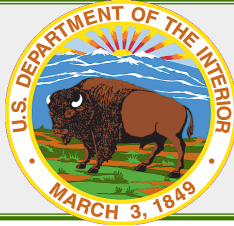


Department of the Interior
Office of the Assistant Secretary – Indian Affairs



Federal Acknowledgment of Indian Tribes

Discussion Draft Rule - 25 CFR 83

Background

- Ways in which U.S. Government may acknowledge or recognize an Indian tribe:
 - Judicially
 - Federal court decision
 - Congressionally
 - Congress passes law
 - ➡ – Administratively
 - Determination by Assistant Secretary – Indian Affairs (AS-IA)

Background (continued)

- Pre-1978
 - AS-IA reviewed, on an ad-hoc basis, petitions by groups seeking Federal acknowledgment as Indian tribes
- 1978
 - Regulations published to establish uniform process for AS-IA review of petitions
- 1994
 - Revisions to regulations published
 - Criteria unchanged, previous acknowledgment added
- 2000, 2005, 2008
 - Guidance published with internal processing changes
- Of the 566 federally recognized Tribes, 17 recognized through Part 83

3

Need for Revisions

- Many have criticized that process is “broken”:
 - Too long
 - Burdensome
 - Expensive
 - Unpredictable
 - Interpretation of criteria
 - What proof is sufficient
 - Results
 - Not transparent

4

Development of 2013 Discussion Draft

- 2009 – Secretary Salazar commits to examining ways to improve the process
- 2010 – AS-IA, SOL, OFA work on draft revisions to Part 83
- 2012 – AS-IA rep. Newland identifies “guiding principles” (“Goals” below)
- 2013
 - Assistant Secretary Washburn promises release of a Discussion Draft
 - On June 21, AS-IA releases Discussion Draft developed by DOI workgroup
 - Goals of Discussion Draft:
 - **Transparency** – Make petitioning process more easily understood
 - **Timeliness** – Move petitions through the process
 - **Efficiency** – Be mindful of limited resources
 - **Flexibility** – Account for the unique histories of tribal communities
 - **Integrity** – Maintain the accuracy and integrity of decisions

5

Discussion Draft Revisions

Overview of Primary Proposals to Improve Process:

- Eliminates “Letter of Intent”
 - Adds Expedited Favorable & Negative Decisions
 - Clarifies some criteria
 - Allows petitioner to withdraw after active consideration begins, anytime before proposed finding
 - Provides for automatic final determination under certain circumstances
 - Examines who issues final determination
 - Eliminates IBIA review
- *Draft also includes placeholders for input

6

Discussion Draft Revisions – Eliminate Letter of Intent

§ 83.4

- Eliminate “Letter of Intent”
 - Process begins by filing documented petition
 - No change:
 - OFA keeps register of prior letters of intent based on original filing date [§ 83.10(h)]
 - If two or more documented petitions receive priority of the same date, the register of any prior letters of intent or incomplete petitions shall determine the order of consideration [§ 83.10(h)]

Goal: Transparency, Timeliness, Efficiency

7

Discussion Draft Revisions – Expedited Negative Finding

§ 83.10(f)

- “Expedited negative” review at beginning of active consideration
- Review of criteria:
 - (e) (descent from historical Indian tribe);
 - (f) (membership principally of persons who are not members of another acknowledged tribe); and
 - (g) (federal relationship was not terminated or forbidden)
 - If petitioner fails criteria (e), **or** (f), **or** (g):
 - Proposed finding declining to acknowledge
 - Within 6 months of beginning active consideration
 - If petitioner meets criteria (e), **and** (f), **and** (g):
 - Proceed to full evaluation of petition (or “expedited favorable” review if asserted)

Goal: Timeliness, Efficiency, Flexibility

8

Discussion Draft Revisions – Expedited Favorable Finding

§ 83.10(g)

“Expedited favorable” review is done only if petitioner asserts that it is eligible, after passing expedited negative review

- Criteria:
 - Petitioner maintained since 1934 a reservation recognized by the state and continues to hold a state reservation; **OR**
 - U.S. has held land for the group at any point in time since 1934.
- If petitioner provides its governing document (or summary) and meets either of the above criteria:
 - OFA will issue a proposed finding acknowledging the tribe
 - Within 6 months of beginning active consideration
- If petitioner fails the criteria, OFA will undertake full evaluation

