U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS

PUBLIC MEETING
ON
FEDERAL ACKNOWLEDGMENT OF ALASKA NATIVE ENTITIES
PROPOSED RULE - 25 CFR 82

EGAN ROOM, CENTENNIAL HALL
JUNEAU, ALASKA
JANUARY 28, 2020
1:30 P.M.
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1:30 P.M.

MS. APPEL: Welcome, everybody, to our public meeting on the Proposed Rule 25 CFR Part 82, Federal Acknowledgment of Alaska Native Entities. My name is Liz Appel. I'm with the Office of Regulatory Affairs and Collaborative Action under the Assistant Secretary for Indian Affairs, and with me are --

MR. PARTESOTTI: John-Michael Partesotti. I'm an attorney in the Division of Indian Affairs in the Department of the Interior.

MR. SCHERER: Hello and welcome.

Kyle Scherer, Deputy Solicitor for Indian Affairs.

MR. FLEMING: Lee Fleming. I'm the Director of the Office of Federal Acknowledgment.

MS. APPEL: And since we have a small crowd today, do you want to introduce yourself?

MR. STEPETIN: I'm Martin Stepetin. I'm actually from St. Paul Island, Alaska, and I learned about this issue down here in Southeast because of the communities that are trying to be recognized by the federal government as a tribe.
And I worked up in the state office last year and learned a lot about it there. I worked with Representative Dan Ortiz, and in his district there are communities, more than one, that have -- Wrangell and a couple of other communities that are within his district, that I commonly heard from his constituents that needed help with trying to be organized and recognized by the federal government. So I am very much interested in learning more about this.

MS. APPEL: So I'll run through the presentation. You have a copy of the slides in your handouts, along with a copy of the rule. And basically we'll give you an overview of what the department is proposing and why, and then we'll delve into the contents of the proposed rule a little bit.

So in 1934, Congress enacted the Indian Reorganization Act, or IRA. And that authorized tribes to organize for their common welfare, but most of the sections of the IRA were not applicable to Alaska Native entities, and it essentially prevented nearly all Alaska Natives from benefiting from the IRA's provisions.

So in 1936 Congress enacted what
we call the Alaska IRA, and that legislation allows
groups of Indians in Alaska that are not already
recognized by the federal government to organize
under the IRA and become eligible for benefits as
long as they can demonstrate -- and this language
is straight from the statute -- "a common bond of
occupation, or association, or residence within a
well-defined neighborhood, community, or rural
district." And we call that the common bond
provision.

For the 1934 Alaska IRA, we have
regulations on the books in the Code of Federal
Regulations at Part 83, and those regulations
govern federal acknowledgment of Indian tribes by
setting out the process and criteria by which
petitions are evaluated for acknowledgment, and
then appeal procedures for appealing the
department's decision to acknowledge or not
acknowledge a petitioner as an Indian tribe.

But while Part 83 implements the
1934 IRA, there is no parallel regulatory process
for the 1936 Alaska IRA, so there's no regulation
for entities to follow to be acknowledged as tribes
by meeting the Alaska IRA common bond standard.

To date, the department has
approved organization of more than 70 entities under the Alaska IRA common bond provision, but these have all been case-by-case determinations, based on 1937 instructions providing guidance on how to organize and other guidance that's contemporaneous to the Alaska IRA, as well as previous determinations under the Alaska IRA, and those determinations have mostly been reviewed by the Office of the Solicitor.

To establish a regulatory process to implement the Alaska IRA, the department started consulting on and having public meetings on this idea of whether a regulation was needed back in the summer of 2018, and it held multiple tribal consultations and public hearings through the spring of last year.

The input received mostly were questions as to why we need an Alaska-specific regulatory process. We also had many who expressed concern about whether a regulation would affect the status of currently recognized tribes. And nearly all who commented urged the department to issue final determinations on the Alaska IRA petitions currently pending before it before implementing a regulation or guidance on the Alaska IRA.
The department reviewed those comments and transcripts and determined that there is a need for an Alaska-specific regulatory process to carry out the Alaska IRA provision, because the formal process that's set out in the current Part 83 does not account for that common bond standard that's in the Alaska IRA.

The effect on the status of currently recognized tribes of a new rule on the Alaska IRA -- there is no effect on the tribes at all. The rule would only affect groups who are not currently federally recognized who are seeking acknowledgment as a tribe.

And then regarding consideration of pending petitions, the department is proposing that it will not consider any petitions submitted by Alaska Native entities under the Alaska IRA during this rule-making. And if the rule is finalized, any groups that previously submitted petitions would have to resubmit their petitions to conform to the final rule.

