CERTIFIED COPY

TRIBAL CONSULTATION MEETING
FEDERAL ACKNOWLEDGEMENT OF INDIAN TRIBES
PROPOSED RULE - 25 CFR 83
Tuesday, July 22, 2014

Reported by: Amy E. Perry, CSR License No. 11880
TRIBAL CONSULTATION

APPEARANCES

U.S. DEPARTMENT OF THE INTERIOR
Assistant Secretary - Indian Affairs
ELIZABETH APPEL, Director, Regulatory Affairs &
Collaborative Action
1849 C Street, NW
MIB, Mailstop 3071
Washington, DC 20240
202.273.4680
elizabeth.appele@bia.gov

U.S. DEPARTMENT OF THE INTERIOR
Office of the Solicitor
KAITLYN KLASS, Attorney-Advisor,
Division of Indian Affairs
1849 C Street, NW
Room 6519, Mailstop 6513
Washington, DC 20240
202.208.5134
kaitlyn.klass@sol.doi.gov

U.S. DEPARTMENT OF THE INTERIOR
Office of the Secretary
DBERRICK BEETSO, Counselor to the Assistant Secretary
Indian Affairs
1849 C Street, NW
MS-4141-MIB
Washington, DC 20240
202.208.7352
derrick_beetso@ios.doi.gov

Also Present: Regina Gilbert, Regulatory Specialist,
Office of Regulatory Affairs
Viola Brooks, Pacific Region
Harley Long, Pacific Region

Commenters: Tunney Crowe
Brandon Jones
Todd Hambree
Tracy Edwards
Dennis Hendricks
Tunney Crowe

--000--
Tuesday, the 22nd day of July, 2014, commencing at the hour of 1:10 p.m., thereof, at Cache Creek Resort, 14455 California 16, Brooks, California, before me, Amy E. Perry, a Certified Shorthand Reporter, in and for the State of California.

MR. BEETSO: Good afternoon, everyone. We are going to go ahead and get started. Please come in and take a seat.

So before we started this afternoon's session, we put forth the proposal that non-recognized tribes and non-federally recognized tribes be allowed to attend the meeting. We've had some objections to that. This meeting will be closed to only those folks who are representatives or delegates of federally-recognized Indian tribes.

The transcripts will be available online so you guys could see what was stated during the session, and there was a morning session as well and those transcripts will be online as well. But at this time the meeting will be closed to federally-recognized tribes and their official delegates.

I guess we'll start out by having folks stand up and introduce themselves and what tribe they're here on behalf of.

ATTENDEE: I'm Gary Rickard. I'm here representing my son and daughter from the Wintu Tribe.
They weren't able to make it, they had to work.

ATTENDEE: Kimberly Fuhrman, paralegal to Cody for the Cody O'Connell Cherokee Tribe.

ATTENDEE: Cody O'Connell, Cherokee Tribe.

ATTENDEE: Tunney Crowe [unintelligible], Eastern Band of Cherokee.

THE REPORTER: Can you repeat that?

ATTENDEE: Tunney Crowe.

ATTENDEE: Brandon Jones, tribal councilman for Eastern Band of Cherokee.

ATTENDEE: Ray Martin, Agua Caliente Band of Cahuilla Indians.

ATTENDEE: [Unintelligible].

THE REPORTER: Can you repeat that with the mic?

ATTENDEE: Pamela Cubbler, Colfax Rancheria.

ATTENDEE: I am Jacob Coin here on behalf of the San Manuel Band of Mission Indians.

ATTENDEE: James Hayward, Jr., Redding Rancheria [unintelligible].

ATTENDEE: Patty Spaulding, Redding Rancheria.

ATTENDEE: Miranda Edwards, Redding Rancheria.

ATTENDEE: Tracy Edwards, Redding Rancheria.

ATTENDEE: Hope Wilkes, Redding Rancheria.

ATTENDEE: Michelle Hayward, Redding Rancheria.

ATTENDEE: Charlene Nijmeh, Muwekma Ohlone Tribe
of the San Francisco Bay Area.

ATTENDEE: Rosemary Kim, chairwoman of the Muwekma Tribe of the Bay Area. And behind me is the head woman of the Winnemem Wintu Tribe. And I would just, out of respect and belief in our own religion, request that she be given two minutes as you have requested.

ATTENDEE: I'm Chief of the Winnemem Wintu Tribe [unintelligible] on McCloud River. We would -- we have traveled a long way to be here.

ATTENDEE: Joe Pina from Cachil DeHe, Colusa, California.

ATTENDEE: Lindsay Earls, Cherokee Nation.

ATTENDEE: Todd Hembree, Attorney General for the Cherokee Nation, Oklahoma.

MR. BEETSO: Before we start, I respectfully request that if you're not here on behalf of a federally-recognized Indian tribe, you exit the room. There's an Executive Order 13175, that requires the Department of Interior to hold consultation with federally-recognized Indian tribes, that's folks that are on a federally-recognized list.

And as part of that, the federally-recognized tribes have the floor, this is their meeting. The public meeting was earlier this morning. It was from 8:30 until noon. So three-and-a-half hours for folks to come that
were not federally-recognized Indian tribes or representatives of federally-recognized Indian tribes.

So at this time I respectfully ask that if you're not here on behalf of a federally-recognized Indian tribe, that you leave the room.

ATTENDEE: You know, the public meeting didn't really say unrecognized tribes. And we don't feel like we're public, but we're tribal. And you said tribes in the afternoon, public in the morning.

MR. BEETSO: We said federally-recognized tribal consultation in the afternoon was what the notice said. And then the notice said public meeting in the morning.

ATTENDEE: And where did you say unrecognized tribes which this is about, process for unrecognized tribes.

MR. BEETSO: There were a number of unrecognized tribes that had the opportunity to speak this morning from 8:30 until noon.

ATTENDEE: On the paper it says generally, generally-recognized tribes. Generally. It didn't say if you're unrecognized you could not attend.

