

2. Within sixty days following the receipt of the tribal rebuttal, the Commissioner should issue his final report with findings and conclusions.

3. Section 54.3 should be amended to allow the petitioner to have the right to appeal to the Secretary of the Interior following the issuance of this report.

A procedure like the above should cure the due process problems involved.

Burden of Proof - §54.7

The BIA's proposed regulations impose an onerous burden on a petitioning tribe to establish, through documentation which is either buried in BIA files or National Archives records, that it satisfies at least 7 of the 10 criteria listed in §54.7(c). The burden of proof is made heavier by the fact that several of the required criteria are vaguely worded. Since a tribe would not know exactly what it was being required to prove, it would be very difficult to ascertain the type and extent of evidence it would have to satisfy the criteria.

The inadequacy of notice of what a tribe must prove in the regulations raises a question as to whether a petitioning tribe is being afforded its constitutional right to due process in a manner which could result in the termination of its existence.

Even if adequate notice were provided, clarifying the criteria, it is unfair to place such a burden on petitioning tribes. Tribes will have few resources and will be extremely hard pressed to prove their existence in a process which gives scarce and [illegible] [illegible].

[illegible] of Indian [illegible] rights have been recognized by the U.S. providing fiscal support to petitioning tribes; however, placing the burden on tribes to affirmatively prove their existence would still constitute an unfair departure from past Indian policy. Historically the courts and Congress have demonstrated great reserve before taking away rights which go to the heart of a tribe's very existence. Treaty rights cannot be abrogated except by clear and unequivocal act of Congress. U.S. v. Santa Fe Pacific Railroad Co., 314 U.S. 339 (1941); Menominee Tribe v. U.S., 391 U.S. 404 (1968). Termination of the federal/tribal relationship has been accomplished only through specific acts of Congress regarding specific tribes. See generally 25 U.S.C. 564 et seq., 25 U.S.C. 391 et seq., 25 U.S.C. 677 et seq. The effect of denial of federal recognition to an Indian tribe is virtually identical to termination or abrogation of treaty rights and the policy governing the latter action would also

govern the former. The BIA should not impose the burden on the weaker party to prove its existence. Rather, the U.S. should be required to affirmatively justify why it refuses to "recognize" certain tribes.

In contrast to the proposed BIA regulations, the AIPRC recommendations require the United States to document its rejection of a petitioner's claim if it finds that the petitioner does not meet any of seven itemized criteria. AIPRC Summary ¶¶166, 168. This approach should be incorporated into the BIA regulations. An Indian group seeking recognition would alert the U.S. of their desire to be considered by presenting in a petition as much information and documentation of its status as possible. At that point, as suggested by the AIPRC approach, there would be a presumption that the petitioning group was a tribe. The burden would fall upon the U.S. to prove otherwise if it were to deny recognition.

Satisfaction of Substantive Criteria - 554.6

The BIA regulations require that a petitioner satisfy six specific criteria and one of four optional criteria. The documentation of these factors would supposedly prove whether or not the tribe is a recognized tribe and has been dealt with as such. The substance of the proposed criteria, as well as the requirement that seven out of ten be proved by the petitioner, requires major changes because of the following problems:

1. The criteria do not address the proper question.

As discussed in the "General Comments," above, the appropriate question these regulations should address is "which petitioning group is a tribe?" This question could be answered by satisfying certain ethnological, cultural and social factors, or by examining ways in which other Indian tribes or the federal government have behaved toward the petitioning group. Because of the unique relationship between Indian tribes and the federal government, there are certain circumstances which would strongly suggest that a group is a tribe. For example, the fact that it has had treaty relations with the federal government, received funds through an Indian Claims Commission settlement or has had land held in trust for it by the federal government all create a very strong presumption that an Indian group is a tribe. When that presumption is established, nothing more should be required of the petitioning tribe.

The AIPRC Summary lists seven criteria, any one of which is a reasonable indicator that an Indian group is a tribe. Under the AIPRC approach it is unnecessary to go further and document ways in which the U.S. has already recognized the tribe. Past dealings with the U.S. might provide proof of the fact that the petitioner is a tribe, but a determination of the tribe's existence should not rest exclusively upon its past dealings with the federal government.

2. Several of the criteria are vague and duplicate themselves.

Criteria (1), (2), and (3) are so vague that it is difficult to know what they require to be proved. What does "social solidarity" mean and how is it measured? What kind of "political authority" is envisioned?

"Common ethnological origins" is very broad and seems to be an obvious element implicit in each of criteria 6 through 9. It

is unlikely that the U.S. would have had treaty relationships with the group, (6), enacted legislation designating the group as a tribe, (7), granted it services, (9), or acknowledged its collective rights in its resources if the group had no "common ethnological origins."

The AIPRC recommendations provide a desirable alternative to the BIA's vague and sometimes overlapping criteria. Each of the seven items enumerated in AIPRC Summary ¶168 is more clearly defined and provides a more definite standard of proof. For example, in determining whether the group has held collective rights in tribal lands or funds, ¶168(d), the terms are defined so as to identify more clearly the facts needed to prove the criteria.

3. Several criteria reflect inappropriate standards.

The standard for measuring "political authority" is too broad under criteria (c)(3). There must be some assurance that it would be measured with two important factors in mind:

First, a tribe's present exercise of political authority must be considered in light of the traditional political structure of that tribe. Tribes in the Pacific Northwest generally had no governing council, as such, but met whenever it was necessary for whatever purpose arose. "Political authority" was more closely connected to kin relationships than to formalized governmental structures. A tribe's present "political authority" should not be determined according to characteristics of Anglo governments. A tribe's existence at treaty times was not determined according to those standards and the measure of a tribe's "political authority" over its members should be no greater in determining its existence today.

Second, the degree of "political authority" cannot be measured by the same standard which would be characteristic of a tribe that has been federally recognized for a considerable time. Obviously, if the tribe's sovereignty has not been fully exercised because the U.S. has not supported it by recognition, the tribe would not have as substantial a basis for the exercise of political control as a tribe with an active government and/or a land base. The only fair indicator of the presence of "political authority" would rest in the tribal members' conception of that authority.

In contrast, one of the Policy Review Commission's tribal criteria takes the above concerns into consideration and is more preferable to the BIA proposal:

> The Indian group has exercised political authority over its members through a tribal council or other governmental structures which the Indian group has determined or defined as its own form of government.

Criteria (c)(10) is apparently an attempt to insure that the petitioner is not a splinter group from a recognized tribe. However, that determination can be made through the satisfaction of criteria 6, 7, 8 or 9. The standard proposed by (c)(10) is inappropriate because it fails to consider the situation of tribes in the Northwest.

Because of intertribal marriages and because of the attempted placement of several tribes on one reservation in the Northwest, many Indian people could be members of more than one tribe. This

is true of recognized as well as unrecognized tribes and has no bearing on whether either tribe is a sub-group of the other. An unrecognized tribe's allowance of dual membership during the time prior to its recognition would not necessarily mean that it was a sub-group of another tribe. It would stem from a practical desire to allow those members who could to take advantage of services provided only to members of recognized tribes.

The Policy Review Commission properly considers the formal determination of tribal membership as a procedure which may begin after a tribe's recognized status is affirmed. Through this approach, any unrecognized tribe which permitted dual membership prior to recognition would have a period of time after recognition during which dual members could chose with which tribe they wished to be exclusively associated.

4. Criteria (c)(6) is not comprehensive enough in that it may not include tribes which can document their presence and participation in treaty negotiations although they were inadvertently excluded from the list of signatories.

In summary, the AIPRC substantive criteria are a preferable alternative to the BIA proposed criteria. They require proof of one out of seven criteria, each one of which is more clearly defined, more comprehensive and a more appropriate indicator of whether a petitioning group is a tribe.

Respectfully submitted by,

Emily Mansfield/Jeff Schwarz
Attorneys at Law

attorney at law
STOWW
[illegible]
Summer Wash
[illegible]

On behalf of:

Cowlitz Indian Tribe
Lummi Indian Tribe
Muckleshoot Tribe of Indi[illegible]
Nooksack Tribe of Indian[illegible]
Nisqually Indian Tribe
Puyallup Tribe
Sauk-Suiattle Tribe
Jamestown-Clallam Tribe
Quileute-Hoh Band

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

440
Tribal Government

JUL 21 1977

Ack 7/27/77

Dennis Peterson, Director
Office of Indian Services
Bureau of Indian Affairs
1951 Constitution Avenue, N.W.
Washington, D.C. 20245

Dear Mr. Peterson:

ONAP would like to take this opportunity to comment on BIA's proposed rulemaking regarding procedures for determining whether or not an Indian group should be a Federally recognized tribe. I apologize for our tardiness but we have been in the midst of preparation for hearings and awarding of T/TA contracts. I trust that submission of comments two days late will not preclude consideration of our remarks.

Let me begin by stating that we welcome BIA's initiative in this regard and feel that these proposed Rules will greatly facilitate the procedure for recognition as well as lend the process greater consistency and objectivity. In general, we support the approach which the Bureau is intending to take. We do, however, have a few comments which you will find enumerated below:

1. Section 54.7(c)(6): ONAP strongly recommends that the language in this Section be expanded so as to include treaties and agreements which were made between tribes and States (or colonies) not just with the United States government. This addition would ensure consideration of those treaties which were affected prior to the Revolutionary War.

2. Section 54.7(c)(9): Is the Bureau referring to any and all Federal services under this Section, including for instance, ONAP, NIAAA, Title IV, CETA? While we would encourage that such an interpretation be your position, we feel that as currently written this Section is not clear. Nor are we certain whether you are referring only to Federal or State resources/services earmarked for Indians, or resources in general?

3. ONAP recommends that a provision be added whereby consultation with the Indian Health Service will become an integral part of this recognition procedure.

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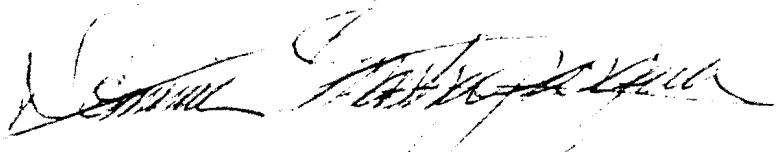
If you have any questions regarding our remarks please let me know. We appreciate your consideration of this memo as you begin revising the proposed Rules.

Sincerely,



Dominic J. Mastrapasqua
Acting Director
Office of Native American Programs

ZIONTZ, PIRTLE, MORISSET, ERNSTOFF & CHESTNUT
ATTORNEYS AT LAW
PIONEER BUILDING, 600 FIRST AVENUE
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ROBERT L. PIRTLE
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BARRY D. ERNSTOFF
STEVEN H. CHESTNUT
STEVEN S. ANDERSON

AREA CODE 206
623-1255

July 22, 1977

ack 8/3/77

Director, Office of Indian Services
Bureau of Indian Affairs
18 and C Streets, N.W.
Washington, D.C. 20245

Re: Petitions for Federal Recognition
(Amendments to 25 C.F.R. Part 54)

Dear Sir:

We are general counsel for the Lummi, Makah, Colville and Suquamish Indian tribes and special counsel for the Nooksack, Northern Cheyenne and Quileute tribes and the Metlakatla Indian community of Alaska. On their behalf we wish to point out what appears to be an ommission from the proposed procedures governing "determination that the Indian group is a federally-recognized Indian tribe," previously printed in the Federal Register on June 16, 1977. Those proposals do not make it clear that any currently federally-recognized Indian tribe need not reapply or petition for federal recognition. We presume that there was no intention to require reapplication by those Indian tribes and groups long recognized by the United States. In the interests of clarity, however, the matter should be definitely made clear in the final version of the regulations.

Thank you for your attention in this matter.

Very truly yours,

ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT

Mason D. Morisset

Mason D. Morisset

MDM:sa

cc: Sam Cagey, Chairman; Lummi
John Ides, Chairman; Makah
Mel Tonasket, Chairman; Colville
Richard Belmont, Jr., Chairman; Suquamish
Milton Williams, Chairman; Nooksack
Allen Rowland, Chairman; Northern Cheyenne
Christian Penn, Sr., Chairman; Quileute
Wallace Leask, Mayor; Metlakatla
Alan Stay
Lewis Bell
Mike Taylor

38-1

Western Union

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PMS DIRECTOR OFFICE OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS

[redacted]

WASHINGTON DC 20245

THE VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF MICHIGAN [redacted] PROVISION OF PROPOSED [redacted] SECTION 5A.7 (B) (1) TO [redacted] THE BAND MEETS VIRTUALLY ALL [redacted] OF THE [redacted] SECTION 5A.7 (B). BUT THEY MEMBERS ARE ENROLLED AT HOLE LAKE (GREAT LAKES AGENCY) AND MOVE AT HOUGHTON BAY. LAND WAS SET ASIDE FOR THE LAC VIEUX DESERT GROUP AT WATERSMEET, GOGEBIC COUNTY, MICHIGAN, NEAR THE STILL OCCUPIED TRADITIONAL VILLAGE SITE ON LAC VIEUX DESERT ON THE MICHIGAN WISCONSIN BORDER. TRUST TITLE HELD FOR [redacted] PROVIDED [redacted]

[redacted]

PROBLEM ARISE WHEN MOST OF THEIR MEMBERS HAVE LEFT RESERVATION ON HOUGHTON BAY AND WANT TO [redacted] IN LAC VIEUX DESERT. [redacted] THE LIMITED [redacted] MEMBERS. [redacted] OF IRA [redacted] TO [redacted] HAVE TO ORGANIZE SEPARATELY WITH BIA. [redacted] IS OVER LAKE SUPERIOR [redacted] TO PROVIDE [redacted] FOR IHS SERVICES.

[redacted]

[redacted] TO [redacted] "TRIBAL" [redacted] FOR THE EXPRESS PURPOSE OF [redacted] INDIVIDUAL INDIANS VIEW DIVERSE TRIBAL ASSOCIATIONS.

LAC VIEUX DESERT BAND URGES SUPPORT OF ELIMINATION OF THE [redacted] SECTION 2(C) (2)(B) TO PERMIT ITS RECOGNIZED AS A DOMESTIC DEPENDENT SOVEREIGN [redacted]

THOMAS L. SHRINER, TRIBAL ATTORNEY

[redacted]

(34) - 1

July 18

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
MUSKOGEE AREA OFFICE
MUSKOGEE, OKLAHOMA 74401

IN REPLY REFER TO:
Tribal Operations

JUL 21 1977

Memorandum

To: Commissioner of Indian Affairs
Attention: Tribal Government Services

From: Area Director, Muskogee Area Office

Subject: Proposed Regulations to Establish Procedures Governing Determination that an Indian Group is a Federally Recognized Indian Tribe

Attached are comments from interested Agencies in this Area, as requested in your memorandum of June 20, with reference to subject above.

ACTING Area Director

Attachments

(36) -3

United States Department of the Interior

IN REPLY REFER TO:

BUREAU OF INDIAN AFFAIRS
Drawer H
Talihina, Oklahoma 74571

JUN 30 1977

Memorandum

To: Area Director, MAO

From: Superintendent, Talihina Agency

Subject: Proposed Regulations to Establish Procedures Governing Determination that an Indian Group is a Federally Recognized Indian Tribe

This Agency's response to these proposed regulations is favorable and the limitations which are placed upon the Indian group seems reasonable. However, a statutory requirement instead of proposed regulations may be in order. Part 54.3 of these proposed regulations on who may petition seems to be awful loose and the Commissioner may receive numerous requests from small groups, splinters, etc., that should not be recognized.

These are our comments on the proposed rules.

Billy F Cummings
Acting Superintendent

United States Department of the Interior

IN REPLY REFER TO:

BUREAU OF INDIAN AFFAIRS
Wewoka, Oklahoma 74884
June 24,1977

MEMORANDUM

TO : Muskogee Area Office, Muskogee, Oklahoma
Attn: Tribal Operations

FROM : Superintendent, Wewoka Agency

SUBJECT: Proposed Regulations to Establish Procedures Governing Determination that an Indian Group is a Federally Recognized Indian Tribe

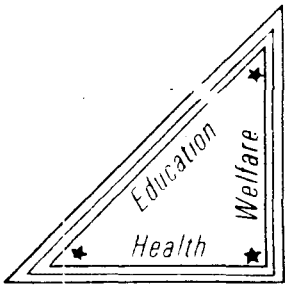
With reference to your subject Memorandum dated June 23, 1977, this Agency submits the following comments:

a. It is believed an Indian group petitioning for Federal Recognition should have inhabited their locale historically.

b. The group should be recognized and considered by non-related community members as a bonafide Indian group.

Jack Rumsey

440



COPPER
RIVER
NATIVE
ASSOCIATION, INC.
(Ahtna Tanah Ninnah)

Administration	822-3949
Health	822-3521
Alcoholism	822-3955
J.O.M.	822-3333
Manpower	822-3333
Housing	822-3333

Drawer H-Copper Center, Alaska 99573

cale 7/29/77

TO: Director Office of Indian Services
Bureau of Indian Affairs
18th & C Street, N.W.
Washington, D.C. 20245

FROM: Maxwell L. Fancher
Executive Director

SUBJECT: Department of Interior, Bureau of Indian Affairs (25-CFRPART-54). Procedures governing determination that Indian group is a Federally recognized Indian Tribe.

DATE: July 19, 1977

On behalf of the Copper River Native Association I would like to make the following comments regarding the proposal as cited above.

The Rural Alaska Community Action Program has as a part of their service a clipping service of news releases which they provide to the non-profit native organizations which receive funding from them.

This morning we received an excerpt which was printed in the Alaska Native Management report which is an extract of the Federal Register of June 16, 1977 as listed above. Unfortunately, this is the first time we have had the opportunity of seeing this information and we observe that comments are to be received on or before July 18, 1977, which was yesterday.

We are greatly concerned that proposed rules governing the designation of Federally recognized Indian Tribes was published in the June 16, 1977 Federal Register with the deadline of July 18, 1977 yet to the best of our knowledge we never were aware of such action or received any information until the clipping service provided us with that information.

Even though the deadline is past we are taking the opportunity to submit to you our comments regarding the proposed rules governing the designation of Federally recognized Indian Tribes.

In Section 54.1 definition Section F it specifically states that "Federally recognized Tribe" "means any Indian group within the

(35).2

United States that the Secretary of the Interior acknowledges to have had and should continue to have the status of a domestic dependent sovereign." We take exception with this definition due to the restrictive quality and the determination of the Department of the Interior to make this unilateral decision. We do not feel this is fair and that it is in conflict with Indian Self Determination!

We fail to see why the burden for all of this development action is left upon the local community! The process is cumbersome, and allows the Commissioner to make a unilateral decision. This is further reason for Self-determination, but not by this process. These regulations seem to inhibit Self-determination and enhances BIA self perpetuation. With this process we emphatically disagree. Make the process more simple not more complicated.

Unfortunately, it appears the Department of the Interior/ Bureau of Indian Affairs is attempting to make unilateral decisions without the input of the local native organizations. Is this another technique by which rules and regulations would be submitted without any acknowledgment or with any opportunity of input from the local area? This we highly feel is suspect and highly detrimental to the cause of Indian Self-determination.

Sincerely,

Maxwell L. Fancher
Executive Director, CRNA

MF/lab

cc: Senator Ted Stevens
Senator Mike Gravel
Representative Don Young

ack 7/20/77

Association on American Indian Affairs, Inc.

Office of General Counsel
600 New Hampshire Avenue, N.W.
Washington, D. C. 20037
Telephone: 965-9400

ARTHUR LAZARUS, JR.
RICHARD SCHIFTER
General Counsel

Oliver La Farge, *President*
(1937-1963)

Alfonso Ortiz, Ph.D., *President*
Benjamin C. O'Sullivan, *1st Vice President*
Roger C. Ernst, *2nd Vice President*
Mrs. Henry S. Forbes, *Secretary*
E. Tinsley Ray, *Treasurer*
William Byler, *Executive Director*
Arthur Lazarus, Jr., Richard Schifter, *General Counsel*

July 18, 1977

DELIVER BY HAND

Director
Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N. W.
Washington, D. C. 20245

Re: Proposed Rule for
Federal Recognition Determinations

Dear Sir:

On behalf of the Association on American Indian Affairs, which we represent, we submit the following comments on Proposed 25 C.F.R. Part 54, 42 Fed. Reg. 30647 (June 16, 1977), and ask that they be made a part of the record in this matter.

1. Scope

Regulations requiring Indian groups to come forward with evidence that they are federally-recognized tribes whose status should be formally acknowledged by the Bureau of Indian Affairs ["BIA"] raise the specter that all tribes, regardless of past and continuing recognition, must file petitions or lose their federally-recognized status. Therefore, we believe the second sentence of Proposed §54.2, which specifies that groups already recognized by the Secretary are not covered by the proposed regulations, is not adequately conspicuous. We propose that a separate subsection, entitled "Scope", be broken out of the "Purpose" subsection to make this vital message more visible.

Second, Secretarial recognition can and has taken many forms in the past, so that some tribes may assume they are exempt from the petitioning regulations while not actually enjoying full federal recognition. For this reason, we suggest that an up-to-date list of federally-recognized tribes be

(23)-8

published as an integral component of Proposed Part 54, and that this list be periodically amended as federal recognition is formally accorded additional tribes. The publication of such an official list in a readily-accessible periodical as the Federal Register is long overdue and would serve many purposes in addition to the narrower goals of Proposed Part 54 -- e.g., as evidence in litigation and in dealings with state and local bodies that the provisions of title 25 of the United States Code and the Code of Federal Regulations apply to a given tribe. The promulgation of rules governing the determination of a group's federally-recognized status -- an instance when such a list is of obvious importance -- provides an ideal occasion for the publication of a full list of federally-recognized tribes which can be updated as necessary by notice in the Federal Register.

2. Filing Deadline for Petitions

Under Proposed §54.3, all petitions for status determinations must be filed within one year of the proposed regulations' effective date. We see no basis for imposing any deadline on the filing of these petitions, particularly where the determinations to be made are not grants of a new status but acknowledgements of an existing status. As the proposal now stands, a tribe that is able to demonstrate the requisite relationship with the Federal Government, but cannot or does not do so within the brief period permitted in Proposed §54.3, apparently faces termination of its rightful status in violation of the trust responsibilities of the United States. This, of course, would be an illegal action by the Secretary. For, while sections 2 and 9 of title 25 of the United States Code (cited as the Secretary's authority for the proposed regulations) permit determinations by the Secretary that given Indian groups are federally-recognized by virtue of a past or present relationship maintained with the Federal Government, no act of Congress delegates to the Executive Branch the power to terminate such relationships by the placement of an arbitrary (and short) statute of limitations on tribes' ability to prove the existence of their federal relationships. For this reason, future determinations of tribal status will have to be made regardless of the running of the proposed one-year statute of limitations. The continued use of formal regulations specifying uniform standards for such future determinations clearly is preferable to a reversion to ad hoc status determinations. This can be assured by dropping the statute of limitations.

The one-year statute of limitations proposed by the Department also is unrealistic, given the nature of the Indian groups eligible to petition for status determinations. First, if recently-recognized tribes are indicative of other groups, such groups are not tightly organized and have little modern experience in conducting relations with the federal bureaucracy, in gathering documentary evidence for formal presentation, and in meeting arbitrarily-fixed deadlines. Quite conceivably, many such groups will not even learn of proposed or final regulations within the year allowed for compliance.

Second, Indian groups not now recognized by the Secretary are unlikely to have the financial resources to comply with the evidentiary requirements of the proposed regulations within as short a time as one year. Thus, many worthy tribes may be frustrated in their attempts to clarify their status.

Third, intra-group dissension -- experienced by many currently-recognized tribes -- may hamper attempts to gather expeditiously the information necessary to the Commissioner's determination of tribal status. Such dissension has no bearing on the "Indian-ness" of a group, and delays occasioned thereby in the petitioning process should have no bearing on the consideration of the group's claim to federal recognition.

Retention of the one-year statute of limitations set forth in Proposed §54.3 is likely to subvert the express purpose of the regulations. Elimination of any filing deadline, on the other hand, creates no additional burden on the BIA and comports with the nature and capabilities of Indian groups eligible to make use of the proposed regulations. For these reasons, Proposed §54.3 should be amended by deleting therefrom the words "within one year from the effective date of these regulations".

