

Department of the Interior
Office of the Assistant Secretary – Indian Affairs



Federal Acknowledgment of Alaska Native Entities

Proposed Rule - 25 CFR 82

Background

- 1934: Congress enacted the Indian Reorganization Act (IRA)
 - Authorized Tribes to organize for their common welfare
 - Most sections of IRA were inapplicable to the Territory of Alaska
 - Functionally prevented nearly all Alaska Natives from benefitting from IRA's provisions
- 1936: Congress enacted the "Alaska IRA"
 - Allows groups of Indians in Alaska, not previously recognized as bands or Tribes by the U.S., to organize under the IRA and become eligible for benefits under the IRA so long as they could demonstrate:
 - "a common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district"

Background (continued)

- Regulations at 25 CFR 83 (“Part 83”) govern Federal acknowledgment of Indian Tribes
 - Process
 - Criteria
 - Appeal procedures
- Except, there is currently no regulatory process through which Alaska entities (that are not currently recognized Tribes) can be acknowledged under the Alaska IRA “common bond” standard as Tribes

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DOI Implementation of the Alaska IRA

- To date: DOI has approved the organization of >70 entities under the Alaska IRA “common bond” provision
 - Case-by-case determinations, relying on:
 - 1937 instructions providing guidance on how to organize
 - Other Alaska IRA-contemporaneous guidance
 - Previous Alaska IRA determinations

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Regulations to Guide Implementation of Alaska IRA?

- DOI sought input on its implementation of the Alaska IRA
 - July 2, 2018: Initiated consultation with Tribes
 - Through Spring 2019: Held multiple listening sessions in Alaska
- Input received
 - Most questioned the need for an Alaska-specific regulatory process
 - Others expressed concern as to whether an Alaska-specific regulatory process would affect the federal recognition of existing Tribes in Alaska (organized under the Alaska IRA or otherwise)
 - Nearly all urged DOI to issue final decisions on any outstanding Alaska IRA petitions prior to implementing a regulatory or guidance-based process for Alaska

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DOI Responses to Input

1. Need for an Alaska-Specific Regulatory Process
 - Formal process needed to effectively carry out Alaska IRA
 - Formal process set out in Part 83 (25 CFR 83) does not account for “common bond” standard
2. Effect on Status of Currently Recognized Tribes
 - No effect
3. Consideration of Pending Petitions
 - DOI will not consider any acknowledgment petitions submitted by Alaska Native entities under the Alaska IRA during this rulemaking
 - If rule finalized, Alaska Native groups that previously submitted petitions would be invited to revise or resubmit their petitions to conform to the final rule

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Proposed Rule (Proposed Part 82)

- Proposed rule published January 2, 2020 (85 FR 37)
- **Proposed new regulatory process** through which Alaska Native entities can become federally acknowledged under the “common bond” standard in the Alaska IRA
 - Applies only to groups not currently on the List*
 - Does not impair or otherwise affect the existing rights and authorities of any Alaska Native Tribe already recognized and included on the List
 - Any Alaska Native entity acknowledged under this proposed rule would be eligible to receive all services available to federally recognized Tribes
- To be located at 25 CFR 82 (Part 82)

* “List” means the list of federally recognized Tribes that BIA publishes annually in the Federal Register.

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Adopts Part 83 with Alaska-Specific Distinctions

- In large part, the proposed rule (Proposed Part 82) incorporates the requirements and procedures for federal acknowledgment found in Part 83 (25 CFR 83), with a limited number of important distinctions:
- 1. **Genealogical and Political Descent**
 - Proposed Part 82 requires descent from an Alaska IRA-eligible entity
 - Part 83 requires descent from a “historical Indian Tribe”
- 2. **Start Date for Evidentiary Standards**
 - Proposed Part 82 start date: May 1, 1936 (the date of enactment of the Alaska IRA)
 - Part 83 start date: 1900

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Adopts Part 83 with Alaska-Specific Distinctions (continued)

3. **Period to Satisfy Evidentiary Criteria**
 - Under Proposed Part 82, a petitioner must show the existence of an Alaska IRA-eligible entity in 1936 and satisfy all evidentiary criteria from May 1, 1936 to present
 - Part 83: 1900 to present
4. **No review of “Previous Federal Acknowledgment” claims**

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Tribal Reorganization

- Proposed Part 82
 - Establishes a requirement that Alaska Native entities seeking to hold secretarial elections under 25 CFR 81 (Part 81) first gain Federal recognition
 - Consistent with past Department practices, which have focused on organizing entities capable of establishing government-to-government relations with the United States
 - Consistent with the IRA, the Alaska IRA, and Part 81

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Proposed Rule: Who Reviews Petitions

- Proposed Part 82:
 - The Office of Federal Acknowledgment (OFA) will review Alaska IRA petitions on the merits and make recommendations to AS-IA
 - OFA is composed of anthropologists, historians, and genealogists - civil servants who work together to review, analyze, and evaluate evidence submitted by petitioners consistent with the methods and standards of their professions
 - OFA's professional expertise is important to:
 - Safeguard the uniform application of the Alaska IRA according to best practices within these academic fields &
 - Help ensure DOI's decisions will be accorded due deference by a reviewing court
 - AS-IA issues final decision

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Proposed Rule: Contents

- Subpart A. General Provisions
 - Definitions, overall purpose, deadlines, etc.
- Subpart B. Criteria for Federal Acknowledgment
 - Substantive evidentiary and factual requirements for petitioners
- Subpart C. Process for Federal Acknowledgment
 - Process through which OFA will receive a petition, engage with petitioner, and make and publish recommendations
 - Process for obtaining a hearing from an ALJ regarding OFA recommendations
 - AS-IA issues final determination and final agency action