MS. APPEL: Given that you've traveled so far if you're not comfortable just submitting written comments and you'd like to get a statement on the record, one thing we could do to accommodate you is stay after the tribal
consultation and then get their statement on the record.

MR. BEETSO: Would that be okay?

ATTENDEE: This is not really okay. I mean you
have Cherokee Tribe here and you have [unintelligible]
Native tribe here and you're not going to listen to us?
You're not going to allow us time in this session?

MR. BEETSO: This session right here is a closed
session for federally-recognized Indian tribes with
executive order --

ATTENDEE: We have been federally recognized, we
work with the Bureau of [unintelligible] and we work with
the Bureau of Latin Management who holds our land, that's
federal.

MR. BEETSO: We're specifically talking about the
566 tribes on the list for Indian entities eligible for
services. That's who the Executive Order 13175 pertains
to.

ATTENDEE: And we were, you know, I'm a person
who got a BIA grant to go to school and my aunt got a house
to build and so that's federal recognition, as well and
we're California Claims Case Indians, I have a roll number
from California with benefits of Indian services.

ATTENDEE: It didn't say only
federally-recognized tribes for this meeting at this time.

MR. BEETSO: On this notice right here which was
in the Federal Register it says, "Tribal consultations are for representatives of currently federally-recognized tribes only," under the tribal consultation session and public meetings. So it did say that on the notice.

ATTENDEE: Not on mine. It said generally.

ATTENDEE: I think this is very unfair for Californians.

ATTENDEE: Yes, definitely.

ATTENDEE: You're ignoring the California claims case and we already proved that we were California Indians recognized by the Bureau and serviced by the Bureau up until you made a list. And I think that's a discriminatory process that you're doing right now and that discrimination will be noted.

We have been discriminated against since 1985, you have discontinued our services for no reason, no rhyme, just stopped, and yet we have all of the documents in the California claims case, we have government roll numbers certifying that we are federally-recognized Indians.

And we don't have anything from BIA saying we're not federally recognized anymore. We were never terminated, we were never given the letter from the BIA saying your federal recognition has terminated.

MR. BEETSO: And I know it's a difficult situation but it's one of those situations where we have to
TRIBAL CONSULTATION

respect the integrity of the tribal consultation process
and that consultation process expands just to
federally-recognized tribes. And as of right now your
tribe is not on the list.

And the morning session was for -- the public
session was meant to catch folks that were not on the list
that wanted to have input on this regulatory process.

ATTENDEE: You didn't say that on your notice,
the unrecognized tribes should come during the public
session.

MR. BEETSO: The notice did say that the
afternoon session was for only those tribes that are
already federally recognized.

ATTENDEE: Actually it says generally are open to
everyone.

ATTENDEE: And the only people that are opposed
to unrecognized tribes are from out of state, not for
California.

THE REPORTER: Can we get a microphone?

MR. BEETSO: We ask that you respect the
objections by the tribal leaders raised at this time.
We're here on behalf of the federal government and we have
a duty to federally-recognize tribes, to respect their
wishes. Like Liz said, we're trying to be able to
accommodate you all. So if you guys would like, I can step
out and take a public statement if that's acceptable. I'd be happy to do that.

But at this point we have to move forward with the afternoon session which was for federally-recognized tribes. So can I step outside if you guys feel like that's okay.

ATTENDEE: Well I think it's highly unjust what you're doing, but since you're talking about a process to federally-recognized tribes and tribes have been in this process for over 30 years, and now you're letting federally-recognized tribes who cannot even manage these criteria to be recognized have the floor on our future.

ATTENDEE: But it's normal treatment by the BIA.

Thank you for verifying.

(Off-the-record discussion.)

(Whereupon a recess was taken.)

MS. APPEL: So just to reiterate what Derrick said, this is a closed session. This is part of the government-to-government relationship. So we ask that only representatives of the tribal governments of federally-recognized tribes participate.

And while we're waiting for Derrick, in the meantime I'll run through the presentation. It's the same presentation we had this morning. I apologize to those of you who have heard it before and probably are saying it in
your sleep.

    My name is Liz Appel, I'm the director of the
Office of Regulatory Affairs and Collaborative Action under
the Assistant Secretary for Indian Affairs.

    And with me, I have Katie Klass, who is with the
Office of the Solicitor, and Derrick Beetso, who is a
Counselor to the Assistant Secretary for Indian Affairs
will be joining us in a moment.

    In your packet you should have a copy of the
presentation, it's the same presentation and materials that
were provided this morning in the public meeting. It
includes the Proposed Rule as well as some additional
outreach material.

    I will walk through the Proposed Rule and how we
got here and then we'll open the floor to representatives
of federally-recognized tribes.

    So there are three primary ways in which the U.S.
Government can recognize an Indian tribe. Today we're
talking about the administrative process for recognizing
tribes and that is by determination of the Assistant
Secretary for Indian affairs.

    Prior to 1978 the assistant secretary would
review petitions by tribes on an ad-hoc basis to determine
whether the federal government would recognize those
tribes. And in 1978 the Department of the Interior
promulgated regulations to make that process of reviewing petitions consistent and impose certain uniform steps and criteria that the petitioners must meet for acknowledgment.

In 1994 those regulations were updated. The biggest change probably was the addition of the previous federal acknowledgment process, otherwise the criteria were unchanged. And in 2000, 2005 and 2008, the Department published guidance documents that set out how the Department would be interpreting various provisions of the Rule.

Of the 566 federally-recognized tribes, 17 have been acknowledged through this regulatory process, the Part 83 process. And approximately 30-some have been denied through that process. So we have had the regulations in place since 1978 and we have received a lot of comments, some on the record before Congress, indicating that the process is broken because it takes too long for petitioners to get through the process. The process is burdensome, it's too expensive, it's unpredictable and it's not transparent.