Elimination of the statute of limitations from Proposed §54.3 requires that the two-year deadline for disposition of petitions be measured from the time a petition is received, rather than from the effective date of the regulations in Proposed Part 54. Thus, the final sentence in Proposed §54.7(b) should be amended to read: "All [] petitions shall be disposed of no later than [] <u>two</u> years from the [] <u>date of their filing with the Commissioner of Indian Affairs</u>."

3. "Common Ethnological Origins" Test

Proposed §54.7(c)(2) requires that a petitioner have "as members principally persons of common ethnological origins." We believe this language is too loose, and should be amended to require "common Indian ethnological origins". The definition of "Indian group" in Proposed §54.1(e) carefully avoids blood quantum standards, and instead speaks of "Indian, Aleut, or Eskimo extraction." Thus, the combination of the "Indian group" and "common ethnological origins" requirements would permit a group with minimal Indian blood but with an identifiable, non-Indian ethnological origin to meet the test of Proposed 54.7(c)(2). We do not believe this construction comports with the Department's intent, and hence suggest that the Indian ethnological requirement be made explicit.

4. "Political Authority" Test

Proposed §54.7(c)(3) requires that a group exercise "political authority" over its members, but does not define the quoted term or fix any standards for its measurement. The phrase "exercises political authority" evokes the image of a general, multi-purpose governmental entity involved in all aspects of the daily lives of its constituents. In the context of a group that the Federal Government does not formally recognize, by contrast, the scope of "political authority" exercised is likely to be severely circumscribed by jurisdictional competition from other governmental units and by financial constraints. Moreover, if political fragmentation or factionalism is present within the group, subgroups may be the sole wielders of political authority while other bonds, such as religion or language, hold the various subgroups together. In such cases, federal recognition may be a prerequisite to any faction's exercise of effective political authority over the whole group. This in no way detracts from the entitlement of the group to federal recognition on any objective basis, as the "Indian-ness" of the group and its prior federal recognition are not thereby affected.

For these reasons, we strongly urge that the criterion of "political authority" in Proposed §54.7(c)(3) be expanded to reflect the various traditional ways in which Indian groups and their members are bound together and the relationships which indicate the continuation of an identifiable Indian community. This amendment to the proposed regulations is particularly

important since the criterion involved has been made one of the mandatory tests for federal recognition. Alternatively, we recommend that any requirement that a group exercise political authority in a governmental sense be made optional rather than mandatory, because even many tribes formally recognized by the Secretary do not meet this standard today.

We further urge that, if this criterion is retained in its present form, a definition of "exercises political authority over its members" be added to Proposed §54.1 to indicate the scope of this requirement, e.g., whether survival of kinship systems and similar decentralized structures of authority, social controls, common religious rites and requirements, etc., are considered exercises of the group's "political authority" over members.

6. Party to an Agreement that "Remains in Effect" Test

To satisfy the optional criterion of Proposed 54.7(c)(6), a group must have been a party to a treaty or other agreement with the Federal Government which "remains in effect". We urge that the meaning of the quoted phrase be clarified. Many tribes entered into treaties or agreements with the United States concerning particular land, and were subsequently resettled on other land. In such cases, Congress never expressly abrogated the agreements, but their practical significance ended when the Indians were removed from the land described. Nonetheless, the existence of such treaties and agreements is persuasive evidence that a group or its predecessor in interest was recognized by the Federal Government as possessing sovereignty or constituting a distinct tribe. Therefore, unless a treaty or agreement was expressly abrogated by Congress on the basis that the tribe or group had disbanded or no longer was sovereign, we believe that evidence of the treaty or agreement should fulfill the criterion in Proposed §54.7(c)(6) regardless of the current relevance or effectiveness of the subject matter contained in the treaty or agreement.

6. "Collective Rights in Assets" and "Receipt of Services" Tests

Proposed §54.7(c)(8) and (9) are deficient in their failure to link state or federal recognition of collective rights in assets and/or provision of services, respectively, with the status of the group members as Indians. We believe that both

categories are unreliable indicators that tribal status is federally recognized unless the tests are tightened to include "Indian-ness" as the basis for the federal or state treatment of the group. Therefore, we urge that both subsections be amended by the addition of the words "on the basis of the group's status as an Indian group" at the end of each.

7. Finality and Specificity of Status Determinations

As stated above, we believe that the nature of most Indian groups eligible to petition for status determinations and the trust responsibilities of the United States toward tribes that, at any time, demonstrate federal recognition in accordance with the criteria of Proposed Part 54, require deletion of the statute of limitations contained in Proposed §54.3. Identical considerations of eligible groups' probable levels of sophistication, experience, and finances lead us to suggest that decisions by the Commissioner or the Secretary rejecting a group's petition not be treated as barring submission of further evidence of federal recognition at a later time. Rather, negative determinations should be treated as "final" only as to the sufficiency of the evidence presented up to the time the determination is made. (We recognize the danger that certain groups might tie up the administrative process by frequent submission of bits and pieces of additional information. This could be prevented by fixing a mandatory waiting period of, e.g., one year from the date of a negative determination, during which period an amended petition would not be accepted.)

To prevent unnecessary expenditures of money and administrative time in the submission and evaluation of evidence covering criteria that a group has satisfied in a prior determination by the Commissioner or Secretary, we also recommend that negative status determinations contain a clear statement of the criteria not satisfied by a petitioner and that only criteria previously unsatisfied be reconsidered upon the filing of an amended petition. This would allow an Indian group to pursue particular information and evidence for submission in an amended petition and would obviate Departmental consideration of cumulative evidence related to criteria previously satisfied. To accomplish these results, we recommend that Proposed §54.8 be amended by the addition of a new subsection, as follows:

"(e) The final determination of the Commissioner or the Secretary, as the case may be, shall state with particularity those criteria contained in §54.7(c) of this part which were not satisfied by an unsuccessful petitioning group."

In addition, a new §54.9 should be added, as follows:

"§54.9 Submission of new evidence.

(a) Any Indian group whose petition for acknowledgement that it has the status of a federally-recognized tribe was finally rejected may present newly-gathered or newly-discovered evidence of its federal recognition for investigation and evaluation by the Commissioner as provided in §§54.4 through 54.8 of this part.

(b) Such new evidence shall be presented in an amended petition. The amended petition shall be limited in scope to include only information and evidence related to such criteria of §54.7(c) as were found unsatisfied by the previous petition(s) filed by the Indian group.

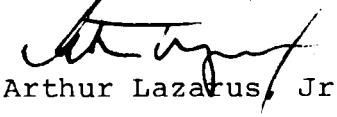
(c) No amended petition will be accepted for filing if received less than one year from the date on which the most recent determination rejecting the previous petition(s) filed by the Indian group under this part became final."

10. Internal Logic of Proposed §54.7(c)

We believe that the internal organization of the criteria set forth in Proposed §54.7(c) would be improved if all mandatory criteria were grouped together. To achieve this purpose, we suggest the insertion of Proposed §54.7(c)(10) after Proposed §54.7(c)(5), and the appropriate renumbering of the remaining subsections. This change also would necessitate amending Proposed §54.8(b), lines 4 and 5 to read: "satisfied paragraphs (1)-(6) of §54.7(c) . . .", and Proposed §54.8(c), line 5, to read: "(6) of §54.7(c) . . .".

We trust that these comments are constructive, and that they will be given consideration in the process of promulgating final regulations for new Part 54.

Respectfully submitted,



Arthur Lazarus, Jr.

AL, Jr./skh

cc: Mr. William Byler

Coos, Lower Umpqua, Siuslaw Indian Tribes, Inc.

P. O. Box 3506 Coos Bay, Oregon 97420

Chief: Edgar Bowen
Chairman: Russell Anderson
Vice-Chairman: Bill Brainard

July 18, 1977

Ack 7/28/77

LESLIE M. GAY, JR.
CHIEF, BRANCH OF TRIBAL RELATIONS
U.S. DEPT. OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

Dear Sir;

We are in receipt of your letter of July 11. However, it was received on such a late date, that this is the earliest we could respond. We realize that this is the date that comments should be received.

In lieu of writing comments, we are, for expediency sake, enclosing a copy of our Historical Perspective which outlines the situation of these particular tribes.

We hope this will not be received too late for consideration. We have always been interested in Federal Recognition as we feel this will assist our people in a multiude of ways.

Sincerely,

Russell Anderson

Russell Anderson

RA/ems

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THE COOS, LOWER UMPQUA AND SIUSLAW INDIAN TRIBES

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AN HISTORICAL PERSPECTIVE

Starting at a point twelve (12) nautical miles west of the continental shelf and running due east to the mouth of a creek known as Ten Mile Creek, in section 27, township 15 south, range 12 west, Lane County, Oregon; thence east on the water shed between the waters of the Alsea and the Siuslaw Rivers to the summit of said mountains, to the junction of the Calapooia Range, near the headwaters of the Siuslaw River, in township 21 south, range 4 west; thence in a westerly direction following the summit of the ridge between the waters of the Smith and Umpqua Rivers, to a point due north of the head of tidewater on the Umpqua River; thence south across the Umpqua River to the summit of the mountains dividing the waters of Camp Creek from the waters of the Umpqua River thence in a southeasterly direction along the summit of the Coast Range Mountains, to the summit of the divide separating the waters of Looking Glass Creek from the waters of the south fork of Coos River in township 27 south, range 8 west, Douglas County, Oregon; thence west to a point of rocks, known as Five Mile Point, in section 19, township 27 south, range 14 west of the Willamette Meridian, Coos County, Oregon; extending due west to a point twelve (12) nautical miles beyond the Continental Shelf.

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Such is the legal description of the five million plus acres of traditional tribal lands of the Coos, Lower Umpqua and Siuslaw Indian tribes of the Oregon coast. These tribes lived here in peace and harmony until the initial encounter with European Civilization in 1826 when members of the Hudson's Bay Company traveled the Oregon coast. This being the forerunner of the coastal Manifest Destiny, the usurpment of Indian lands by the white man began.

Shortly after 1850 white settlers began to move into the area. Thus, began the long list of violations of treaties:

ORDNANCE OF 1787

"The utmost of good faith shall always be observed towards the Indians, their lands, and property shall never be taken from them without their consent. And in their property, rights and liberty, they shall never be disturbed or invaded."

OREGON TERRITORIAL TREATY WITH GREAT BRITAIN 1846

"The United States government recognizes the Indians' title to the lands occupied by the different tribes and specifies that the settlers are not to settle on or occupy land in use by the different Indians until such land is ceded to the United States by treaty, under the provisions treaty with Great Britain."

OREGON ORGANIC ACT/OREGON TERRITORIAL ACT 1848

"That nothing in this act contained shall be construed to impair the rights of persons or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians."
"That no laws shall be enacted governing the Indian tribes and bands without the approval of the President of the United States, Congress, and the consent of the Indians involved."
(THIS ACT CONFIRMED ALL TITLES TO INDIAN LANDS)
"All laws heretofore passed in said territory making grants of land, or otherwise affecting or incumbering the title to lands shall be and are hereby declared null and void."

AN ACT PROVIDING FOR SURVEY OF PUBLIC LANDS 1854

"Providing that nothing in this act contained shall be construed and executed as in any way to destroy or effect any rights to land in said territory, holden or claimed under the provisions of the treaty between the United States and Great Britain."

Articles and convention of a treaty were entered into on the 17th day of August, 1855, in Empire City, Oregon between JOEL PALMER, ESQ., SUPERINTENDANT OF INDIAN AFFAIRS and the COOS, LOWER UMPQUA and SIUSLAW INDIAN TRIBES. The treaty was signed by 38 members of the three tribes (these being marked by an X and witnessed by a LT. SMITH,) and the following white men:

CHRIS TAYLOR, SECRETARY
E.P. DREW, SUB-INDIAN AGENT
JOHN FLEET, INTERPRETER
R.W. DUNBAR
M.H. HILL
JOEL PALMER
R.B. METCALFE, SUB-INDIAN AGENT
J.B. GAGNIER, INTERPRETER
J.C. CLARK, INTERPRETER
L.P. BROWN
JOHN GALE

The text of the treaty describes the agreement by the three tribes to cede to the United States all rights to the land in return for com-

pensations such as annuities, food, clothing, employment, education and health benefits.

HOWEVER, TO THIS DAY, THE TREATY REMAINS UNRATIFIED, despite historical comments urging its ratification:

"I transmit...the suggestion that, if you concur, they (articles of the treaty) be submitted to the President..."
(To R. McClelland, Sec. of the Interior, from G.W. Mannypenny, Commissioner of the Umpqua Indian Sub-Agency, 1857)

"Non-ratification of these treaties... and the continued extension of our settlements into their territory without any compensation being made to them is a constant source of dissatisfaction and hostile feeling."
(From annual report for the year 1857, by J.V. Denver, Commissioner of Indian Affairs.)

"...They are continually asking why it is that the Great Father (the President) does not send back their paper, i.e. treaty, as he promised and pay them for their lands. They say they are tired of waiting for it. And complain bitterly that their lands were taken from them without their receiving any compensation therefore. I would respectfully urge that their treaty be ratified..."
(Report of Sub-Agent J.B. Sykes, to Edward R. Geary, Supt. of Indian Affairs, Oregon 1860)

"I communicate to the Senate herewith, for its Constitutional action thereon, articles of agreement and convention made and concluded at the places and dates therein named, by Joel Palmer, Superintendent of Indian Affairs, on the part of the United States, and the Chiefs and Headmen of the confederate tribes and bands of Indians residing along the coast...of Oregon."
(Confidential message from President Franklin Pierce)

Assuming good faith on the part of the United States and in compliance with the Treaty of 1855, the Indians of these three tribes left their homelands in 1856 under duress and direction from Indian Agent E.P. Drew. They were relocated at Umpqua City at the mouth of the Umpqua River and held under armed guard until 1859 when they were forcibly marched some eighty miles north to the Yachats River.

From the initial removal WITHOUT TREATY in 1856, until 1875, the Coos, Lower Umpqua and Siuslaw experienced a long and unjust period of reservation life. During this time, the Indian people served as no more

than slaves, clearing the land at Yachats and constructing buildings. It is held that nearly half the Indian people died during this period of slavery.

As the Coos, Lower Umpqua and Siuslaw were not legally prisoners of war and were treaty-less, another violation occurred that encompassed the entire 1856-1875 period:

THE ORGANIC ACT OF 1849 specifically prohibited SLAVERY in the Oregon Territory.

When the Yachats area was made available to white settlers in 1875, the Coos, Lower Umpqua and Siuslaw were driven from the area without any compensation for the many years of forced labor. Many returned to their former homelands only to find the beginnings of white communities and settlements on the lands that were once theirs. Not wishing to leave their ancestral homelands again, the Coos, Lower Umpqua and Siuslaw experienced a forced assimilation in order to survive.

Responsibility for the tribes was shuffled between several agencies up until 1925. No health or educational benefits were ever extended to the tribes and during this entire period from 1855 to the PRESENT, the Bureau of Indian Affairs has not served the Coos, Lower Umpqua and Siuslaw on any consistent basis.

In 1917, the tribes began legal action for compensation of illegally taken tribal lands. In the ensuing twelve years, the expenses of bringing about the legislation was paid for by tribal members on a donation basis. No aid from government sources was ever available nor offered. On February 23, 1929, legislation was passed to allow the tribes to bring suit before the U.S. Court of Claims. Case K-345 was finally ruled upon in May of 1938. It stated that the Coos, Lower Umpqua and Siuslaw were parties to the Siletz Allotment agreement on the Siletz Reservation in 1892 in which some compensation was called for.(However, records do not show the Coos, Lower Umpqua and Siuslaw as participants in the agreement.)

The case was then, in essence, thrown out of court because the statements of eighteen Indian persons who testified in North Bend, Oregon in 1931 were considered by the court to be inadmissable and was deemed to be merely HEARESAY. The testimonies were not accepted as evidence, nor was the unratified Treaty of 1855.

In part, the court ruled:

"None of the plaintiff tribes has ever possessed any right, title or interest in or to any desig-

In short, the United States Court of Claims said that the Coos, Lower Umpqua and Siuslaw Indian tribes have never existed!

HR 4190 was introduced in 1951 by Harrison Ellsworth of Oregon. In the same year, Senator Guy Cordon and Senator Wayne Morse introduced S1572. Both were for the purpose of allowing the tribes to appear before the Claims Commission again. However, no action was taken.

In 1952, the Coos, Lower Umpqua and Siuslaw Case #265 was dismissed by the Indian Claims Commission as a matter of res judicata. It was decided that the tribes did, in actuality have their day in court in the 1930's and had presented all the evidence that was necessary. The court upheld the decision that the Coos, Lower Umpqua and Siuslaw could not prove aboriginal title.

In 1947, during the termination hearings, forty-six members of the Coos, Lower Umpqua and Siuslaw tribes went to Siletz, Oregon to vote on behalf of the three tribes. The consensus was to vote AGAINST termination. The delegates were informed that the termination vote did not concern them and they were taken from the hearings to be placed in a locked room under guard until the vote was completed.

The termination decision was eventually handed down to terminate the several small tribes of Western Oregon. No mention of the Coos, Lower Umpqua or Siuslaw was made, except at the end of the written decision where it states that this '...also applies...' to the Coos, Lower Umpqua and Siuslaw.

Following the termination decision and the finalization of the Act, only a small percentage of the three tribes were ever notified of the decision itself. However, when the tribes were finally notified of the 'compensation' arrived at by the termination decision, it was found that after legal fees were taken and other expenditures subtracted, there was $47.48 to the credit of the Coos, Lower Umpqua and Siuslaw. But, due to the fact that the government couldn't decide how to divide the sum equally among all members of the tribes, the money was kept in the Treasury and so remains today.

This very act of termination violates the OREGON TERRITORIAL ACT in that the Indian tribes were not CONSENTING parties.

"That no laws shall be enacted governing the Indian tribes and bands without the approval of the President of the United States AND THE CONSENT OF THE INDIANS INVOLVED." (Oregon Territorial Act)

The Coos, Lower Umpqua and Siuslaw tribes then took the case to the United Nations on August 8, 1956. The basis for this move was that the government of the United States as a separate entity had systematically

refused to acknowledge the rights of those tribes; had refused to honor claims and most of all, the United States government in a court of law had denied the very existence of the Coos, Lower Umpqua and Siuslaw tribes of Indians. The United Nations, in turn informed the tribes that it was an 'internal affair' and would not intervene.

Since that time, the Coos, Lower Umpqua and Siuslaw have continued to be ignored by the United States government. Every avenue of legal means seems to have been exhausted, but the tribes still feel that somewhere there is a justifiable answer to their problems. These problems are various and widespread and do not only entail the denial of tribal recognition.

For example, the tribes have a unique situation whereby they are legally terminated Indians, totally divorced from any type of Federal services or supervision. Yet, they hold a 6.1 acre reservation and a meeting hall that was built for them in 1939 by the U.S. government.

It was at this hall that for a few years before World War II and for a short time afterward, the tribes received the 'medical' care promised to them. The medical care consisted of a doctor and a nurse who came to the reservation one day per month. The medical supplies and the answer to all medical problems was solved by Band-Aids, Aspirin and salve.

The tribal hall on the reservation has steadily fallen into a state of disrepair. There are no funds available either on a State or Federal level to aid in the reconstruction process. The Bureau of Indian Affairs and other agencies claim no responsibility for the reservation. However, the tribal hall and the reservation have continued through the years to be the basis for tribal life.

Despite the continued non-recognition, the Coos, Lower Umpqua and Siuslaw have made efforts to open lines of communication with agencies and organizations on the local, state and Federal levels. As treatyless Indians, the tribes have been shunned and refused aid. Specifially, since the disasterous policy of termination, the tribes have been ineligable for health, welfare and educational benefits. The State of Oregon and the Bureau of Indian Affairs in fact deny the existence of the Coos, Lower Umpqua and Siuslaw. A graphic example of this is an event of last year.....A graduate student in Archaeology from Portland State U. wanted to contact the director of the research center the tribes sponsor locally. The student knew the director was a Coos Indian, but couldn't find an address or phone number. He finally went

to the obvious source: the Bureau of Indian Affairs in Portland. The Bureau informed him the there was NO SUCH THING AS A COOS INDIAN.

In addition, several people who hold public office in the State of Oregon have stated that on the Oregon coast, '...There are no Indians and there is no problem.'

The county of Coos and those surrounding the area refuse to work with the Coos, Lower Umpqua and Siuslaw, totally by-passing any regard or input into county concerns. An example of this occurred in February of this year. The Coos-Curry Economic Improvement Association applied for a grant for a feasibility study of Indian aquaculture. The grant was submitted and plans were made BEFORE the tribes were notified. NO input was taken into consideration, nor were the tribes ever assured the study would benefit them. It was clear to the tribes that as Indians, they were being used as a head-count by the county agency in order to obtain Indian monies to be used for non-Indian financial gain.

The cities have been no better in their interaction with the tribes. Most often as not, there is a TOTAL DENIAL of the entire Indian population.

Despite petitions and correspondence pertaining to many aspects of tribal problems, the ONLY time the State of Oregon has worked with the Coos, Lower Umpqua and Siuslaw tribes was in August of 1974. The State Parks Department then sanctioned the overnight use of Sunset Bay State Park for the traditional Sacred Salmon Ceremony of the tribes. Rules were laid down by the State and strictly enforced as to area use and length of use as well as conduct. Ironically, the area in use was the same grounds used by the Coos, Lower Umpqua and Siuslaw for the Ceremony since the beginning of tribal history.

On a Federal level, after twenty-five years of petitions, letter writing and communication to various offices, the U.S. Coast Guard granted the Coos, Lower Umpqua and Siuslaw a permanent easement onto the sacred tribal burial grounds, which lie on land in Coast Guard jurisdiction. This is the only instance of any type of Federal action on behalf of the tribes.

Accordingly, the State of Oregon took into possession in 1951 some 50 acres adjoining the sacred burial grounds that was intended originally to be returned to Indian title. Along with this, many of the sacred burial grounds of the Coos, Lower Umpqua and Siuslaw lie within the Oregon Dunes Nation Park area and are inaccessable to use by the tribes.

The attitudes in all levels of government and the total lack of

co-operation and recognition has greatly affected the Coos, Lower Umpqua and Siuslaw Tribes. In an attempt to govern its own affairs, it is a constant battle against discrimination, harassment and lack of service.

Health and educational services are the personal financial responsibilities of each individual tribal member because no Federal benefits are available to them. The tribe as a governing entity is unable to afford services to the members due to lack of gainful tribal income. This again reverts to the problem that non-recognized tribes are not eligible for the majority of the Indian-oriented grants and funded programs.

It has been a long succession of documented events of harassment by non-Indians. Law enforcement officers religiously patrol and check up on the yearly Sacred Salmon Ceremony. The State Game Commission constantly harasses the tribal members who exercise the hunting and fishing rights. Meetings are often under suspicion.

Yes, through this, the Coos, Lower Umpqua and Siuslaw have maintained a strong form of government, still hoping for a just compensation and another day in court.

The Coos, Lower Umpqua and Siuslaw have been in turn, enslaved, supressed and ignored for the past 121 years. Historically, it has been a deliberate and systematic trail of continuing genocide, broken promises and lies on the part of the government of the United States of America. Not only did the government not see fit to ratify the Treaty of 1855, it has passed a multitude of laws to prevent the tribes from proving the real and complete truth.

The Coos, Lower Umpqua and Siuslaw tribes kept their part of the bargain set forth by the Treaty of 1855, by peacefully leaving their homelands in 1856. One-hundred-twenty-one years later, the Coos, Lower Umpqua and Siuslaw still await fair judgment.

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CENTRAL COUNCIL
of the
tlingit and haida indians of alaska

130 Seward Street · Rm. 412 Juneau, Alaska 99801
(907) 586-2204, 586-2206 or 586-2293
Manpower Division: (907) 586-3405

RAYMOND E. PADDOCK, JR.
President

440

ale 7/25/77

July 18, 1977

HAND DELIVERED

Director
Office of Indian Services
Bureau of Indian Affairs
18th & C Streets, N.W.
Washington, D.C. 20245

Sir:

This is in response to your invitation to comment on the proposed regulations to "establish procedures to govern the determination that an Indian group is a federally recognized Indian tribe," which were published on June 16, 1977, 42 Fed. Reg. 30647-48. Although the Tlingit & Haida Indian Tribes previously have been "recognized" by the Congress and the Secretary and would be excluded from the operation of the proposed regulations (25 C.F.R. §54.2), the Central Council is nevertheless interested because of their possible effect on a number of Alaska Native groups and organizations that have dealings and interests in common with the Tlingit & Haida Tribes and the Central Council.

