

**NWX-DEPT OF INTERIOR-NBC**

**Moderator: Elizabeth Appel**  
**February 6, 2020**  
**12:00 pm CT**

Coordinator: Welcome and thank you for standing by. At this time I'd like to inform all participants that today's call is being recorded, if you have any objections, you may disconnect at his time. All participants will remain in the listen-only mode throughout the remainder of the call until the question and answer session. At that time, if you would like to ask a question, you would do so by pressing Star and then 1. I would now like to turn the meeting over now to Liz Appel. You may begin.

Elizabeth Appel: Hi, good afternoon, or good morning, depending on where you're calling from, everybody. This is Liz Appel. I am the Director of the Office of Regulatory Affairs and Collaborative Action under the Assistant Secretary for Indian Affairs. And I have with me today two other Department of the Interior officials who I'll have introduce themselves so you can familiarize yourselves with their voices.

Lee Fleming: Hi, my name is Lee Fleming. I am the Director of the Office of Federal Acknowledgment.

Connie Briggs: Hi, my name is Connie Briggs, I'm an Attorney-Advisor in the Office of the Solicitor, Branch of Tribal Government Services.

Elizabeth Appel: Thank you everyone, and this call is a Tribal consultation to address the the proposed rule regarding federal acknowledgment of Alaska native entities under the Alaska IRA.

And unfortunately, we don't have visuals coordinated with the call, but if you go to our DOI website, actually it's BIA website, if you go to BIA.gov and then search for, under offices, the Office of Regulatory Affairs and Collaborative Action, we have a list of regulatory efforts that are currently underway. One of them is this proposed rule, the Alaska IRA proposed rule, and I'm going to be walking through a presentation that is posted on that website so if you'd like to follow through, uh, follow along, you're welcome to go to that website to view the presentation. And additionally, if you'd like me to email you the presentation or other information, please let me know. And before I walk through the presentation, can we open the line Rebecca to see if anyone wants me to email them the presentation?

Coordinator: One moment, I'll open up the line. All lines are now open.

Elizabeth Appel: Okay, if nobody's requesting an email then I guess we'll proceed. So, just some background to start out with. Everyone is likely familiar with the Indian Reorganization Act, the IRA, that was enacted in 1934 and authorized tribes to organize for their common welfare but most sections were inapplicable to the territory of Alaska and that functionally prevented Alaskan natives from benefitting from the IRA's provisions.

So in 1936, Congress enacted new legislation, which is... which was, what we'll be referring to as the Alaska IRA. That legislation allowed for groups of

Indians in Alaska not previously recognized as bands or tribes by the United States to organize under the IRA and become eligible for benefits so long as they could demonstrate “a common bond of occupation or association or residence within a well-defined neighborhood, community or rural district.” And that, that language, the common bond language, is how we refer to that in shorthand.

We have regulations at 25 CFR part 83 that govern federal acknowledgment of Indian tribes and establish a process and criteria by which the Office of Federal Acknowledgment reviews petitions for acknowledgment. But there’s currently no regulatory process through which Alaska entities that are not currently recognized as Tribes can be acknowledged under the Alaska IRA common bond standard as tribes.

To date the Department has approved the organization of more than 70 entities under the Alaska IRA’s common bond provision. And it has done so by, on an ad-hoc basis, using case by case determinations, relying on 1937 guidance and other Alaska IRA contemporaneous guidance as well as previous determinations.

In 2018, the Department began an effort to obtain input on how it was implementing the Alaska IRA and held multiple consultations with tribes and listening sessions and public meetings from 2018 through the spring of 2019. The input the Department received during that effort - most participants questioned the need for an Alaska-specific regulatory process, others expressed concern as to whether an Alaska-specific regulations or guidance would affect existing tribes, tribes that are already federally recognized under the Alaska IRA or otherwise, and nearly all urged the Department to issue decisions on any outstanding Alaska IRA petitions prior to implementing any regulation or guidance for Alaska.