The proposed rule published in the Federal Register on January 2nd, and it proposes a new regulatory process for federal acknowledgment under the Alaska IRA common bond standard. Again,
it applies only to groups that aren't currently recognized, so if a tribe has been listed on the list of federally recognized tribes that BIA publishes every year in the Federal Register, then there is no need for it to go through this process. And the regulation wouldn't impair or otherwise affect the existing rights and authorities of any tribe that's already recognized. Any Alaska Native entity that ultimately is federally acknowledged as a tribe under the rule would be eligible to receive all the services available to other federally recognized tribes.

Mostly the new regulation adopts the framework of the current Part 83 1934 IRA regulation, but there's a couple of important distinctions. First, the proposed rule requires descent from an Alaska IRA-eligible entity when the petitioner is showing genealogical and political decent, versus the current Part 83 requires the petitioner to show descent from an historical Indian tribe.

The start date for evidentiary standards under the proposed rule is 1936, the date that the Alaska IRA was enacted; and for the current Part 83, it's 1900.
Likewise, the period to satisfy evidentiary criteria under the proposed rule is from the date of the Alaska IRA, so 1936 forward to the present, versus under the current Part 83, the petitioner has to satisfy the evidentiary criteria from 1900 to the present.

And then, finally, the proposed rule doesn't have the option of showing previous federal acknowledgment that's in the current Part 83, and we can talk more about that if that's a question.

The proposed Part 82 has provisions that clarify that if an Alaska Native entity wants to have a secretarial election under Part 81, it first has to gain federal recognition; so Part 81 isn't a route on its own to gain federal recognition. And this is consistent with past department practices which focused on making sure that entities are capable of establishing the government-to-government relationship with the United States, and it's consistent with the IRA, Alaska IRA, and our current Part 81 regulations.

Proposed Part 82 includes the Office of Federal Acknowledgment as the expert reviewers of the petitions. So under the ad hoc
process that's currently happening, the Office of the Solicitor plays a big role in reviewing requests for acknowledgment under the Alaska IRA. But the proposed rule would have the Office of Federal Acknowledgment, OFA, which Lee Fleming here is the director of -- and OFA includes several subject matter experts -- anthropologists, historians, genealogists -- who are all civil servants and apply their professional expertise to reviewing petitions. And so they would make recommendations on petitions to the Assistant Secretary of Indian Affairs, who would ultimately issue the final decision whether to acknowledge the Alaska Native entity as a tribe or not.

The proposed rule has three main subparts, and we'll go into each of these. But roughly the first subpart is just the overview, definitions, purpose, that kind of thing. The second subpart is the criteria for federal acknowledgment. So these are the standards that the petitioner has to show, demonstrate that they meet in their petition in order to be acknowledged. And then the third subpart, Subpart C, sets out the process for submitting a petition and what happens at each step of the petitioning process.
So we're going to delve into each of these subparts, so I'll just pause here and see if anyone has any questions so far.

MR. STEPETIN: Oh, I'm just -- you know, this is the first time I've seen any of -- it's just the first time I've seen any of these, the way that tribes came about in the past, I guess. And I'm just imagining that they're tried and tested, but it's not like you guys are -- I don't think this is something that any of you guys do on a regular basis, so I think that the department has to relearn these rules once they start exercising what they have done in the past.

But is there a process to improve upon some of these rules and processes so that the Alaska ruling is protected from any holes that might be in the current rule, instead of just making it the same exact way as the one in the past? And we can do that now, so have we thought of that? Has the department thought of that and tried to make it so that it's Alaska-specific?

MS. APPEL: Sure. So the Part 83 that this proposed rule is modeled after was updated in 2015, following an extensive tribal consultation, public comment period; so the department is pretty
confident in the workability of those regulations that are published.

MR. FLEMING: Some of the principles of the 2015 revisions focused on timeliness, consistency, fairness, transparency, and so those revisions were done with the Part 83. Since we felt that those improvements would make the process easier and better, the decision was made to work with that experience and information and create those provisions for Alaska entities in the proposed Part 82.

So there's a lot of experience, training, and knowledge that went into Part 83 and the revisions to improve that. This is being applied to the Alaska entities. So we're confident that a process will be put in place to ensure a group that it will be reviewed, analyzed, and evaluated with standards and criteria and due process, and informed decisions can be made based on the evidence.

MR. SCHERER: I would only add that the regulations for the Lower 48, or the implementation of the Indian Reorganization Act of 1934, have been in place since 1978 and were, I believe, twice updated, most recently in 2015. And
so hopefully every iteration of an update is an
ability to improve upon the prior regulations in
force.

MS. APPEL: And I think we talked a
little bit about how Part 83 has been tweaked to
address the Alaska IRA, but we'll talk a little bit
more about that as we go through.

Did you have any questions?

MS. EVOY: Heather Evoy. Am I
understanding correctly that DOI is not doing
anything on previously submitted petitions? Is that
correct? And the second part of that would be
then -- I guess my question is why are they -- or
how many outstanding petitions for -- I can't really
use the word "acknowledgment." That just doesn't
flow well with my values, but if you understand what
I'm getting at.