First, we would point out that under the Constitution of the United States (particularly Art. I, Sec. 8, Cl.3), the Congress (not the executive or any officer or agency thereof) has plenary authority over Indians and all their tribal relations. Colliflower v. Garland, 342 F.2d 369 (9 Cir. 1965); Means v. Wilson, 522 F.2d 833 (Cir. 1975), cert. den. 424 U.S.958.

Such authority as officers of the executive (including the President, the Secretary of the Interior and the Commissioner of Indian Affairs) possess relative to the administration of Indian affairs, including to "recognize" Indian tribes, is strictly as delegates of the Congress.

Mark Jacobs, Jr., 1st Vice President, Sitka
Chris E. McNeil, Jr., 2nd Vice President, California
Alfred Widmark, 3rd Vice President, Juneau

Richard Kito, 4th Vice President, Petersburg
Charles Nelson, 5th Vice President
Mrs. Margaret Demmert, 6th Vice President

tlingit and haida indians of alaska

(31)-9

If a group of Indians "has been designated a tribe by an Act of Congress" (25 U.S.C. § 54.7), it has been "federally recognized" by the paramount constitutional authority and its status as such put beyond the power of any officer of the executive to alter. Thus, in any case where an identifiable group of Indians has been designated or dealt with as a tribe by Congress, its "recognition" is complete and not subject to denial or review by the Commissioner or anyone else, save Congress.

Second, while we do not question that the President and his delegates implicitly have been granted authority by Congress to recognize Indian groups as tribes for purposes of defining their relationship to the federal government, we would point out that they have been granted no authority, express or implied, to withhold or withdraw recognition from any groups previously accorded tribal status by the Congress, the courts or the executive. Tribal status, once granted by the Secretary of the Interior, is no more revocable by his successor than a patent to land. It is subject, of course, to the plenary power of Congress.

This point is important because of an ambiquity or ambivalence we perceive in the proposed regulations. In some respects they seem to provide for new and original "recognitions", while in others they appear to provide only for administrative "acknowlegement" or reaffirmation of "recognitions" previously extended.

For example, supportive of the first interpretation are (1) the summary, which speaks in terms of "procedures to govern the determination that an Indian group is a federally recognized Indian tribe"; (2) the supplementary information, which states that "[v]arious Indian groups throughout the United States . . . have requested the Secretary of the Interior to 'recognize' them as an Indian tribe"; and (3) § 54.2, which says that the purpose of the proposed

regulations "is to establish a Departmental procedure and policy for determining which Indian groups should have the status of federally recognized Indian tribes."

Cutting toward the second construction are (1) § 54.1(f), defining "Federally Recognized Tribe" as meaning "any Indian groups within the United States that the Secretary of the Interior Acknowledges (sic) to have had and should continue to have the status of a domestic dependent sovereign"; (2) § 54.3, which provides that any group may petition "which believes that it has the status of a federally recognized Indian tribe"; and (3) § 54.4, which stipulates that "[a] petition requesting acknowledgment that an Indian group has the status of a federally recognized tribe shall be filed . . . ."

As noted, while the President and his delegates likely possess implied authority to extend new and original recognition as a tribe to an Indian group not previously recognized, and to prescribe reasonable standards for the extension of such recognition, they clearly lack authority, in the case of a group previously recognized as a tribe (whether by the Congress, the courts or the executive), to deny the benefits of such status, on the basis that the group does not qualify under some newly minted administrative criteria.

In short, when a group that does not claim to have been "recognized" previously petitions for recognition, the issue for decision is within the administrative discretion of the President or his delegate and may properly be taken with reference to reasonable standards adopted by the executive. On the other hand, when a group that claims to have been "recognized" previously, by whatever means, petitions to receive the benefits of such status, the threshhold issue posed is one of fact (or of mixed fact and law) and must be determined by quasi-judicial processes rather than by reference to artificial standards. As noted, in the second case, a finding that the group has "been designated a tribe

by an Act of Congress, Executive Order, or judicial decision," rather than simply being a factor that might be considered (cf. 25 C.F.R. §§ 54.7(c)(7) and 5418(b)), would be dispositive.

Initially, the proposed regulations need to be clarified to make plain that they are intended to apply only in the case of groups seeking original recognition and not in the case of groups seeking to be admitted to the benefits of a recognized status they claim already to have. The first poses issues resolvable by an exercise of administrative discretion, which can properly be referred to discretionary standards. The second poses issues of fact and law determinable only by judicial type inquiry and not by reference to discretionary standards.

Even limited to cases of groups petitioning for recognition as an original matter, we have difficulties with the proposed regulations.

First, we question the need and desirability of such regulations. As is stated in their preface, in the past the Secretary and his representatives have dealt with petitions by Native groups for original recognition as tribes on an ad hoc basis and with the understanding that such petitions called for an execise of discretion.

Given the policy of the present Administration to cut down rather than increase the number of administrative regulations, we question whether the fact that the number of such petitions has increased is enough to justify the promulgation of another set of regulations to govern the performance of what is inherently a highly discretionary function.

When a group petitions for original recognition as a tribe, it seems to us that the critical questions the Secretary and his representatives should ask are: (1) are the members of the group truly Native Americans, i.e., descendants of people who were living in the territory of

the United States before its colonization by Europeans, and (2) do the advantages that would result to the group from recognition as a tribe outweigh the considerations, if any, militating against recognition?

If these questions are answered in the affirmative, recognition should generally be extended, without reference to further artificial standards. After all, the decision whether or not to extend recognition to an applicant group should turn on an assessment of the ratio of the social costs to the social benefits, not on ethnosocial or ethnohistorical considerations of interest to a hand full of sociologists and anthropologists, and to no one else.

If it appears that the members of an applicant group are legitimately Native Americans and that the benefits they would receive from recognition outweigh any disadvantages to be perceived from granting it, then it strikes us that it is largely irrelevant whether the group (1) "[m]anifests a sense of social solidarity"; (2) "[h]as as members principally persons of common ethnological origins"; (3) "[e]xercises political authority over its members"; (4) [h]as a specific area which the group either presently inhabits or has inhabited historically"; or (5) "[h]as as members principally persons who are not members of any other Indian tribe."

Again, such considerations may fascinate anthropologists, but in our view they have no bearing on the essential issue posed by a request for recognition, i.e., whether a group of Native Americans would be advantaged by its grant.

Additionally, several of these criteria are nebulous in the extreme and, if they were applied to presently recognized tribes, could not be met by many.

As a practical matter, how does one determine whether a group "[m]anifests a sense of social solidarity"? Intense factionalism is a principal characteristic of some of the most powerful and dynamic federally recognized Indian tribes in the country.

What is meant by "persons of common ethnological origins"? The land area now encompassed by the United States was occupied aboriginally by peoples of four distinct major ethnic groups or races: (1) Indian; (2) Eskimo; (3) Aleut; and (4) Polynesian. These major groups can be divided and redivided according to various arbitary systems, almost ad infinitum, into families, cultures, tribes, bands, clans, etc., etc., etc.

All persons possessing Indian blood quite literally are of common ethnological origin; they are descendents of members of the same race.

At a more discreet level, the Indians of interior Alaska and the Apaches of the Southwest are members of the same Indian family, the Athapascan.

On the other hand, several of the principal modern recognized tribal entities are made up of descendants of several aboriginal tribes which, historically, were not only separate and distinct major entities but, in some cases, were mortal enemies.

Although Indian tribes are held to possess such powers of internal sovereignty as have not been taken from them by Congress, most of the authority they exercise over their members is not political in nature. It stems not from sovereignty but from the ownership of land and other property, and from the power of any voluntary association to regulate the conduct of its members in relationship to the group.

To exercise truly political authority, an Indian tribe must first be recognized as such by the United States and, as a practical matter, must be based on a reservation largely exempt from the jurisdiction of any of the several states. While theoretically tribal sovereignty (political authority) is not derived from the United States, it can not have been exercised for the last 100 years in the absence of recognition by the United States of tribal status. Thus, to require a group petitioning for recognition to show that it is currently exercising political authority over its members, is to require the impossible. And, in any event, it is hardly to be supposed that any Native group currently seeking recognition would ever exercise much political authority, properly so-called, over its members. It could, however, be expected to benefit greatly from certain of the non-authoritarian attributes of sovereignty, of which recognition would confirm its possession, such as immunity from suit and certain forms of taxation.

What is the meaning of the requirement that the group have "a specific area which [it] either presently inhabits or has inhabited historically"? Would 25 families of Mohawk high steel workers living in a condominium in the Bronxs qualify? Every person who is descended from peoples who were living prior to the 17th Century in what are now the contiguous 48 states, possesses the blood of the Indian race and, historically, that race inhabited the "specific area" now encompassed by such states.

If a group of American Natives, having a community of interests and living, say, in the Seattle area, petitions for recognition as a tribe, and it appears they would be significantly benefited as human beings by being accorded such recognition, why in the world should they be ineligible simply because a substantial number of them are also members of other tribes, particularly tribes with a locus distant from Seattle.

The proposition that an individual should not be a member of more than one tribe did not originate with American Natives but with the bureaucracy. Aboriginally, dual membership was not uncommon. The bureaucracy's disapprobation of it arose during the era when tribes were receiving judgments against the United States that were distributed per capita. It was concluded as a matter of policy that, generally, an individual should not share in the recovery of more than one tribe.

But the reasons for the policy would seldom, if ever, apply in the case of a group now petitioning for recognition. And, in any event, duplication of entitlement to benefits can be guarded against in more direct and less arbitrary ways than decreeing that individuals cannot be members of more than one tribe.

The Native group in Seattle composed, perhaps, of individuals who are variously members of the Navajo, Mescalero, Crow, Sioux, Tlingit and other tribes will likely be seeking benefits through recognition that are totally unrelated to any they are entitled to receive as members of their parent tribes.

We believe the proposed regulations are unnecessary and unwise. As applied to Native groups seeking recognition as an original matter, they would encumber rather than

assist the exercise of sound discretion. The criteria they employ are largely those developed by sociologists and anthropologists for purposes that are wholly foreign to the human and social cost-benefit issues that a contemporaneous petition for recognition properly poses.

Sincerely,

Raymond E. Paddock, Jr.
President

ac R 7/20/77

THE 13TH REGIONAL CORPORATION

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July 18, 1977

Director, Office of Indian
Services
Bureau of Indian Affairs
18th & C Streets, N.W.
Washington, D.C. 20245

RE: Procedures Governing Determination of Indian Group as a Federally Recognized Indian Tribe

Dear Sir:

These comments are being submitted on behalf of The 13th Regional Corporation. The 13th Regional Corporation is a corporation created pursuant to the Alaskan Native Claims Settlement Act, consisting of over 4,000 shareholders who are of Indian, Aleut or Eskimo extraction. All the shareholders of The 13th Regional Corporation are, or were at the time of enrollment, Alaskan natives living outside of the state of Alaska.

The 13th Regional Corporation has a distinct interest in the subject matter covered by the proposed rulemaking by the Department of Interior, Bureau of Indian Affairs, to be designated part 54 of line 25 of the Code of Federal Regulations.

In the past year, The 13th Regional Corporation and its sister organization, Al-Ind-Eska-A, Inc. have taken an important role in planning for and commencing the delivery of social services to non-resident Alaskan natives. The scope of the regulations will clearly affect the planning for and provision of services to the members of The 13th Regional Corporation and other non-resident Alaskan natives.

The 13th Regional Corporation believes that the proposed regulations as noticed in the Federal Register of Thursday, June 16, 1977, ought not to be applicable to determinations with regard to tribal status of Alaska native groups. The 13th Regional Corporation believes that Alaska native groups, are unique with regard to the question of tribal status, and that the proposed rulemaking encompasses criteria which are not applicable to them.

The 13th Region believes that this position is supported by the unique status that regional corporations were accorded in the Indian Self-Determination and Education Assistance Act, PL 93-638. Section 4(b) of that Act provides:

> "'Indian tribe' means any Indian, Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claim Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their tribal status as Indians."

Obviously the question of whether Alaskan native regional corporations are or are not included within the term "recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians" is complex. The resolution of that question, however, must take into consideration the fact that Alaskan native corporations were given special status for eligibility for provision of social services by BIA in the Self-Determination Act, and in the savings clause, §2(c), of the Alaskan Native Claims Settlement Act. For example, former Commissioner Thompson, testifying on the fiscal year 1977 BIA appropriations stated:

> "As you know, Alaska is very unique. In the Indian Claims bill, or Native Claims bill that passed, it does away with the reservation situation and it complicates what we consider a reservation in Alaska for purposes of administering Bureau programs."
> Hearings on Fiscal Year 1977 Before the Committee on Appropriations, Part III, 94th Cong., 2d Sess., at 705 (1976).

That discussion, in relationship to the Indian Financing Act, indicates that the question of the tribal status of Alaskan natives is unique and different from the question as to tribal status in the lower 48. Therefore, The 13th Regional Corporation respectfully request that the rule-making noticed in the Federal Register be limited to non-Alaskan native groups until such time as a complete examination of the question with regard to Alaska Native Regional Corporations is undertaken.

Very truly yours,

Raymond E. Combs, Jr. by

Raymond E. Combs, Jr.
Sr. Vice President-Director

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East Of The Mississippi River

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Arthur R. Turner
Principal Chief
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JULY 16. 1977

DIRECTOR. OFFICE OF INDIAN SERVICES
BUREAU OF INDIAN AFFAIRS
18th and C STREET N.W.
WASHINGTIO, D.C. 20245

Dear Sir:

in reguards to your letter and proposed regulations of July 20. 1977. for indians to be recognized as an indian tribe. Ihave read and studied these proposed regulations and I think that for the best Interest to all the Tribes under review. these proposed regulations are very good and I appreciate them very much as thay are.

Sincerely.

Arthur R. Turner

Arthur R.Turner. Chief

29-1

440

702 Laurel Drive
Everett, Washington
98201
July 16, 1977

Rcle 7/25/77

Director, Office of Indian Services
Bureau of Indian Affairs
13th. & C Street
Washington D.C., 20245

Dear Sir,

May I offer my comments on the proposed rules for addition to 25 CFR setting forth the procedures for federal tribal recognition. Although I am an employee of the BIA at the Western Washington Agency, I am offering these comments as an individual; they reflect only my personal opinions and are not in any way intended as the opinion of our Agency or Area offices. I offer these comments as over the past three years I have researched the recognition question as it relates to various Western Washington Tribes, including some which have petitioned the Court for off-reservation fishing rights and for some which have not yet done so.

First, Section 54.7(a) states that the review of the petition shall include "...an opportunity to present oral arguments." This section should be expanded to delineate the individual or quasi-judicial body before whom the arguments are to be presented. Consideration of who or what this body should be should be considered in conjunction with appeal procedures, upon which I will also comment later in this letter.

Secondly, the time period found in this section should be shortened, and the one year limitation period found in Section 54.3 should be eliminated entirely. There is no practical or legal basis for the imposition of a time limit for the filing of a petition. There are Tribes which are still becoming aware that they may be able to file for recognition and, indeed, there are in all likelihood Tribes which do not yet even know that they have this right. Therefore, it is my suggestion that the regulations be changed to clearly indicate that there will be no time limit for the filing of the petition. It is my opinion that after a petition is filed it should be disposed of sooner than three years, and I would suggest, perhaps, two years. The two year period would be particularly appropriate for those petitions which are already pending; assuming, of course, that the petitioners be given ample additional time to amend their petitions to conform to the regulations as ultimately approved.

Section 54.8 requires that paragraphs (1) thru (5) & (10) of Section 54.7(c) be satisfied. I offer these comments on the first five criteria Section 54.8. The phrase "...manifest a sense of social solidarity." is particularly vague. This vagueness appears to allow an inordinate amound discretion by the Commissioner, especially in light of the fact that there

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no appeal right allowed for a final factual determination of the Secretary.

The comments of the preceeding paragraph apply equally to (3) wherein the phrase "....exercises political authority over its member." appears. The term "political authority" is inordinately broad. Is it meant to encompass all those political authorities that other, non-Indian, governental bodies exercise? Or, does it refer to political authority in the sense of that exercised by existing recognized Tribes? Circular reasoning arises because of this criteria: A currently unrecognized Tribe probably can not exercise any political authority in the legal sense over its members because the power to do so arises, in all likelihood, only from the fact of recognition. Thus, this particular requirement would seem to impose an impossible burden. How could a Tribe exercise political authority when it has not been granted the power to exercise such political authority; stated differently, when it has not yet been "recognized" as being able to exercise political authority. The retention of this requirement with such a possible future interpretation would make it a practical impossibility for a Tribe to become recognized because they would never be able to break this "Catch 22" circle.

Section 54.7(c)(4) is objectionable to me in that it imposes some sort of a geographic area in which the group must live. Why should a potentially viable tribal organization be penalized because their ancestors did not allow themselves to be removed to reservations? Why should there not be urban Tribes? It would be less objectionable should it require only some sort of residence in a previously ceded treaty area or some such similar limitation.

As a philosophical aside, why should not a terminated Tribe be able to at least petition for federal recognition?

Regarding Section 54.7(c)(6) thru (10), I would suggest an additional subsection which would incorporate the idea that the petitioning Tribe has fulfilled the one of the new (6) thru (11) criteria if it has been determined by a court of competent jurisdiction to be entitled to exercise a right under a treaty. (Under the criteria as listed, is an award by the Indian Claims Commission sufficient?) In fact, my suggested new (11) has arguably been administratively accepted as a criteria in the Stillaguamish case and why, therefore, should it not be included as a criteria here?

As aluded to above, there should be a more definite appeals procedure set up: perhaps an administrative body having quasi-judicial authority to make factual determinations. Consideration should also be given to the question of whether or not such a body should be governed by the Administrative Procedures Act or, alternatively, whether the petitioner should be allowed the opportunity to have a de novo right of appeal to a federal district court.

Thank you for reviewing my comments and for any consideration you may give them.

Sincerely yours,

Gosta E. Dagg

Gosta E. Dagg

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
TULSA REGION
P. O. BOX 3156
TULSA, OKLAHOMA 74101

INTERIOR DEPT.
JUL 18 1977
SOLICITOR'S
DOCKET

July 15, 1977

Memorandum

To: Associate Solicitor, Indian Affairs

From: Regional Solicitor, Tulsa Region

Subject: Proposed Regulations Governing the Determination that an Indian Group is a Federally Recognized Indian Tribe

The comments which follow are furnished in response to your memorandum dated June 22, 1977, on the above subject, and are based on our review of the draft of the proposed regulations which were furnished with your memorandum.

It is our view that the proposed regulations, in their present form or any conceivable alternate form, would create more problems than they would solve. This belief is based on our concurrence in most of the assertions and conclusions set forth in the proposed undated 76-page Solicitor's Memorandum Opinion to the Secretary which was received with the memorandum dated September 24, 1976, from the Associate Solicitor, Indian Affairs, to Commissioner Thompson and others.

It is my recommendation, therefore, that no further action be taken toward promulgating or publishing the proposed regulations. It is my further recommendation that the Bureau of Indian Affairs continue the procedure of making individual responses to requests for tribal recognition after securing appropriate legal review.

However, in the event some version of the proposed regulations is adopted, it is recommended that consideration be given to the following suggestions for changes:

1. Cause the title of the regulations to be revised to read:

"PART 54--PROCEDURES FOR OBTAINING ACKNOWLEDGMENT THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE"

Comment: Use of the word "determination" in a former draft of the proposed regulations has appropriately been abandoned in most of the text. In this connection, the word "conclusions" should be substituted for the word "determination" in the four places where it occurs in § 54.8(d).

(27)-5

2. Unless the text of the draft is revised to include the word "Bureau," eliminate § 54.1(c) and make appropriate redesignations of the subsections which follow.

Comment: Definition of a word which does not appear in the text of the regulations is considered inappropriate.

3. Cause § 54.1(e) to be redesignated as appropriate, and substitute the word "organization" for the word "community."

Comment: The word "community" has geographical connotations which should not exclude groups which may petition for acknowledgment. To the extent that geographical considerations are appropriate for responding to a petition, § 54.7(c)(4) should be adequate.

4. Cause § 54.1(f) to be redesignated as appropriate, and revised to read:

> "'Federally Recognized Indian Tribe,' referred to also herein as 'Federally Recognized Tribe,' means an Indian group which has been acknowledged by the Secretary as having sufficient characteristics in common with traditional Indian tribes to be within the class for whom the laws of the United States provide benefits based on the status of the group or its members as Indians."

Comment: Insertion of the term "domestic dependent sovereign" in this definition adds nothing but confusion, and should be deleted. The meaning of the term is vague, and no reference is made to it in other sections of the regulations. An applicant group may qualify for acknowledgment by meeting the standard set forth in § 54.8(b) without necessarily being a "domestic dependent sovereign." A significant problem which will be created by the regulations is the probability that Indian groups and their officials and members will assume that acknowledgment under the regulations will automatically confer upon them the full scope of rights and powers enjoyed by many traditionally recognized tribes, including legislative jurisdiction over numerous civil and criminal matters; such an assumption is not justified because many rights and powers are dependent on factors other than Federal recognition, and any reference to a "domestic dependent sovereign" intensifies this misconception.

5. Cause § 54.2 to read:

"(a) The purpose of this part is to establish policy and procedures for acknowledgment by the Department that Indian groups have or do not have the status of federally recognized Indian Tribes.

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(b) Any Indian group which believes that the Department had acknowledged such status prior to the date of publication of this part in the Federal Register may request from the Commissioner that he confirm or deny that such status was acknowledged before that date. If the Commissioner confirms in writing that such prior acknowledgment has been made, the procedures in this part will be inapplicable. If the Commissioner denies in writing that such prior acknowledgment has been made, the procedures in this part shall be applicable to the group.

(c) Acknowledgment by the Secretary or the Commissioner that an Indian group is a federally recognized Indian tribe shall entitle the tribe and its members to such benefits as the laws of the United States provide because of their status as Indians but does not increase or decrease any benefits provided by law based on factors other than Federal recognition."

Comment: This eliminates the reference to "determining." It also provides a relatively uncomplicated procedure under which a particular Indian group can establish whether it acquired "Federal recognition" before the regulations were issued or must follow the procedures set forth. It further dispels the notion that the regulations provide benefits based on factors other than Federal recognition.

6. In § 54.3, substitute the words "should be acknowledged to be" for the words "has the status of", and eliminate the words "within one year from the effective date of these regulations."

Comment: The phrase last quoted should be eliminated because it attempts to impose an administrative requirement in the nature of a "statute of limitations." Unless a firm statutory basis for this administrative action can be discovered, it probably would not be upheld by the courts. In practice, it would allow leaders in control of a group during the limitation period to impose their opposition to federal relationships upon their successor leaders in later years, regardless of the subsequent needs of the tribe for the benefits of Federal recognition. In any event, if the limitation is to be included in the regulations, it should be stated in a separate subsection with an appropriate title to give it the significance that such a drastic provision deserves.

7. In the last sentence of § 54.7(b), the words "timely filed" should be omitted and the words "from the date of filing the petition" should be substituted for "from the date of these regulations," in the event the limitation on filing time is deleted from the regulations.

8. The standards set forth in § 54.7(c)(1) and (3) should be stated in more precise terms.

Comment: Administrative determinations that a group "manifests a sense of social solidarity" and "exercises political authority over its members" probably would not follow a consistent pattern because of the vagueness of the standards. We are unable to draft substitute definite language which is considered adequate.

9. In § 54.7(c)(2), substitute the word "only" for the word "principally."

Comment: Because of the favored status of Indians, persons who are not Indian should be excluded from that class, notwithstanding traditional adoption or similar practices of the group. In addition, consideration should be given to requiring a minimum degree of Indian blood to qualify for membership in a recognizable tribe.

10. Cause § 54.7(c)(4) to read:

"Inhabits a specific area or its members are descendants from an Indian group which historically inhabited a specific area."

Comment: This permits recognition if ancestors historically inhabited a specific area, even though they at that time did not constitute the applicant group.

11. Eliminate § 54.7(c)(5) as originally drafted, and redesignate the original § 54.7(c)(10) to be § 54.7(c)(5).

Comment: Numerous tribes have been "terminated" by statute, some of which (such as the Choctaw) have been restored to their prior status by statute and others (such as the Menominee and Klamath) have been judically recognized to have continuing rights as a group for certain purposes. The redesignation is appropriate to include all essential standards in a continuous sequence for reference purposes in § 54.8.