So in 2009 Secretary of the Interior, Ken Salazar, testified before the Senate Committee on Indian Affairs that the Department would be taking a look at the federal acknowledgment process and looking at ways it could be improved.
TRIBAL CONSULTATION

And in 2010 an internal department workgroup was pulled together with representatives from the Office of the Assistant Secretary for Indian Affairs, the Office of the Solicitor and Office of Federal Acknowledgment to work on ways to improve the federal acknowledgment process.

And in 2012 the representative of the Assistant Secretary for Indian Affairs again testified before the Senate Committee on Indian Affairs and identified guiding principles that that workgroup had identified as principles for changes to the federal acknowledgment process.

And those principles became the goal of the discussion draft in 2013, while in the fall of 2012 Assistant Secretary, Kevin Washburn, and Deputy Assistant Secretary, Larry Roberts, came on board and they committed to finally getting a rule developed to update the federal acknowledgment process. So they followed these guiding principles that were already established and released a discussion draft of changes to 25 CFR 83 in June of last year.

So following distribution of the discussion draft of changes in July and August of last year, the Department held various public hearings and tribal consultations across the country to get input on that discussion draft. And the discussion draft was really a strongman document that was intended to garner discussion and get ideas and
input from people.

So we reviewed, the Department reviewed the transcripts and all the written comments that we received. We received over 350 unique comments, submissions and about 2,000, more than 2,000 people signed on to those comments in the form of form letters or as signatories to the comments.

And after reviewing all those changes, the Department -- I'm sorry, reviewing all the comments, the Department updated the discussion draft, made additional changes and rewrote the rule to meet plain language requirements so it's now in a question-and-answer format, and developed a draft proposed rule.

That draft proposed rule went through the process of the approval within the Department and was submitted to OMB, the Office of Management and Budget, and then was published in the Federal Register on May 29th of this year.

And so the proposed rules that we're consulting on today, comments are due on August 1st. And next I'll give an overview of the content of the Proposed Rule.

So the Proposed Rule proposes revision to both the process and the criteria, and there are clarifications to the previous federal acknowledgment process and the burden of proof. And the Proposed Rule also allows for repetitioning under limited circumstances and adds some
TRIBAL CONSULTATION

notice requirements.

So starting with revisions to the process, the current, under the current process, the petitioners first submit or they may submit a Letter of Intent which is basically, just can be a one-page letter stating their intent to undergo the process, but doesn't actually initiate any response from the Department at that point.

So the Proposed Rule proposes eliminating the Letter of Intent step and instead beginning the process, when it actually begins currently, which is with the start of with the submission of a documented petition.

And then there are currently seven mandatory criteria. In the past the Department has reviewed all the criteria at once. The Proposed Rule would instead have the Department first looking at the descent criterion, whether the petitioner descends from a historical Indian tribe. And if the petition fails to show that criterion is met, then a negative proposed finding would be issued at that point.

If that criterion is met, the Department would then review Criteria A, which I'll talk about; and D, which is the governing documents; F, membership; and G, correctional termination. And if those are all met, again, if they are not met at that point, they could be receiving a negative proposed finding.
TRIBAL CONSULTATION

If they're met, then they would move to Phase II, and Phase II is where the Department would look at Criteria B, community; and Criteria C, political influence or authority. And those, that phase is put later in the process so that because B and C tend to be the most
intensive and time consuming of the criteria to review.

Currently the proposed finding is issued by the assistant secretary. The Proposed Rule would instead have the Office of Federal Acknowledgment issuing the proposed finding. And if there is, as there is currently, there would be a comment and response period on the proposed finding.

But if the proposed finding is positive and through that commentary there are no objections and negative comments on the proposed finding, then the assistant secretary would automatically issue a positive final determination.

If the proposed finding is negative, then the petitioner could elect to have a hearing before a judge with the Office of Hearings and Appeals. And the OHA judge would make a recommended decision for the Assistant Secretary for Indian Affairs.

The assistant secretary would continue to be the one who issues the final determination, that's not changing, but the final determination would be final for
the Department under the proposed rules. So anyone who
wanted to challenge that final determination would need to
file in federal district court.

Currently there is limited IBIA review, Interior
Board of Indian Appeals review, for certain defined
grounds, but that is the only instance currently where a
decision of the assistant secretary is subject to
administrative review.

So this proposed rule would make the final
determination a final decision as the assistant secretary's
other decisions are all final for the Department.

The Office of Hearings and Appeals has issued a
separate proposed rule that would govern the procedures for
the hearings on a negative proposed finding. And that's
also included in your packet. They have asked some
questions about the direction of that role, and the first
is who should preside over the hearing and issue the
recommended decision that goes to the assistant secretary.

Should it be an administrative law judge who is
independent of supervision and routinely conducts hearings,
an administrative judge who reports to the OHA director and
serves on an appellate board, or an attorney designated by
an OHA director who may not have as much experience holding
hearings but would be possibly more available and would
report ultimately to the OHA director.
And then the other question OHA has is whether the basis for the judge's recommended decisions should be limited to the hearing record or should it include all the information that has been submitted regarding that petition.

Other revisions to the process would allow the petitioner to withdraw the petition at any time before the proposed finding is published. OFA would cease consideration upon that withdrawal but the petitioner would have to, if the petitioner does resubmit, they would probably lose their place in line and not regain their priority number.

And also, in the interest of transparency, the Proposed Rule provides that the Department will post to the internet those portions of the petition and other reports and proposed findings that are releasable under federal law, so hopefully that will cut down on requests under the Freedom of Information Act and increase the transparency.

So changes to the criteria, there are currently seven mandatory criteria and the proposed rule does not change that. There will continue to be seven mandatory criteria, all of which must be met, but there is a significant change to the first Criterion A.

This criterion currently requires external parties to identify the petitioner as an Indian group
throughout its history and this would, this criterion would
be replaced by a criterion that would require the
petitioner to provide a narrative and evidence of their
existence as a tribe before 1900.