The Department reviewed this input and determined that there is a need for an Alaska specific regulatory process to effectively carry out the Alaska IRA because the formal process set out in part 83 does not account for the common bond standard. There is no effect on the status of currently recognized tribes and as far as consideration of pending petitions under the Alaska IRA, the Department determined that it is not going to consider any acknowledgement petitions submitted by Alaska native entities under the Alaska IRA while this rulemaking is in progress. But if the rule is finalized, then any groups that previously submitted petitions would be invited to revise or resubmit their petitions in conformance with the final rule.

The proposed regulation published on January 2 of this year and proposed a new regulatory process through which Alaskan native entities can become federally recognized under the common bond standard in the Alaska IRA. The proposed process would apply only to groups that are not currently federally recognized, so meaning groups that are not currently on the list of federally recognized tribes that BIA publishes annually in the federal register. And the regulation would not impair or otherwise affect existing rights and authorities of any tribe that's already recognized and included on the list.

Any Alaskan native entity acknowledged under the proposed rule, if it's ultimately finalized, would be eligible to receive all the services that are available to federally recognized tribes. And the proposed rule if finalized, would be located at 25 CFR part 82.

In large part, the proposed Part 82 incorporates the procedures for federal acknowledgement that are found in part 83 but there are a number of important distinctions. First in demonstrating genealogical and political descent, the current part 83 requires the petitioner to show descent from a

historical Indian tribe, whereas the proposed part 82 would require descent from an Alaska IRA eligible entity.

Second, the start date for evidentiary standards in the current part 83 is 1900, whereas the start date for the proposed Part 82 would be the date that the Alaska IRA was enacted, May 1, 1936.

Likewise, the period to satisfy the evidentiary criteria is measured from 1900 to present under the current part 83, and under the proposed part 82, the petitioner would need to show the existence of an Alaska IRA eligible entity in 1936 and satisfy all evidentiary criteria from May 1, 1936 to the present. And the final important distinction between part 82 and part 83 is that the proposed part 82 does not include a review of previous federal acknowledgement claims which is currently available in part 83.

A note regarding tribal reorganization and under part 81. Part 81 allows Tribes to hold secretarial elections, and this proposed part 82 would establish a requirement that Alaska native entities seeking to hold a secretarial election would first have to gain federal recognition. And that requirement is consistent with past departmental practices which has focused on organizing entities capable of establishing the government to government relationship with the U.S. as well as this requirement being consistent with the IRA, Alaska IRA and regulations at part 81 which are the secretarial elections regulations.

The proposed part 82, like part 83, has the Office of Federal Acknowledgement reviewing petitions on the merits and making recommendations to the Assistant Secretary for Indian Affairs. The Office of Federal Acknowledgment is composed of anthropologists, historians and genealogists who review the petitions in accordance with the standards of

their professions and using their professional expertise. The ASIA reviews their findings and recommendations and issues a final decision.

So from this point on, we're going to delve into the contents of the proposed rule, and the proposed rule is broken into three subparts. Subparts A, B, and C. And we will address each of those.

So, in Subpart A, which addresses general provisions and definitions, some of the notable definitions are "Alaska IRA eligible entity" which is proposed to be defined as any entity that as of May 1, 1936, the date Alaska IRA was enacted, an entity that was not recognized by the federal government as a band or tribe, that was organized on a basis of a common bond and occupation association or residence, and was comprised of members descending from Indians in Alaska. As part of the documented petition, the petitioner has to submit a claim of an Alaska IRA eligible entity from which it will demonstrate descent. The proposed rule further defines each of these constituent requirements.

Another important definition is "common bond," which is a clearly defined common interest that's shared and acted upon by a group of Alaskan natives distinguishable from other groups or associations and the proposed rule at section 82.21(a)(5) delves further into detail on what that common bond should look like.

The proposed rule uses the definition of Indian provided in the IRA, which states that for the purposes of the Act, Eskimos and other aboriginal peoples of Alaska are considered Indians, and the proposed rule also defines membership list to include each member's name, date of birth and current residential address.