12. Eliminate that portion of § 54.7(c)(7) which follows the words "judicial decision."

Comment: Obviously the legislative history could not "designate" a tribe.

13. In § 54.7(c)(9), after the word "services" in the first line, add the words "because of its Indian status" and delete the portion in parentheses.

Comment: Services furnished to the general public not related to Indian status are not relevant considerations for recognition as a tribe. A requirement for specification of the "exact" nature and extent of services is unreasonable.

14. Revise § 54.8(b) and (c) to read:

"(b) The Commissioner shall conclude that an Indian group is a federally recognized Indian tribe if the group meets all of the standards set forth in paragraphs (1) through (5) of § 54.7(c) and also meets one of the standards set forth in paragraphs (6) through (9) of § 54.7(c).

(c) The Commissioner shall conclude that an Indian group is not a federally recognized Indian tribe if the group fails to meet any one of the standards required to be met by § 54.8(b)."

Comment: These subsections as drafted are ambiguous. In any event, the erroneous reference in § 54.8(c) to "§ 54.7(b)" should be corrected to read "§ 54.7(c)."

15. In the four places in § 54.8(d) where the word "determination" appears, substitute the word "conclusions."

Comment: This eliminates use of the word "determination" which is the practice followed in the present draft of the regulations.

Please advise if we can be of further assistance in this matter.

Raymond F. Sanford
Regional Solicitor

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15 July 1977

Rec'd 7/18/77
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Director of Indian Services
Bureau of Indian Affairs
18th and 'C' Streets, N.W.
Washington, D. C. 20245

Dear Sir:

I am writing to you on behalf of California Indian Legal Services, which is a federally-funded legal services program which has provided full legal representation to eligible individual California Indians and Indian Tribes for about ten years. We have represented dozens of Tribes and hundreds, if not thousands, of individuals, and frequently encounter problems dealing with federal recognition of Tribes and eligibility of individual Indians for federal services. For this reason, CILS wishes to comment on the proposed "Procedures Governing Determinations that Indian Group is a Federally Recognized Indian Tribe" published on June 16, 1977 at 42 F.R. 30647.

Our comments appear below and are divided into the following sub-categories: (1) general comments, (2) comments on specific provisions, and (3) comments on the internal consistency of the proposed text.

GENERAL COMMENTS

1. The 30-day period for the receipt of comments is far too short. CILS has been unable to contact certain unrecognized groups (e.g., the San Juan Capistrano Tribe, various Chumash Bands, etc.) even to inform them of the publication of the proposed regulations, much less to solicit and convey their views. This topic is at least as important and should be subject to at least as full an airing as the proposed regulations regarding water codes on reservations. The period for receipt of comments on those proposed regulations has been extended well beyond its initial 30 days in order to allow full comment by all affected parties; the period on these proposed regulations should be at least as long, considering the fundamental and sweeping nature of the

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issue. Given more time, CILS could present the views of presently unrecognized tribes to you. Due to the shortness of time, all we can present is what we think our clients' views might be if they had been contacted, had had time to consider the question, and had had time to formulate their views.

2. The regulations purport to address only the issue of federal recognition for tribes. However, it is likely that the non-recognition of an individual Indian's tribe will be used by federal agencies (and perhaps others) to deny federal services and federal benefits to the otherwise eligible individual. This is in disregard of the Snyder Act (25 U.S.C. §13) which authorizes such services and benefits for "Indians throughout the United States", not only for Indians whose tribes are federally recognized. See the Court of Appeal's rejection of the narrow reading of "tribe of Indians" as only federally recognized tribes, rather than all tribes, in 25 U.S.C. §177. Joint Tribal Council of the Passamoquoddy Tribe v. Morton, 528 F.2d 370 (1st Cir., 1975).

Thus, we urge that a proviso be added to the regulations to the effect that no individual's right to or eligibility for services or benefits from the United States shall be impaired by reason of his tribe's lack of federal recognition.

3. The American Indian Policy Review Commission (AIPRC) has proposed procedures under which a non-recognized Indian group can seek and obtain federal recognition. These procedures were developed after extensive research, and after contacts with and input from individual non-recognized tribes. Hearing on the proposed recommendations are scheduled for September of this year before the Senate Select Committee on Indian Affairs.

In many respects, the AIPRC procedures provide a broader-based, more realistic, and more flexible approach to the subject of federal recognition than do the proposed regulations. It is strongly recommended that approval of the proposed regulations be deferred until the Senate hearings are conducted on the final AIPRC report on Unrecognized Tribes.

4. The regulations also ignore a crucial fact: the government which now purports to confer recognition on certain select Indian groups (those who can meet the federal criteria) is the same government which historically was

instrumental -- through termination legislation, incompetent administration of Indian affairs, neglect and ignorance -- in causing the disintegration of the culture and social and political cohesiveness ("sense of social solidarity" if you may) of these and other Indian groups. It is indeed ironic that the federal criteria for recognition, contained in §54.7(c), reflect many of those same elements of tribal existence which the federal government actively sought to destroy. Because of this, the regulations should include remedial provisions for Indian groups who cannot satisfy the criteria enumerated in §54.7(c).

Many Indian tribes in California have been splintered, factionalized and, in some instances, have ceased to exist as such, because of the affirmative efforts (termination), as well as neglect, of the federal government. These Indian groups should be afforded the opportunity, through remedial provisions, to establish the reasons why they cannot satisfy the federal criteria for federal recognition. If these reasons are directly related to past actions by the federal government, there should be a mechanism for waiver of certain criteria depending upon the circumstances of the petitioning group.

SPECIFIC COMMENTS

1. Section 54.2

The language of §54.2, disclaiming application of the proposed regulations "to any group which has already been recognized by the Secretary of the Interior", creates a major ambiguity in the proposed regulations.

Historically, the process of obtaining recognition by the federal government has not been characterized by definite criteria or established procedures. Tribes have obtained recognition through various avenues, many of which were untainted by the type of formalistic approach which is proposed today. In the past, the process of recognition has often been adopted to accommodate the unique history and circumstances of a particular tribe, rather than requiring the tribe to sustain the burden of tailoring itself to fit criteria devised by the federal government, criteria which purport to be applicable to all tribes whatever their cultural, historical, ethnological, and geographical origins and characteristics.

Many times "recognition", in a broad sense, has

been accorded an Indian Group at an administrative level far removed from the Office of the Secretary of the Interior. BIA local and area office officials, working on a day-to-day basis with Indian groups, "recognized" tribes, even where official recognition by the Department of the Interior was not forthcoming. In other instances, recognition is evident from the actions of the federal government in dealing with a particular Indian group, despite the absence of formal recognition by the Secretary of the Interior. The Death Valley Shoshone Band is an excellent example of de facto recognition. It appears as though all of these groups will have to proceed under the proposed regulations in order to obtain recognition "by the Secretary of the Interior". Because of this, §54.2, as drafted, does not have the definitional flexibility to accommodate the various approaches which have, in the past, been used to establish federal recognition.

2. Section 54.3

Although this point is not clear in the proposed regulations, §54.3 implies that all petitions for recognition must be filed within a one-year period, and those not filed within that period, even if otherwise meritorious, would be rejected solely for lateness. This deadline would work a great hardship on those groups who do not hear of the requirement in time, or who are unable to prepare a properly-documented petition in time.

Similar one-year filing periods in the past have proven disastrous for California Indians. E.g., their unwitting failure to register their pre-1848 land titles under a 1851 statute establishing a federal commission to register all such land titles cost California Indians nearly all of their aboriginal lands; see the Supreme Court's glib description and endorsement of this casual assault on the Indian land base in California in Barker v. Harvey, 181 U.S. 481 (1903), which authorized the U. S. Cavalry to forcibly oust the Cupeno people from their ancestral lands for failure to register their title within a similar one-year period which had never been brought to their attention.

A more recent debacle concerns the original one-year period for the filing of applications for individual California Indians to share in the award of the Court of Claims which was intended to compensate them for the loss

of their ancestral lands for reason such as that just described. See 25 U.S.C. §§659-663 and 25 C.F.R. §43e in general, and 25 U.S.C. §663 and 25 C.F.R. §43e.5(a) in particular. Many thousands of California Indians did not learn of this one-year filing period (ending on September 21, 1969) in time to file properly-documented applications, and were thus denied their share of this pittance of their birthright because of the one-year deadline. CILS represents 2,089 of these late applicants in Angle, et al. v. Andrus, et al., U.S.D.C., E.D. Cal., No. S02867-TJM, a class action in federal court seeking damages for the federal government's mismanagement of the one-year deadline.

In short, given the disastrous consequences of similar one-year filing periods on California Indians, we urge that there be no time restriction, at all. If there must be a time limit, it should be much longer than one-year (perhaps 10 years as AIPRC has recommended) and it should be accompanied by a vigorous campaign to inform potential petitioners of the deadline, and there should be a provision applying the deadline only to those groups who are contacted and informed of the deadline and who affirmatively choose not to petition.

3. Section 54.6

§54.6 implies that all petitioning groups must have a functioning tribal government, a current membership roll, and organic documents. This is a heavy, unfair, and unreasonable burden on tribes which, often due to the conduct of the United States itself, lack these attributes. This requirement is particularly harsh, unnecessary, and irksome in the case of tribes who lack these attributes but are still otherwise qualified for federal recognition. For example, the Yurok Tribe in California is definitely federally recognized (see Short v. U. S., 486 F.2d 561, Ct. Cls., 1973) but would be ineligible for such recognition under these regulations because it lacks a functioning tribal government, a tribal roll, or other organic documents.

Therefore, §54.6 should encourage the submission of such items, but should not require them to be submitted if not available.

4. Section 54.7(b)

It will be impossible for the Commissioner to prepare the individual written reports required by §54.7(b) for persons who, like the 2,089 plaintiffs in Angle, et al. v. Andrus, et al., supra, cannot demonstrate their ancestry because the BIA rejected their applications to have this ancestry recognized solely for lateness in filing, and not on the merits. For such persons as these, the regulations should be amended to require the Commissioner to make a determination of the substantive merits of each such individual's application to share in an award of the Court of Claims, whether he considers that application to be timely or not, and to provide a copy of it to each of the members of the petitioning group within a short stated time after the receipt of the petition, so that the individuals and petitioner may submit further data if appropriate.

This provision should also be amended to require the Commissioner to make his findings and conclusions within a specific period of time subsequent to receipt of a petition.

5. Section 54.7(c)

More than one test/approach should be used in making the decision on federal recognition. This would provide more flexibility than presently exists under the test proposed in §54.8(b). The following two approaches are recommended, in addition to the above-referenced remedial provisions:

(a) An Indian group should be allowed to establish its status as a domestic dependent soveriegn by satisfying criteria (1) - (5) and (10) of this section. By eliminating the additional requirement that one of criteria (6) - (9) also be satisfied, this approach would enable Indian groups which have maintained historical and cultural unity, despite being ignored or neglected by the federal government, to establish that they are entitled to formal recognition. However, vague terms and phrases, such as "sense of social solidarity" (criterion (1)) and "political unity" (criterion (3)) should either be clarified or construed in a sense favorable to the petitioning group.

(b) An Indian group which can establish that it

satisfies one or more of criteria (6) - (9) of §54.7(c) is entitled to a presumption that it is a domestic dependent sovereign. This presumption is a realistic one because an Indian group which can establish at least one of criteria (6) - (9) will most likely be able to satisfy criteria (1) - (5) and (10), but the converse would not necessarily be true. Once the presumption is established (by submitting a petition with supporting documentation), the burden would then be upon the federal government to establish that the petitioning group does not satisfy criteria (1) - (5) and (10).

By allowing such a presumption, the recognition process would, presumably, be expedited for those Indian groups that can easily meet criteria (1) - (5) and (10) as well as one of criteria (6) - (9).

Under both approaches, procedures should be developed specifying a time period during which the Commissioner is to submit proposed findings and conclusions. An additional time period, during which the petitioning group may submit new evidence or comment, as appropriate, before the Commissioner enters his final findings and conclusions, should also be included.

6. Section 54.7(c)(5)

This section is ambiguous. All of the 40 + rancherias in California were "the subject of Congressional legislation terminating the Federal relationship" (i.e., the Act of August 18, 1958; 72 Stat. 619, as amended). Does this mean that no such terminated rancheria can petition for federal recognition, even a rancheria whose termination has been declared illegal and void? See e.g., Duncan, et al. v. Andrus, et al., U.S.D.C., N.D. Cal., Nos. C-71-1572-WWS and C-71-1713-WWS, final judgment entered March 22, 1977. The regulation should be amended to allow a petition to be filed at any time by such a group if its termination is, or may be determined to be, void, voidable, or otherwise illegal or unauthorized.

7. Section 54.8(d)

This section should be amended to make clear that a "final" determination by the Commissioner or Secretary is

"final" within the administrative context, but not "final" in the sense of prohibiting judicial review under the normal devices for judicial review of administrative action, such as the Administrative Procedure Act (5 U.S.C. §701, et seq.).

COMMENTS ON INCONSISTENCIES IN THE TEXT

The use of the phrase "federally recognized Indian tribe" throughout the proposed regulations is inconsistent with the definition given that phrase in §54.1(f).

"Federally Recognized Tribe" is defined as

> any Indian group within the United States that the Secretary of the Interior acknowledges to have had and should continue to have the status of a domestic dependent sovereign. [Emphasis added]

By its terms, the definition states that acknowledgement of status by the Secretary is the formal and final step in obtaining federal recognition. Under the proposed regulations, acknowledgement of a certain status - that of a domestic dependent sovereign - is recognition.

The text of §54.6(a) is, therefore, misleading because it states that a recognition petition should include facts which

> the petitioners believe will establish that their group is a federally recognized Indian tribe . . .

How can an Indian group produce facts establishing that they are a recognized Indian tribe if acknowledgement by the Secretary confers recognized status, and acknowledgement is the very act they are petitioning for? This question is even more perplexing in view of §54.2 which states

> these regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

To resolve this ambiguity, the phrase "domestic

dependent sovereign" should be substituted for the phrase "federally recognized Indian tribe" in §54.6(a). That section would then read:

> A statement of the facts and arguments which the petitioners believe will establish that their group is a domestic dependent sovereign which has been and should continue to be dealt with as such by the United States.

These same amendments should be made to the language of §54.4, §54.7(a), and §54.8(a).

The use of the phrase "federally recognized Indian tribe" in §54.8(b) and §54.8(c) is equally confusing. How can the Commissioner determine that an Indian group is or is not federally recognized when recognition requires acknowledgement of a certain status - that of a domestic dependent sovereign - by the Secretary? It would be more accurate again to substitute the phrase "domestic dependent sovereign" for the phrase "federally recognized Indian tribe". The Commissioner would then be making the determination, based on the criteria contained in §54.7(c)(1)-(10), that the Indian group is a domestic dependent sovereign. This determination could be upheld or rejected by the Secretary. If the Secretary failed to act within the 30-day period specified in §54.8(d) then the petitioning group's status as a domestic dependent sovereign would then be deemed acknowledged, thus satisfying the definition of "federally recognized tribe" set forth in §54.1(f). Accordingly, the second sentence of §54.8(d) should be amended to read:

> If the Secretary takes no action within such thirty-day period, the Commissioner's determination shall be final, and the petitioning group's status as domestic dependent sovereign shall be deemed to be acknowledged by the Secretary.

* * *

We hope that these comments will assist you in preparing a set of final regulations which will enable groups of California Indians to seek federal recognition in a way which will not impose unreasonable or unnecessary burdens

on them and will not require them to make a higher or more burdensome showing than Indian groups elsewhere. If we can be of further assistance, please feel free to call on us.

Sincerely yours,

STEPHEN V. QUESENBERRY
ART BUNCE

SVQ/sw

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ack 7/20/77

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July 7, 1977

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Director,
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Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D. C. 20245

Re: Proposed Procedures Governing Determination that Indian Group is a Federally Recognized Indian Tribe.

Dear Mr. Director:

On Thursday, June 16, 1977, the Department of Interior, Bureau of Indian Affairs, published in 42 Federal Register 30647-30648 proposed rules governing the method by which the Department of Interior would make determinations that certain Indian groups were or ought to be Federally Recognized Indian tribes. Comments on the proposed regulations are required to be submitted before July 18, 1977. We have reviewed those pr- posed regulations and would offer the following comments.

Officials of the State of Maine have for many years adv Federal recognition of the Indians in Maine in order that the Indians might receive the benefit of programs which, althou created to improve the social and economic condition of all Indians, have traditionally been only used for the benefit western Indian tribes. That position by elected officials Maine long predates the initiation of the current pending I land claims litigation. The current proposed regulations as they appear to provide a procedure whereby any Indian gr might become Federally recognized is consistent with this standing position by the State of Maine. I therefore beli proposed regulations to be a fair and equitable approach a would in general support their adoption.

However, the regulations as drafted do create several which I believe can be cured without interfering with the objective of the Department of Interior.

(10)-3

As noted above, I understand that the purpose of recognition would be to make Indian groups in Maine eligible for receipt of benefits pursuant to special Indian legislation. The purpose of the regulation is not to effect or have any impact upon pending land claims or other suits by Indian tribes or groups wherever located. Nevertheless, it is possible that as currently drafted the regulations may have precisely that impact. The definition of "Federally Recognized Tribe" in § 54.1(f) is so worded that the granting of such status to a tribe might well be used as an after-the-fact argument by a tribe or group of Indians in litigation in Maine or elsewhere that for purposes unrelated to the intent of this regulation the particular tribe or group of Indians was as a matter of law entitled to particular status in litigation.

Specifically, one of the issues raised in both the Maine and Massachusetts land claim litigation is the question of whether or not the plaintiff "tribes" are tribes within the meaning of the Nonintercourse Act, 25 U.S.C. § 177. The standard by which tribal status is to be determined under the Nonintercourse Act or any other act which creates certain legal rights for the Indian groups are complicated both factually and legally. Indeed the standard for tribal status appears to have changed significantly over the last 200 or 300 years. All of these issues have yet to be resolved in any actual litigation. It is possible, however, that the extension of Federal recognition under the proposed regulations in 25 C.F.R. Part 54 might be used by an Indian group to argue that they were a tribe for purposes of the Nonintercourse Act or other similar acts.

I believe that it is appropriate to adopt a regulation which would make the Maine and Massachusetts tribes eligible for Federal programs but that it would be most unfair to promulgate a regulation which would conceivably have some effect on the pending land claims. I therefore urge you to amend the definition of "Federally Recognized Tribe" by

(1) deleting the phrase "domestic dependent sovereign"

(2) inserting specific statutory references to federal Indian aid programs to which such Federal recognition would apply, and

(3) adding to the definition a proviso that:

> "provided, however, that such Indian group shall be deemed to be a tribe only for the purposes of eligibility for federally funded programs designed to provide social, economic,

> educational or other similar assistance to such groups and that such Indian groups shall not be deemed by these regulations to constitute a tribe for any other purposes."

I believe that amendment of the proposed regulations as suggested above would achieve the end of permitting all Indian groups to be eligible for federally assisted social and economic aid programs and at the same time not affecting one way or the other any pending litigation.

I would appreciate very much your direct response to these comments and your advising us whether or not you intend to implement the same and the reasons for your decision. As I am sure you can appreciate, this is a matter of great significance to the State of Maine and other states who are facing potential claims under the Nonintercourse Act or otherwise from Indian groups.

Sincerely,

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

JEB:jg

cc: Honorable James B. Longley
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July 15, 1977

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Director, Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D.C. 20245

Re: Draft of Comments on Proposed Procedures Governing Determination that an Indian Group is a Federally Recognized Indian tribe.

Dear Sir:

Enclosed is a draft of our comments on the proposed recognition procedures. Please note that this is a draft only. Our final comments will follow shortly.

Sincerely,

Jeanne S. Whiteing

Jeanne S. Whiteing

JSW/clr
Enclosure

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COMMENTS ON PROPOSED PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED TRIBE

Jeanne S. Whiteing
Thomas N. Tureen
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
July 8, 1977

PART 54 - PROCEDURES GOVERNING THE DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE

I. General Comments.

The proposed procedures governing the determination that an Indian group is a federally recognized Indian tribe are an inadequate response to the requests by Indian groups for recognition as Indian tribes. Moreover the procedures constitute an unlawful attempt to restrict the Indian service population and the inherent powers of Indian tribes.

The concern about federal recognition on the part of many Indian groups is the result of federal policies which state that: (1) only federally recognized tribes are eligible for the protections and benefits of statutes enacted for Indian tribes; and (2) only federally recognized tribes can exercise powers of self-government. Indian groups have therefore sought recognition or acknowledgment of federal recognition as a result of these policies. For the reasons outlined below, we suggest that eligibility for benefits and protections and possession of powers of self-government turns on whether an Indian group is an Indian tribe, not on federal recognition. A determination of federal recognition then is neither necessary nor appropriate, except perhaps as an indication that an Indian group has been treated as a tribe by the federal government.

A. Eligibility for Benefits and Protections.

There are numerous statutes enacted by Congress which pertain to Indian tribes. The vast majority of these statutes

are applicable generally to "Indians" and "Indian tribes," and necessarily require a determination of those to whom the statutes apply. Since the statutes apply to "Indians" and "Indian tribes," the determination to be made in every case is whether an Indian group is in fact an Indian tribe and in the case of individuals, whether the person is an "Indian."[1/] Such a determination is purely a factual matter.

An analysis of the majority of the statutes applicable to Indian tribes generally indicates that with few exceptions these statutes are applicable by their terms to all Indian tribes without regard to whether the tribes are "recognized."[2/] Secretarial regulation of Indian affairs is itself authorized in general terms. Thus, the Secretary is responsible for directing the management of all "Indian affairs" and "all matters arising out of Indian relations." 25 U.S.C. §2. Moreover, the Secretary is authorized to expend money "for the benefit, care, and assistance of the Indians throughout the United States," 25 U.S.C. §13, and is responsible for carrying out congressional policies relating to "Indian affairs," 25 U.S.C. §9.

The bulk of federal services are provided to Indian tribes pursuant to the Snyder Act, 25 U.S.C. §13. On its face, the act applies

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[1/] In the context of these comments, we are concerned only with those statutes which apply to Indian tribes.

[2/] For a review of most of the important statutes, see Thomas N. Tureen's article, "Federal Recognition and the 'Passamaquoddy' Decision" prepared for and included in the Task Force Report on Terminated and Nonfederally Recognized Indians to the American Indian Policy Review Commission.

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to "Indians throughout the United States." Similarly, the Johnson-O'Malley Act authorizes the Secretary to enter into contracts with states "for the education, medical attention, agricultural assistance, and social welfare, including relief of distress of Indians in such state . . . ." 25 U.S.C. §452, et seq. Literally hundreds of other statutes in Title 25 make reference to Indians or Indian tribes in general terms without reference to recognition. See, e.g., 25 U.S.C. §§81, 177, 476 and 1302.

The few statutes which do refer to some type of recognition do not exclude any tribes as a practical matter. The Indian Financing Act defines Indian tribe to mean, "any tribe . . . which is recognized by the federal government as eligible for services from the Bureau of Indian Affairs." 25 U.S.C. §1452(c). The Indian Self-Determination Act refers to "any Indian tribe . . . which is recognized as eligible for the special programs and services provided to Indians because of their status as Indians." 25 U.S.C. §450b(b). Since any Indian group who can show it is any Indian tribe is eligible for some services provided by the Bureau whether it be pursuant to the Snyder Act or another act applicable to Indian tribes generally, those tribes would then come within the definition of the Indian Financing Act and the Self-Determination Act. Moreover, the Self-Determination Act indicates in its own definition that eligibility for services is predicated on a group's "status as Indians" rather than any recognition concept.

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Recently, the First Circuit Court of Appeals has had occasion to test the proposition that a statute which on its face applies to "Indian tribes" includes all Indian tribes regardless of whether the federal government has dealt with them as Indian tribes in the past. Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d 370 (1st Cir. 1975). In that case the Passamaquoddy Tribe brought an action against the Secretary of the Interior in which the tribe sought a declaration that it was entitled to federal protection under the Indian Nonintercourse Act, 25 U.S.C. §177. The Act prohibits conveyances of Indian land "from any nation or tribe of Indians" unless approved by the United States. The central question in determining the applicability of the Act was whether the Passamaquoddies were a tribe within the meaning of the Act. The court affirmed the lower court's decision that the tribe came within the Act and consequentially that there was a trust relationship between the tribe and the federal government. The court specifically found that "the absence of specific federal recognition in and of itself provides little basis for concluding that the Passamaquoddies are not a "tribe" within the Act." 528 F.2d at 378.