And the reason for changing this criterion is
that first of all, no petitioner to date has been denied
solely on this criterion requiring external observers to
identify, and also if the petitioner meets all the other
mandatory criteria but doesn't for whatever reason, does
not have third parties identifying them as a tribe, then it
doesn't necessarily make them less of a tribe.

So that external identification evidence can
still be provided in support of the other criteria but it's
no longer under the Proposed Rule, it would no longer be an
independent criterion.

For Criterion B, community, and Criterion C,
political influence and authority, the analysis time period
is being changed. Currently the analysis begins at the
time of first sustained contact with non-Indians or 1789,
whichever is later.

And the Proposed Rule would instead have the
analysis start point begin at 1934 when the Indian
Reorganization Act was passed, and that Indian
Reorganization Act, as I'm sure you all know, represents
the watershed moment when the federal government revoked
its assimilation and allotment policy and expressed its tribal self-determination support.

And again, to date no petitioner has met the criteria for B and C from 1934 to the present but failed prior to 1934. So by starting the analysis at 1934, we're hoping to cut back on the documentary burden while still getting to the crux of community and political influence and authority.

Another change with the community criterion is establishing 30 percent as an objective criteria for having to show distinct community, 30 percent of the membership must show distinct community for each time period rather than, I think the current rule says predominant portion.

And we're also including in the Proposed Rule that attendance of students at an Indian boarding school within a certain geographic area as acceptable evidence of community.

And then the other cross-cutting change with B and C is that if a petitioner has maintained a state reservation since 1934 or if the U.S. has held land for the group at any point since 1934, then they will -- the petitioner meets Criteria B and C.

And that comes from looking at collective ownership and land. And they propose -- thank you -- also defines without substantial interruption to be less than
TRIBAL CONSULTATION

20 years. So the criteria must be shown without
substantial interruption, so the evidence must be there
with no more than 20-year gaps.

In Criterion E, documents what has been past
practice which is that 80 percent of the members must
descend from a tribe that existed in historical times which
we're defining as pre-1900. And that, again, it is current
practice and it doesn't mean that 20 percent can be
non-Indians, it just means that 80 percent have to have the
documentation. So maybe 20 percent don't have
documentation or have been adopted in.

And the Criterion E also allows descent to be
traced from a role prepared by the Department or a role
prepared at the direction of Congress, otherwise whatever
the most recent pre-1900 evidence is, descent will be
traced from that.

In Criterion F, we made a change as a result of
the comments received during on the discussion draft. We
had comments from several people saying that they had
petitioned but because the petitioning process was taking
so long, their members were enrolling in
federally-recognized tribes that they were eligible to
enroll in solely by necessity to obtain the healthcare and
other benefits that were only available to members of
federally-recognized tribes.
TRIBAL CONSULTATION

So we added in Criterion F, that petitioners who have filed a Letter of Intent by 2010 and then had members joining federally-recognized tribes, that those members having joined federally-recognized tribes would not be held against their membership totals.

And then finally, Criterion G, currently petitioners must show that they have not been terminated by Congress, and the Proposed Rule would switch the ownness, putting the ownness on the government, on the Department to show that if the petitioner has been terminated rather than having the petitioner proven negative.

For previous federal acknowledgment, we are not proposing any substantive change but we're trying to document how previous federal acknowledgment has been implemented in the past.

So it's, the current rule is unclear so we're trying to basically just clarify here. But we're still open to comment. And similarly with the burden of proof, the burden of proof is reasonable likelihood, we're not changing that. We're just trying to clarify what reasonable likelihood means, using language that -- using language that the Supreme Court has used to explain reasonable likelihood in decisions that have been issued since the regulations were last updated.

And then the Proposed Rule, as I said, would
allow repetitioning in certain limited circumstances. Basically if any third parties were involved in litigation and in IBIA reconstruction or federal court appeal regarding a petitioner's acknowledgment petition, and those third parties prevailed, then the petitioner would need the consent of those third parties before repetitioning.

So the third parties would have to consent. If they do consent or if there were no third parties who prevailed in litigation, then the petitioners would then go to, go before an OHA judge and they would have to prove to the OHA judge either that a change in the regulation warrants their reconsideration and repetitioning, or that the Department had misapplied the burden of proof during the consideration of their petition and that warrants reconsideration.

So then the OHA judge determines, acts as a gatekeeper, determines whether repetitioning is appropriate. If the judge determines repetitioning is appropriate, then the petitioner starts the whole petitioning process.

The Proposed Rule includes some additional notifications in the petitioning process. Currently when OFA receives a petition and acknowledges receipt to the petitioner and within 60 days publishes notice of receipt, if the Proposed Rule would add a requirement that the
Department post the petition’s narrative and other information on its website, the Department would continue to notify the governor and the attorney general in the state of the petition.

But the proposed rule would add that the Department also notifies any federally-recognized tribes within the state or any federally-recognized tribe within a 25-mile radius of the petitioner in order to cover any tribes that may be across state lines but nevertheless nearby.

And under the Proposed Rule, the Department would continue to notify any other federally-recognized tribe and any petitioner that appears to have a relationship with the petition or an interest in the acknowledgement to termination.

And then notice to the petitioner and informed parties would happen at various points throughout the process and inform parties under the current rules there are two separate categories of interested parties and informed parties. And the Proposed Rule just has everyone who requests to be notified as an informed party in the process.

So when OFA begins reviewing the petition and issues the proposed finding, it would notify the petitioner and inform parties and the assistant secretary, whenever it
grants a time extension, begins review of the proposed
finding and issues the final determination. It would also
issue notice to the petitioner and informed parties.

So comments on the Proposed Rule are due
August 1st. Comments on OHA's Proposed Rule, which are
the -- which is the Proposed Rule addressing the procedures
for the hearing on the negative proposed finding, those are
due on August 18th. And comments may be submitted by email
or through any of the other methods outlined in the
Proposed Rule.