MR. FLEMING: All right. So the
answer to the number of pending petitions -- we know
of two in particular, Qutuchec and Kanakanak. One
is near Dillingham, and the other one is in Seward.
And then Valdez is another group that has been
wishing to be established.

And recently there was a bill
introduced by Representative Don Young regarding a
group called Alexander, which was affected by the 1972 Settlement Act. They were designated as an Alaskan group, but because they did not have the required 25 members under that legislation, they were not recognized as a village, but they were recognized as a group. And so that legislation is suggesting that their status be elevated to an Indian entity.

So those are the four that are on the radar screen. What was the other part of your question?

MS. EVOY: Well, I'm just asking -- so if they're not, you know, being considered right now and they have already gone through some sort of process, then --

MR. FLEMING: Well, they haven't.

MS. EVOY: Oh, they haven't?

MR. FLEMING: That's the point. They have not. And so this sets up a mechanism to allow for a good review of their claims and evidence, analyzed and evaluated under standards and criteria, and it also provides due process. And a well-informed decision can then be made by the Assistant Secretary of Indian Affairs.

MS. EVOY: Thank you.
MS. APPEL: All right. I'll keep going.

Among the definitions that are being proposed are "Alaska IRA-eligible entity," and that is defined as an entity that, as of May 1st, 1936, the date the Alaska IRA was enacted, was not federally recognized, was organized on the basis of a common bond of occupation, association, or residence, and was comprised of members descending from Indians in Alaska.

So as part of its documented petition, the petitioner also must submit a claim of an Alaska IRA-eligible entity from which it can demonstrate descent and will demonstrate descent. And the proposed rule further defines each of those constituents requirements.

Another definition that is key to this proposed rule is "common bond." And that's a clearly defined common interest, shared and acted upon by a group of Alaska Natives distinguishable from other groups or associations. And there is additional language in the proposal regarding that "common bond," since that is really the key with the Alaska IRA criteria.

"Indians in Alaska" or "Alaska
Native" -- the definition is taken from the IRA, which states that Eskimos and other aboriginal peoples of Alaska are considered Indians, so that statutory language has been folded into the proposed rule.

And "membership list" is defined as a list of all known current members of the petitioner, including each member's name, date of birth, and current residential address.

The scope and applicability section of the proposed rule clarifies that the department will not acknowledge certain entities under the rule. Those are entities that have already petitioned for and been denied federal acknowledgment under the current federal acknowledgment process at Part 83; any entity that petitions and is denied acknowledgment under the eventual final Part 82, assuming it's finalized; any entity that is located outside of Alaska; any entity that was recognized as a tribe by the federal government before 1936, or was recognized by the federal government through some other means and included on the list after 1936; and any entity that petitions and is denied acknowledgment under the eventual final Part 82 will not be eligible for
acknowledgment under Part 83 either. So a petitioner cannot petition under both Part 82 and Part 83. And if they are denied acknowledgment under one, they can't then go to the other to seek acknowledgment.

The department evaluates the mandatory criteria using the same standard of proof that is in the current Part 83 process. And that standard is that a petition must show a reasonable likelihood of the validity of the facts relating to each criterion, and the proposed rule requires that the existence of community, which is one of the criteria, and political influence and authority, which is another, be demonstrated on a substantially continuous basis. So the petition must show that there has been overall continuity in community and political influence and authority, even though there may be certain gaps, interruptions, or periods where evidence is absent or limited.

There are seven mandatory criteria that a petitioner would have to meet to be acknowledged as a federal tribe under the Alaska IRA under this proposed rule. There are also seven mandatory criteria in the current Part 83 process,
but, as I mentioned on a previous slide, there are some key differences in this proposed rule that relate back to the Alaska IRA, as opposed to the 1934 IRA.

So the first, which we call the identification criterion: The petitioner must have been identified as an Alaska Native entity on a substantially continuous basis since the date of enactment of the Alaska IRA, 1936.

The second criterion, the community criterion: The petitioner must show that it comprised a distinct community from 1936 to the present.

The third: Exercise of political influence and authority over members from 1936 to the present.

The fourth -- so those first three are really the resource-intensive criteria, and the second four are a little bit less resource-intensive. And I mention that because the review process is broken up into two phases. So (d), the petitioner has to provide their governing document; (e), they have to show decent from an Alaska IRA-eligible entity that existed on May 1, 1936; (f), they have to show that their membership is not
composed principally of persons who are members of another tribe; and then (g), which is the criterion that the department researches, rather than the petitioner needing to show, that no legislation has terminated or forbidden the federal relationship with the entity.

The process for federal acknowledgment begins when the entity submits a documented petition to the Office of Federal Acknowledgment, explaining how it meets all of the criterion -- well, criteria (a) through (f), and then the department looks at criterion (g).