Goal: Timeliness, Efficiency, Flexibility

9

Discussion Draft Revisions – Adjustments to Criteria

§ 83.7

- Deletes criterion (a) (external observers identify group as “Indian”)
- In criteria (b) (community) and (c) (political influence/authority)
 - Analysis of criteria is from **1934 to present**
 - Frequency at which criteria must be proven is made on a case-by-case basis
- In criterion (e) (descent from historical tribe), allows historians’ and anthropologists’ conclusions as evidence of descent from historical Indian tribe (since first sustained contact with non-Indians)
- Specific numbers (see placeholders) for more objective criteria

Goal: Transparency, Timeliness, Efficiency, Flexibility,

10

Discussion Draft Revisions – Withdrawal §83.10(e) Automatic Final Determinations §83.10(m)

- Petitioner may withdraw petition at any time before proposed finding is published
 - OFA will cease consideration upon withdrawal
 - If re-submit, petition will be placed at the bottom of the numbered register and may not regain its initial priority number

Goal: Flexibility

- Automatic final determination if:
 - Proposed finding is positive; and
 - No timely arguments/evidence in opposition to acknowledgment are received from either:
 - An acknowledged tribe located in same State as petitioner; or
 - The State or local government where petitioner's office is located

Goal: Timeliness, Efficiency

11

Discussion Draft Revisions – Who Issues Final Determination

§83.10(i)-(r)

- Currently, OFA prepares and AS-IA issues both:
 - Proposed finding
 - Final determination
- In Discussion Draft, OFA prepares and issues proposed finding, and following publication of proposed finding:
 - Petitioner submits arguments and evidence to **OHA or AS-IA***
 - Challengers may also submit arguments & evidence
 - OHA or AS-IA:
 - Decides whether to grant extensions of deadlines
 - Holds hearing (if requested by petitioner or interested party)
 - Considers submitted arguments and evidence
 - May require additional research to supplement record
 - Issues final determination
- *OHA or AS-IA – Which is more appropriate?

Goal: Transparency, Integrity

12

Discussion Draft Revisions – Delete IBIA Review

§83.11

- Currently, the final determination by AS-IA is the only AS-IA decision that is appealable to the Interior Board of Indian Appeals (IBIA)
- Discussion Draft deletes opportunity to challenge a final determination before the IBIA
 - All challenges to final determinations would instead have to be filed in Federal court

Goal: Timeliness, Efficiency

13

Which version of Part 83 will apply

- If the Discussion Draft is proposed and finalized, the new version would apply to:
 - Anyone who has not yet reached active consideration as of the effective date of the new version
 - Anyone who is under active consideration (even if they have received a proposed finding) that chooses to complete the process under the new version, and files a new documented petition
- A petitioner that has been denied Federal acknowledgment under previous regulations may re-petition if it proves, by a preponderance of the evidence that:
 - Change from previous version to new version of regulations warrants reversal of the final determination.

Goal: Flexibility, Integrity

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Also Seeking Comment On:

- Draft revisions
- § 83.1 - Should the definitions be revised? If so, which & how?
- § 83.5, 83.6 - Would a standard form for petitions be helpful?
 - Should a standard form be available, but optional to use?

Goal: Transparency, Efficiency

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Also Seeking Comment On: (continued)

Criteria

- § 83.7(b) (community)
 - What percentage should comprise a distinct community?
 - What percentage should reside in geographic area?
 - What percentage of marriages should be between group members?
 - What percentage should maintain distinct cultural patterns?
 - Could “cultural patterns” be clarified?

Goal: Transparency, Efficiency, Integrity

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Also Seeking Comment On: (continued)

Criteria (continued)

- § 83.7(c) (political influence or authority)
 - A “bilateral” relationship has been examined by OFA
 - Should evidence of a bilateral relationship be required?
- § 83.7(e) (descent from historical tribe)
 - What percentage of the group’s membership should descend from a historical Indian tribe?
 - What are other objective standards that could be used for this criterion?

Goal: Transparency, Flexibility, Integrity

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Also Seeking Comment On: (continued)

- What page limits (if any) should apply to:
 - Petition
 - Proposed finding
 - OFA’s report in support of proposed finding
 - Petitioner’s arguments supporting or rebutting the proposed finding
 - Interested and informed parties’ comments on the proposed finding
 - Petitioner’s response to comments

Goal: Timeliness, Efficiency

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Comments Due

- Comments on this draft rule are due: **August 16, 2013**
- You may submit comments either by email or mail:
 - E-mail: consultation@bia.gov
 - Mail: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street, NW, MS 4141, Washington, DC 20240
- Next steps
 - Review comments, make changes as appropriate
 - Publish a proposed rule in the Federal Register

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