And as far as next steps, once the comment period
is closed, we have a couple more public hearings and tribal
consultations after this one. And then when the public
comment period is closed, the Department will review all
the comments and the transcripts from all the meetings and
consultations and make appropriate changes.

And then it will go through the same internal
review process within the Department and then to the Office
of Management and Budget and then ultimately publication in
the Federal Register. And then once the rule is published
there's a 30-day delay before it's effective in the Federal
Register. So Katie's going to go grab Derrick, so if you
will hang on one minute.

(Off-the-record discussion.)

MS. APPEL: It's up to you since Derrick as
Representative of the Assistant Secretary's Office isn't here, if you want to take a break and wait until he comes back?

ATTENDEE: I think we need some clarification on executive order.

MS. APPEL: Sure.

ATTENDEE: Executive order states from the President of the United States that the government-to-government relationship, this meeting would be heard between them and the sovereign nations that are federally recognized.

MS. APPEL: Yes.

ATTENDEE: For the people that are planning to be Cherokee that are not one of the three federally-recognized Cherokee tribes, Cherokee Nation of Oklahoma or the Band of Cherokee or the Keetoowah Band of Cherokee, I respectfully request that they leave the room at this time.

MS. APPEL: I would also ask that anyone who -- I mean, technically this is supposed to be government-to-government consultation. So unless you're here on behalf of your tribal government, with that tribal government's blessing, I would ask that you respect the process and allow those who are here on behalf of their federally-recognized governments.

Why don't we take a five-minute break so that we
can have our assistant secretary representative. So let's break really quickly and come back and reconvene. (Whereupon a recess was taken.)

MS. APPEL: We're going to go ahead and reconvene. Thank you everyone for your patience. Just to reiterate, this is a closed consultation only for representatives of federally-recognized governments, and I think we're going to start out with a prayer. (Opening Prayer by Attendee.)

MR. BEETSO: So welcome everybody. Thank you for taking the time out of your day to come join us this afternoon. This is a consultation with federally-recognized Indian tribes pursuant to Executive Order 13175. This is a government-to-government consultation that we're trying to host here. We want to get your perspectives on the Proposed Rule, changes to the Part 83 Regulations.

Before we start out, I want to introduce the federal team here. We have two folks from the Pacific Region with us. We have Viola Brooks, who's from Hoopa Valley, and we have Mr. Harley Long, who's from Round Valley.

Then up here we have the Director of Regulatory Affairs within the Office of Assistant Secretary, Ms. Liz Appel. She was the one who gave the presentation earlier.
And then we have Ms. Katie Klass who's an Attorney-Advisor with the Office of Solicitor. And out front we have Regulatory Specialist, Ms. Regina Gilbert.

And again, my name is Derrick Beetso, I'm Counselor to Assistant Secretary for Indian Affairs. So just wanted you guys to be able to put a face to the name and understand who the federal folks here that are hosting this consultation. I understand we already went through the presentation so we're going to have a little bit of housekeeping rules here.

One, we want to make sure everybody has an opportunity to speak. This morning we had a crowd of about 100 individuals, and so the way we handled that situation was we allotted two minutes per person so that everybody could get a statement that wanted to give a statement. It worked out pretty well, obviously we don't have 100 people here right now.

So I'm proposing we go down and maybe give five minutes per speakers for opening statements, and then make sure everybody has an opportunity to speak. And then at that point then we'll go for a second round of folks who want to make second statements. And so if everybody is okay with that, maybe we can go, we can start with this gentleman right here.

MS. KLASS: One last thing. Please make sure to
say your names clearly and tribal affiliations for our lovely court reporter. Thank you.

COMMENTER: Good afternoon. My name is Tunney Crowe. I serve on the Tribal Council for the Eastern Band of Cherokees. Thank you for the opportunity to address this body today.

Our reservation is located in Western North Carolina where most of our 15,000 tribal members lived and have lived since time memorial. Eastern Band of Cherokees have been living language, cultural history in ways that have survived wars, treaty making, the Trail of Tears, allotment and other federal actions that have tried to eradicate our government turning our Cherokee people into non-Indians.

Those hard times we have struggled, we have fought and many of our people have died to preserve our separate identities as Cherokees. We have our separate Cherokee language and culture to be safer and our people are still willing to fight to preserve it.

As you know, we hear all the time different people that claim that Cherokee Frances is a grandmother or great-grandmother. We've heard from everyone from Cher to Johnny Cash to Beyonce having Cherokee ancestors. While we understand it's a beautiful thing to be a Cherokee Indian, we as tribes feel strongly that we must protect our
Cherokee identity from those who try to take it over, water it down or destroy it.

We have serious concerns about lowering the standard as a petitioner must meet to be federally acknowledged as a tribe. These proposed regulations include change after change that would make it much easier for a petitioning group that is not a historical tribe to gain status as a federally-acknowledged tribe.

In our view, the changes go way too far. Leading up to the establishment of the 1978 regulations tribal leaders from across the country said that petitioning groups should have to demonstrate a continuing history of tribal relations in order to receive federal acknowledgement.

This policy provision has been reinforced on many occasions through the National Congress of American Indians. Even groups of persons that have native ancestry should not be acknowledged as tribes if they do not descend from a historical tribe or they gave up their tribal identity and assimilated into mainstream society.

Listing to tribal leaders and regulations from 1978 to the present have required groups to demonstrate they did not abandon their tribal identity throughout their histories. In a dramatic lowering descent, the new rule only required petitioners to provide a brief narrative with
evidence of the group's existence.

At some point during historical times the revisions would also define historical to be prior to but as late as 1900. Petitioners would no longer be required to account for over a century or more of history that is essential to a determination of continuous existence.

This new standard would not be fair to the Eastern Band of Cherokee Indians or other tribes that [unintelligible] or died to maintained their tribal relations through hard times and preserve their lands, cultures and other ways.