The Secretary of the Interior has the duty to carry out the congressional policies toward Indian tribes which are embodied in the various statutes passed for their benefit. 25 U.S.C. §2, 9 and 13. As in Passamaquoddy, the threshold question in carrying out all statutes which are applicable to Indian tribes generally is whether a particular group is an Indian tribe.

The Secretary's authority to make such a determination is clear. The Kansas Indians, 72 U.S. (5 Wall.) 737 (1867); United States v. Holliday, 70 U.S. (3 Wall.) 407 (1865); United States v. Sandoval, 231 U.S. 28 (1913). Moreover, in making this determination, the Secretary has broad authority to formulate policy and make rules.

> The power of an administrative agency to administer a congressionally created and funded program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress. In the area of Indian affairs, the Executive has long been impowered to promulgate rules and policies, [citing 25 U.S.C. §9] and the power has been given explicitly to the Secretary and his delegates at the BIA [citing 25 U.S.C. §2].

Morton v. Ruiz, 415 U.S. 199, 231 (1974).

The Secretary's discretion in carrying out congressional policies while broad is not unlimited, however. Thus, he may not adopt an interpretation of a statute which is narrower than the plain meaning. Joint Tribal Council of the Passamaquoddy Tribe v. Morton, supra; Freeman v. Morton, 499 F.2d 494 (D.C. Cir. 1974). "Any conflicting administrative interpretation to the contrary must yield to the clear provisions of the act." Id. at 501. This means that the Secretary may not interpret statutes which are applicable to Indian tribes generally to apply to recognized tribes only unless Congress indicates a specific intent to [illegible]

B. Powers of Self-Government.

Possession of powers of self-government, like eligibility for federal benefits and protections, depends on tribal existence rather than federal recognition. Powers of self-government are inherent powers of an Indian tribe. As stated by Felix Cohen in his Handbook on Federal Indian Law at 122:

> Perhaps the most basic principle of all Indian law, supported by a host of decisions . . . is the principle that those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress but rather inherent powers of a limited sovereignty which have never been distinguished.

(Emphasis in original.) See, United States v. Mazurie, 419 U.S. 544, 557 (1975). Although Congress can act to restrict a tribe's powers or abolish them completely, such action must be specific and will be interpreted strictly in favor of continuing tribal authority. See, Bryan v. Itasca County, ___ U.S. ___, 48 L.Ed.2d 710, 96 S.Ct. 2102 (1976).

As a practical matter, however, most Indian tribes would find it difficult to exercise their powers of self-government unless those powers are respected and protected by the federal government. Acknowledgment by the federal government that a group is in fact an Indian tribe with powers of self-government would aid in the exercise of the power to its fullest, but would not be necessary to a finding that the power exists in the first place.

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II. Specific Comments.

§54.1 Definitions.

(a) - (e) No Comment.

(f) Definition of federally recognized tribe.

In light of our general comments above, we suggest that this section be amended to read as follows:

> "Federally Recognized Tribe" means any Indian group within the United States which the Secretary of the Interior acknowledges to have the status of an Indian tribe and which as a result of that status: (1) is eligible for all statutory protections and benefits enacted for Indian tribes; and (2) possesses powers of self-government.

Comment: Although eligibility for protections and benefits and exercise of powers of self-government do not depend upon recognition by the federal government, we have retained the use of the word in order to insure that a distinction is not made between those tribes which have been "recognized" previously and those groups which are subsequently determined to be Indian groups. In fact, our definition assumes that all Indian tribes, upon acknowledgment of their status, will be federally recognized tribes.

We view the procedure of acknowledgment of tribal status only as a convenient administrative method for determining whether administrative statutes passed for the benefit of Indian tribes apply to particular Indian groups. Such acknowledgment is not a prerequisite for tribal status.

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§54.2 Purpose.

Although the purpose of the proposed procedures is to develop a policy and procedure for determining an Indian group's status, it should be made clear why such a determination is necessary. Therefore, we suggest that this section be amended to read as follows:

> §54.2 Purpose.
>
> The purpose of this part is to establish a departmental procedure and policy for determining which Indian groups have the status of Indian tribes and are therefore: (1) eligible for statutory benefits and protections enacted for the benefit of Indian tribes; and (2) possess powers of self-government. These regulations shall not apply to any group which has already been recognized by the Secretary of the Interior as having the status of an Indian tribe.

Comment: We have suggested that such a determination is necessary in order to determine: (1) which groups are eligible for fe[illegible] protections and services enacted for the benefit of "Indian tribes," and (2) which groups possess powers of self-governm[illegible]. There may be additional reasons for seeking a determination [illegible] a group's status, but the above reasons are by far the most important.

We would like to emphasize again that eligibilit[illegible] benefits and protections and possession of self-government powers does not depend on federal recognition. Rather, th[illegible] things depend on the factual matter of whether a group po[illegible] the status of an Indian tribe. See, the general comments We recognize, however, that some type of procedure may be [illegible]

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as a practical matter for making a determination of status in order to determine whether protections and benefits should be made available to certain groups.

§54.3 Who May Petition.

We suggest that the requirement that petitions be submitted within one year be omitted and that this section be amended to read as follows:

> §54.3 Who May Petition.
>
> Any Indian group in the United States which believes that it has the status of an Indian tribe may submit a petition requesting the Secretary to acknowledge such status.

Comment: The proposed amendment reflects our position as to what status determination is necessary in light of the purposes to be accomplished by such a determination.

The requirement that petitions be submitted within [illegible] year of the effective date of the procedures was entirely omitted as being unlawful. Such a requirement is contrary to the statutes passed for the benefit of Indian tribes and would constitute a denial of due process and a deprivation of property and other rights under the Fifth Amendment of the United States Constitution.

As we pointed out in our general comments, the Secretary has the authority and duty to carry out congressional [illegible] pertaining to Indian tribes. He may promulgate rules and [illegible] to assist in carrying out statutes. Such rules, however, [illegible] be applied to give a statute a narrower interpretation than [illegible] plain meaning. Freeman v. Morton, supra.

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It may be possible to exclude certain classes of Indians from receiving federal services if the basis of the exclusion is rational and fair. See, Ruiz v. Morton, 415 U.S. 199, 236 (1974). For instance, the Secretary may be able to exclude urban Indians from Snyder Act services, but he could not arbitrarily exclude members of certain tribes from receiving the services. Similarly, the Secretary may be able to exclude certain tribes from specific services by specific regulations if rationally based. However, a distinction between recognized and nonrecognized tribes is not such a rational basis. Moreover, land related statutes cannot be interpreted to include some tribes but not others. On the face of the statutes, they apply to all Indian tribes.

The one year limitation on petitions is completely arbitrar It is obviously designed to limit the duties and responsibilities of the Secretary to all Indian Tribes. There is no apparent basis for the limitation and we can think of none which would justify it. Such a limitation is therefore unlawful.

§54.5 Where the Petition is to be Filed.

Comment: We suggest this section be amended to indicate that petitions shall be submitted requesting acknowledgment that an Indian group has the status of an Indian tribe.

§54.5 Notice of receipt of the Petition.

No comment.

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§54.6 Form and Content of the Petition.

§56.4(a)

We suggest this section be amended to indicate that petitions shall request acknowledgment of tribal status.

§54.6(b)

No suggested changes.

§54.6(c)

We suggest this section be amended to read as follows:

> §54.6(c). A copy of the group's governing document, or in the absence of such written document, a statement describing the tribe's organizational form and concept of membership.

Comment: This section, as proposed originally, appears to require some degree of formal organization of an Indian group. Our amendment seeks to clarify that the organization of a tribe may be informal as well as formal.

> In point of form it is immaterial whether the powers of an Indian tribe are expressed and exercised through customs handed down by word of mouth or through written constitutions and statutes.

Cohen, p. 122.

Many "non-recognized" tribes presently operate on an informal basis. This situation is often the result of federal policies which have sought to suppress tribal self-government and break up tribal relations. Tribes and groups which were the object of such policies should not now be denied protections and benefits.

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§54.7 Processing of the Petition.

We suggest this section be amended to read as follows:

§54.7 Processing of the Petition.

(a) Upon receipt of the petition the Commissioner shall cause a review to be conducted to determine whether the group is an Indian tribe. The review shall include consideration of the petition and, to the extent necessary, verification of the factual statements contained therein and the gathering of any additional information necessary to make a determination. The Commissioner may also require the group to provide additional information, especially about its members, including but not limited to the age, Indian ancestry, nature of tribal affiliation, and addresses of individual members

Comment: Again we have indicated that the primary determination to be made is that a group is an Indian tribe. We have also indicated that it may be necessary for the Commissioner to do some independent information gathering, particularly where he is inclined to find that a group is not a tribe.

§54.7(b) and (c)

We suggest these sections be amended as follows:

On the basis of this review the Commissioner shall make a written preliminary report to the petitioner and interested parties setting forth his findings and conclusions as to the group's status and his reasons therefore. The petitioner shall then have sixty days in which to respond, including an opportunity to present oral argument.

(c) The Commissioner shall have sixty days after petitioner's response to prepare a final report to be submitted to the petitioner.

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Comment: In order to avoid the possibility of an adverse determination due to an inadequate petition or some other such reason, we have provided for a preliminary report to be submitted to the Indian group with a sixty-day period for a response to the preliminary findings. Such a period of response would allow the group to correct any deficiencies in the petition, to submit additional documents or information, and to specifically address those issues on which the Commissioner is inclined to make an adverse finding or determination. A response period would also allow for the development of a complete record on which a determination can be made, and on which any judicial review can be had. Moreover, this procedure allows for many issues to be dealt with in the context of the administrative process and may avoid frequent resort to the courts. We have also added a section (§56.7(c)) providing for additional time for the Commissioner to prepare a final report in light of the response by the petitioner. Finally, the former §54.7(c) was changed to 54.7(d).

§56.7(d) Criteria for Tribal Existence.

This section, in effect, constitutes the criteria for determining tribal existence. Any criteria developed for this purpose by the Secretary of the Interior must conform to settled caselaw. Several cases have discussed the definition of Indian tribe in various contexts. One of the most complete definitions appears in United States v. Montoya, 180 U.S. 261, 266 (1901). There "Indian tribe" was defined as:

> . . . a body of Indians of the same or a similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory . . .

This definition was quoted and used in United States v. Candelaria, 271 U.S. 432, 442 (1926) for the purpose of defining "tribe" within the meaning of the Indian Nonintercourse Act, 25 U.S.C. §177.[3/] Other cases define tribe in a variety of terms. These include: "a people distinct from others" (The Kansas Indians, 72 U.S. 737, 755 (1867); "Indians in race, customs and domestic government" (United States v. Sandoval, 231 U.S. 28, 39, 47 (1913); "a distinct people, with an existing tribal organization" (United States v. Forty-three Gallons of Whiskey, 93 U.S. 188, 195 (1876); and "unique aggregations possessing attributes of sovereignty over both their members and their territory . . . ; they are a 'separate people' possessing the power of regulating their internal and social relationships" (United States v. Mazurie, supra at 557).

Relying principally upon Montoya v. United States, supra, the case law indicates that a group must meet the following criteria in order to show that it is an Indian tribe:

(1) A body of Indians of the same or similar race or simply an Indian community;

(2) United under one leadership or government; and

(3) Inhabiting a particular though sometimes ill-defined territory.

[3/] See, Joint Tribal Council of the Passamaquoddy [illegible] v. Morton, supra at 377, n. 8; Narragansett Tribe of Indians [illegible] Southern Rhode Island and Development Corp., 418 F.Supp. 7[illegible] (D.R.I. 1976).

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As a matter of law, any criteria developed for tribal existence must closely follow the above criteria. In comparing the proposed criteria with the above, we will first discuss (1) - (5) and (10), then (6) - (9).

Criteria (1) - (5) and (10), with some changes, conform fairly closely to the Montoya definition:

(1) Social Solidarity.

We recommend that this criterion be omitted. It is vague and difficult to define. The sense it conveys is more easily defined by using the word "community," and combinig it with the following criteria.

(2) Members Principally of Common Enthnological Origins.

This criterion is satisfactory. However, we suggest that it be expanded to read:

> Has as members principally persons of common ethnological origins and are identified as Indians within their Indian community.

(3) Exercises Political Authority Over Members.

Some indication that a group regulates the internal and social relations of its members is appropriate. However, a formal organizational structure is not necessary. This criterion should be interpreted broadly to include all degrees and types of organization.

(4) Specific Area.

We suggest that the word specific be changed to general. The territory of a tribe is sometimes "ill defined."

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(5) Not Subject to Termination.

This criterion is satisfactory.

(10) Members Are Not Members of Other Tribes.

The purpose of this criterion is unclear. If it is a matter of insuring that a group is a "distinct" Indian community, it should be stated. If not, we can see no reason for this requirement. Moreover, it should be omitted as an infringement on an Indian tribe's exclusive authority to define its membership. Martinez v. Southern Ute Tribe, 249 F.2d 915 (10th Cir. 1957).

The remainder of the criteria, (6) - (9), deal with indications that a tribe has been recognized in the past. Because such recognition is not a prerequisite for federal protections and benefits, these criteria must be optional. However, the existence of any one of the criteria is at least a prima facie showing of tribal existence and should be treated as such.

We would add one additional optional criteria:

> Has been treated as an Indian tribe by other Indian tribes.

§54.8 Action by the Commissioner.

§54.8(a) should be amended to indicate that the Commissioner's conclusion should be addressed to the petitioner's status as an Indian tribe.

§54.8(b) should be amended to indicate that the Commissioner shall determine that an Indian group has the status of an Indian tribe if it satisfies (1) - (5) and (10) of §54.7(c)

with the suggested changes.

§54.8(c) dealing with a determination that a group is not an Indian tribe should be omitted should be amended to read as follows:

> (c) The Commissioner shall determine that an Indian group is not an Indian tribe only upon an affirmative finding that the group fails to satisfy (1) - (5) and (10) of §54.7(c). Such finding will be supported by specific facts and arguments.

§54.8(d) should indicate that the Commissioner's "final" report shall be published in the Federal Register.

ack 7/20/77

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 207 1701 Pennsylvania Avenue, N.W. Washington, D.C. 20006
202 – 343-9484

July 15, 1977

Mr. John Geary
Acting Director
Office of Indian Services
Bureau of Indian Affairs
Room 4058
18th and C Streets, N.W.
Washington, D.C. 20245

Re: Comments on Proposed Procedures Governing Determination That Indian Group Is A Federally Recognized Indian Tribe

Dear Mr. Geary:

The National Tribal Chairmen's Association takes this opportunity to comment upon the Bureau's proposed rules creating standards for federal recognition of Indian tribes. 42 Fed.Reg. 30647 (1977). We note first our agreement with the premise underlying the rules that federal recognition is a status which exists and which, if it exists with regard to any Indian group, needs only to be acknowledged, not created. This concept is appropriate where the relationship being recognized is an historical/political one originating in the intercourse of sovereign nations.

The treaties and agreements made by Indian tribes with the United States are the soundest, truest bases of the federal trust responsibility. Our comments are thus directed to clarifying, preserving, and strengthening the political character of the trust relationship.

I. Reconciliation of definitions with applicability of the Proposed Part 54.

Proposed section 54.1(f) defines a "Federally Recognized Tribe" as an "Indian group within the United States that the Secretary of the Interior acknowledges to have had and should continue to

(24)-6

to have the status of a domestic dependent sovereign." The regulations would not apply to any group which has already been recognized by the Secretary of the Interior. § 54.2. The new Part would, however, be available to "any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe. § 54.3. This would mean that eligibility would be contingent upon belief that the Secretary acknowledges the group to have had the status of a domestic dependent sovereign in which case the regulations would not apply. See § 54.2. There is a circular logic here which should be clarified.

We submit that section 54.3 should be amended to read as follows:

> Any Indian group in the United States which believes it has the ability to satisfy the criteria specified in section 54.7(c) in the manner prescribed in section 54.8 of this Part, and that it therefore has the status of a domestic dependent sovereign may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

In accord with the concept of Secretarial acknowledgment of an existing status, section 54.2 should be amended by deleting from the first sentence thereof the word "should."

II. Recognition Criteria

Section 54.8 would direct that the Commissioner of Indian Affairs determine that an Indian group is a federally recognized tribe whenever the group satisfies all of a group of mandatory criteria and at least one of a group of optional criteria as set forth in section 54.7(c). Section 54.8(a) should be clarified for the same reasons we suggested above in connection with sections 54.1(f) and 54.3 The Commissioner could in no instance conclude that a tribe has had the status of a federally recognized tribe if that status is defined by Secretarial acknowledgment of the status. We suggest using the term "domestic dependent sovereign" in lieu of "federally recognized tribe" wherever it appears in section 54.8

We strongly support the concept that federal recognition must be based on a status that has existed in the past and which should continue to exist. We think the regulations should also reflect a certain historical continuity and traditionalism in the sense that phenomena or evidence of tribalism of strictly recent origin should not be considered or should receive little weight in evaluation of a group's petition. We suggest the following specific amendments to the recognition criteria of section 54.7(c):

Criterion (1) should be amended for purposes of clarification to read as follows:

> Manifests a sense of social solidarity which shall be shown by evidence that members: interact on a regular basis in social, cultural, and economic matters unrelated to official group business; share common religious practices of Indian origin; communicate in an Indian language; reside in relatively close proximity to one another in communities traditionally regarded as Indian by other Indian or non-Indian communities. The foregoing factors shall not be deemed exclusive but shall be entitled to great weight.

Criterion (2) should be amended to read as follows:

> Has as members principally persons having common origin in a distinct Indian ethnic group, as defined according to the group's culture, which existed prior to significant contact with non-Indians, or which signed a treaty or entered into an agreement with the United States.

Our intent here is simply to direct the determination of common origin to some point in the past where tribal or band distinctiveness was more clear than it is in the present.

Criterion (3) should be amended to read as follows:

> Has historically and more or less continuously exercised political or religious authority over its members.

By this amendment, we intend to emphasize that federal recognition should be based on a historical and relatively continuous tribal political existence. Political authority should not be found to exist where modern voluntary associations or corporations have been founded without relation to a line of relatively continuous succession of authority or social evolution. The reference to religious authority would account for groups having theocratic structures.

Criterion (4): No change.

Criterion (5) should be amended to read as follows:

> Is not, nor are its members, the subject of any Act of Congress terminating the Federal relationship, or of any treaty provision whereby the group's ancestors renounced their tribal relations and rights.

Criterion (6): No change.

Criterion (7) should be amended to read as follows:

> Has been designated a tribe by an Act of Congress, Executive Order, or in the legislative history of a bill which was subsequently enacted into law or has been held to be a tribe by a court of law or by the Indian Claims Commission.

This is primarily a technical amendment designed to clarify the appropriate judicial role in the recognition process and to include specifically the Indian Claims Commission which is not a court and whose decisions technically are not "judicial." We believe that in order for a judicial decision to furnish the basis for recognition the matter should have been litigated. Tribal existence should not be established on the basis of presumption, stipulation, or mere reference in dicta. It should be noted too that courts traditionally have regarded tribal existence as a political question to be determined by the political branches of government - the Legislative and the Executive. E.g., United States v. Sandoval, 231 U.S. 28, 46 (1913); United States v. Holliday, 3 Wall. 407, 419 (1865).

Criterion (8): We suggest no change in substance but recommend that this be promulgated as one of the mandatory criteria that all tribes must satisfy. This test goes to the most fundamental meaning of tribal existence. Conforming amendments to subsections 54.8(b) and 54.8(c) would be necessary.

Criterion (9) should be amended to read as follows:

> Has received services from any Federal agency based on the group's status as Indian (the request shall specify the exact nature and extent of such services, whether incidental or otherwise).

No group should be "bootstrapped" into the status of federally recognized tribe based solely on its receipt of state services. This would be inconsistent with the fact that the relationship the group seeks to have acknowledged is a political one existing between the tribe and the federal government alone. Nor should the receipt of services from a federal agency which are granted and delivered on the basis of individual need rather than on the traditional basis of Indian status be used to establish an intergovernmental political relationship.

Criterion (10) should be amended to read as follows:

> Has as members principally persons who are not members of any other Indian tribe as of the effective date of this part.

The new regulations should not serve as the vehicle for realignment of existing tribal affiliation.

III. Procedure

Sections 54.5 and 54.6 should be amended to require that the petition and notice thereof contain the name and signature and [illegible] address of at least three persons authorized to act for the [illegible]ing group.

A new section should be added to read as follows:

> In addition to any right of comment provided in section 54.5 of this part, the Commissioner may, in his discretion, invite any federally recognized tribe or intertribal organization to intervene in any proceeding under this Part under such conditions as the Commissioner may specify.

NTCA supports the basic concepts of the proposed regulations in the belief that all tribes are strengthened when Indian people with a true desire to maintain their tribal relations and to live as Indian are federally recognized. We are, of course, available for any further consultation the Bureau may deem necessary or helpful on this matter.

Very truly yours,

WILLIAM YOUPEE
Executive Director

WY:ng

Cod - 440

RDA
AIN OFFICE
19) 521-9761

NNEX
19) 521-2401

Lumbee Regional Development Association, Inc.

East Main Street P. O. Box 68 Pembroke, N. C. 28372

KENNETH R. MAYNOR
Executive Director

AMES H. WOODS
hairman

OHN R. JONES
ice Chairman

URT LOCKLEAR
reasurer

ARY L. LOCKLEAR
ecretary

Fck 7/27/77

July 15, 1977

Director, Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, NW
Washington, DC 20245

Re: "Procedures Governing Determination that Indian Group is a Federally Recognized Indian Tribe"

Dear Sir:

In response to the proposed rules on the above subject published in the Federal Register on June 16, 1977, we would like to provide the following comments and recommendations for consideration:

1. That Section 54.1 (Definitions) be expanded to include working definitions for key terms and phrases used in the context of Section 54.6 and 54.7. For example, in paragraph (6) of Section 54.6 the propsed rules reads "a list of all current members....". Is this a tribal roll? And, if so, what constitutes an acceptable tribal roll for purposes of Section 54.6?

   In Section 54.7, paragraph (c), key terms such as "social solidarity", "common ethological origins" and "exercises political authority" are used without any concise meaning as to what each of these terms mean. We feel that it would be helpful to all interested persons if Section 54.1 would present a clear definition on these terms to ensure that Indian groups fully understand the requirements the Secretary has set forth.

2. Lastly, in regards to Section 54.1, we would like to see the Bureau cite the applicable laws for arriving at the difinition of "Federally Recognized Tribe" contained in Section 54.1 in any final rules.

In studying the Bureau's proposed rules, we were extremely preplexed over the requirement that Indian groups seeking "Federal Recognition" exercise political authority as one of the requirements for obtaining federal recognition. Notwithstanding the absence of a clear definition on the meaning of "political authority", it would seem highly unlikely that any Indian group could exercise political authority in the sense that such language is normally used. Again, the absence of any working definition on such a key phrase creates confusion and can lead to a misunderstanding of the requirements being set forth. Our recommendation to the Director would be, therefore, to delete this criteria as a requirement for federal recognition altogether.

Lastly, we would like to encourage the Director of the Bureau to consider the recommendations of the American Indian Policy Review Commission who have spent a year gathering testimony from non-federally recognized tribes and studying the status and conditions of such tribes for determining future policies Congress should implement to improve the status and conditions of these tribes.

Sincerely,

Kenneth R. Maynor

Kenneth R. Maynor
Executive Director

AFTER FIVE DAYS RETURN TO:
Jena Band of Choctaw Indians of La. Inc.
Clyde Jackson, Tribal Chairman
Box 745, Jena, Louisiana 71342
ZIP CODE

440

D OF
CHOCTAWS

LaSALLE
PARISH

July 15,1977

7/27/77

Director
Office of Indian Services
Bureau of Indian Affairs
18th and C. Streets, N.W.
Washington,D.C. 20245

Dear Sir:

This letter is in response to the proposed regulations establishing procedures and policy for determining whether an Indian group is a federally recognized Indian Tribe.

As of this time the Jena Band of Choctaw Indians of Louisiana Inc. are not Federally recognized. So therefore I would like to make the following comments on the 10 criteria which are to be considered in judging whether a petitioning group is a federally recognized Indian Tribe.

