

NWX-DEPT OF INTERIOR-NBC

Moderator: Elizabeth Appel
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12:00 pm CT

Coordinator: Welcome and thank you all for standing by. At this time, all participants will be in a listen-only mode until the question-and-answer session of today's conference. During the question-and-answer session, if you do have a question, you may use star one. Today's conference is being recorded. If you have any objections, you may disconnect at this time. I would like to turn the call over to Ms. Elizabeth Appel. You may begin.

Elizabeth Appel: Hi. Good morning. Good afternoon to everyone. This is Liz Appel. I am with the Office of Regulatory Affairs and the Office of the Assistant Secretary for Indian Affairs at the Department of the Interior. And today we're going to be covering the proposed rule that was published on January 2, 2020 addressing federal acknowledgement of Alaskan native entities. And this public meeting is a rescheduled public meeting.

I'd like to apologize to anyone who tried to join our public meeting that was originally scheduled for February 6. We didn't realize until the actual time of the public meeting that there was a misprint in the federal register telephone number. So for anyone who tried to call and was unable to, I'm sorry that - for that inconvenience but I'm glad that you can join us today.

So what I'm going to do is go around the room here and have my colleagues introduce themselves and then we'll walk through a presentation that provides an overview of what the proposed rule would do. And that presentation is available on our BIA Web site. If you go to BIA.gov and search for federal acknowledgement of Alaskan native entities it should pop up. But in the meantime, I'll turn it over to Sam Ennis with the Office of the Solicitor.

Sam Ennis: Thanks Liz and good morning, good afternoon everybody. My name is Sam Ennis. I'm the Assistant Solicitor for the Branch of Tribal Government Services in the Division of Indian Affairs here at the Department of the Interior.

Lee Fleming: I'm Lee Fleming. I'm the Director of the Office of Federal Acknowledgement within the Office of the Assistant Secretary Indian Affairs.

Connie Briggs: Hi I'm Connie Briggs. I'm an attorney advisor in the Office of the Solicitor, Division of Indian Affairs.

Elizabeth Appel: Okay so with that, we'll jump into what our discussion is today. For some background starting on the first slide, in 1934 Congress had enacted the Indian Reorganization Act or IRA that authorized tribes to organize for their common welfare but most sections were inapplicable to the territories of Alaska. So that essentially prevented Alaskan natives from benefitting from the IRA's provisions.

So in 1936, Congress enacted what's known as the Alaska IRA and that allowed for groups of Indians in Alaska not previously recognized as tribes by the United States to organize under the IRA so that they could also be eligible for benefits so long as they could demonstrate - and this is a quote from the

Alaska IRA - that they must demonstrate a common bond of occupation or association or residence within a well-defined neighborhood, community or rural district. So that provision is referred to as the Common Bond Provision generally.

So for the current administrative process of acknowledging tribes, we have regulations at 25 CFR part 83 and that sets out the process and criteria and appeal procedures for acknowledgment of Indian tribes but there's no regulatory process in part 83 through which Alaska entities that are not currently recognized as tribes could be acknowledged under that common bond standard in the Alaska IRA.

To date under part 83, the Department has approved the - I'm sorry. To date under the Alaska IRA, the Department has approved the organization of more than 70 entities and that's under that common bond provision. These have all been case by case determinations that have relied on instructions from 1937 providing guidance on how to organize and then - and other Alaska IRA contemporaneous guidance and previous determinations.

So in 2018, the Department sought input on whether its implementation of the Alaska IRA should be codified in regulations or otherwise. So in July, the Department initiated consultation with tribes which through the spring of 2019 multiple listening sessions have been held throughout Alaska. And the input that the Department received mostly was questioning the need for a regulatory process specific to the Alaska common bond provision.

There's express concern as to whether an Alaska-specific regulatory process would affect federal recognition of existing tribes in Alaska, whether they were recognized under the Alaska IRA or otherwise. And there we all urged the Department to issue final decisions on any outstanding Alaska IRA

petitions prior to implementing a regulatory or guidance-based process for Alaska under the Alaska IRA.

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 common bond provision because the process set out in part 83 does not account for that common bond standard. There is no effect on the status of currently recognized tribes and as far as considering pending petitions, the Department is not considering any acknowledgement petitions submitted by Alaska native entities under the Alaska IRA while this rulemaking is in progress. But if the rule is finalized, Alaska native groups that had previously submitted petitions would be invited to revise or resubmit their petitions in conformance with the final rule.

