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2
3 U.S. DEPARTMENT OF THE INTERIOR
4 OFFICE OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS
5

6 PUBLIC MEETING

7 ON

8 FEDERAL ACKNOWLEDGMENT OF ALASKA NATIVE ENTITIES
9 PROPOSED RULE - 25 CFR 82
10

11 EGAN ROOM, CENTENNIAL HALL

12 JUNEAU, ALASKA

13 JANUARY 28, 2020

14 1:30 P.M.
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1 TUESDAY, JANUARY 28, 2020

2 1:30 P.M.

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

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

14 MR. SCHERER: Hello and welcome.
15 Kyle Scherer, Deputy Solicitor for Indian Affairs.

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

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

21 MR. STEPETIN: I'm Martin Stepetin.
22 I'm actually from St. Paul Island, Alaska, and I
23 learned about this issue down here in Southeast
24 because of the communities that are trying to be
25 recognized by the federal government as a tribe.

1 And I worked up in the state office last year and
2 learned a lot about it there. I worked with
3 Representative Dan Ortiz, and in his district there
4 are communities, more than one, that have --
5 Wrangell and a couple of other communities that are
6 within his district, that I commonly heard from his
7 constituents that needed help with trying to be
8 organized and recognized by the federal government.
9 So I am very much interested in learning more about
10 this.

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

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

25 So in 1936 Congress enacted what

1 we call the Alaska IRA, and that legislation allows
2 groups of Indians in Alaska that are not already
3 recognized by the federal government to organize
4 under the IRA and become eligible for benefits as
5 long as they can demonstrate -- and this language
6 is straight from the statute -- "a common bond of
7 occupation, or association, or residence within a
8 well-defined neighborhood, community, or rural
9 district." And we call that the common bond
10 provision.

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

20 But while Part 83 implements the
21 1934 IRA, there is no parallel regulatory process
22 for the 1936 Alaska IRA, so there's no regulation
23 for entities to follow to be acknowledged as tribes
24 by meeting the Alaska IRA common bond standard.

25 To date, the department has

1 approved organization of more than 70 entities
2 under the Alaska IRA common bond provision, but
3 these have all been case-by-case determinations,
4 based on 1937 instructions providing guidance on
5 how to organize and other guidance that's
6 contemporaneous to the Alaska IRA, as well as
7 previous determinations under the Alaska IRA, and
8 those determinations have mostly been reviewed by
9 the Office of the Solicitor.

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

17 The input received mostly were
18 questions as to why we need an Alaska-specific
19 regulatory process. We also had many who expressed
20 concern about whether a regulation would affect the
21 status of currently recognized tribes. And nearly
22 all who commented urged the department to issue
23 final determinations on the Alaska IRA petitions
24 currently pending before it before implementing a
25 regulation or guidance on the Alaska IRA.

1 The department reviewed those
2 comments and transcripts and determined that there
3 is a need for an Alaska-specific regulatory process
4 to carry out the Alaska IRA provision, because the
5 formal process that's set out in the current
6 Part 83 does not account for that common bond
7 standard that's in the Alaska IRA.

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

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

22 The proposed rule published in the
23 Federal Register on January 2nd, and it proposes a
24 new regulatory process for federal acknowledgment
25 under the Alaska IRA common bond standard. Again,

1 it applies only to groups that aren't currently
2 recognized, so if a tribe has been listed on the
3 list of federally recognized tribes that BIA
4 publishes every year in the Federal Register, then
5 there is no need for it to go through this process.
6 And the regulation wouldn't impair or otherwise
7 affect the existing rights and authorities of any
8 tribe that's already recognized. Any Alaska Native
9 entity that ultimately is federally acknowledged as
10 a tribe under the rule would be eligible to receive
11 all the services available to other federally
12 recognized tribes.

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

22 The start date for evidentiary
23 standards under the proposed rule is 1936, the date
24 that the Alaska IRA was enacted; and for the
25 current Part 83, it's 1900.

1 Likewise, the period to satisfy
2 evidentiary criteria under the proposed rule is
3 from the date of the Alaska IRA, so 1936 forward to
4 the present, versus under the current Part 83, the
5 petitioner has to satisfy the evidentiary criteria
6 from 1900 to the present.