I beleive that an Indian Tribe should be recognized by the local Community as a Tribe, with all it's By-Laws and their Incorporation statics, and a Governing Body of it's own. Also a Tribe should be recognized by the State in which they Reside, which is done by a Bill passed through the Legislative Body of the State and sign by the Governor of that State.

I beleive that Paragraph-6- may effect many small Indian Tribes. For example the Jena Choctaw Indians have received services from Federal Agencies and have all other requirements within the 10 criteria. Because the Choctaw Tribe at Jena, who have lived in this community, and have maintained their Traditional and Cultural back ground as an Indian Tribe in the past Centuries.

I beleive that each Indian Community should be Reviewed separately within each State, with all it's Historical documentation and other means showing their identity as an Indian Tribe which would enable them to be Federally Recognized.

(22)-2

If the Federal Government does not recognized the Indians in the small Community no one else will. The Indians have a problem of getting services from agencies that deal with the Federal government. But as a group or a Tribe With a Leader and a Governing Body,Indians have a better chance to express their needs and have someone to listen.

I would also like to state that in the case of an Indian Tribe or an Indian Community should be turned down for Federal Recognization for some reason there should be an alternative, so that these Tribes or Community can continue working for Services for Indian People through other means of Federal assistance.

Also if an Indian Tribe or an Indian Community is now working with other Indian Tribes within the State that they reside, andif these Tribes are Federally Recognized and would state that the Indian Community is an establish Tribe of Indian Group this should be done also to help establish some identity.

I would like to thank the Director and the Office for the chance to make these comments. I hope this will be helpful to Indian people and to my Community. If I can be of futher assistance please call on me.

Sincerely,

Clyde Jackson
Tribal Chairman
Jena Band of Choctaw Indians of La. Inc.

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MITCHELL BAY INDIAN TRIBE
of the San Juan Islands

FROM THE PEOPLE OF TALEQAMIS

July 15, 1977

Director, Office of Indian Services
Bureau of Indian Affairs
18th & C Streets N.W.
Washington, D.C. 20245

Dear Sir:

In answer to your request for comments: The Mitchell Bay tribe feels that your proposed regulations for establishing an administrative procedure for recognition of indian tribes will only continue the short-sighted approach to the question of tribal status.

We urgently request that the regulations as written not be adopted and that the Interior and Bureau of Indian Affairs departments staffs work with members of the Senate Select Committee on Indian Affairs and develop a more appropriate legislative base on the recommendation of the American Indian policy review commission.

Our request for Federal recognition of our legal rights and powers must be given due process and the burden of proof should not fall on the Mitchell Bay tribe alone.

Sincerely,

Charles R. Chevalier

Charles Chevalier
Acting Chairman

187 Spring Street West Friday Harbor, Washington 98250 Phone (206) 378-2181

UNITED STATES DEPARTMENT OF AGRICULTURE

FOOD AND NUTRITION SERVICE

WASHINGTON, D.C. 20250

440

JUL 14 1977

Ack
7/27/77

Director, Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D.C. 20245

Dear Director:

The Special Supplemental Food Program for Women, Infants and Children (WIC) is a food program administered by the Food and Nutrition Service of the Department of Agriculture. We provide grants to State agencies to provide supplemental food to pregnant and postpartum women, and children to age five. Indian tribes, bands, or groups which are recognized by the Department of the Interior are eligible to participate in the WIC Program. We are, therefore, interested in your proposed rules concerning a procedure to determine which tribes are federally recognized.

In regards to the proposed rules published in the Federal Register of June 16, we have the following comments:

Section 54.3 - Perhaps it should be clarified if there is any procedure for granting the status of federally recognized Indian tribe if the tribe applies after one year following the effective date of the regulation.

Section 54.8 (d) - It would be helpful if, in addition to publishing a notice in the Federal Register, each tribe could receive a formal letter stating that they are a federally recognized Indian tribe. The tribe could then present this letter to prove that they are recognized. The WIC Program provides grants to Indian tribes, bands, or groups which are recognized by the Department of the Interior. It would be administratively easier if each tribe could send us a copy of a letter certifying to their recognized status, rather than our having to search through the Federal Register or write to the Bureau of Indian Affairs to determine if a tribe is federally recognized.

(19)-2

We would like to suggest that in the future you consider regulations to govern certification of inter-tribal organizations as bonafide representatives of recognized tribes. As stated, our program has a provision whereby Indian tribes, bands, or groups may function as a State agency for the purpose of administering a program. However, an individual tribe is often, too small to successfully fulfill all the administrative requirements necessary to operate a program and a cooperative arrangement among tribes is useful. For this reason, it would be preferable to have an official sanction for inter-tribal organizations from the Department of the Interior.

We appreciate your consideration of these comments.

for Jennifer R. Nelson
Gene P. Dickey, Director
Special Supplemental Food Division

CHEIF BIG EAGLE
GOLDEN HILL TRIBAL COUNCIL
GOLDEN HILL INDIAN RESERVATION
TRUMBULL,CONN. 06611-P.O.BOX 126

Ack 7/27/77

N 7/18 440

to
DIRECTOR ,OFFICE OF INDIAN SERVISES
BREAUA OF INDIAN AFFAIRS
18 th &C.STREETS,N.W.
WASHINGTON D.C.

JULY 13,1977

RE FEDERAL RECOGNITION

SAY GO,

ON THE COMMENTS,I DO BELEIVE THAT ALL STATE RECOGNIZED TRIBES SHOULD BE FEDERALLY RECOGNIZED,TAKE GOLDEN HILL TRIBE OF THE PAUGUSSETTS. WE HAVE BEEN ON STATE RECOGIZED RESERVATION'S FOR 318 YEARS.THE FIRST RESERVATION SET ASIDE IN THE YEAR 1658.,IN WHAT IS NOW BRIDGEPORT,CONN. AND TODAY STILL RECOGNIZED AS A MAJOR STATE RESERVATION. FOR COMMENT ON FEDERAL REGISTER,VOL 42 # 116 THURSDAY JUNE 16,1977

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Chief Big Eagle
CHEIF BIG EAGLE
Xingayham

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ABBEY, STRAND & FOX
ATTORNEYS AT LAW

VINCENT H. D. ABBEY
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(206) 624-5082

EVERETT: 355-7333

July 13, 1977

A/C 7/25/77

Department of the Interior
Bureau of Indian Affairs
Washington, D. C. 20037

Re: Proposed Rules Regarding Federal Recognition of Indian Tribes

Dear Sirs:

My name is Timothy Odell and I am the attorney for the Duwamish Indian Tribe of Washington State. As I have just returned from Washington, D. C. where I presented a Petition for Federal Recognition on behalf of the Duwamish Tribe, I have read with interest your proposed rules regarding "recognition".

My initial reaction was that the proposed rules were very similar to those propounded by Felix Cohen in his "Handbook on Indian Law". I feel this is a good start and for the most part, I have no objection to the proposed rules.

Under Section 54.7(c)(10), one of the items the Commissioner must deal with in arriving at a conclusion is the fact that a petitioning tribe must have as its members principally persons who are not members of any other tribe. I find this item to be very discriminating due to the fact that for many years members of various Indian tribes have intermarried and affiliated with both tribes, and by this regulation you are forcing people to choose one tribe over another. Also, many tribes in the Northwest, some of which are already "recognized", provide for dual membership in their constitutions. Why should one tribe enjoy the benefits of "recognition" and dual membership and another tribe be forced to choose between the two? A final problem that I have with the above-mentioned section is the discriminatory effect it will have upon members of a tribe who have not intermarried or otherwise obtained dual membership. These people could be denied the benefits of recognition simply because other members of their tribe married outside of the tribe. This is not at all equitable and should be dropped from the proposed regulations.

The final item that bothers me in the proposed rules is the three year period which the Department has to issue a decision. I find this to be entirely too long. The disadvantages of non-recognition are tremendous and every day that goes by irreparably harms the tribe and its members. The Department

(18)-2

should make an all-out effort to handle this petition as quickly as possible.

Thank you very much for allowing me to make my thoughts known on the matter, and I hope you will take them into consideration when making your decision.

Sincerely,

Tim Odell
Attorney for Duwaumish Tribe

TO:bm

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TOBIN LAW OFFICE

422 MAIN STREET
WINNER, SOUTH DAKOTA 57580

TOM D. TOBIN
EARL R. METTLER
GARY W. CONKLIN

TELEPHONE 842-2500
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ak
7/25/77

July 13, 1977

Director, Office of Indian Services
Bureau of Indian Affairs
18th & C. Streets, N.W.
Washington, D.C. 20245

RE: Proposed Rule-Making Procedures Governing Determination that Indian Group is a Federally Recognized Indian Tribe

Dear Sir:

This letter is intended as commentary on the above referenced rule making, as published in the Federal Register, Vol. 42, No. 116, June 16, 1977.

COMMENT: In the authorities cited for the Commissioners authority, "Sec. 463 and 465 of the Revised Statutes" are listed. Assuming this reference to be citations to sections 3 and 5 of the Act of June 18, 1934, (48 stat. 984, 985), as codified at 25 USC sections 463 and 465, I make the observation that these citations do not give the Secretary of Interior nor the Commissioner of Indian Affairs the substantive rule making authority asserted in this proposal. See U.S. v. State Tax Commissioner of the State of Mississippi, 535 F.2d300(5th Cir. 1976). Consequently the proposed rule making is an unconstitutional excercise of the authority of 5 USC section 301.

COMMENT: Aside from the capricious attempt at rule making, at proposed section 54.1(f) a definition of "Federally Recognized Tribes" is proposed. This definition is without substance and leaves the decision to the whim of the Secretary or his authorized representative and ignores the Congressional definition of Tribe found in section 19, Act of June 18, 1934 (48 stat, 988). Congress, in that Act, defines a Tribe as "...an organized band, Pueblo or the Indians residing on one reservation." This is an obvious attempt to expand jurisdiction of the Department of the Interior beyond the bounds authorized

(16)-2

by Congress and is an unabashed effort to proliferate and perpetuate the Bureau of Indian Affairs.

Sincerely yours,

Donald E. Covey
Attorney At Law

DEC/kn

Ack 7/27/77 440

Route 1, Box 87
Ft. Gibson, Oklahoma 74434
July 10, 1977

Director
Office of Indian Services
Bureau of Indian Affairs
18th and C Streets
Washington, D.C. 20245

Director:

I wish to comment on the proposed new "Part 54—Procedures Governing Determination That An Indian Group Is a Federally Recognized Indian Tribe" to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations as printed in the Federal Register, Vol. 42, No. 116, P. 30647.

I applaud your decision that a "uniform and objective approach" be taken in the evaluation of applications for recognition as an Indian tribe. However, some of the proposed procedures disturb me greatly and I do not think that they are consistent with the federal government's position as trustee of the Native American.

> Sec. 54.3 Who may petition.
> Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit within one year from the effective date of these regulations a petition requesting that the Secretary acknowledge such status.

The limiting of applications to a one year period is over restrictive, arbitrary and not in the best interest of Native Americans. After over two hundred years of terminating possessions, lands and tribes it seems to me to be an unnecessary burden to restrict applications to one year and an unnecessary injustice to those Native Americans who, for one reason or another, fail to apply during this arbitrary time period.

> Sec. 54.7 Processing of the petition.
> (b) . . . All timely filed petitions shall be disposed of no later than three years from the effective date of these regulations.

(15)-3

The lengthy time for processing seems unjustified especially in light of the one year application time.

(c) The Commissioner's report shall deal specifically with whether the group:
(1) Manifests a sense of social solidarity.

"Social solidarity" is unnecessarily vague in a set of regulations that is supposed to bring objectivity.

(2) Has as members principally persons of common ethnological origins.

This statement denies the history of the United States and demands racial purity for a culture. It demands that Indian tribes be based on the bloodline of the past. It is in effect a termination policy for a culture, if a racialy pure bloodline is not maintained. It freezes Indian tribes and Native American culture as a part of the past and denies it life in the future.

(3) Exercises political authority over its members.

Tribes that have had federal recognition and protection have found it very difficult to maintain political authority over their members and have done so only by the pleasure of the federal government. It seems unreasonable to expect this type of authority and its measurement could only be done subjectively.

(8) Has (Is), of has been treated by a state or by a Federal Government Agency as having, collective rights in land, water, funds or other assets, or collective hunting and fishing rights.

This statement should be amended to include the colonial predecessors of the fifty states. As it stands now no historical evidence could be presented that predates 1776, and in some locations the date would be much later.

It is therefore my recomendation that Sec. 54.7(c) be changed deleting paragraphs (1), (2), and (3) from the proposed regulation and amending paragraph (8) as indicated above. Further, the meaning of tribe in all of Sec. 54.7 should include "successor in interest" as defined in Sec. 54.7(c) paragraph (6).

Sec. 54.8 Action by Commissioner.
(b) The Commissioner shall determine that an Indian group is a federally recognized Indian tribe whenever the group satisfies paragraphs (1-5) and (10) of Sec. 54.7(c) so long as at least one other paragraph of that section is also satisfied.

The only power that the Secretary of the Interior has over Indian affairs is to administer and manage the relationship between the United States and the Indian tribes.

Therefore, the regulations should not be adopted by reason of the fact that they are beyond the power and authority of the Secretary and are in effect ultra vires.

Acknowledging that there is a difference between "recognition" of an existing tribe and "creation" of a tribal governmental entity, I would point out that no group of Indians not recognized can ever have had political authority over the members of that group because its members are United States and State citizens as well as group members. As citizens of the United States and respective States, no political authority could ever have been exercised over them by an unrecognized Indian group. Political authority must mean the exercise of the police power.

Therefore, whether or not an existing group is given subsequent recognition as a tribe or a tribe is newly created from an existing group the fact of recognition will create a political organization with power over its members who will, in effect, become similar to citizens of that group. This is the creation of a government where none existed before and this is the sole prerogative of the Congress of the United States which must decide whether or not to enable a government to co-exist with other governments of the United States, both Federal, State and local.

The Indian Reorganization Act of the United States was a Congressional Act enabling tribes to acquire governmental powers and sovereignty of express nature by voting to adopt a Constitution. This is similar to enabling acts of the Congress which allow peoples of a territory to acquire sovereignty through statehood by voting to adopt a Constitution.

Short of amendment of the Indian Reorganization Act (25 USC 464 et seq.) or passage of a new act of Congress giving authority to the Secretary, the Secretary has no authority to adopt the proposed regulations.

The reasons for these objections on the part of the Tulalip Tribes of Washington are quite simple. There are literally thousands of people in the United States of Indian descent and blood retaining social contact with some tribal entity which either exists or did exist. In the main, these people have expatriated themselves from their respective tribal affiliations and by reasons of policies of the Congress through the many decades and particularly in the late 1800's became assimilated into the non-Indian society.

In this day of recognition of long slumbering Indian rights many of these people are returning to tribal affiliations for the economic benefits to be gained by membership therein.

The sum total of this means that either the benefits to existing Indian tribes and appropriations to fund those benefits will be diluted or the cost of Indian affairs to the people of the United States will be substantially increased.

As a matter of simple equity I might also point out that recognized tribes are composed of Indian people who together with their ancestors have long suffered the inequities that always come to a subjugated race under governmental control. They cannot bring themselves to believe that they must now share the benefits which they have so long fought for and secured with persons who are, in effect socially and racially non-Indians and who abandoned tribal relationships long ago either through themselves or their ancestors to reap the benefits of full non-Indian status.

Lastly, I would point out to you a fundamental principal of State -vs- Federal government and that the principal applies equally to Federal-Indian-State governments.

This principal is that the government of the United States as limited by the Constitution is a government which can exercise only express powers and those implied thereunder as granted by the people of the United States through the Constitution. While the government of a State is sovereign and can exercise any and all powers that a government has or may hereafter be deemed to have as a matter of inherent sovereignty, except those powers which are expressly prohibited to it by the State Constitution.

An Indian tribe is sovereign and can exercise inherent powers unless the exercise of such power is prohibited by treaty or Congressional enactment or regulated or circumscribed thereby.

If recognition of an Indian tribe is to give it political authority, it gives to that tribe inherent sovereignty without restriction over the affairs of its members who are its citizens. It is unbelievable that the Secretary of the Interior can so circumscribe the affairs of citizens of the United States of Indian blood through regulation.

To emphasize the foregoing paragraphs and the argument presented to you therein, I would call your attention to the recognition of the principals stated in all Constitutions given Indian tribes organized under the Indian Reorganization Act. As far as I know they do without exception recognize the reserved powers of inherent nature which all tribes have by containing words to the effect as follows:

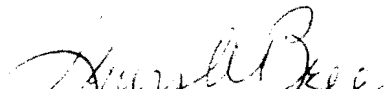
> "Any rights and powers heretofore vested in the tribes or bands but not expressly referred to in the Constitution or the tribes shall not be abridged but may be exercised by the Indian people through the adoption of appropriate by-laws and Constitutional amendments."

The efficacy of the Bureau of Indian Affairs has been impaired through these last years by the appropriations of funds for the benefit of people of Indian blood as minority races, a people discriminated against and a class of people below the legal definition of poverity. Congress has not always been careful in its language in such acts and has appropriated funds for the implementation of such acts through the Department of Health, Education and Welfare instead of through the Bureau of Indian Affairs. This has diluted the Bureau's authority and put, to the extent that funds appropriated must be administered, some regulation of the conduct of people of Indian blood into other departments of the executive branch of government. The mischief accorded by this legislation and the courts' recognition of broad property rights under treaties, which property rights contain substantial economic benefits, have resulted in the present drive for the enlargement of definition of an Indian tribe and recognition of the same.

The fact that the Bureau of Indian Affairs sees its duly to be the extension of its authority over all people of Indian blood who can meet the criteria set forth in the proposed regulation is not justification for the enlargement of a class of people known as Indian tribal members.

The Tulalip Tribes of Washington trust that the Congress will put a stop to the enactment of your proposed regulations and are seriously considering that if the proposed regulations are adopted such will be immediately contested as to their efficacy and legality in an appropriate court of law.

Yours truly,



LEWIS A. BELL

LAB:gh

cc: Lloyd Meeds
Henry M. Jackson
Wayne Williams

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6 July 1977

ack'd 7/18/77

Director, Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, NW
Washington, DC 20245

Re: Comments on proposed regulations governing federal recognition of Indian tribes, 25 CFR Part 54.

As an attorney who has worked extensively with one tribe which has recently obtained federal recognition - the Sault Ste. Marie Tribe of Chippewa Indians - I would like to enter the following comments on proposed 25 CFR Part 54, as published in the Federal Register on June 16, 1977.

In general, the proposed regulations represent a noteworthy attempt by the Bureau to provide a formal procedure for recognition of Indian tribes. Having had experience with the past practice and procedure of the Bureau in this regard, it is gratifying to note that an Indian group which wishes to achieve federal recognition will have for it a detailed procedure to follow. The concept and general outlines of the proposed regulations are well within the bounds of the federal government's trust responsibility toward the Indian people. There are certain features of the proposed regulations which disturb me, however, and seem to be at odds with the avowed purpose of the regulations. I therefore propose the following changes in the regulations, which will be discussed more fully below:

1) The term "community" as used in §54.1(e) should be clarified so as not to be potentially unduly restrictive of eligibility for recognition;

2) The one year limitation on petitioning for recognition embodied in §54.3 should either be eliminated altogether or greatly lengthened in order to avoid cutting off Indian groups potentially eligible for recognition;

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3) The requirement of providing a list of members with the petition embodied in §54.6(b) should be altered so as to protect the legitimate privacy interests of the petitioning group;

4) The "political authority" criterion of §54.7(c)(4) should either be clarified or eliminated altogether so as to avoid being potentially unduly restrictive of eligibility for recognition; and

5) $54.8 should be altered to expressly provide a rejected Indian group the opportunity for a hearing on its petition and an appeal to the Board of Indian Appeals.

1. §54.1(e) - definition of "Indian group"

It is unclear to me in what sense the term "community" is employed in this proposed definition. In Indian law, the terms "Indian community" and "dependent Indian community" have been employed as terms of art to distinguish between certain forms of association or organization; e.g., community is often distinguished from tribe or band. The term seems to connote some form of physical proximity of members which, if true, is too restrictive.

The Sault Ste. Marie Tribe of Chippewa Indians provides an example of how the term "community" could be employed in an overly restrictive sense. The present membership of the tribe is spread throughout the eastern Upper Peninsula of Michigan, an area large enough that it may not make sense to consider it one "community". The tribe is organized into five "units", each of which clusters around one locale which could properly be characterized as a "community". If the term "community" were interpreted narrowly, under the proposed regulation the Sault Tribe would be required to petition and organize as five separate Indian tribes, not as one tribe. This would result even though in terms of its history and culture, as well as its immediately prior organizational form, the group had a common nexus and must surely be considered one tribe.

Furthermore, the larger group is much better able to provide services to its members and to exercise its powers of self-determination than the five smaller units would be. In terms of present federal policy, then, this amalgamation of related "communities" should be encouraged. Yet the proposed definition may make the creation or perpetuation of larger tribal groups impossible.

I therefore propose that §54.1(e) be altered to read:

> "Indian group"...means any community, organization or association of persons of Indian, Aleut, or Eskimo extraction.

2. §54.3 Who may petition

As I read this proposed regulation, it is at least implicit that Indian groups who do not petition for recognition within one year of the adoption of the regulations cannot later be recognized. This is an unnecessary and unfair restriction upon the recognition process, and should be removed from the regulations. I have two principal reasons for this suggestion:

a) As anyone familiar with the field of Indian law should know, the burgeoning of Indian claims of all sorts, including claims of recognition, has resulted at least in part from increasing access of small poor Indian groups to legal representation. Recognition is a process which certainly requires or at least is greatly eased by the participation of legal counsel. Though in many areas of the country legal counsel is now available to small, poor Indian groups, this is by no means universally true. In Michigan at present, for example, there are large areas of the state with a high Indian population which are not adequately served by groups providing free legal services to Indians which can provide advice and assistance to Indian groups who may be eligible for recognition. Since many unrecognized Indian groups are by definition not in contact with the federal government or with other sources of assistance designed to serve recognized Indian tribes, such groups are unlikely to be made aware of the recognition process or of the potential benefits of federal recognition within the proposed one year period for petitioning. The proposed one year period may thus operate to cut off from recognition the most disadvantaged Indian groups, who are presumably the most deserving of the Indian groups which could be recognized.

b) Some Indian groups who may be very well aware of the federal recognition process may not desire to seek federal recognition at this time. This is certainly understandable, given the lamentable history of federal-Indian relations in this country. While it appears that, given the current federal policy toward Indians, federal recognition is highly advantageous to most Indian groups, old wounds heal slowly in the Indian community. There is among Indian people a certain stigma attached to association with the federal government, especially among Indians who are not now receiving federal assistance and benefits. This is certainly the thinking among a number of currently unrecognized Indians in the Lower Peninsula of Michigan. This feeling is not likely to change in the course of a year, but it should change over time if the federal policy toward Indians remains on its present course. Such Indian groups may well decide in the not-too-distant future that federal recognition is desirable, only to find themselves cut off from federal recognition by the one year limitation imposed in the proposed regulations. This is surely an undesirable result.

The one year limitation presently embodied in proposed §54.3 thus appears to be an attempt to limit, rather than provide a procedure for acknowledging, the trust responsibility of the federal government toward its Indian tribes. I therefore propose that §54.3 be altered to read:

> Any Indian group in the United States which believes that it has the status of a federally recognized Indian tribe may submit [...] a petition requesting that the Secretary acknowledge such status.

At the very least, the regulation should allow a period substantially longer than one year within which petitions may be filed.

3. §54.6(b) - form and content of petition; list of members

I can well image privacy objections by Indian groups to the requirement that the petition contain a list of members, especially since under §54.5 the petition must be available for local examination. The tribes with which I have dealt are quite reluctant to reveal membership lists to outsiders. I fear that this requirement may chill the willingness of Indian groups to petition for recognition.

It seems that the government's interest in knowing something about a group's membership could be served by less intrusive methods of obtaining the information. The regulations already require that the group furnish documentation about membership requirements [§54.6(c)], and allow the Commissioner to require additional information about membership when he feels in a given case that such information is necessary [§54.7(b)]. Given these current proposed regulatory provisions, I propose that §54.6(b) be altered to read:

> A statement of the number of members of the group and their geographical location and distribution.