Most tribal governments today establish membership based on descent from a base roll of Indians prepared for allotment for other purposes. In addition to their other criteria such as [unintelligible], most established tribes, all or nearly all of the persons from the base roll are members from that particular tribe.

Under the Proposed Rule, 80 percent of the petitioner's group members would have to demonstrate ancestors from this historical tribe. The other 20 percent would not have to demonstrate any ancestor whatever. Further, the Proposed Rule [unintelligible] requirement ending ancestry would be met by providing the [unintelligible] the department at the direction of Congress even if the roll is demonstrated [unintelligible].
The decisions by the Department on tribal identity establishing the government-to-government relationship with the tribe should be on merit and not on politics. Unfortunately the proposed change in the process is within the Department, but opened the door to more political decisionmaking rather than less.

The proposed changes in process would be more separate between the [un intelligible], ethnohistorians and other experts in the Office of Federal Acknowledgment. The Assistant Secretary for Indian Affairs as a political appointee, the assistant secretary would be more able to deviate from the evidence and findings of the experts without any stated procedures or standards.

The United States already falls far short on its existing treaty and trust obligations to Indian tribes. The Department has not studied the possible impacts of this proposed rule on its assisting treaty and trust obligations.

The cost of this rule changes could be enormous. For example, one petitioning group, the Lumbee's in North Carolina, claim about 50,000 tribal members. If they would immediately become -- if recognized they would immediately become third largest tribe in America.

In 2011 the congressional budget office estimated the cost of acknowledging the Lumbee's as a tribe would
cost $846 million over five years in BIA and IHS funding. We'll be sending an electronic letter to you all also.

But in closing, we just want to make sure you know, we don't agree with the process being moved forward but lowering the standards, it's going to affect all Indian tribes, you know, if other people are able to be given and gained federal acknowledgment.

I don't think that the government has stopped and thought how much money that's going to cost the government and it's going to take away from the people that have been federally recognized throughout the years.

We go back as far as 18 -- we were federally recognized back in 1846 or 1856, way back, you know, before 1900. So lowering the standards and the documents that they need to present is, you know, something that we don't want to see any of that done. So I appreciate your time and thank you for allowing us to speak. Thank you.

MS. APPEL: Thank you.

COMMENTER: Good afternoon. My name is Brandon Jones, I'm also a tribal council representative for the Eastern Band of Cherokee for North Carolina.

Our concerns is that Proposed Rule will have a negative impact on federally-recognized tribes including Cherokee both historically and financially. Historically the Eastern Band began long before [unintelligible] the
date which is about to become our new standard. 100 years prior to this date in 1830s, southeastern tribes were gathered up and removed from their homelands on what's known as the Trail of Tears. Thousands died and many more suffered for generations.

We cannot allow this history to be forgotten and we cannot allow this history to be removed from this process. We have a long history with the federal government and it's well documented, we have both the written and spoken language, we're very proud of that.

Our identity is always under attack. Our neighbors in North Carolina have petitioned three times prior to 1934 and once as Cherokees. We cannot allow this to be ignored and pursue the efficiency and timeliness. We still have an obligation to transparency and integrity.

Finally, the congressional budget office, as Mr. Crowe just read to you, estimated about $846 million would be spent on recognizing our neighbors alone. And this is just one tribe in North Carolina. This is a huge financial burden they're taking on. This is BIA and Indian Health Service moneys.

Another concern with the process is the proposed brief narrative which would replace necessary historical documentation. These are non-natives telling natives who they were in previous times. The Eastern Band has a firm
grip on our identity and we are not willing to sit back and watch it disappear.

The quickest way for me to lose my identity as an Indian man, as a Cherokee Indian man is to allow everyone else to claim Cherokee and become Cherokee. As a tribal leader I can't do that. I have to protect our integrity for generations to come.

Many people claim Cherokee ancestry but did not offer it as it exists in a form of a tribe historically as the definition we have today. Taking pre-1934 events out of the process is a major injustice to the Cherokee people who have died preserving our identities. This also allows the Office of OFA and Assistant Secretary, Washburn's office an opportunity to become more involved in the process and determination.

Many petitioners claim Cherokee ancestry and many more will come. If they existed as a tribe in 1837 why were they so easily overlooked? This is where transparency and integrity play a role in tribe's histories. We support a fair transparent process but not if we're going to lose our identity by doing so.

As you have asked, we'll be sending letters discussing each of our concerns with proposal changes and we hope you can consider extending this process so we can get more dialogue and feedback for other Native American
tribes. Thank you for hearing me today on behalf of my people at home in North Carolina. Thank you.

MS. APPEL: Thank you.

MR. BEETSO: Is there anybody else that would like to give a statement?

COMMENTER: May name is Todd Hambree, I'm the Attorney General from Cherokee Nation in Oklahoma. Thank you for the opportunity to address the United States on a government-to-government basis. We will also be submitting written comments along with what we will state here today.

While the Cherokee Nation appreciates the efforts of the Bureau of Indian Affairs to improve increased transparency and maintain the federal acknowledgement process, we continue to be concerned about the proposed changes to the federal acknowledgement rule.

Since the Indians self-determination in 1975, the federal acknowledgement process has been the mechanism to recognize the government-to-government relationship between the tribal governments and the United States Government.

As noted, in Cherokee Nation's response to the earlier draft of proposed changes, the federal acknowledgement process has been a longstanding concern of our tribe. We believe that since Indian tribes hold a unique relationship with the United States Government, stringent procedures for the acknowledgment process protect
the interest of both the United States Government and tribal governments, including our own.

Although there are three Cherokee tribes, the Cherokee Nation of Oklahoma, Eastern Band of Cherokee Indians and the United Keetoowah Band of Cherokee Indians, we have, although they have long been federally recognized, the Cherokee name continues to be popular with roots seeking federal acknowledgment.