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

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

23 Proposed Part 82 includes the
24 Office of Federal Acknowledgment as the expert
25 reviewers of the petitions. So under the ad hoc

1 process that's currently happening, the Office of
2 the Solicitor plays a big role in reviewing
3 requests for acknowledgment under the Alaska IRA.
4 But the proposed rule would have the Office of
5 Federal Acknowledgment, OFA, which Lee Fleming here
6 is the director of -- and OFA includes several
7 subject matter experts -- anthropologists,
8 historians, genealogists -- who are all civil
9 servants and apply their professional expertise to
10 reviewing petitions. And so they would make
11 recommendations on petitions to the Assistant
12 Secretary of Indian Affairs, who would ultimately
13 issue the final decision whether to acknowledge the
14 Alaska Native entity as a tribe or not.

15 The proposed rule has three main
16 subparts, and we'll go into each of these. But
17 roughly the first subpart is just the overview,
18 definitions, purpose, that kind of thing. The
19 second subpart is the criteria for federal
20 acknowledgment. So these are the standards that
21 the petitioner has to show, demonstrate that they
22 meet in their petition in order to be acknowledged.
23 And then the third subpart, Subpart C, sets out the
24 process for submitting a petition and what happens
25 at each step of the petitioning process.

1 So we're going to delve into each
2 of these subparts, so I'll just pause here and see
3 if anyone has any questions so far.

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

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

22 MS. APPEL: Sure. So the Part 83
23 that this proposed rule is modeled after was updated
24 in 2015, following an extensive tribal consultation,
25 public comment period; so the department is pretty

1 confident in the workability of those regulations
2 that are published.

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

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

21 MR. SCHERER: I would only add that
22 the regulations for the Lower 48, or the
23 implementation of the Indian Reorganization Act of
24 1934, have been in place since 1978 and were, I
25 believe, twice updated, most recently in 2015. And

1 so hopefully every iteration of an update is an
2 ability to improve upon the prior regulations in
3 force.

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

8 Did you have any questions?

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

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

24 And recently there was a bill
25 introduced by Representative Don Young regarding a

1 group called Alexander, which was affected by the
2 1972 Settlement Act. They were designated as an
3 Alaskan group, but because they did not have the
4 required 25 members under that legislation, they
5 were not recognized as a village, but they were
6 recognized as a group. And so that legislation is
7 suggesting that their status be elevated to an
8 Indian entity.

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

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

16 MR. FLEMING: Well, they haven't.

17 MS. EVOY: Oh, they haven't?

18 MR. FLEMING: That's the point.

19 They have not. And so this sets up a mechanism to
20 allow for a good review of their claims and
21 evidence, analyzed and evaluated under standards and
22 criteria, and it also provides due process. And a
23 well-informed decision can then be made by the
24 Assistant Secretary of Indian Affairs.

25 MS. EVOY: Thank you.

1 MS. APPEL: All right. I'll keep
2 going.

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

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

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

25 "Indians in Alaska" or "Alaska

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

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

10 The scope and applicability
11 section of the proposed rule clarifies that the
12 department will not acknowledge certain entities
13 under the rule. Those are entities that have
14 already petitioned for and been denied federal
15 acknowledgment under the current federal
16 acknowledgment process at Part 83; any entity that
17 petitions and is denied acknowledgment under the
18 eventual final Part 82, assuming it's finalized;
19 any entity that is located outside of Alaska; any
20 entity that was recognized as a tribe by the
21 federal government before 1936, or was recognized
22 by the federal government through some other means
23 and included on the list after 1936; and any entity
24 that petitions and is denied acknowledgment under
25 the eventual final Part 82 will not be eligible for

1 acknowledgment under Part 83 either. So a
2 petitioner cannot petition under both Part 82 and
3 Part 83. And if they are denied acknowledgment
4 under one, they can't then go to the other to seek
5 acknowledgment.

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

21 There are seven mandatory criteria
22 that a petitioner would have to meet to be
23 acknowledged as a federal tribe under the Alaska
24 IRA under this proposed rule. There are also seven
25 mandatory criteria in the current Part 83 process,

1 but, as I mentioned on a previous slide, there are
2 some key differences in this proposed rule that
3 relate back to the Alaska IRA, as opposed to the
4 1934 IRA.