When the Office of Federal Acknowledgment begins review, it provides public notice of that. And then it examines the second four criteria that I pointed out as part of Phase I and issues a proposed finding first on those four criteria and then looks at the first three criteria and issues is a proposed finding on those criteria as part of Phase II.

And then ultimately the Assistant Secretary for Indian Affairs reviews OFA's findings and issues the final determination as to whether or not to acknowledge the entity as a federal tribe.

At each phase of the process, OFA
provides technical assistance. And if a proposed finding that OFA issues is negative, the petitioner can ask for a hearing before an administrative law judge. After the hearing, the judge would then make a recommendation to the Assistant Secretary, who would then review that recommendation, along with OFA's proposed finding, and issue a final determination. And then once the final determination is issued, there is the opportunity to appeal that final determination to federal court.

As for the timeline of the process, the documented petition submission by the entity starts the process. And then when OFA's workload allows, it begins that Phase I review and provides the notice that it's beginning the review. Within six months of issuing notice that it's beginning that Phase I review, OFA will issue the Phase I proposed finding, and then within six months of that will issue the Phase II proposed finding.

Acknowledgment ultimately happens when the petitioner receives a positive final determination. And at that point, the petitioner is considered by the federal government to be a
federally recognized tribe and will be included on
the next list of federally recognized tribes that's
published in the Federal Register.

Right now we're in the comment
period for the proposed rule, so we are having
tribal consultation and public meetings today in
Juneau and then Wednesday in Fairbanks. And on
February 6 we'll be having both a consultation and
public meeting by teleconference.

E-mail is the preferred method for
sending comments, but we also accept comments by
mail. That information is included in your packet.
And it can also be submitted through
regulations.gov. The comment deadline is March
2nd. After all the comments have been submitted,
the department will review the comments and the
transcripts and make changes as appropriate, and
ultimately publish a final rule in the Federal
Register that would establish a Part 82 process for
acknowledgment of tribes under the Alaska IRA.

So that is this presentation. Do
you have any questions? Do you want to go back to
any specific slide?

MS. EVOY: No. I think that's
good. Thank you.
MS. APPEL: Do you have anything?
MR. SCHERER: Just to provide a clearer picture of the consultation and public meeting schedule, we did have a consultation and public meeting concurrently with the Alaska Federation of Natives meeting.

MS. EVOY: In October?
MR. SCHERER: Yes.
MS. APPEL: Yes. In Anchorage, we did.
MR. SCHERER: It was better attended.
MS. APPEL: Yes, a very large group.
MS. EVOY: All right. Well, thank you.
MR. SCHERER: Thank you.
MS. APPEL: Thank you for joining.
If you don't mind signing in, too, then we can make sure the court reporter gets your name and everything.
MS. EVOY: Great. Thank you.
MS. APPEL: Thank you.
MR. FLEMING: Thank you.
2:04 PM
(Off record.)

2:14 PM

MS. APPEL: My name is Liz Appel. I'm with the Office of Regulatory Affairs and Collaborative Action, and that's under the Assistant Secretary for Indian Affairs and Interior. We have John-Michael Partesotti from the Office of the Solicitor; Kyle Scherer, who may be joining us. I think he's taking a call; and then Lee Fleming, who is our Director of the Office of Federal Acknowledgment. And that's also under the Assistant Secretary for Indian Affairs.

So this presentation -- you have copies in your handouts -- provides some background on what we're proposing and why. And if you have any questions, feel free to interrupt me at any time.

As background, in 1934 Congress enacted the Indian Reorganization Act, the IRA, that authorized tribes to organize for their common welfare. But it was mostly inapplicable to Alaska Native entities, so Alaska Natives were functionally prevented from benefiting from the IRA provisions. So in 1936 Congress enacted what we call the Alaska IRA, and that allows groups of

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Indians in Alaska not previously recognized as tribes to organize under the IRA and become eligible for IRA benefits if they demonstrate a common bond of occupation or association or residence within a well-defined neighborhood, community, or rural district. And that language is in the statute, the Alaska IRA statute.

We have on the books in the Code of Federal Regulations CFR Part 83, which governs how we, at the executive branch, federally acknowledge Indian tribes under the 1934 IRA, but there is no parallel regulatory process for recognizing Alaska Native entities as tribes under the Alaska IRA in that common bond provision.

So far, when entities would seek to be acknowledged as tribes under the Alaska IRA, the department has been reviewing those requests on a case-by-case basis, using 1937 guidance and other Alaska IRA contemporaneous guidance. And primarily those requests have been reviewed by the Office of the Solicitor.

So the department first started reaching out to tribes and the public on whether a regulatory process to implement the Alaska IRA was appropriate back in 2018 and held several tribal
consultations and listening sessions and public hearings up through the spring of 2019.