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Proposed Rule: Subpart A – General Provisions

- Definitions include:
 - “Alaska IRA-eligible entity” - an entity that as of May 1, 1936:
 - (1) was not recognized by the Federal government as a band or Tribe;
 - (2) was organized on the basis of a common bond of occupation, association, or residence; and
 - (3) was comprised of members descending from Indians in Alaska.As part of its documented petition, the petitioner must submit a claim of an Alaska IRA-eligible entity from which it will demonstrate descent. This proposed rule further defines each of these constituent requirements

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Proposed Rule: Subpart A – General Provisions (cont'd)

- Definitions (continued):
 - “Common bond” - clearly defined common interest shared and acted upon by a group of Alaska Natives, distinguishable from other groups or associations
 - Also, proposed 82.21(a)(5) states that having a common bond:
 - [M]eans that the petitioner must be bound together by their common interest and actions taken in common. The claimed common bond must be clear and capable of statement and definition, and the petitioner must be distinguishable from other groups or associations. Groups of Alaska Natives having a common bond must be substantial enough and democratic enough to permit participation by a substantial share of the persons within the entity. There is no legal requirement that the members of a petitioning group must all live in one community or village to meet this criterion. The claimed common bond is best understood flexibly in the context of the history, geography, culture, and social organization of the entity.

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Proposed Rule:
Subpart A – General Provisions (cont'd)

- Definitions (continued):
 - “Indians in Alaska” or “Alaska Native” - “Eskimos and other aboriginal peoples of Alaska” as stated in Section 19 of the Indian Reorganization Act
 - Adopted from the definition of “Indian” provided in the IRA, which states that for the purposes of that Act, “Eskimos and other aboriginal peoples of Alaska” are considered Indians. 25 U.S.C. 5129.
 - “Membership list” - a list of all known current members of the petitioner, including each member’s full name (including maiden name, if any), date of birth, and current residential address.

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Proposed Rule:
Subpart A – General Provisions (cont'd)

- Scope and Applicability
 - DOI will not acknowledge under the rule, any entity that:
 - Has already petitioned for, and been denied, Federal acknowledgment under Part 83
 - Petitions and is denied acknowledgment under the eventual final Part 82
 - Is located outside of Alaska
 - Was recognized as a band or Tribe by the Federal government on or before May 1, 1936
 - Was recognized by the Federal government through some other means and included on the List after May 1, 1936
 - Any entity that petitions and is denied acknowledgment under the eventual final Part 82 will not be eligible for acknowledgment under Part 83 either

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Proposed Rule:
Subpart B – Criteria for Federal Acknowledgment

- Evaluation of Mandatory Criteria
 - Same as in the Part 83 process:
 - Standard of proof: “Reasonable likelihood of the validity of the facts relating to that criterion”
 - Require that existence of community and political influence and authority be demonstrated on a substantially continuous basis
 - Overall continuity has been maintained, even though there may be interruptions or periods where evidence is absent or limited

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Proposed Rule:
Subpart B – Criteria for Federal Acknowledgment (cont'd)

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- (a) Identified as an Alaska Native entity on a substantially continuous basis since May 1, 1936
- (b) Comprised a distinct community from May 1, 1936 to present
- (c) Exercise of political influence/authority over members from May 1, 1936 to present
- (d) Governing document or written statement describing membership criteria and current governing procedures
- (e) Members’ descent from the Alaska IRA-eligible entity that existed on May 1, 1936
- (f) Petitioner’s membership is not “composed principally” of persons who are members of another Tribe
- (g) No legislation has terminated/forbidden the Federal relationship

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Proposed Rule:
Subpart C – Process for Federal Acknowledgment

- **Documented Petition:** Entity submits documented petition to OFA, explaining how it meets criteria (a) through (f) (DOI does (g))
- **Notice:** OFA provides notice that it is beginning review
- **Phase I Review:** OFA examines criteria (d) governing document; (e) descent; (f) unique membership; and (g) termination
- **Phase I Proposed Finding:** OFA issues findings on criteria (d)-(g)
- **Phase II Review:** OFA examines criteria (a) identification; (b) community; and (c) political influence/authority
- **Phase II Proposed Finding:** OFA issues findings on criteria (a)-(c)
- **Final Determination:** AS-IA reviews OFA findings and issues final determination

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Proposed Rule:
Subpart C – Process for Federal Acknowledgment (cont'd)

- Technical assistance from OFA available at each Phase
- Appeals
 - If a Proposed Finding is negative, petitioner may object to the proposed finding before an administrative law judge (ALJ)
 - ALJ makes recommendation to AS-IA
 - AS-IA issues final determination
 - Appeal of AS-IA final determination to Federal court

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Proposed Rule: Subpart C – Process for Federal Acknowledgment (cont'd)

- Timeline
 - Documented Petition – When entity submits
 - Notice & Phase I Review - When OFA workload lets it begin review
 - Phase I Proposed Finding: Within 6 months of Notice
 - Phase II Proposed Finding: Within 6 months of deadline to issue Phase I Proposed Finding
- Acknowledgment when petitioner receives positive final determination
 - Petitioner will be a federally recognized Tribe and included on the next list of federally recognized Tribes

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Next Steps & Comment Deadline

- Comment Period
 - Consultation & public meetings:
 - Juneau - January 28, 2020
 - Fairbanks – January 30, 2020
 - Teleconference – February 6, 2020
 - Email comments to: consultation@bia.gov
 - Comment deadline: March 2, 2020
- Next Steps
 - Review comments, make changes as appropriate
 - Publish a final rule in the Federal Register

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