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

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

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

17 The fourth -- so those first three
18 are really the resource-intensive criteria, and the
19 second four are a little bit less resource-
20 intensive. And I mention that because the review
21 process is broken up into two phases. So (d), the
22 petitioner has to provide their governing document;
23 (e), they have to show descent from an Alaska
24 IRA-eligible entity that existed on May 1, 1936;
25 (f), they have to show that their membership is not

1 composed principally of persons who are members of
2 another tribe; and then (g), which is the criterion
3 that the department researches, rather than the
4 petitioner needing to show, that no legislation has
5 terminated or forbidden the federal relationship
6 with the entity.

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

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

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

25 At each phase of the process, OFA

1 provides technical assistance. And if a proposed
2 finding that OFA issues is negative, the petitioner
3 can ask for a hearing before an administrative law
4 judge. After the hearing, the judge would then
5 make a recommendation to the Assistant Secretary,
6 who would then review that recommendation, along
7 with OFA's proposed finding, and issue a final
8 determination. And then once the final
9 determination is issued, there is the opportunity
10 to appeal that final determination to federal
11 court.

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

22 Acknowledgment ultimately happens
23 when the petitioner receives a positive final
24 determination. And at that point, the petitioner
25 is considered by the federal government to be a

1 federally recognized tribe and will be included on
2 the next list of federally recognized tribes that's
3 published in the Federal Register.

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

10 E-mail is the preferred method for
11 sending comments, but we also accept comments by
12 mail. That information is included in your packet.
13 And it can also be submitted through
14 regulations.gov. The comment deadline is March
15 2nd. After all the comments have been submitted,
16 the department will review the comments and the
17 transcripts and make changes as appropriate, and
18 ultimately publish a final rule in the Federal
19 Register that would establish a Part 82 process for
20 acknowledgment of tribes under the Alaska IRA.

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

24 MS. EVOY: No. I think that's
25 good. Thank you.

1 MS. APPEL: Do you have anything?

2 MR. SCHERER: Just to provide a
3 clearer picture of the consultation and public
4 meeting schedule, we did have a consultation and
5 public meeting concurrently with the Alaska
6 Federation of Natives meeting.

7 MS. EVOY: In October?

8 MR. SCHERER: Yes.

9 MS. APPEL: Yes. In Anchorage, we
10 did.

11 MR. SCHERER: It was better
12 attended.

13 MS. APPEL: Yes, a very large
14 group.

15 MS. EVOY: All right. Well, thank
16 you.

17 MR. SCHERER: Thank you.

18 MS. APPEL: Thank you for joining.
19 If you don't mind signing in, too, then we can make
20 sure the court reporter gets your name and
21 everything.

22 MS. EVOY: Great. Thank you.

23 MS. APPEL: Thank you.

24 MR. FLEMING: Thank you.

25 2:04 PM

1 (Off record.)

2 2:14 PM

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

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

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

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

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

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

22 So the department first started
23 reaching out to tribes and the public on whether a
24 regulatory process to implement the Alaska IRA was
25 appropriate back in 2018 and held several tribal

1 consultations and listening sessions and public
2 hearings up through the spring of 2019.

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

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

16 MR. FLEMING: For Southeast Alaska,
17 just overall there are four that we know of:
18 Qutuchec, which is in Seward; Kanakanak, which is
19 near Dillingham; Valdez; and one that is attached to
20 a bill that was introduced by Representative Don
21 Young, Alexander. And apparently Alexander was
22 designated as a group under the Settlement Act.
23 They did not have the required 25 members or more,
24 so they didn't have that tribal status. That was
25 associated with the Settlement Act.

1 MS. DABALUZ: Oh, ANCSA?

2 MR. FLEMING: ANCSA, yes.

3 MS. DABALUZ: Alexander, where it
4 that? In the Interior?

5 MR. FLEMING: Alexander?

6 MS. APPEL: Are any of those groups
7 in Southeast?

8 MS. DABALUZ: None of them are
9 Southeast, from what I can --

10 MR. FLEMING: No, and that's why --

11 MS. DABALUZ: It's probably the
12 Interior.

13 MR. PARTESOTTI: Yeah. I don't
14 know if that's the same as Point Alexander, which is
15 on Baranof Island, so --

16 MS. DABALUZ: Oh, that would be
17 Southeast, then.

18 MR. PARTESOTTI: But I don't know
19 if it's the same.

20 MS. DABALUZ: I don't think it's
21 the same.

22 MR. PARTESOTTI: Okay.

23 MR. FLEMING: I think there is
24 another --

25 MS. DABALUZ: I'm not even familiar

1 with that name. It may not be a village. Maybe
2 it's the name of the overall group.