In the scope and applicability sections of the proposed rule, the Department clarifies that it will not acknowledge under the rule any entity that's already petitioned for and been denied federal acknowledgement under the part 83 regulations, any entity that petitions and is denied acknowledgement under the eventual final part 82, any entity that's located outside of Alaska, any entity that was recognized as a tribe by the federal government on or before 1936, or was recognized by the federal government through some other means and included on the list after May 1, 1936. And any entity that petitions and is denied acknowledgement under the eventual part 82 final rule will not be eligible for acknowledgement under part 83 either. So, these are not multiple avenues for acknowledgment, it's one or the other.

Subpart B addresses the criteria for federal acknowledgement and in large part, it's the same process as what's set out in the part 83 regulations. The standard of proof, like the standard in part 83 is reasonable likelihood of the validity of the facts relating to that criterion, and the criteria require existence of community and political influence to be demonstrated on a substantially continuous basis. So, those are two of the criteria – community and political influence and authority. So, the petitioner must show that overall continuity must be maintained even though there are periods of interruptions for periods of little or no evidence.

The criteria are pretty much parallel to those in the existing part 83 except for the differences that I pointed out earlier. We'll run through those. Criterion A is identification, so the petitioner must be identified as an Alaskan native entity on a substantially continuous basis since May 1, 1936. Criterion B, the petitioner must have comprised a distinct community from '36 to the present. C, the petitioner must show exercise of political influence or authority over members from '36 to the present.

And then D, governing document or written statement describing membership criteria and governing procedures must be submitted. E, the petitioner must show that the members descend from the Alaska IRA eligible entity that existed in 1936. F, the petitioner's membership must not be composed principally of persons who are members of another tribe. And then G, the last criterion is one that the Department, rather than the petitioner, has the responsibility has to prove, and that's that there is no legislation that has forbidden or terminated the federal relationship.

The process for petitioning for federal acknowledgement under the proposed rule would begin with the submission by an entity of a documented petition to the Office of Federal Acknowledgment explaining how the petitioner meets the criteria A through F. The Office of Federal Acknowledgment, or OFA, then provides public notice when it begins review of the documented petition. And it starts its review, it conducts its review in two phases. Phase one looks at the second four criteria, criteria D through G, and OFA then issues a proposed finding or findings on those criteria and then moves to the phase two review which are the more resource intensive criteria, to review. And those are the first three criteria which are identification, community, and political influence and authority. OFA then issues findings, the phase two findings, and the Assistant Secretary then reviews OFA's findings and issues a final determination. At each phase of the petitioning process, technical assistance is available from OFA.

And the petitioners have options if there is a negative proposed finding that OFA issues in phase one or phase two, the petitioner may then object before an administrative law judge. That administrative law judge would then hold a hearing and make a recommendation to the assistant secretary. The assistant secretary would then have the ALJ's recommendations and OFA's findings to review in making the final determination. Ultimately, when the assistant



secretary issues the final determination, the petitioner may seek appeal in federal court.

As for the timeline, there are some benchmarks included in the proposed rule, as I said, the process begins when the entity submits the documented petition. OFA begins review of a documented petition as soon as its workload allows, but when it begins review, OFA must issue the public notice, and within six months of that notice, OFA must issue a phase one proposed finding. And then within six months of the deadline to issue the phase one proposed finding, OFA must then issue the phase two proposed finding.

Acknowledgment occurs when the petitioner receives a positive final determination from the assistant secretary. At that point the petitioner is a federally recognized tribe and included on the next list of federally recognized tribes.

So we are currently in the comment period on the proposed rule. This is the last scheduled Tribal consultation. We do have a public hearing by teleconference by teleconference, but, the comment deadline is then approaching on March 2. And any written comments can be emailed to [consultation@bia.gov](mailto:consultation@bia.gov). Or submitted by mail or the options that are listed in the federal register notice. So once the comment deadline passes and the Department has all the comments and transcripts from the sessions, the Department will review that input and make any changes that are appropriate to the proposed rule, and ultimately publish a final rule in the federal register.

So that's an overview of the rule and where we're at. So at this time, I would like to open the line so that we can address any questions or hear any comments and input that those of you on the call might have.

Coordinator: If you'd like to ask a question, please press star 1 from your phone, unmute your line, and record your first and last name clearly when prompted. If you would like to withdraw your question, please press start 2. Just a moment as we wait for questions to queue.