In a cursory glance at the list of groups who have submitted applications for federal recognition, there are more than 40 groups who claim to claim our historical right. We continue to pose all efforts by the Bureau of Indian Affairs that would make it easier for non-Indian groups to usurp our sovereignty, our unique history and our culture.

For many years now, the Cherokee tribes have been under constant assault by many groups who appropriate our stories and legitimize themselves as Cherokee through the federal acknowledgement process. These groups are made up as people who may share an admiration for our beautiful culture and history and may even contain some who have genealogical ties to the Cherokee people.

However, all too often these groups are organized by a leader who has motives that are more [unintelligible] and who [unintelligible] the groups to great opportunities
to scan individuals in governments. Groups claiming to be Cherokee have been known to charge membership to their tribal members in exchange for fraudulent CDIB cards, license plates or vehicles and other schemes.

These are groups who are typically to establish illegal gaining enterprises outside of [unintelligible].

On a personal note, I'd like to state as an attorney and later as Attorney General of the Cherokee Nation, often I will receive calls from individuals from across the United States that often it involves a core procedure involving a purported Indian child, and these, they will go to a court and they will have their laminated Cherokee ID from the United Cherokee Band of Indians of wherever. And they attempt to interject themselves into a child custody process.

That is harmful. That is harmful to that child, that is harmful to that court system and it is harmful to federally-recognized real governments. And that's one thing that's so important about this federal process is that it be kept legitimate, that it be -- it should be stringent and it should be hard.

And I will -- one thing to reiterate for my brothers in North Carolina, we have a longstanding history. 175 years ago, this year is the anniversary of the Trail of Tears, is the anniversary of the reforming of the Cherokee
government and the Indian territory. That's history, and
that's even recent history. Our culture, or land, our
history goes back to [unintelligible], long before there
was a United States.

History doesn't mean 1900 and before, history
doesn't mean 1934. So this process, it is a difficult one.
It is a stringent one and, well it should be. And that's
one thing that I really wanted to reiterate. When an
illegitimate group tries to act like a government and uses
our name, it damages all Cherokee people.

The actions of these groups damage our reputation
with people, sometimes including government officials who
do not understand the difference between one illegitimate
group that calls themselves Cherokee and Cherokee Nation.
When an illegitimate group acts as if they are like tribal
governments, they are damaging all immune people.

Any change to the federal acknowledgement
requirements that make it more likely that these groups
will be able to manipulate the process, to gain recognition
is an upfront to the Cherokee Nation and every other tribe
that has historical government-to-government relationship
with the United States.

The May 22, 2014 discussion draft does not ease
our concerns that the proposed changes to the current
federal acknowledgement rule are not adequately stringent.
These revisions which seek a more transparent and streamline process would enable groups who do not have a true historical government-to-government relationship with the United States to manipulate this process.

Federal acknowledgment is a weighing designation. It is a political relationship defined by the acknowledgement of the inherent sovereignty of the Indian tribe. These government-to-government relationships where established by rich history and such documents such as intergovernmental treaties, federal acknowledgment in an important process that should not be streamlined in the interest of efficiency. It is a process that should be deliberative and measured and purposely slow.

The Cherokee Nation believes that a group who apply for federal acknowledgment should undergo a strict process to determine whether their claims are valid and historically supportive. This is necessary to prevent illegitimate groups from taking advantage for the resources that are set aside from federally-recognized governments which protect the interest of the United States Government and of tribal systems across the country.

The Cherokee Nation also believes that this process is so critical that any change to the proposed rules should be carefully deliberated by all interested stakeholders, just as the BIA has attempted with this
scheduled consultation.

However, neglecting to schedule any consultations in Oklahoma, home of 38 federally-recognized tribes including several of the largest in the United States, the BIA has not provided an adequate opportunity to all stakeholders to participate in this process surrounding the proposed rule change.

It was said earlier that a person felt discriminated against because we were in Oklahoma. Although we're in California, other Oklahoma tribes got to speak here and their group did not, although public comment was made available earlier today.

I would propose that the real discrimination is having to make the North Carolina Eastern Band of Cherokee Nations travel from North Carolina to here, making the Cherokee Nation of Oklahoma travel to here to get our concerns heard.

If the BIA is interested in hearing from all views, it only makes sense to go where the Native Americans are. There are 38 federally-recognized tribes in Oklahoma. One consultation, one consultation would give them the opportunity to voice their concerns.

Fortunately, the Eastern Band of Cherokee Nation, the Cherokee Nation of Oklahoma, we have the resources to send a couple people out here. There are 36 others who are
not represented here today, and at very little cost and
very little time the Bureau of Indian Affairs could
schedule just one, just one consultation in Oklahoma.

With the criteria session, there are several
proposed changes that are unacceptable. First, the
deletion of the requirement for external identification
criteria in favor of a brief narrative showing that the
group existed as a tribe at some point, at some historical
point is alarming.

Although as people who have been marginalized
throughout history and they seem that Indian tribes would
reject any requirement that lies on someone else's
definition of us. In this context showing a historical
government-to-government relationship is critical that this
requirement remain unchanged.

Next criteria, B and C, which currently require a
showing of community and political authorities since
historical times would be changed to establish 1934, the
year, the passage of the Indian Reorganization Act as a
starting year for establishing community and political
authority.

Again, 1934 is not historical. If a person could
be here today born in 1934, that doesn't meet our
definition of history or historical. We can go on and on
about, you know, this process and we will be submitting
written documentation. But at the end of the day, what's important is preserving the integrity of a government-to-government relationship with, and I'll say it, real Indian tribes.

This morning I sat and was able to listen to groups and organizations and I applaud their affinity for Indian culture. But Article 1, Section 8 of the United States Constitution gives the United States the authority to deal on a government-to-government basis with Indian tribes.