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

8 MS. DABALUZ: For them to do that.

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

11 MS. DABALUZ: Thank you.

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

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

25 If the rule is ultimately

1 finalized, then Alaska Native groups that
2 previously submitted petitions would need to revise
3 or resubmit their petitions to conform to the final
4 rule.

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

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

24 MS. DABALUZ: I have a question.

25 MS. APPEL: Yes.

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

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

8 MS. DABALUZ: Could apply?

9 MS. APPEL: -- petition; right.
10 They could apply to be federally acknowledged under
11 the Alaska IRA.

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

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

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

24 MR. FLEMING: And Congress
25 recognized Little Shell most really.

1 MR. PARTESOTTI: That was all done
2 through Congress, not the department.

3 MS. DABALUZ: Oh, okay.

4 MR. PARTESOTTI: Those ones in
5 particular.

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

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

11 MR. FLEMING: They were the tribe
12 that was there when Jamestown was in existence in
13 1607 and Pocahontas and such. They still had their
14 colonial state reservation, and so their continued
15 existence -- the evidence that they presented was
16 just really unbelievable. And through a quirk of
17 history or their own choice, they never sought the
18 federal relationship. And so finally they said,
19 "All right. Let's do it." They did it. And they
20 met the criteria, and they were added to the list.

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

25 MR. FLEMING: It has not yet been

1 developed.

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

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

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

11 MR. FLEMING: Yes.

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

15 MS. DABALUZ: Okay. Thank you.
16 You have a small audience, but
17 this small audience has a lot of questions.

18 MR. FLEMING: Hey, that's great.

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

23 MS. APPEL: Okay. So in large
24 part, the proposed rule, which is Part 82, follows
25 the same requirements and procedures as the current

1 federal acknowledgment regulation that's in Part 83.
2 There are a certain number of important
3 distinctions, though, to account for the Alaska IRA
4 component. First, in demonstrating genealogical and
5 political decent, the proposed Part 82 requires that
6 the petitioner show decent from an Alaska
7 IRA-eligible entity, as opposed to Part 83 which
8 requires descent from an "historical Indian tribe."

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

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

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

1 rather than 1900.

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

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

9 MS. DABALUZ: Okay.

10 MR. FLEMING: They would start in
11 1936, which is about two generations of information;
12 so it's a break.

13 MS. DABALUZ: Okay.

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

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

25 MR. FLEMING: I think we're going

1 to go over some timelines here coming up.

2 MS. DABALUZ: Okay.

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

11 MS. DABALUZ: Uh-huh.

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

17 MS. DABALUZ: Okay.

18 (Kyle Scherer enters the room.)

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

21 MS. APPEL: Okay. Under the
22 proposed rule, it's the Office of Federal
23 Acknowledgment, OFA, that reviews the petitions.
24 OFA is who reviews petitions under the Part 83
25 process. And that office is composed of

1 anthropologists, historians, genealogists, all of
2 whom use their professional expertise to review each
3 petition. And OFA submits recommendations
4 essentially to the Assistant Secretary for Indian
5 Affairs, who ultimately issues the final decision.

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

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

22 As part of its documented
23 petition, the petitioner has to submit a claim -- I
24 just said that -- an Alaska IRA-eligible entity
25 that it descends from, and the proposed rule goes

1 further into each of these requirements.

2 "Common bond," of course, is a key
3 definition. It's a clearly defined common
4 interest, shared and acted upon by a group of
5 Alaska Natives, as distinguished from other groups
6 or associations. And there is additional
7 regulatory language proposed that delves further
8 into what the common bond has to consist of.

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

15 Under the scope and applicability,
16 the proposed rule provides that the department is
17 not going to acknowledge certain entities under the
18 rule. Those are entities that have already gone
19 through the Part 83 process and been denied
20 acknowledgment. Petitioners that go through this
21 new process and are denied can't then repetition.
22 Any group that is located outside of Alaska
23 couldn't use this new regulation. And then anyone
24 that was recognized as a tribe by the federal
25 government on or before 1936 or was recognized by

1 the federal government through some other means and
2 included on the list of federally recognized tribes
3 after 1936 could not go through this process.