There are no questions in queue at this time. Oh, one just came up. Our first question is from Michael Willis, your line is now open.

Michael Willis: Hi, good morning, or good afternoon, Michael Willis from Hobbs Straus Dean and Walker and I just wanted to make one comment on the presentation which I did make in Fairbanks as well. And that's on what is slide number 10 of the presentation, there's erroneous information on that particular slide, which refers to the position that Alaska native entities will need to be first recognized before organizing under a secretarial election. And a statement in the slide suggests that this is consistent with past practices, as well as the IRA itself. And I think it's been longstanding policy as well as the specific statutory language that recognition is not required to prior to organization of Alaska native tribes meeting the common bond standard. Indeed, for instance, as the 1975 memorandum of the Solicitor notes that in Alaska, organization of previously unrecognized tribes is specifically permitted. That was the 1975 Department of the Solicitor's opinion and there have been several since including the 1993 position, and I think this was clarified by Assistant Secretary Echo Hawk in 2012 in response to Senator Murkowski's question. So I think for the record that should be corrected and addressed. Thank you.

Elizabeth Appel: Thank you for your comment, Mr. Willis.

Coordinator: There are no other questions in queue at this time. As a reminder, if you'd like to ask a question, please press star 1 from your phone, unmute your line, and

record your first and last name clearly when prompted. Once again, as we wait for questions to queue.

Elizabeth Appel: Are there any other questions or comments while we have Office of Federal Acknowledgment and the Office of the Solicitor here? Any questions you may have on the proposed rule or rulemaking, we're happy to discuss with you.

Coordinator: Once again, any questions or comments, you can press star 1, unmute your line, and record your first and last name clearly when prompted. Just a moment as we wait for questions and comments to queue.

Elizabeth Appel: If anyone has any comments they would like included in the record, please provide them now. Um, I don't know that we'll stay on the full two hours if we don't have a desire from our participants to. So, this is, I guess, this is almost the last call for comments, so if you have any comments, please speak up now. Thank you.

Coordinator: We do have someone in queue. Our next question or comment comes from Michael Willis, your line is now open.

Michael Willis: Hi, this is just a procedural question with today's, this particular call, and then the one in the afternoon. Is the, when you describe, is it open for all comments, or should public meeting comments be reserved for the later call?

Elizabeth Appel: I think we should reserve public comments for the public meeting since this time is set aside for, specifically for Tribes and Alaska Native Corporations' representatives.

Coordinator: Our next question comes from Sarah Walker, your line is now open.

Sarah Walker, your line is now open.

Sarah Walker: Hello?

Elizabeth Appel: Hi.

Sarah Walker: Okay, I asked a whole question and then I guess you didn't hear me.

Elizabeth Appel: Oh, no. Sorry.

Sarah Walker: Looking back at the December consultation where, the questions, the request for comments were passed out, are those questions on that paper still current as to what your seeking comment on?

Elizabeth Appel: So, the questions were related to when we were first scoping out whether to propose a regulation. We've now proposed a regulation, so we are specifically seeking comments on the proposed regulation itself, but if I remember correctly, the comments related, it's all the same topic, so we welcome any relevant comments.

Coordinator: There are no other questions in queue.

Elizabeth Appel: Okay, well if there are no other questions or comments, I think we'll plan to close it out. So this is the last call for questions and comments at this Tribal/ANC teleconference consultation. And, seeing no additional questions pop up, I will close it out. I thank everyone today for joining us and I encourage you to review the proposed rule, which is available through the BIA website, and submit comments to [consultation@bia.gov](mailto:consultation@bia.gov) or through one of the other methods listed in the federal register notice. A reminder again, the comment deadline is March 2, so we will be reviewing only the comments

that have been received before that date. And if anyone has any additional questions or comments, without... that aren't formal comments that you would like to submit, if you have any procedural questions or comments, please feel free to reach me. And my email is elizabeth period appel (with "el" instead of "le") at BIA dot gov, so that's [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov). Thank you everyone for joinng and have a great rest of your day.

Coordinator: Thank you for your participation in today's conference. All parties may disconnect at this time.

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