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

Any Alaskan native entity that's acknowledged under the proposed rule, what's ultimately the final rule, would be eligible to receive all services that are available to other federally recognized tribes. And while the current regulations governing federal acknowledgement are part 83, this new proposed regulatory process would be placed at 25 CFR part 82.

So jumping into the content of part 82, in a large part it incorporates the requirements and procedures for federal acknowledgement that are bound in part 83 but there are some important distinctions. First with regard to genealogical and political descent, while part 83 requires descent from a historical Indian tribe, part 82 would require descent from an Alaska IRA eligible entity.

Second with regard to the start date for evidentiary standards, part 83 start date for showing - providing evidence there's 1900 while proposed part 82's start date would be May 1, 1936 which was the date of enactment of the Alaska IRA.

Third, the period to satisfy the evidentiary criteria likewise would be instead of 1900 to the present, under part 82 would be 1936 to the present. So the petitioner would need to show the existence of an Alaska IRA eligible entity in 1936 and then satisfy all the evidentiary criteria forward to the present. And the fourth distinction is that part 82 does not provide for a review of any previous federal acknowledgement claims which is available under part 83.

So the proposed part 82 also establishes a requirement that Alaskan native entities seeking to hold secretarial elections under part 81 starts gaining federal recognition. This is consistent with past departmental practices which has focused on organizing entities capable of establishing a government to government relationship with the U.S. also consistent with the IRA, Alaska IRA and part 81 which is the secretarial elections regulations.

The Office of Federal Acknowledgement, which we have the director Lee Fleming here from, will be the entity that will review the Alaska IRA petitions on the merits and make recommendations to the Assistant Secretary for Indian Affairs. And also for federal acknowledgement known as OFA is composed

of anthropologists, historians and genealogists who are all civil servants who will review and analyze evidence consistent with the standards of their professions.

This professional expertise is important to safeguard the uniform application of the Alaska IRA according to the best practices within these academic fields and helps to ensure that the Department's decisions will be accorded due deference by reviewing courts. Ultimately ASIA will review both feds work and issue the final decision.

So delving into the contents of the proposed rule itself, it's broken into three subparts. The first addresses general provisions. That's subpart A. Subpart B then addresses criteria for federal acknowledgement. And subpart C addresses the process. So we'll go through each of those in a little more detail now.

Some highlights from the general provisions are found in the definitions. For example, the definition of Alaska IRA eligible entity is an entity that as of May 1, 1936, the Alaska IRA enactment date, was not recognized by the federal government of the tribe, was organized on a basis of a common bond and occupation association or residence, and was comprised of members descending from Indians in Alaska. So as part of the documented petition, the petitioner must submit a claim of an Alaska IRA eligible entity from which is will demonstrate descent and then the proposed rule further defines each of those requirements.

Common bond is defined as a clearly defined common interest that's shared and acted upon by a group of Alaskan natives as distinguishable from other groups or associations and the proposed rule provides additional detail on what it means to have a common bond in section 82.21 paragraph page 5.

The definition of Indians in Alaska or Alaskan natives is largely taken from the definitions adopted from the definition of Indian that's provided in the IRA. And membership is list - is defined as a list of all current known members of the petitioner including the - each member's full name, date of birth and current residential address.

The scope and applicability provisions of the proposed rule clarify that the Department will not acknowledge under the rule any entity that's already petitioned for and been denied federal acknowledgement under the part 83 regulations. Anyone who to send in and is denied acknowledgement under the eventual part 82 any group that's allocated outside of Alaska, any entity that was recognized as a tribe by the federal government on or before the date of the Alaska IRA enactment, and any entity that was recognized by the federal government through some other means and included on the list after 1936. So any entity that petitions and is denied acknowledgement under the eventual part 82 will not be eligible for acknowledgement under part 83.

Moving on to subpart B, the criteria for federal acknowledgement, the evaluations set out in part 82 is the same as part 83 as far as the standard approved being a reasonable likelihood of the validity of the facts relating to each criterion and requires existence of community and political influence, which is criterion B and - I'm sorry existence of community which is criterion B and criterion C which is political influence and authority. Those must be demonstrated on a substantially continuous basis. So that means that overall continuity must be maintained even though there are periods of interruptions for a period where evidence is absent or is omitted.

There are seven mandatory criteria set out in subpart B. They're very similar to the criteria that are in part 83 with the distinctions that I pointed out before. Just to run through them, criterion A is that the entity must be identified as an

Alaskan native entity on a substantially continuous basis since May 1, 1936. B, the entity must have comprised a distinct community from 1936 to the present. C, the entity must show exercise of political influence or authority over members from May 1, 1936 to the present.