4 MS. DABALUZ: So I have a question.

5 MS. APPEL: Yes.

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

9 MS. APPEL: Yes.

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

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

22 MR. PARTESOTTI: And I'll just note
23 that that term "recognition prior to 1936" -- that
24 requirement comes from the Alaska IRA language
25 itself, where it says "Groups not heretofore

1 recognized can take advantage of the Alaska IRA
2 provision." And so if there was recognition before
3 1936, or May 1st, 1936, that petitioning group could
4 still apply under Part 83, for example.

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

17 MS. DABALUZ: Okay.

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

21 MS. DABALUZ: Uh-huh.

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

24 MS. DABALUZ: Yeah. That's Tlingit
25 & Haida. They were here this morning.

1 MR. FLEMING: Okay.

2 MS. DABALUZ: Yeah. And then I
3 belong to Juneau Tlingit & Haida Community Council,
4 which is a political subdivision, and that's over
5 7,000 tribal citizens that are under the compact of
6 Central Council. And in the past we've had
7 discussions about becoming federally recognized.

8 MR. FLEMING: Okay.

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

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

16 MS. DABALUZ: Uh-huh.

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

24 MS. DABALUZ: Uh-huh.

25 MR. FLEMING: And then we'd be able

1 to give technical assistance on how to proceed or
2 not proceed, depending on what the issue is.

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

7 MR. FLEMING: In the scope of the
8 regulation, too, you'll note that groups that are
9 associated or splinter from federally recognized
10 tribes -- the scope indicates that they would not be
11 acknowledged under the process. But I don't know
12 what the relationship is politically between the
13 7,000-member group and the federally recognized
14 tribe, so it would be difficult to say anything more
15 until we saw some claims and evidence.

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

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

24 Subpart B addresses the mandatory
25 criteria and the standard of proof that the

1 department is going to use, and that's the same
2 standard of proof that's in the current Part 83
3 process. The petition has to show a reasonable
4 likelihood of the validity of the facts relating to
5 each criterion, and the petition also has to show
6 the existence of community, which is the second
7 criterion, and political influence and authority,
8 which is the third criterion, on a substantially
9 continuous basis. And that substantially
10 continuous basis means that overall continuity is
11 maintained, even though there may be interruptions
12 or periods where there is limited or no evidence.

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

20 Second, the community criterion.
21 The entity has to be comprised of a distinct
22 community from 1936 to the present. The entity has
23 to exercise political influence and authority over
24 its members from 1936 to the present, and then the
25 entity has to show its governing document

1 describing its membership criteria and governing
2 procedures.

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

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

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

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

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

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

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

17 So the timeline is based off of
18 the current Part 83. And when those regulations
19 were updated in 2015, we had these time limits put
20 in to try to keep the process moving. So the
21 process begins, as I said, when an entity submitted
22 a documented petition. Then whenever OFA's
23 workload lets it turn to that petition, that's when
24 OFA begins review of that particular petition and
25 issues the public notice. And within six months of

1 providing that notice that it's doing the Phase I
2 review, then OFA will issue a proposed finding on
3 that Phase I. Then within six months of that, it
4 will issue the proposed finding on Phase II.

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

12 Okay. So the comment period is
13 going on until March 2nd, and we're accepting
14 written comments through consultation@bia.gov, as
15 well as mail and through [regulations.gov](https://www.regulations.gov), and
16 that's listed in the Federal Register notice.

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

24 And our next steps are, once the
25 comment period closes, the department will review

1 all the comments and the transcripts from the
2 meetings and make any changes that are necessary to
3 the rule and address the comments and publish a
4 final rule in the Federal Register.

5 And that's it.

6 MS. DABALUZ: Thank you.

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

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

12 MS. APPEL: Are you sure?

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

16 MS. APPEL: Thank you so much.

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

19 MR. PARTESOTTI: Thank you very
20 much for coming.

21 MR. FLEMING: Nice to meet you.

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

24 MS. APPEL: Yes. You had good
25 questions. Thank you.

1 MS. DABALUZ: Well, it's come up at
2 our Community Council before. I figured our
3 president couldn't come, so I just wanted to be
4 here.

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

7 MS. APPEL: Yes. We are off
8 record.

9
10 (Public Meeting concluded at 2:30 p.m.)
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