4. §54.7(c)(4) - political authority over members

It is unclear to me in what sense an unrecognized Indian group can exercise political authority over its members if the group does not have a reservation. The usual requisites of political authority of tribes involves sovereignty over an area and administration of

services for its members. Neither is likely to be possible for an unorganized Indian group. This criterion, strictly applied, could thus operate to exclude all but the most exceptional Indian groups from federal recognition.

It is therefore my suggestion that proposed §54.7(c)(4) be deleted altogether from the final regulation. At the very least, the section should define the indicia of political authority in terms that will not clearly exclude from eligibility for recognition most Indian groups who can meet the other criteria.

5. §54.8 - action by Commissioner

The administrative procedure embodied in the proposed regulations does not provide the opportunity for the Indian group at any stage to present its materials supporting the petition at any type of hearing. I believe that fundamental fairness requires that the affected Indian group should be allowed to present their evidence and arguments at a hearing. This may be especially important for small Indian groups who do not at the time of petitioning have access to the type of assistance necessary to allow them to present a persuasive petition. Such a group would be at the mercy of the Commissioner's staff who prepares the report on the group, and it is certainly likely that the Indian group will take exception to certain features of an adverse report to the Commissioner. The present regulations do not provide an opportunity for the Indian group to do so.

One method of correcting the present defect in the proposed regulations would be to provide that the report of the Commissioner be circulated to the affected Indian group prior to its adoption. The Indian group could then be given a certain period of time, say 30 days, within which to contest the proposed report and its conclusion. If such a contest is filed, the Indian group should then be able to invoke a formal administrative hearing at which it would be given the opportunity to present evidence and arguments relevant to the indicia of recognition set forth in proposed §54.7(c). After the hearing is concluded and the record closed, the Commissioner's report should then be rewritten to take into account matters presented at the hearing.

The Commissioner's determination should also be appealable to the Board of Indian Appeals pursuant to 43 CFR §4.350 et seq. As I read the regulations governing the Board of Indian Appeals, the Commissioner's decision is already appealable to the Board of Indian Appeals; the proposed regulations do not clearly indicate this at present, and they should affirmatively do so.

As an alternative to the above procedure, the Commissioner's determination could be appealable to the Board of Indian Appeals, under the current regulations governing appeals to that Board. The right to an administrative hearing at which the Indian group could present additional evidence should be specifically provided, however. (As I read the current provisions of 43 CFR §4.350 et seq such a hearing would be discretionary with the Board of Indian Appeals.)

If the latter suggestion is adopted, the proposed regulation could be altered to read:

§54.8 Action by Commissioner

* * *

(e) Any interested party dissatisfied with the decision of the Commissioner may appeal the decision to the Board of Indian Appeals as provided in 43 CFR §4.350 et seq. In any such appeal, the interested party shall have a right to a hearing in accordance with the provisions of 43 CFR §4.362 through §4.369. In the event that such a hearing is requested, the Secretarial review period as provided in paragraph (d) hereof shall be thirty days from the date of decision of the Board of Indian Appeals.

Dated: 7/6/77

James Jannetta
Research, Training and
Litigation Coordinator

JJ:jf
c: Eleesha Pastor, esq.
Michigan Indian Legal Services
3041 North Garfield Road
Traverse City, MI 49684

United States Department of the Interior

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125 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84138

Bud
3 separate comments!

July 5, 1977

Memorandum

To: Associate Solicitor, Indian Affairs

From: Regional Solicitor, SLCU

Subject: Proposed Regulations Governing the Determination that an Indian Group is a Federally Recognized Indian Tribe

In accordance with your June 22 memorandum, we have reviewed proposed Rule 25 CFR, Part 54.

We agree that a regulatory procedure should be established to govern the determination as to whether an Indian Group is infact a federally recognized Indian Tribe.

Several have questioned this.

Section 54.3 limits the period of time that an Indian Group may petition the Secretary to acknowledge federally recognized status to one year. We see no reason for such a limitation and recommend that this time limitation be deleted.

Reid W. Nielson

REID W. NIELSON
Regional Solicitor

WRM:bt

United States Department of the Interior

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ATLANTA REGIONAL OFFICE
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ATLANTA, GEORGIA 30303

IN REPLY REFER TO:

July 1, 1977

Memorandum

To: Acting Associate Solicitor for Indian Affairs

From: Regional Solicitor, Atlanta

Subject: Proposed Regulations Governing the Determination that an Indian Group is a Federally Recognized Indian Tribe

The following are my comments as requested in your memorandum of June 22, 1977, on the above subject.

1. In 54.1(f) a "Federally Recognized Tribe" is described as one who "should continue to have the status of a domestic dependent sovereign." A "domestic dependent sovereign" is not defined; but, more significantly, the way it is worded it would appear that the Secretary would maintain a continuous review of such tribes to be sure that they meet the specifications. From this definition one would conclude that the review would pertain to existing federally recognized tribes and yet in 54.2 this is denied. It would appear to be a non sequitur.

2. There is no recognition of the problem of a tribe being declared judicially to be without tribal status. Notwithstanding such a situation, can the Secretary recognize such a tribe?

3. In 54.3 there is a limit of one year to petition. If the petition is based on a treaty or an agreement, how can this right be limited to one year?

4. In 54.7 the Commissioner had the discretion to listen to "oral arguments." It seems to me that a determination of a federally recognized tribe affects many people and many institutions and that a full public hearing should be held in order that all persons will have a right to express their preferences.

5. If the comment in paragraph 3 of this memorandum is correct, then the provision of 54.7(b) relating to the three-year disposition period should be

JOHNNY HORIZON 76

Let's Clean Up America For Our 200th Birthday

7 - 2

modified.

6. In 54.8(b) the Commissioner is required to find the existence of a tribe when paragraphs (1-5) and (10) are satisfied together with one other paragraph. 54.7(c)(7) contains, inter alia, the fact of Congressional recognition. If a tribe has been Congressionally recognized, what authority would the Commissioner have to deny tribal organization even if all the factors in (1-5) and (10) were not met?

Generally, this proposed regulation deals with a very fundamental right of government, i.e., sovereignty, and it should be as precise as possible. For example, in 54.7(c)(4) relating to area it includes the words "or has inhabited historically." Does this mean that a tribe who historically used a given area but which has now passed into other ownership legally has the right to assert ownership in that area? What is meant by "persons of Indian, Aleut, or Eskimo extraction?" There are many people with a small amount, 1/32 or 1/50, of Indian blood. Are these persons of "Indian extraction?" Because of the fundamental nature of these regulations it would appear that additional specification is needed.

Raymond C. Coulter

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
FIELD SOLICITOR
P. O. BOX 397
ANADARKO, OKLAHOMA 73005

June 30, 1977

Memorandum

To: Acting Associate Solicitor, Indian Affairs

From: Field Solicitor, Anadarko

Subject: Proposed Regulations Governing the Determination that an Indian Group is a Federally Recognized Indian Tribe

After reviewing the proposed regulations, I find no procedure for the publication of a current, updated list of tribes which the Secretary of the Interior considers to be federally recognized tribes.

It is our suggestion that a list of such tribes be published nationwide in order that a tribe will know whether or not it has to apply to be recognized. It is our feeling that such a list will eliminate the possibility of a tribe claiming in the future that it did not know whether or not it was necessary to apply.

Benno G. Imbrock
Field Solicitor, Anadarko

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JUN 30 1977
SOLICITOR'S
DOCKET

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TELEPHONE
202 33 7750

June 29, 1977

Scott Keep, Esq.
Division of Indian Affairs
Office of the Solicitor
Department of the Interior
Washington, D. C. 20240

Dear Scott:

I have a few thoughts on the proposed "recognition" procedures which I would like to communicate to you informally. I do not believe that our clients have a sufficient interest in them for me to make any "formal" comments.

I have two substantive observations; then, some technical suggestions. My substantive comments relate to "even-handedness" -- that is, to treating similarly situated Indian groups in a similar fashion -- and to the "all or nothing" concept of recognition.

A. Even-Handedness

I retain the concern that there are "equal protection" problems with a view of recognition that treats a tribe as eligible to be "recognized" only if it has already been "recognized" in the past. The regulations adopt this approach, at least in form. And since there are some Indian groups that have not historically been treated as tribal governments or as eligible for BIA services, and these groups cannot validly be distinguished from others that have been "recognized", except by historical accidents, I prefer an approach which considers whether a tribe is entitled to recognition to one that considers whether it "has been" recognized.

(5) - 3

The procedures in this respect to follow the "second best" approach that you, Alan and I took in our April 12, 1976 memorandum to Greg Austin. As you know, my own preference is that a tribe is entitled to recognition if it satisfies criteria (1) through (5) and (10), and that no further inquiry is necessary or desirable. I agree, however, that criteria (6) through (9) are liberally drafted to permit recognition for a broad number of tribes. So, as a practical matter, it may not make much difference.

B. All or Nothing

The regulations appear to continue the all or nothing concept of recognition. While they do not state what follows from being recognized, it is implicit that a "recognized" tribe is eligible for all BIA services and an "unrecognized" tribe is eligible for none. The regulations might be improved by retaining discretion in the Commissioner to recognize tribes for certain specified purposes. On the other hand, that approach could be more constrictive than an all or nothing concept, if the all or nothing concept is liberally applied.

C. More Technical Suggestions

Assuming that the Department continues with basically these regulations and the concepts they embody, I have the following specific suggestions:

1. Section 54.1(f). I would change the wording because it suggests that the Commissioner could determine that tribes which "have had" the status of domestic dependent sovereigns should "continue to have" that status. This suggests a power of executive termination which I am sure is unintended, and which would be undesirable and probably unlawful. I wonder if you want to couch the section in terms of "status of domestic dependent sovereign" at all. Perhaps eligibility for BIA services and programs is a more accurate characterization.

2. Section 54.2. To avoid any ambiguity as to whether a tribe is currently recognized or not, it has always seemed to me that the Department should publish a list of federally recognized tribes. I recollect that Les Gay's office had compiled such a list. If a list is not published, then a tribe which erroneously believes it has been "recognized" may not apply for recognition and may be denied recognition by failure to apply. Conversely, a tribe which is in doubt may apply even though it has been recognized.

3. Section 54.7(b). This section speaks of "timely filed petitions", which are to be disposed of within three years from the date of the regulations. This suggests that tribes have one and only one opportunity to make a filing. On the merits, I think such a procedure is undesirable (e.g., the IRA cut-off). Moreover, it is not stated anywhere in the regulations that there will be any kind of a "statute of limitations" barring a petition not filed by a certain date. My own preference would be that a tribe could petition at any time and that the Bureau should act within a certain period (I hope more promptly than three years) on the petition after it has been filed.

4. Section 57.8(d). This section allows the Secretary to set aside the Commissioner's determination. If he does this, it seems to me the Secretary's decision should be set forth in writing and should state its reasons in detail. The regulation does not so provide.

Thank you for your note. I would be delighted to discuss these comments and the regulations with you further anytime you desire.

Best regards,

Sincerely,

Reid

Reid Peyton Chambers

RPC:bps

NORTHWESTERN STATE
UNIVERSITY OF LOUISIANA

Department of Social Sciences
Natchitoches, LA 71457

June 27, 1977

Director
Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D.C. 20245

Dear Sir:

I am writing to formally comment on "Procedures Governing Determination that Indian Group is a Federally Recognized Indian Tribe," Department of the Interior, Bureau of Indian Affairs (25 CFR PART 54) as appears in the Federal Register, Vol. 42, No. 116, Thursday, June 16, 1977.

I have been working on ethnohistorical and ethnographic details with the Louisiana tribal people for several years now and appreciate the chance to comment directly.

These proposals, if adopted, will effect a number of Louisiana communities, as well as other recognized and unrecognized communities in the Southeastern United States. Consequently, it is hoped that the Office and the Bureau will consider the following comments as a serious attempt to aid those offices in tribal identification.

Specifically Part C, Paragraphs 1-10, points for identity consideration, might be reconsidered or at least discussed in terms of the historical situation in Louisiana and other former colonial situations where non-Anglo governments once held jurisdiction over Indian affairs. I should like to address these paragraphs in order, beginning with paragraph 2. (Other paragraphs and statements would seem to be acceptable):

Paragraph 2 -- Has as members principally persons of common ethnological origins.

Comment: Ethnology is the study of ethnic groups "common ethnological origins" might ultimately be taken to refer to any group studied by an ethnologist--otherwise it should read "common ethnic origin or background."

Paragraph 3 -- Exercises political authority over its members.

Comment: This seems vague, and the question immediately arises as to what "political authority" consists of.

If you mean a body that legally represents a corporate body that is one situation, if you mean a contemporary chiefdom that is another. Unrecognized tribes would appear to have no legal basis for "authority" unless sanctioned by Federal or State law, a point of contention with traditional Indian practice anyway. Any more confusion about this issue would not seem helpful at this point.

Paragraph 6 -- Has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was party to a treaty or agreement with the United States, which treaty or agreement was ratified by Congress and remains in effect.

Comment: This paragraph poses a direct impediment to tribes which easily meet the other qualifications listed dealing with ethnic background, land and polity. Tribes like the Tunica-Biloxi, Houma and Louisiana band of Choctaw had formal agreements with the French and Spanish authorities of Louisiana and/or Texas. Since these tribes were not affected by the Indian Removal Act nor received Federal recognition or services, there exist no treaties which were enacted for them. It was explicit in the ratification of the Louisiana Purchase that such prior agreements would be honored and John Sibley, the first American Indian agent, served these tribal groups. However, it would be most imperative at this point if "agreement" was stipulated to mean recognition of tribes documented from letter books of the American agents--tacit in their documentation and/or formal recognition of bands or chiefs historically connected to applicants for recognition.

There have been services rendered these unrecognized tribes without treaties or tacit agreements. However, some, like the Houma here in Louisiana, never received anything although they were, and are, one of the larger Indian populations in the South. Similarly, tribal and non-tribal Indian communities in western Louisiana and eastern Texas fell into a no-man's land between Spanish/Republican Texas and the United States. No treaties were enacted which specifically dealt with these people--including the Caddo, Choctaw, Cherokee and others in Texas--so they remained in political limbo long after international boundaries were resolved.

Inasmuch as Paragraph 6 has a strong effect on several historically documented groups: Tunica-Biloxi, Choctaw (outside of Mississippi and Oklahoma--especially those in Louisiana who had agreements with Spanish authority), Houma, isolated clusters of Lipan (ex-Spanish slave populations) on the upper Sabine River and

possibly other groups, it should be specific and clearly stipulate the meaning of "agreement," at least as specifically as it defines "successor."

It should also allow tribes who can document cultural continuity to establish claims for recognition on historical documentation that they were officially recognized by the several colonial powers involved. In short, "treaties and agreements" should be broadened to include those with former colonial administrations as well as those ratified by the United States. Otherwise these guidelines will exclude tribal groups and bands who have lived continuously in their communities and maintained their traditional polity and cultural identity for two or more centuries. It should not be the intention of these qualifications to exclude, accidentally, people of American Indian descent from much needed services and other advantages. It is felt that the documentation of recognition by or agreements with foreign as well as domestic governments is available for most groups with real claim on recognition and would serve as adequate proof of identity. It should at least be admissable and formally considered.

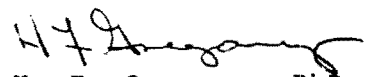
Paragraph 10 -- Has as members principally persons who are not members of any other Indian tribe.

Comment: Does this mean persons not on tribal rolls, or not of ultimate tribal background? A case in point would be Choctaw in Louisiana, who had agreements with both the Spanish and American agents, have remained in place uneffected by the Removal, maintain their cultural tradition and polity, and have not been enrolled in Mississippi or Oklahoma Choctaw rolls. Members of such communities who have migrated to Oklahoma still are not enrolled there nor do they receive Federal services. Clarification to state "enrollment" as "membership" is intended would allow these autonomous groups, who have had their own polity longer than the United States, to maintain their integrity and receive the recognition and services they qualify for.

I thank the Director and the Office for a chance to comment. Hopefully others who know about regional Indian affairs and who work with Indian communities will have input at this point. It is realized that recognition is a real problem for the Bureau and the Office of Indian Services. Without serious steps, like these guidelines, it will remain so. However, it seems the agencies should exercise caution so as not to exclude Indian communities with real identity. At least as much caution as it exercises about recognition suits it deems inadequate. I hope these comments will be helpful.

Mr. Leslie N. Gay, Jr. is to be commended for his efforts to deal with this issue. If we can be of any help to him, we would be pleased to input directly.

Sincerely,



H. F. Gregory, PhD.
Williamson Museum
Northwestern State University

jrm

cc Mrs. Jeanette Campos, Indian Manpower Services
Mr. Clyde Jackson, Jena Band of Louisiana Choctaw
Mr. Joseph Pierite, Tunica-Biloxi Tribe
Mr. Ernest Sickey, Coushatta Tribe of Louisiana
Mr. E. C. Downs, American Indian Policy Review Commission

ROUND VALLEY INDIAN HEALTH CENTER
Post Office Box 247 ❦ Covelo, California 95428
Telephone 707 983-2981

June 23, 1977

Director
Office of Indian Services
Bureau of Indian Affairs
18 and C streets
NW., Washington D.C. 20245

Dear Sir:

We have, at the Round Valley Indian Health Center, Inc. recently reviewed your Procedures Governing Determination that Indian Group is a Federally Recognized Indian Tribe. We have basically two comments that we would like to address to you at this time ralative to this document.

First, It hardly seems fair that after a great amount of work on the part of the Indian tribe or band, in the assimilation of complex and complete documents in a year, that the Bureau should take three years to simply review these documents. Surely, with the staff that the Bureau has, the small amounts of data relative to these tribes can be obtained from the computer banks in Washington and the determination can be made in a much more timely fashion. At most a year should be the maximum limit that the Bureau should have. After all, that is all the time that you give the Indian people.

Secondly, there is no provision whatsoever in this document for the grievance procedure that a tribe or band may take if they are refused recognized status. The way the document reads presently is that if one man in the Bureau makes this determination, then for all time in the future, this tribe or band may not be recognized. This is hardly fair, that one man should have such judgemental authority over the lives of the Indian people. Specific and timely procedures for Indian grievences relative to the refusal of tribal status should be established and included in the document immediately. Such procedures should be created and drafted with the aide of national Indian groups, for instance the National Association of Tribal Chairman, to insure that the procedure is Indian oriented.

Thank you for your consideration of these suggestions

sincerely

James D. Bono
Adm. Assist.
RVIHC, Inc.

(3)-1

United States Department of the Interior

440

BUREAU OF INDIAN AFFAIRS
SISSETON AGENCY
SISSETON, SOUTH DAKOTA 57262

IN REPLY REFER TO:
Administration

June 22, 1977

Memorandum

Through: Area Director, Aberdeen Area

N6/28 To: Director, Office of Indian Services
Bureau of Indian Affairs, Washington, D. C.

From: Acting Superintendent, Sisseton Agency

Subject: Comments on Proposed Rule as published in the Federal Register on Thursday, June 16, 1977

54.1 "Indian Group" should also define community

54.2 Purpose - clearly states that "these regulations shall not apply to any group which has already been recognized by the Secretary of the Interior" yet under the following it is implied that these groups already have Federal recognition. I believe the regulations could be clarified by the changes below:

54.3 "Any Indian Group .....that it has the status....." should read ".....should have the status....."

54.6 ".....has the status of a Federally recognized Indian Tribe" again should read ".....should have the status....."

Hugh Thurman
Acting Superintendent

TRANSMITTED 6-23-77
Harlan D. Zephier
Area Director

②-1

OPTIONAL FORM NO. 10
MAY 1962 EDITION

Comments on Regs.

UNITED STATES GOVERNMENT

Memorandum

DJA

TO : Area Director, Bureau of Indian Affairs

DATE: May 26, 1977

FROM : Office of the Regional Solicitor, Portland

SUBJECT: Proposed Interior Department Rule-making for Extending Federal Recognition to Tribal Groups

When I was in Washington, D.C., on April 18-19 I was shown a copy of proposed rules for extending federal recognition to Indian groups by Secretarial action which are to be published shortly in the Federal Register. The draft apparently was in final form for presentation to the Secretary for approval of its publication and a Notice of Proposed Rule-making. Following such publication the public would be given an opportunity to make comments before the rules are finally adopted. I was asked to make any comments I had on the draft.

I made the following oral comments which Scott Keep of the Solicitor's office noted down and said he would discuss with BIA to see whether it wanted to make any changes before submitting the rules for publication. I was subsequently advised the Bureau preferred to proceed with the publication of the proposed rules as drafted and that any changes could be made following the public consideration. To the best of my knowledge the rules have not yet been published.

Following are the comments which I made. These are reconstructed from memory and I do not have a copy of the proposed rules with me so cannot make reference to specific sections.

(1)

1. I felt that more extensive Federal Register notice should be required concerning the identity of the group petitioning for recognition. Sufficient information concerning the identity should be included so as to enable greater segments of the public, including state and local governmental entities, to ascertain whether they are concerned with the application of a particular petitioner. Merely listing the name of the petitioning group is often not enough to serve this purpose. We have had at least two groups of Indians in western Washington which have recently given some public indication of their desire to obtain federal recognition that even those of us quite familiar with Indian Affairs were not able to identify without further research and inquiry.

done

2. I felt that the rules should require Federal Register publication of the Commissioner's Report to the Secretary or at least a fairly inclusive summary thereof. At present, I believe, they only require notice that he has made a report. The proposed rules seem to treat the petitioning group as the only really interested party that has to be kept informed of all actions along the way. Obviously a decision to

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(1)-2

extend federal recognition to any group has consequences that will affect others than the petitioning group. They may affect other Indian groups which might claim that the petitioner belongs with them. And they certainly affect state and local governments. If the Petition includes any recommendation or contemplation of establishing an Indian reservation for the group, it would also directly affect all residents or property owners of the area to be included within the reservation.

done

3. The requirement set out in the proposed rules for recognition and for findings of nonrecognition leave a gap. Various criteria are set out (which incidentally are a considerable improvement over some of the criteria which has previously been mentioned). Then there is a section which says that before recognition can be extended certain specific criteria must be met plus at least a certain number of other optional criteria. A following subsection states that a failure to meet certain criteria plus a certain number of optional criteria is to result in nonrecognition. However, as presently worded, it is possible for a group to fall in between the requirements set out in the two subsections referred to.

?

4. There does not appear to be enough opportunity for others to offer testimony. Again this seems to be consistent with what appears to be the philosophy that the only real interested party in a petition for recognition is the petitioning entity.

If 2 is accepted, would there not be?

For the Regional Solicitor

George D. Dysart

George D. Dysart
Assistant Regional Solicitor

CARLTON L. RHOADES AND ASSOCIATES SYSTEM CONSULTANTS

31218 PACIFIC HWY SOUTH FEDERAL WAY, WA 98003 (206) 839-3660

CARLTON L. RHOADES
PRINCIPAL

September 13, 1977

Director
Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D.C.

Dear Sir:

My comments on the proposed new rule (25 CFR Part 54) are submitted for consideration. I am currently a member of the Recognition Committee of the Chinook Tribe. I am by descent part Chinook and part Chehalis. I was raised in the ways of the Chinooks in our ancestral home on Willapa Bay in Southwestern Washington. In addition to being a member of the Chinook Tribe, I am allotted on the Quinault Reservation.

I recognize that a means to consider applications for recognition by Indian Groups is desirable. The regulations for this consideration should provide a means for orderly evaluation and a reasonable and just decision by the Commissioner. As written, the proposed regulations seem ambiguous and possibly self-defeating.

Paragraphs 54.1 (f) and 54.3 would seem to be ambiguous and perhaps contradictory. Is the "Federally Recognized Tribe" defined in 54.1 (f) the same "federally recognized Indian tribe" of 54.3? More precise definitions and subsequent statements are required in this case.

Paragraph 54.7 (c)(3) is concerned with the petitioning groups exercising political authority over its members. In general, this implies the ability to reward or punish the members in some manner in order to maintain an orderly society. In the case of the Chinooks (and many other legitimate historical as well as contemporary unrecognized tribes, I'm sure) with no Federal recognition or reserved historical land area this "political authority" requires an exact definition. Does, for example, the Chinook Tribe organized as a non-profit corporation satisfy this requirement? Would a less formal organization satisfy the requirements? Without specific definition, this "political authority" statement could limit recognition to those tribes currently recognized.

Paragraph 54.7 (c)(10) is concerned with the petitioning tribes members being principally persons who are not members of any other Indian tribe. Here we have many Chinooks who are members of either the Quinault Tribe or the Shoalwater Tribe. Many such as myself, are not members of any federally recognized tribes. Some background is necessary to fully understand the reason for many being members of the Quinault Tribe.