C, the entity must submit a governing document or a written statement describing membership criteria in current governing procedures. E, the entity must show members descend from the Alaska IRA eligible entity that existed in May - on May 1, 1936. F, the petitioner membership must not be composed principally of persons who are members of another federally recognized tribe. And then G, no legislation must have forbidden or terminated the federal relationship with the entity. And that last criterion is the one criterion that the federal government rather than the petitioner has the burden to prove.

So part C provides the process for federal acknowledgement which begins when the entity submits a documented petition to OFA explaining how it meets the criteria A through F. Again, DOI does criterion G. And then once OFA begins review, it provides notice to the public that it's beginning review. And that kicks off phase one review where OFA examines the second four criterion which are governing documents, membership descent, unique membership and termination. And at the end of that phase one review, OFA issues findings on those criteria.

OFA then moves on to the phase two review where it examines the more resource intensive part three criteria which are identification, community, and political influence and authority. It then issues a phase two proposed finding and ultimately ASIA reviews the OFA findings and issues a final determination. So that's a very high-level overview of the process. And at each phase OFA is available for technical assistance to the petitioner.

And ultimately if the proposed finding is negative, the petitioner may object before an administrative law judge and then that administrative law judge would make a recommendation to the assistant secretary who would then review OFA's findings and the ALJ's recommendations to issue a final determination. Once the ASIA assistant secretary issues the final determination, the petitioner may appeal that to federal court.

As far as the timeline for this process, the process begins when an entity submits the documented petition and OFA's review begins when its workload allows it to begin review of that particular petition. Once it does begin review and provides public notice, then within six months OFA will issue a phase one proposed finding. And then within six months of that deadline, OFA will issue the phase two proposed findings.

Ultimately if and when the petitioner receives a positive final determination, that's when acknowledgement as a federally recognized tribe occurs. So the petitioner at that point will be a federally recognized tribe and included on the next list of federally recognized tribes that's published in the federal register. So we are - that's an overview of the rules.

As far as where we are in the regulatory process, we're coming up to the comment deadline, which is next week March 2. Comments can be sent in accordance with the directions provided in the federal register publication of the proposed rule on January 2. They can also be emailed to consultation@bia.gov. And once the comment period ends and so the Department has a chance to review all the comments, it will make changes as appropriate. And the current plan is to then publish a final rule in the federal register. So that's where we are and an overview of the rules. So at this point, I would like to open it up to anyone who has questions or comments for us.

Coordinator: Thank you. We would now like to open the phone lines for any questions. If anyone does have a question, please hit star one and record your name when prompted. Again that's star one. One moment while we wait for the first question. We do have a question from (Maryanne Mills). Your line is open.

(Maryanne Mills): Yes. My question is, you know, Alaska is also privileged to be listed in the UN charter. And with that comes the list of what the United States and other countries around the world, what their obligation is the Alaska natives peoples with regard to, you know, the list of non-sovereign governing territories and other laws that have been passed by the United Nations and also passed through Congress and accepted through Congress. Will these also be considered in the law briefs that your Department will be observing and going through?

Sam Ennis: Hi. Thank you for your question. This is Sam Ennis from the Division of Indian Affairs. That is not something that we considered but we will look into that and consider it as we move forward. Thank you.

Elizabeth Appel: And we also encourage you if you have any background information or more detail that you'd like to provide in writing, you know, to feel free to email us or provide it through the regulations.gov commenting portal.

Lee Fleming: This is Lee Fleming. I just want to add that the proposed rule outlines seven mandatory criteria. If there evidence, correspondence, letters that may have gone to and from the United Nations and some group in Alaska, that could be some form of evidence that could be applied to one or more of the criteria.

Coordinator: Thank you and again if there are any questions, please use star one. It looks like we have another one queuing up. One moment. And (Sharon Isaac) your line is open. Hi (Sharon). Can you check the mute feature on your phone?

(Sharon Isaac): Yes that would be helpful wouldn't it? Thank you. I'm sorry. The question I have is and I want to make sure I heard it correctly, the new register regulatory process does not apply to those that are currently recognized. Correct?

Elizabeth Appel: That is correct.

(Sharon Isaac): Okay. That's what I just want clarification of. So thank you very much.

Elizabeth Appel: Thank you.

Coordinator: And again that is star one if you have a question on the phone. And again that is star one if you have a question on the phone. And I am currently showing no questions in queue.