    And most of what we heard was questioning as to whether a regulation was really needed to implement the Alaska IRA. Several federally recognized tribes expressed concern as to whether a new regulation or guidance would affect their current status as federally recognized tribes. And then nearly all that we heard from urged the department to issue decisions on those requests that were pending before it, before implementing any new regulation or guidance for the Alaska IRA.

    MS. DABALUZ: How many outstanding petitions do you have for Southeast Alaska?

    MR. FLEMING: For Southeast Alaska, just overall there are four that we know of: Qutuchec, which is in Seward; Kanakanak, which is near Dillingham; Valdez; and one that is attached to a bill that was introduced by Representative Don Young, Alexander. And apparently Alexander was designated as a group under the Settlement Act. They did not have the required 25 members or more, so they didn't have that tribal status. That was associated with the Settlement Act.
MS. DABALUZ: Oh, ANCSA?
MR. FLEMING: ANCSA, yes.
MS. DABALUZ: Alexander, where it that? In the Interior?
MR. FLEMING: Alexander?
MS. APPEL: Are any of those groups in Southeast?
MS. DABALUZ: None of them are Southeast, from what I can --
MR. FLEMING: No, and that's why --
MS. DABALUZ: It's probably the Interior.
MR. PARTESOTTI: Yeah. I don't know if that's the same as Point Alexander, which is on Baranof Island, so --
MS. DABALUZ: Oh, that would be Southeast, then.
MR. PARTESOTTI: But I don't know if it's the same.
MS. DABALUZ: I don't think it's the same.
MR. PARTESOTTI: Okay.
MR. FLEMING: I think there is another --
MS. DABALUZ: I'm not even familiar
with that name. It may not be a village. Maybe it's the name of the overall group.

MR. FLEMING: Well, since it was less than 25 individuals at that time, more than likely it didn't get as much attention or such. And so now they want to be elevated to tribal status, and this proposed rule offers a mechanism for --

MS. DABALUZ: For them to do that.

MR. FLEMING: -- review of their claims and evidence.

MS. DABALUZ: Thank you.

MS. APPEL: Okay. So in the department's responses to the input in the 2018-2019 sessions, the department determined that a formal process is needed to effectively carry out the Alaska IRA, because the process that's set out in the current regulations does not account for the common bond standard that's in the Alaska IRA.

There is no effect on the status of currently recognized tribes with this proposed rule. And as far as consideration of pending requests, the department will not consider any acknowledgment petitions submitted under the Alaska IRA while this rule-making is in process.

If the rule is ultimately
finalized, then Alaska Native groups that previously submitted petitions would need to revise or resubmit their petitions to conform to the final rule.

The proposed rule published on January 2nd, and we're currently in the public comment period. The rule establishes a new regulatory process through which Alaska Native entities can become federally acknowledged under the common bond standard in the Alaska IRA. And it applies only to groups that are not federally recognized tribes already. So if a tribe has been included on the list of federally recognized tribes that BIA publishes annually in the Federal Register, then this rule does not affect them.

The rule would not impair or otherwise affect the existing rights and authorities of any Alaska Native tribe that's already recognized. And any Alaska Native entity that petitions under the proposed rule, if it's ultimately finalized, and is acknowledged under the rule, would then receive all the services available to other federally recognized tribes.

MS. DABALUZ: I have a question.

MS. APPEL: Yes.
MS. DABALUZ: So under that previous slide that you just had up, tribes that are not -- groups that are not federally recognized could submit an application to be considered in the new IRA; right?

MS. APPEL: Right. Groups that are not federally recognized could --

MS. DABALUZ: Could apply?

MS. APPEL: -- petition; right.

They could apply to be federally acknowledged under the Alaska IRA.

MS. DABALUZ: And how many tribes have been acknowledged as federally recognized tribes under this administration? There has been a couple. I know one by La Conner in Washington state that was recently acknowledged.

MR. PARTESOTTI: Federally acknowledged in this administration? I don't believe any have been federally acknowledged by the department.

MS. APPEL: Right. There was legislation acknowledging the six tribes in Virginia and then Little Shell.

MR. FLEMING: And Congress recognized Little Shell most really.
MR. PARTESOTTI: That was all done through Congress, not the department.

MS. DABALUZ: Oh, okay.

MR. PARTESOTTI: Those ones in particular.

MS. DABALUZ: Maybe that's the same thing with La Conner. Okay. All right.

MS. APPEL: Yeah. The last one federally acknowledged through the Part 83 process was Pamunkey in Virginia.

MR. FLEMING: They were the tribe that was there when Jamestown was in existence in 1607 and Pocahontas and such. They still had their colonial state reservation, and so their continued existence -- the evidence that they presented was just really unbelievable. And through a quirk of history or their own choice, they never sought the federal relationship. And so finally they said, "All right. Let's do it." They did it. And they met the criteria, and they were added to the list.