And it is those people that the founding fathers of the United States were considering, those are the Indian tribes, not groups of people who have an affinity for Indian culture to come out and, I believe that their hope with easier with eased restrictions on how to become a federally-recognized tribe [unintelligible] their benefit. I would lead with the Bureau of Indian Affairs not to change their regulations. If anything else, make them more stringent. This is not a process of efficiency, it is a process of history and is a process of integrity. And we hope that at the very least it stays the same.

I would echo my thoughts that the words from my brothers from the Eastern Band of Cherokee Indians that there needs to be more time. There needs to be more consultation. This should not be a rush to get these
public comments in, to get them published in a rush. We need the ability to have the voice heard from all or at the very most, that give federally-recognized tribes the opportunity to be heard, not the ones that can afford to send a couple people to California or anywhere else in the United States where there doesn't seem to be a very large concentration of federally-recognized tribes.

Just have one in Oklahoma, that's all we're asking, and listen to us and listen to the concerns that we have. I thank you for your time. Thank you very much.

MS. APPEL: Thank you.

MS. KLASS: We do want to clarify just one thing, the current A, external identification, it doesn't require federal government identification, it's, you know, newspapers, it's broader than that. So just wanted to clarify that.

MR. BEETSO: At this time, is there anybody else who would like to make a statement?

COMMENTER: I just wanted make a brief statement on behalf of Redding Rancheria. We are about two-and-a-half hours north of here, and we don't have any comments to submit on the rules today, we'll be taking that away and visiting with our council. But we do feel the government-to-government consultation is of the utmost importance.
We actually canceled a council meeting, our regularly scheduled council meeting so that our council could be here today. We wanted to hear what the tribes had to say. We wanted to hear the presentation and then our council will go back and submit any written comments, but I wanted to thank you for the time.

MS. APPEL: Thank you very much. Could we have your name for the record?

COMMENTER: Tracy Edwards.

MS. APPEL: Thank you.

MS. KLAS: Anybody else?

COMMENTER: Thank you. My name's Dennis Hendricks, I'm a council member for the Tuolumne Band of Mewuk Indians, and we're located about two-and-a-half hours southeast of here, actually three-and-a-half hours because I drove here this morning.

We agree that reform of the process is long overdue. We know of numerous tribes that have been in this process for as long as 30 years or more. We have some neighbors to the south of us that originally came from Yosemite National Park and they have been in this process for a long time and we're here to stand shoulder to shoulder with them and say we support their efforts because we know what they've been through and we know what the cost is for them.
This is just another injustice to which our people have been subjected to. And the unratified California treaty speak volumes about the terrible treatment of our natives. So there's a lot that needs to be done here in the State of California and that's basically what I'm speaking about. As far as the rest of the country, that's a different story.

So we support the just and reasonable process that is transparent, it does not keep changing the rules for recognition. This is not about the money that the government provides either through the BIA or Indian Health Service. This is a whole totally different story.

You know, money doesn't mean all that much to us, even though that's how we live and get by, but there's more to it than that. So the money part does not grab us at all. It's about apathy of the tribe, getting a form of justice that has been too long, has been denied to them.

In closing, I just want to say my tribe, we support the Proposed Rule and hopefully the clarity that it will bring and the decisions that it will make for those tribes that have been in the process for many, many years.

Thank you.

MR. BEETSO: Any other statements? Anybody that made a statement that wants to make an additional statement?
COMMENTER: I would just like to reiterate what my brother there from Oklahoma stated earlier. I think we have already submitted a request to extend the time and to go farther into Indian country, like in Oklahoma. And I think we requested one in the southwest there down around Albuquerque or somewhere in that area to hear from another group of federally-recognized tribes.

This is the third acknowledgement meeting that I've been to, and in that -- in those three meetings, this is the most federally-recognized people that we've had in a meeting, just so everybody knows. And I went to one in Louisiana, there was three tribes there, about six people.

I went to the one in Oregon last week, there was about ten people there from federally-recognized tribes, and were all outnumbered by the people that are trying to gain federal acknowledgment.

I understand where you're coming from, your allotted brothers and sisters that are trying to gain federal acknowledgement, but I think it's up to the federal groups to step up and give their opinions on how if this goes, you know, we all know it's been a rough road from time, like we talked about from where we came from, we're finding bones every day at home where people are digging up, dates back 10,000 years of our people. We know they're our people.
So we've got the history there. It's proven there. But you know, I appreciate the people that came out and acknowledged you guys for being here, and thanks for the support, you know, through this process. Thank you.

MS. APPEL: Thank you. And we have received requests for an extension of the comment period and for additional consultations for those under consideration, hopefully we'll have news soon since the end of the comment period is coming up.

And I just wanted to reiterate of what I said this morning about the administration is committed to improving this process. So if you have specific recommendations on how the regulations can be improved, to improve the process, whether it's making it more stringent, making it more transparent, making it more efficient, whatever, we're very open to suggestions.

MR. BEETSO: At this time if there are no further comments, is anybody opposed to adjourning for today? Okay. Looks like no opposition, so we thank you again for coming. We value the partnership we have with the federally-recognized Indian tribes.

And August 1st, right now is the deadline to submit comments. We have heard a lot of recommendations that we should extend that, but for right now you all should operate as if that's the date.
TRIBAL CONSULTATION

1 (Whereupon the proceedings were
2 adjourned at 2:37 p.m.)
3
4
5
6
7
8
9
10
11.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

--000--
REPORTER'S CERTIFICATE

I, Amy E. Perry, a Certified Shorthand Reporter in and for the State of California, duly appointed and commissioned to administer oaths, do hereby certify:

That I am a disinterested person herein; that the tribal consultation was reported in shorthand by me, Amy E. Perry, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting; that the foregoing is a true and correct record of the proceedings.

IN WITNESS WHEREOF, I hereby certify this transcript at my office in the County of Sacramento, State of California, this 29th day of June, 2014.

[Signature]

AMY E. PERRY, CSR R1880