The Quinault Reservation in its present form was established for the Coastal Washington Indians. It was allotted to these people. Less than 20% was allotted to ethnic Quinaults, approximately 25% to ethnic Chinooks. In order for an allottee to transfer land to children, or to purchase land from another allottee, or to place land in trust on the Quinault Reservation, the allottee must be a member of a federally recognized tribe. For this reason, many have joined the Quinault Tribe. If the Chinook Tribe was federally recognized, this would not be the case. The word "principally" could mean from just over 50% to just short of 100% of the members. Perhaps specific definition is required here as well.

It is felt that most ethnic Chinooks would join the Chinook Tribe once it gained federal recognition allowing the individual allottee to transact his affairs on the Quinault Reservation as a Chinook.

Paragraph 54.8 (b) and (c) establishes the criteria for the Commissioner to grant or refuse recognition and as a basis specifies the petitioner must satisfy among other things, the paragraphs 54.7 (c)(3) and (10) commented upon. Being such key considerations, these paragraphs should be unambiguous and specific in statement.

My final comment concerns the potential costs of complying with these requirements. We recognize the facts as we know them be prepared and submitted in an orderly manner. This activity could present a substantial cost to the petitioning tribe. Additionally, the review procedure of paragraph 54.7 (a) and possible additional information requirements of 54.7 (b) could impose substantial additional costs upon the petitioner. Not being a federally recognized tribe simulaneously means not having access to the funds to respond, and with no funding provisions, the regulation becomes self-defeating.

Sincerely,

Carlton L. Rhoades

CLR/dal

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

COMMENTS OF THE LITTLE SHELL TRIBE OF CHIPPEWA INDIANS UPON PROPOSED PROCEDURES GOVERNING DETERMINATION THAT AN INDIAN GROUP IS A FEDERALLY RECOGNIZED INDIAN TRIBE.

I.

GENERAL STATEMENT

The Little Shell Tribe of Chippewa Indians is a historical Indian group which is a group of descendants of the Plains-Ojibwa. Turtle Mountain Band of Chippewa Indians v. United States, 23 Ind. Cl. Comm. 315, 318 (1970); Little Shell Band v. United States, 3 Ind. Cl. Comm. 417 (1954). The tribe has consistently exercised the powers of a dependent sovereign nation within the United States.

The Little Shell Tribe differs sharply with the proposed regulations published at 42 Federal Register 30647-30648 (June 16, 1977) and hereby presents its comments upon them.

II.

WHILE THE PUBLICATION OF PROPOSED REGULATIONS TECHNICALLY REQUIREMENTS OF 5 U.S.C. §552, THERE HAS NOT BEEN PROPER NOTICE TO "NONRECOGNIZED" INDIAN GROUPS:

Pursuant to the statute, publication of proposed regulations in the Federal Register is sufficient for their legality. 5 U.S.C. §552(a)(3). However, in this case the question is one of the adoption of procedures which will affect the lives and futures not only of Indian groups but of their individual members as well. For the purposes of the Indian Self-

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Determination and Education Assistance Act an "Indian tribe" eligible to contract for the provision of services will be a

> "Indian tribe, band, nation, or other organized group or community . . . which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. §450b.

"Tribes, bands, nations, or other organized groups or communities" include many groups which may or may not have the technical assistance or money to become aware of items published in the Federal Register. Many of these people have received the traditional services offered under the Snyder Act at the reservation of a tribe which has had an area set aside for it. These people would not become aware of the publication of proposed regulations and there is an obligation upon the Department of the Interior to give more adequate notice to the Indian groups by means of newspaper articles, notices in traditional Indian areas, and other kinds of notice likely to come to the notice of "unrecognized" groups.

We are very familiar with the concept of Indian law that treaties are to be construed in the way Indians would understand them as shown by Indian practices and customs. United States v. Top Sky, 547 F.2d 486, 487 (C.A. 9, 1976).

> "In sum, the treaty is to be interpreted to attain the reasonable expectations of the Indians." Id.

The language of the statutes should be interpreted in the

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same way as that of treaties, that is,

> "The language . . . should never be construed to (Indians') prejudice. If words be made use of which, which are susceptible of a more extended meaning than their plain import . . . they should be considered as used only in the latter sense." Worcester v. Georgia, 6 Peters 515, 582 (1832).

The statute should be construed in a spirit which generously recognized the full obligation of this nation to protect the interests of dependent people. Peoria Tribe of Indians v. United States, 390 U.S. 468 (1968). Applying this same doctrine to the idea of publishing administrative regulations pertaining to "recognition," the individual Indian groups and peoples must be given actual notice of regulatory proceedings.

Indicative of the spirit in which the regulations which are proposed is the fact that they have not been widely advertized. One cannot even get notice of the regulations when one specifically asks for notice:

On March 9, 1977 James W. Zion, counsel for the Little Shell Tribe, had a telephone conversation with Leslie Gay, the author of the proposed regulations. In that conversation Zion asked Mr. Gay for specific notice of any proposal regulations and informed Mr. Gay of the interest of the Little Shell Tribe. Gay promised Zion that a copy of any proposed regulations would be sent to him and that the Little Shell would receive notice of proposed policy. That promise was not kept and the Little

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Shell were not given the notice they requested.

Therefore the Little Shell Tribe urges the Department to vacate further proceedings in connection with publication in the Federal Register, give widespread notice to all groups in the form of public notice and specify notification of known groups, and give the people who will be directly affected an opportunity to comment on the regulations. This form of commentary should include public hearings held at area offices and agencies of the Bureau of Indian Affairs.

III.

THE GENERAL TENOR OF THE PROPOSED REGULATIONS IS THAT THE DEPARTMENT OF INTERIOR INTENDS TO ADOPT A RESTRICTIVE POLICY REGARDING "RECOGNITION" WHICH WILL BE STRICTLY APPLIED:

Advocates of the fair treatment of aboriginal peoples by Anglo-European governments will not view the proposed regulations with favor. The clear intent of the regulations, read as a whole, is that the problem of "recognition" is to be dealt with once and for all by standards which "unrecognized" groups will not be able to meet. For example:

- the lack of adequate notice;
- the requirement of precise factual and documentary proof in the petition (§54.6);
- the one year deadline (§54.3);
- the requirements of meeting a specific number of technical standards (§§54.7, 54.8);

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-the repeated inclusion of only "tribes" and not the liberal inclusion of all Indian groups of the Self-Determination Act.

The Self-Determination Act includes tribes, bands, nations, or organized groups or communities which are recognized for programs because they are Indian groups. 25 U.S.C. §450b(b). In other words, we are discussing a recognition which is had in a course of dealing or treatment. Since the United States has the doctrine that tribes of Indians and other Indian groups are "dependent soverign nations" we are in essence dealing with de facto recognition, and the question of whether the United States intends to recognize a group for specific purposes.

> "The distinction between 'de jure/ de facto recognition' and 'recognition as the de jure/ de facto government' is insubstantial, more especially as the question is one of intention and the legal consequences thereof in the particular case." Brownlie, Principles of Public International Law 87 (1966).

Further, "Recognition is a matter of intention and may be express or implied." Id. 89.

The intent of Congress and the intent of the body of case law of the United States courts is that Indians are to be treated with special consideration and the generosity due dependent peoples who were displaced by a more powerful economic society. The proposed regulations are overly technical and legalistic and are designed to eliminate "unrecognized" Indian groups from the coverage of federal programs, and as such should be scrapped.

IV.

ANALYSIS BY SECTION

A. SECTION 54.1:

No comment.

B. SECTION 54.2:

This section addresses only the recognition of "tribes" and not bands, nations and other organized groups and communities as does the Self-Determination Act, and therefore it should be amended to include all Indian groups.

C. SECTION 54.3:

This section fails to address the inclusion of bands, nations and other organized Indian groups and communities. In addition, the one year limitation will impose an unfair burden on applicants.

It is common knowledge that "unrecognized" groups do not have the resources and technical skills to assemble sufficient proof of their implied recognition within one year. The "existence" of an Indian group is a political question involving the use of historical and legal circumstantial evidence. This has been the case with the Indian Claims Commission, and appears to be the case for other Indian law purposes. If the Little Shell Tribe is to show its de facto (or de jure) recognition by the United States, it will be necessary to assemble a good deal of historical and sociological information and data which is to be found in various archives in the West and in Washington. The collection of this proof will require funds which will be

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obtainable from private funding sources. Groups will have to go through the funding process, hire research consultants, and secure the services of counsel in order to prepare their petitions. The funding process along may well take more than one year.

D. SECTION 54.4:

No comment.

E. SECTION 54.5:

No comment.

F. SECTION 54.6:

While most pleading in the courts and administrative agencies of the United States involves principles of notice and fact pleading, this section has requirements or presenting evidentiary material with the petition. The matter or presenting lists of members or making a statement of government and membership standards is evidentiary and has its place in a hearing or in an exhibit and not as the appendix to a petition. Provision should be made for a fact or notice pleading petition to be filed within any limitation period, and evidentiary materials which are reasonably related to issues of de facto, de jure or implied recognition at hearing.

G. SECTION 54.7:

(a): Provision should be made for the presentation of oral arguments at a place convenient to the petitioning group such as an area office or an agency of the Bureau of Indian Affairs.

(c): The factors listed in this subsection are those

which have been used in the past in various legal contexts to examine the "existence" of tribes, bands, or other groups. As such, the Little Shell Tribe has no objection to their use. However the factors that are listed are just that - factors, specific items which pertain to the solution of a problem. Some of the factors may pertain to whether or not a group is legally a "tribe," while others may pertain to a "band." They are not of themselves definitional, that is they do not of themselves define a tribe or other group but may be indicative of such a group. Additionally, the factors do not include, and should, recognition by the Indian Claims Commission as an Indian group.

G. SECTION 54.8:

The Little Shell Tribe takes particular exception to this section. Not only does the section eliminate bands and other INdian groups from its coverage, but selects specific factors enumerated in §54.7(c) for the determination of a "tribe." In international law, where the standards for the recognition of a state are stricter than those required by our municipal Indian law, recognition is a matter of the express or implied intent to recognize a state or government. Brownlie, Principles of Public International Law 89. The proposed regulations are a reflection of the need to set standards for "recognition" for the purposes of the Self-Determination Act and other federal benefits. That act (that is the Self-Determination Act) embodies the concept of implied recognition in that no specific tribal entity is required. The only requirement is that Indian groups show that they are Indian groups having the status of Indians. That is shown through factors internal

to the Indian group and factors having to do with past dealings with the United States. The requirements of this section are rigid, legalistic, definitional, and designed to be exclusive of Indian groups from "recognition" rather than inclusive in the spirit of the body of decisional Indian law.

V.
CONCLUSION

For the reasons stated, the Little Shell Tribe urges the Department of the Interior to give more specific notice to the affected groups and to make revisions of the proposed regulations along the lines suggested.

Dated September 16, 1977

LITTLE SHELL TRIBE OF CHIPPEWA INDIANS

By _____

James W. Zion
Its Attorney
201 Power Block
P.O. Box 314
Helena, Montana 59601
(406) 442-3261

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
REGIONAL OFFICE
450 GOLDEN GATE AVE., P.O. BOX 36003, SAN FRANCISCO, CALIF. 94102

13 SEP 1977

REGION IX

IN REPLY REFER TO:
90C

Office of Indian Programs

10/4

Director
Office of Indian Services
Bureau of Indian Affairs
18th & C Streets, N.W.
Washington, D.C. 20245

Dear Sir:

Subject: Proposed Procedures Governing the Determination that an Indian Group is a Federally Recognized Indian Tribe

This Division's comments and questions on the proposed regulations are as follows:

Section 54.3

Why has the one year deadline for the submission of a petition been established? This deadline seems arbitrary and unnecessary. It has been our experience that an inordinate amount of time is required to disseminate information to all concerned parties in the field (especially in those cases where there is no readily available list of groups affected) and the groups with limited resources might be hard pressed to compile the required data in that limited a period of time. While we understand the need for establishing Departmental policies and procedures for recognizing Indian groups, we see no reason for a time limit to be established for the submission of a petition.

Section 54.7(c)(5)

It is unclear how this provision will affect the California Indian groups which have been terminated as a result of the Rancheria Act of 1964 (P.L. 85-671). What is the effect of this provision on those Indian groups currently requesting de-termination?

Sincerely,

Astrid G. Trauth
Director
Community Planning and Development Division

GHP ADD-RDD-V026-D0149 Page 1 of 1

AIO

AMERICANS for INDIAN OPPORTUNITY

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LaDonna Harris
President

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Vickie Santana, *Southern Piegan-Blackfeet*
Joe S. Sando, *Jemez Pueblo*
Eddie L. Tullis, *Alabama Creek*

440

September 9, 1977

ack by separate letter

Director
Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, NW
Washington, DC 20245

To Director:

The proposed BIA regulations in general are a positive move in the right direction. However, we would like to point out in this specific comments below, several changes are needed before they do clearly address the problem of unrecognized tribes. In order that the BIA's proposed regulations are responsive to the needs of Indian people and ideally suited to meet the practical problems unrecognized tribes are likely to encounter in preparing and presenting their petitions for federal recognition.

Because of the importance of federal recognition to thousands of Indian people, we strenously urge the BIA to reconsider its proposed regulations and to delay taking action on the proposed regulations until tribes and the Bureau can do an indepth study more fully examined if the Bureau delays action until after the Senate Select Committee hearings on non-recognized tribes scheduled for September - at which time the additional information presented could be utilized by the BIA.

For these reasons which are set forth below, AIO believes that the BIA's proposed regulations can be improved upon by incorporating recommendations from various sources, and we urge consideration of these changes. We believe that the most comprehensive, well-reasoned guidelines will result from incorporating such proposals and we believe that this can only be accomplished if the Bureau allows itself and tribal groups more time to consider such recommendations.

Time Limits

The time limit in the proposed regulations should be extended because of the unreasonably short periods involved

and the hardship will impose on the petitioning tribes in meeting these deadlines.

The time period of a year seems entirely too short when compared to the task that must be accomplished. The proposed criteria as they are presently drafted will require petitioning tribes to conduct extensive research to pull together anthropological, historical, and legal material. The research will undoubtedly be exceedingly difficult to do in a year for those tribes.

In order that petitioning tribes prepare the best possible petitions to adequately represent each tribe's case we propose a more reasonable time limit of five years to allow adequate preparation of the petitions. Given the trust responsibility owed to Indian tribes by the United States, it is assumed that it is the United States desire, as trustee, to have the best case put before it so that it can determine more accurately, the parties to whom it owes a duty.

Technical and Financial Assistance

A major deficiency in the proposed regulations is the failure to request for provisions for technical and financial assistance to tribes that may not have access or can not afford the costly expertise required for such an enormous task of preparing well documented evidence to be reviewed for recognition. We urge that these regulations be amended to impose an affirmative duty upon the commissioner to provide technical and financial assistance to a tribe in documenting and preparing petitions for all affected tribes

Processing of Petitions

The BIA require that a petitioner satisfy six specific criteria and one of four optional criteria; The documentation of their factors would supposedly prove whether or not the tribe is a recognized tribe and has been dealt with as such. The substance of the proposed criteria, as well as the requirement that seven out of ten be proved by the petitioner, requires major changes because of the following problems.

Criteria (1), (2), and (3) are so vague that it is difficult to know what they require to be proved. What does a "social solidarity" mean and how is it measured.

"Common ethnological origins" is very broad and seems to be an obvious element implicit in each of criteria through through 9. It is liekly that the U.S. would have had treaty relationships with the group, (6), enacted legislation designating the groups as a tribe, (7), granted it services, (9), or acknowledged its collective rights in its resources if the group had no "common ethnological origins."

Part (6) of the same section 54.7, which reads "has been a party to a treaty or agreement with the United States, or is a successor in interest to an Indian tribe which was a party to a treaty or agreement with the United States," should also include the recognition given to tribes not only from the United States but by pre-existing colonial and/or territorial governments. "Treaty relations" should include any formal relationship based on a governments' acknowledgement of the Indian groups distinct sovereign status.

Each of the seven items enumerated should be more clearly defined and provide a more definite standard of proof. For example, in determining whether the group has held collective rights in tribal lands or funds, the terms should be defined so as to identify more clearly the facts needed to prove the criteria. Each one should be more clearly defined more comprehensive and a more appropriate indicator of whether or not a petitioning group is a tribe.

With warm regards,

LaDonna Harris

LaDonna Harris
President

LDH/maa

TB 9/27

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PUEBLO OF LAGUNA

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September 16, 1977

ack 10/4

Director, Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N. W.
Washington, D. C. 20245

RE: Proposed rules providing for procedures for the determination that an Indian group is a federally recognized tribe.

Dear Sir:

At first glance the proposed rules appear to be inclusive of many Indian groups, however, they do not include procedures for the restoration of those tribes terminated for various reasons. The termination policy as expressed by the federal government in past years has been argued against vigorously by Indian tribes throughout the United States in various forums. Section 54.7, Subsection (c) (5) appears to be expressing or recognizing this policy once again. Termination in any terms will not receive favorable comment or recommendation by the Pueblo of Laguna. Recognition as opposed to restoration appears to be the theme of the proposed rules and the Pueblo of Laguna cannot ignore the pleas of those tribes that have been terminated and wish to have their status as Indian tribes reinstated.

The problems of federal recognition and federal restoration are separate problems and should be dealt with as such. In particular, it is the feeling of the Pueblo of Laguna that separate, specific procedures should be developed for those Indian groups in the two different situations. You undoubtedly will be receiving scholarly, legal opinions on the proposed rules which will buttress and confirm our feelings.

Sincerely yours,

PUEBLO OF LAGUNA

Roland E. Johnson
Governor

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September 16, 1977

ack 10/4

Director, Office of Indian Services
Bureau of Indian Affairs
18th and "C" Streets, NW
Washington, D.C. 20245

Subject: Proposed regulations governing federal recognition of Indian tribes, 25 CFR Part 54.

Pursuant to the Department's request for comments on proposed regulation 25 CFR Part 54, I offer the following:

Initially, I wish to commend the Bureau of Indian Affairs for its efforts to delineate the procedure it seeks to implement in providing federal recognition of tribal groups. As an attorney who has worked with Indian groups seeking the benefits of recognition, I sincerely hope that a fair procedure can be outlined. This procedure hopefully will explicitly detail the requirements which the Department of Interior looks for in a petition for recognition. Unfortunately, I believe that the proposed regulations fail to provide for "a uniform and objective approach" in evaluating said petitions. Specifically I find the following provisions objectionable:

1) The definition of "Indian group" in Section 54.1 (e).

2) The definition of "Federally Recognized Tribe", Section 54.1 (f).

3) The one year filing deadline in Section 54.3.

4) The political authority requirement of Section 54.7 (c) (3).

The first two and the fourth above-stated objections, which will be discussed more fully below, are especially offensive because of their vagueness and potential for anything but an "objective" handling of an Indian organization's petition for recognition.

1. Definition of Indian group, Section 54.1 (e)

The proposed regulations define "Indian group" as any community of persons of Indian, Aleut, or Eskimo extraction. I believe that the use of the word "community" may lead to a restrictive definition of "Indian group." The common connotation of "community" attaches a geographic closeness to a people. Given the past efforts of the federal government to extinguish community ties among Indians in the government's push for assimilation of Indians into the non-Indian community and the physical removal of Indians from their tribal lands, any geographic connotation of community would unjustly restrict the right to federal recognition. Therefore, if the Bureau insists on maintaining the "community" requirement in defining "Indian group", I propose that it adopt the broad meaning of the term, to wit;

> "a body of persons having a history ~~or~~ of social, economic and/or political interests in common." Webster's Seventh New Collegiate Dictionary.

In the alternative, I suggest that the Bureau define an Indian group as any community, organization or association of persons of Indian, Aleut or Eskimo extraction. This definition avoids possible disputes over what a community is and provides for the recognition of groups of Indians who have retained their ties to the tribal group even though they may have been forced by historic or economic pressures to depart from the physical community. In addition, this broader definition allows for the consolidation of small geographic communities under a central tribal government to provide for more effective organization.

2. The definition of "Federally Recognized Tribe", Section 54.1 (f)

The proposed definition of "federally recognized tribe" is the provision which most disturbs me. Instead of providing a uniform and objective criteria for extending recognition, the Bureau has defined federally recognized tribe in terms so loose so as to inform no one of what standard will be used when

evaluating the petition. In fact, Section 54.3 of the proposed regulations provides that any Indian group in the United States who believes it has the status of a federally recognized tribe may apply for recognition. How is any Indian group to believe if it such status when the regulation provides no indication of what the Secretary of Interior accepts as constituting a federally recognized tribe.

Section 54.1 (f) vests absolute discretion in the Secretary of the Interior in determining which Indian group has had and should continue to have the status of a domestic dependent sovereign. The courts have recognized that the Department of Interior may extend recognition to Indian tribes beyond those who have been recognized by Congress through treaties. This power to recognize Indian groups has never been within the sole dominion of the Department of Interior. It has been long acknowledged that "each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation." Felix Cohen, Federal Indian Law, p. 122.

While the Department of Interior may extend recognition to Indian groups other than those who had treaty relations with the federal government, it may not choose to withhold the mantle of recognition from those tribes who have been recognized by the Congress of the United States through treaties and/or legislation. Therefore, in line with the purported purpose of the proposed regulations, I recommend that proposed Section 54.1 (f) be replaced by the existing regulation, 25 CFR 52.1 (g) which defines federally recognized tribe as

> "any Indian tribe which has entered into a treaty, convention or executive agreement with the Federal Government or whose tribal entity has been otherwise recognized by the Untied States."

3. Political Authority

The requirement as contained in Section 54.7 (C) (3) that a group petitioning for recognition exercise political authority over its members is objectionable because it does not define what the Bureau intends by "political authority." Many tribes may not have had an active governing body historically nor more recently as such is usually defined. More importantly, actions by the federal government may have convinced tribes that their governing bodies were useless and they may have fallen by the wayside. On point, is the situation of the Ottawas in Michigan. Twice, they petitioned for recognition, once in 1934 and again in 1941, both times the federal government failed to take action on their request. With such neglect by the federal government, is it surprising that the Ottawas have not exercised political authority over its members, such as the term usually connotes. What is more amazing is that there exists any type of organization of the Ottawas, at all. Certainly it is time for the federal government to admit its trust responsibilities to such groups. It would be manifestly unjust to require a showing of the exercise of political authority by a group when without recognition by the federal government it would be nearly impossible to exercise the same. While all Indian tribes have the inherent powers of a limited sovereignty, it is not until the federal government recognizes them and begins to bestow the benefits it reserves for federally recognized tribes that the tribal group can begin to exercise outward manifestations of political authority over its members. Therefore, by requiring an exercise of political authority prematurely, as Section 54.7 (c) seems to do, the Bureau unfairly restricts the right of recognition to the unusual and rare occurance of a tribe which has continued to exercise political authority over its members while being ignored and neglected by the federal government.

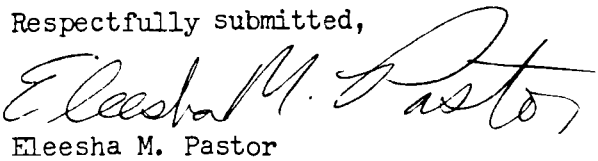
4. One-year filing requirement

Lastly, the requirement that an Indian group request recognition within one year after the promulgation of the proposed regulations unduly limits access to recognition. Anyone who has worked with an unorganized tribe will attest to the fact that it takes at least one year for the interested tribal leaders to educate their members to the benefits of recognition/reorganization and to dispell erroneous and deleterious notions which have arisen over years of federal neglect.

Furthermore, Indian groups who well may wish to receive the benefits of recognition/reorganization may not have access to legal assistance with which to fashion a petition for recognition. While it is not required the group be represented by legal counsel, most unorganized groups who do not have access to legal assistance may not be aware of the one year filing requirement, nor would they be aware of what the petition should contain.

Additionally, some groups may not wish to petition for recognition at the present time. Certainly the current state of Indian law does not give the Secretary or the Bureau the power to require action within 12 months after passage of the regulations. Unless the Bureau proposes to mount a full scale educational campaign to inform potential petitioners of their right to petition, the necessity of doing so within one year, and give them the assistance needed to write a petition, the one-year requirement is unnecessarily restrictive.

Respectfully submitted,



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