MS. DABALUZ: And then the other follow-up question I have is, where would you find an example of what the application is to become federally recognized?

MR. FLEMING: It has not yet been
developed.

    MS. DABALUZ: So how are tribes
getting federally recognized?

    MR. FLEMING: Oh, in Part 83, the
regulation itself outlines all the particular
provisions and steps, and it said in the reg that it
can be in any format. You just have to address
these particular --

    MS. DABALUZ: All of the things
that are on there?

    MR. FLEMING: Yes.

    MR. PARTESOTTI: And the website of
the Office of Federal Acknowledgment is quite
helpful. They post a lot of documents on there.

    MS. DABALUZ: Okay. Thank you.

    You have a small audience, but
this small audience has a lot of questions.

    MR. FLEMING: Hey, that's great.

    MS. DABALUZ: I used to work for
the BIA, and my dad is really trying to get me going
to turn his home village into a reservation. I
said, "I don't know if I can do that, Dad."

    MS. APPEL: Okay. So in large
part, the proposed rule, which is Part 82, follows
the same requirements and procedures as the current
federal acknowledgment regulation that's in Part 83. There are a certain number of important distinctions, though, to account for the Alaska IRA component. First, in demonstrating genealogical and political decent, the proposed Part 82 requires that the petitioner show decent from an Alaska IRA-eligible entity, as opposed to Part 83 which requires descent from an "historical Indian tribe."

Second, the start date for the evidentiary standards under the proposed rule would be May 1st, 1936. That's the date that the Alaska IRA was enacted. And under the current Part 83 regulations, the start date is 1900.

Likewise, the period to satisfy the evidentiary criteria under the proposed rule dates from 1936 to the present, that the evidentiary criteria have to be shown over that time period, vs. Part 83 has 1900 to the present.

And then the other major distinction is that the proposed rule doesn't have any opportunity for an entity to claim that they were previously federally acknowledged. That's in the current Part 83, and allows the group then to be -- the start date to be the date of that previous federal acknowledgment to the present,
rather than 1900.

MS. DABALUZ: What would be the
advantage of being an Alaska IRA versus a federally
recognized tribe?

MR. FLEMING: Under Part 83, the
difference is 36 years, so there's a 36-year
evidentiary benefit for an Alaskan entity. They
wouldn't have to go back to 1900.

MS. DABALUZ: Okay.

MR. FLEMING: They would start in
1936, which is about two generations of information;
so it's a break.

MS. DABALUZ: Okay.

MS. APPEL: The proposed rule
clarifies that before seeking a secretarial
election, an entity would have to first gain federal
recognition; so an entity couldn't use a secretarial
election process as a means to gain recognition.
They first would have to become federally
recognized, and that's consistent with past
department practices and the regulations that are
already on the books.

MS. DABALUZ: Do you know how long
that takes to become federally recognized?

MR. FLEMING: I think we're going
to go over some timelines here coming up.

        MS. DABALUZ: Okay.

        MR. FLEMING: But part of the work
is done by the group itself in gathering the
evidence and preparing their membership list and
getting all that put together. And when you follow
the provisions on how to put together your
documented petition, that is the key that opens the
doors. When you submit that, then a lot of the time
frames begin.

        MS. DABALUZ: Uh-huh.

        MR. FLEMING: So the time spent in
preparing is up to the group, and they can take
their own time in making sure that they're getting
everything put together. But she'll be going over
the process timelines here in a minute.

        MS. DABALUZ: Okay.

        (Kyle Scherer enters the room.)

        MR. FLEMING: This is Kyle Scherer,
Deputy Solicitor.

        MS. APPEL: Okay. Under the
proposed rule, it's the Office of Federal
Acknowledgment, OFA, that reviews the petitions.
OFA is who reviews petitions under the Part 83
process. And that office is composed of
anthropologists, historians, genealogists, all of whom use their professional expertise to review each petition. And OFA submits recommendations essentially to the Assistant Secretary for Indian Affairs, who ultimately issues the final decision.

The proposed rule is broken down into three main subparts that we'll go through. There's the first, general; second, the criteria that a petitioner has to meet for acknowledgment; and then third, the process for getting federally acknowledged.

There are some important definitions in the proposed rule, including "Alaska IRA-eligible entity," since a group has to make a claim that they descend from an Alaska IRA entity. So that's an entity that, as of the date of the Alaska IRA, May 1, 1936, was not recognized as a tribe by the federal government and was organized on the basis of a common bond of occupation, association, or residence, and was comprised of members descending from Indians in Alaska.

As part of its documented petition, the petitioner has to submit a claim -- I just said that -- an Alaska IRA-eligible entity that it descends from, and the proposed rule goes.
further into each of these requirements. "Common bond," of course, is a key definition. It's a clearly defined common interest, shared and acted upon by a group of Alaska Natives, as distinguished from other groups or associations. And there is additional regulatory language proposed that delves further into what the common bond has to consist of.