Elizabeth Appel: Well I just want to reiterate that we have the comment period open until March 2. So if there's anything that if you're considering providing written comments, if there's any clarifications you would like before submitting your comments, we're here to answer questions you may have.

Coordinator: And again that is star one on the phone if you do have any questions. And I'm still showing no questions in queue.

Elizabeth Appel: Okay. Well we'll give it another couple minutes in case anyone is still formulating their thoughts. And if we still have no questions or comments after the next couple minutes, then we'll probably wrap up a little early.

Coordinator: It looks like we have one queueing up. One moment. And (Maryanne Mills) your line is open.

(Maryanne Mills): Yes. I was wondering are you taking testimony as well on this teleconference?

Elizabeth Appel: Yes we are. You're welcome to provide testimony. This is being recorded and will be reviewed with the other transcripts and written comments that we receive.

(Maryanne Mills): Will you be announcing it or does it begin now or?

Elizabeth Appel: This is the opportunity to provide your testimony yes.

(Maryanne Mills): Oh okay. Then I would like to provide my testimony.

Elizabeth Appel: Wonderful. Thanks.

(Maryanne Mills): Okay. My name is (Maryanne Mills). I am a council member for the Kenaitze Indian tribe in Kenai, Alaska and I am speaking on my own behalf today. The Kenaitze Indian tribal submit a written response before the deadline and I saw that it was March 25 but now I see it is March 2, 2020 at 9:00 am. I oppose the Alaska native entities being recognized as tribes. As you all know, the Alaska Native Claims Settlement Act or ANCSA was an experiment on Alaska indigenous peoples and according to the many reports a gross failure to our people.

It wasn't a settlement act for the indigenous peoples of Alaska. It was a settlement act for the oil companies to get their oil out of Prudhoe Bay. Under ANCSA, the U.S. government turned us from human beings, which I am going to email which means a real person, into stockholders thus becoming an easy way to take our land and resources. It also taught our people to be

greedy and self-serving. It also was never ratified by our people and did not include the tribes nor their consent. Reports show we are worse off today than we were before the passage of ANCSA.

Now to exasperate our people more, the federal government is proposing to turn Alaska native entities into federally recognized tribes. This will destroy our tribal self determination to government - governance which supports the critical needs of our people. To include Alaska native entities as tribal government would be a travesty to the tribes in Alaska to the point that we would lose our tribal status to nonprofits and entities. It would deplete the already scarce funds meant for tribal governments. It would not - it would be no different than the federal government giving powers - governing powers to Walmart and other foundations rather than the local governments.

Alaska native entities have little to no oversight. Those who sit on these boards have not been elected and in many circumstances lack the trust of those they serve. Many of these Alaska native entities are nonprofits of a regional corporation, are also corporations who have plenty of money to lobby in D.C. Their CEOs are paid exorbitant amount of money whom - who in many cases cannibalize tribal grassroots efforts to simply exist.

In the United States there are three recognized sovereigns: tribal, federal and state. The Alaska indigenous peoples face insurmountable challenges because of the government's decision not to live up to its sacred trust over our sovereign rights, our self determination and our human rights. Many of these challenges are lack of police protection in rural Alaska, missing and murdered women. Alaska has the highest rate in the nation. Domestic violence in Alaska natives has the highest rate in the nation. Alaska native children in state custody, 63% Alaska natives when we are only 15% of the population.

Suicide rates among Alaska natives is the highest in the nation. Among the highest rates of substance abuse is among our people, we have the highest rate in the nation. Incarceration rates Alaska natives have the highest per capita rate in the state. Alaska natives are criminalized for feeding their family - families using traditional and cultural practices we are denied our right to subsistence.

Please recognize our sovereign tribal governments appropriately and not the state-chartered Alaska native entities. Please consider the UN charter and also included is our right to be listed on the non-self-governing territories. And that these rights cannot be reversed by domestic law. These are rights and covenants and international law that has been accepted not only by countries around the world, states around the world, as well as by the United States through the Congress and the Senate. Thank you for your time and for being here.

Elizabeth Appel: Thank you very much for that thoughtful testimony.

Coordinator: Thank you and again that's star one. And we have (John Ross) your line is open.

(John Ross): Okay can you hear me?...

Coordinator: And (John) can you speak - yes we can hear you.

(John Ross): Okay. I just - I'm (John Ross) with the Salamatof tribe. I also am a Kenaitze tribal member. And I just wanted to say that I support everything that (Maryanne Mills) just said in her statement.