The proposed rule takes the statutory definition that's provided in the IRA for Indians in Alaska, or Alaska Natives, and it defines "membership list" to include information on each member's name, date of birth, and current residential address.

Under the scope and applicability, the proposed rule provides that the department is not going to acknowledge certain entities under the rule. Those are entities that have already gone through the Part 83 process and been denied acknowledgment. Petitioners that go through this new process and are denied can't then repetition. Any group that is located outside of Alaska couldn't use this new regulation. And then anyone 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 of federally recognized tribes
after 1936 could not go through this process.

MS. DABALUZ: So I have a question.

MS. APPEL: Yes.

MS. DABALUZ: The fourth bullet
down says, "Was recognized as a band or tribe by the
federal government on or before May 1, 1936."

MS. APPEL: Yes.

MS. DABALUZ: Central Council --
they were recognized through Congress in 1935
through the Jurisdictional Act. And if Juneau
Tlingit & Haida Community Council wants to apply to
become federally recognized, and we have 7,000
tribal citizens, would that bullet prevent us from
applying?

MR. SCHERER: That seems like a
very fact-specific question, and so I think, without
more information on the particulars of the
situation, I'm not sure that any of us would be in a
position to issue any advice.

MR. PARTESOTTI: And I'll just note
that that term "recognition prior to 1936" -- that
requirement comes from the Alaska IRA language
itself, where it says "Groups not heretofore
recognized can take advantage of the Alaska IRA provision." And so if there was recognition before 1936, or May 1st, 1936, that petitioning group could still apply under Part 83, for example.

And secondly, we are interested, as I believe we note in the language here, in getting -- or hearing concerns or comments about groups and sort of what "recognition" might mean in this context, you know, what level of specificity of recognition was required. Because, you know, you can be recognized -- I mean, there is a whole range of sort of recognition that could be taking place prior to 1936. And so, you know, we would encourage you, if you have a specific example in mind, to look at the language and see whether this would be problematic from your standpoint.

MS. DABALUZ: Okay.

MR. FLEMING: One of the criteria is unique membership. The group must not have membership in other entities.

MS. DABALUZ: Uh-huh.

MR. FLEMING: So if the entity that you mentioned, the Central Council --

MS. DABALUZ: Yeah. That's Tlingit & Haida. They were here this morning.
MR. FLEMING: Okay.

MS. DABALUZ: Yeah. And then I belong to Juneau Tlingit & Haida Community Council, which is a political subdivision, and that's over 7,000 tribal citizens that are under the compact of Central Council. And in the past we've had discussions about becoming federally recognized.

MR. FLEMING: Okay.

MS. DABALUZ: So it would actually be coming out of the compact.

MR. FLEMING: I guess I would say that if you are wishing to consider going under a process, if this is established, that criteria (d), (e), (f), and (g) are reviewed. (f) Would be the unique membership.

MS. DABALUZ: Uh-huh.

MR. FLEMING: So there would be some technical assistance for caution, concerns that could be expressed to further understand, but we'd have to see the evidence that may be involved in the relationship between a federally recognized tribe already on the list and another entity that may be closely associated.

MS. DABALUZ: Uh-huh.

MR. FLEMING: And then we'd be able
to give technical assistance on how to proceed or not proceed, depending on what the issue is.

MS. DABALUZ: I'm one of 7,000 tribal citizens that wants federal recognition. I don't know about the other 6,999, but it's come up before as a group.

MR. FLEMING: In the scope of the regulation, too, you'll note that groups that are associated or splinter from federally recognized tribes -- the scope indicates that they would not be acknowledged under the process. But I don't know what the relationship is politically between the 7,000-member group and the federally recognized tribe, so it would be difficult to say anything more until we saw some claims and evidence.

MS. DABALUZ: We get along fine, but at some point, you know, as our membership grows, we should be thinking about being more autonomous. Okay. Thank you.

MS. APPEL: I think I already mentioned the last bullet. Basically, if you go through Part 82, then you can't go through Part 83 and vice versa.

Subpart B addresses the mandatory criteria and the standard of proof that the
department is going to use, and that's the same
standard of proof that's in the current Part 83
process. The petition has to show a reasonable
likelihood of the validity of the facts relating to
each criterion, and the petition also has to show
the existence of community, which is the second
criterion, and political influence and authority,
which is the third criterion, on a substantially
continuous basis. And that substantially
continuous basis means that overall continuity is
maintained, even though there may be interruptions
or periods where there is limited or no evidence.

The seven mandatory criteria are
much like the criteria in Part 83, with the
differences that we mentioned before, where the
measure is from May 1st, 1936, forward. So the
first criterion is the entity has to be identified
as an Alaska Native entity on a substantially
continuous basis since 1936 to the present.

Second, the community criterion.
The entity has to be comprised of a distinct
community from 1936 to the present. The entity has
to exercise political influence and authority over
its members from 1936 to the present, and then the
entity has to show its governing document
describing its membership criteria and governing procedures.

The members of the entity have to descend from the Alaska IRA-eligible entity that existed on May 1, 1936. The petitioner's membership cannot be composed principally of persons who are members of another tribe.

And then the last criterion is one that the department takes the burden of proving, that there is no legislation that terminated or forbids the federal relationship.

The process for federal acknowledgment starts when an entity submits a documented petition to OFA, explaining how it meets the criteria. And then OFA, when it begins review, provides public notice and examines the last four criteria -- the governing document, descent, unique membership, and termination, and that's considered Phase I.

And OFA issues findings on those criteria and then moves on to the first three criteria, which are the more resource-intensive, generally, criteria -- identification, community, and political influence and authority. And they then issue a proposed finding on those Phase II

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criteria. Then the Assistant Secretary reviews the OFA findings and issues the final determination whether to acknowledge the tribe.

And at each of these steps, technical assistance is offered by OFA. And ultimately, if the proposed finding is negative -- so once OFA issues a proposed finding, before the Assistant Secretary has issued a final decision there is an opportunity for an administrative hearing before an administrative law judge. And that judge then makes a recommendation to the Assistant Secretary, who considers that in making the final determination.

And if the -- well, I guess, regardless, the final determination is then appealable to federal court.

So the timeline is based off of the current Part 83. And when those regulations were updated in 2015, we had these time limits put in to try to keep the process moving. So the process begins, as I said, when an entity submitted a documented petition. Then whenever OFA's workload lets it turn to that petition, that's when OFA begins review of that particular petition and issues the public notice. And within six months of
providing that notice that it's doing the Phase I review, then OFA will issue a proposed finding on that Phase I. Then within six months of that, it will issue the proposed finding on Phase II.

So acknowledgment happens when the petitioner receives a positive final determination from the Assistant Secretary. At that point, then the petitioner is a federally recognized tribe. And the next time the BIA publishes the list of federally recognized tribes, the tribe appears on that list.

Okay. So the comment period is going on until March 2nd, and we're accepting written comments through consultation@bia.gov, as well as mail and through regulations.gov, and that's listed in the Federal Register notice.

This is our second public meeting. We had a session in Anchorage, and then we're going to Fairbanks on Thursday, and then we'll have a teleconference in February, just especially acknowledging that, you know, not everyone can travel and be here in person. But we appreciate you coming.

And our next steps are, once the comment period closes, the department will review...
all the comments and the transcripts from the
meetings and make any changes that are necessary to
the rule and address the comments and publish a
final rule in the Federal Register.

And that's it.

MS. DABALUZ: Thank you.

MS. APPEL: Sure. Did you have any
questions?

MS. DABALUZ: I asked a lot of
questions. You don't want any more questions from
me.

MS. APPEL: Are you sure?

MS. DABALUZ: You know, I just
wanted to know, because it's come up in our
Community Council. But thank you.

MS. APPEL: Thank you so much.

MS. DABALUZ: I appreciate your
time. Thank you.

MR. PARTESOTTI: Thank you very
much for coming.

MR. FLEMING: Nice to meet you.

MS. DABALUZ: Thank you. Were you
recording me?

MS. APPEL: Yes. You had good
questions. Thank you.
MS. DABALUZ: Well, it's come up at our Community Council before. I figured our president couldn't come, so I just wanted to be here.

MR. SCHERER: Pending any further questions, we can end the session now.

MS. APPEL: Yes. We are off record.

(Public Meeting concluded at 2:30 p.m.)
CERTIFICATE

STATE OF ALASKA)

FIRST JUDICIAL DISTRICT)

I, LYNDIA BARKER, Registered Diplomate Reporter and Notary Public duly commissioned and qualified in and for the State of Alaska, do hereby certify that the foregoing proceedings were taken stenographically before me and thereafter reduced to typewriting by me or at my direction;

That the foregoing transcript is a full, true, and correct transcript of the proceedings, including questions, answers, objections, statements, motions and exceptions made and taken at the time of the foregoing proceedings;

That all documents and/or things requested to be included with the transcript of the proceedings have been annexed to and included with said proceedings;

That I am not a relative or employee or attorney or counsel of any of the parties in these proceedings, nor a relative or employee of such attorney or counsel, and that I am not financially interested in said proceedings or the outcome thereof.

IN WITNESS WHEREOF, I have set my hand and affixed my Notarial Seal this 5th day of February, 2020.

LYNDIA BARKER, RDR,
Notary Public for Alaska
My commission expires:
5/6/2020