Elizabeth Appel: Okay thank you. Okay. Yes...

(John Ross): Now in terms of federal recognition, that is important and one of the things that we're doing with the Salamatof tribe is our recognition with our own traditional governance and that's through our clans. And so we're - we have unincorporated part of us that is sovereign and that's through our clans. That's all I have to say.

Coordinator: Thank you and again that's star one.

Elizabeth Appel: Thank you the both of you have commented already. I just want to encourage anyone else who may be on the line who has testimony that they'd like to provide or if you also would like to support or provide additional information please take this opportunity to do so while we have our subject matter experts in the room.

Coordinator: And again that's star one if you have any questions or comments on the phone. And there are currently no questions or comments on the phone.

Elizabeth Appel: Okay well if we have no more questions or comments and nobody else would like to provide any testimony, I think we will wrap up the call. Again I want to encourage you to provide any written input if you would like to by email to consultation@bia.gov. The comment deadline is March 2 which is next week. And the other means by which you can send your comments are through the federal e-rulemaking portal which I mentioned earlier that's at www.regulations.gov. And if you go to that site, you can provide your comments. There's an RIN or RIN number 1076-AF51 and if you search by that RIN number it will pull up this proposed rule and you can comment that way.

We also are accepting comments by mail or courier if you would prefer to do that. We still need to receive the comments by March 2 but the address here is the Office of Regulatory Affairs and Collaborative Actions for Indian Affairs and that's at the U.S. Department of the Interior at 1849 C Street Northwest, Mailstop 4660, Washington D.C. 20240. And again this is all set out in the federal register notice of January 2, 2020 if you'd like to refer back to those addresses.

Coordinator: And Liz we do have two in queue again if you want to take them.

Elizabeth Appel: Great.

Coordinator: And we have (Sharon Isaac). Your line is open.

(Sharon Isaac): Yes thank you. I'm sorry I - a thought came to me late here. Well I know you said you were recording this. Would there be a copy of this transcript that could be emailed to us, those of us that participated?

Elizabeth Appel: Sure. We will make the transcript available on the web page on the BIA.gov site but I'm happy to also email it to you. If you just email your request to consultation@bia.gov, we can bond with the...

(Sharon Isaac): Consultation@bia.gov...

Elizabeth Appel: Yes. Yes. That's it.

(Sharon Isaac): And then is BIA capitalized?

Elizabeth Appel: No I don't think it matters one way or the other but it...

(Sharon Isaac): Okay consultation@bia.com request transcript from today?

Elizabeth Appel: Right. It's consultation@bia.gov.

(Sharon Isaac): Okay.

Elizabeth Appel: G-O-V. I'm sorry if I misstated earlier.

(Sharon Isaac): Okay. Thank you very much.

Elizabeth Appel: Sure. Thank you.

Coordinator: Thank you and (John Ross) your line is open.

(John Ross): Yes hi.

Elizabeth Appel: Hi.

(John Ross): I was just thinking back about what I was saying about our traditional governance and I just - I mentioned clan as, you know, what that's based on but it's also based on our ancestors and our connection to the land through our ancestors and our ancestry. So anyway, it still relates to clan but I just wanted to add that. Thank you.

Elizabeth Appel: Thank you. I appreciate that.

Coordinator: Thank you and if anyone else has any questions or comments, it's star one. And it looks like we have another one queuing up. One moment. (May) your line is open.

Faye Ewan: Faye, it's F-A-Y-E.

Coordinator: Oh I'm sorry Faye.

Faye Ewan: E-W-A-N. I've just got between the tribes and the nonprofit organizations, the tribal affiliation that has anything to do with tribes, they should always have a resolution from the tribe and a consent on how to - anything that on behalf of our tribes should always go through the tribes especially with consultations and anything to do with our sovereignty. We always have to be at the desk. That's what I wanted to say. Thank you.

Elizabeth Appel: Thank you very much for your comment.

Coordinator: And again that is star one for questions or comments on the phone. And it looks like we have one - oh it looks like she disconnected. And I am showing no others in queue. And I am still showing no questions.

Elizabeth Appel: If there aren't any other comments, I think we will wrap it up. If you have any thoughts that occur to you after the call, please submit them to consultation@bia.gov. That's for Bureau of Indian affairs dot G-O-V. And I thank you all for joining us today and again we look forward to your written input. The comment period ends on March 2. Thank you again.

Coordinator: Thank you all for participating in today's conference. You may disconnect your line and have a great day or a great evening.

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