

NWX-DOI-BUR OF IND AFFAIRS (US)

Moderator: Larry Roberts
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12:30 pm CT

Coordinator: Welcome and thank you for standing by.

At this time, all participants are in a listen-only mode. During the question-and-answer session, please press star 1 on your touchtone phone if you'd like to ask a question.

Today's conference is being recorded. If you have any objections, please disconnect at this time.

I'd like to turn the call over to Mr. Larry Roberts. You may begin.

Larry Roberts: Thank you. Good afternoon everyone and thank you for participating in this public meeting today on the proposed changes to the Federal Acknowledgement Rule 25 CFR Part 83.

My name is Larry Roberts. I'm the Principle Deputy Assistant Secretary for Indian Affairs. We will be joined shortly by Assistant Secretary Kevin Washburn.

But before we get started here, I want to let everyone around the table here as part of the Department's team to introduce themselves to everyone that's participating by phone. So Katie?

Katie Klass: My name is Katie Klass and I work in the Solicitor's Office.

Stephen Simpson: I'm Stephen Simpson and I work in the Solicitor's Office as well.

Lee Fleming: I'm Lee Fleming; I work in the Office of Federal Acknowledgement.

Liz Appel: This is Liz Appel with the Office of Regulatory Affairs on Collaborative Action.

Amanda Begay: This is Amanda Begay with the Office of Regulatory Affairs and Collaborative Action.

(Trey VonWeber): I'm (Trey VonWeber); I'm turning with the Bureau of Indian Affairs from (unintelligible).

Larry Roberts: Great, thank you.

So to kick off this afternoon, we're going to go through a Power Point presentation that can be found on our Web site at www.bia.gov. There is a box in the lower right-hand corner that is a link to the Part 83 process regulations - proposed regulations - and there is a link there to a Power Point presentation.

And so we're going to go through the presentation. It should take around 20-30 minutes, and then we will take comments from the public.

So as part of a background of the Part 83 process, historically there are a number of different ways in which tribes can be recognized by the United States. Tribes can be recognized through a Federal Court decision, by Congressional statute, or administratively by the Department of Interior, the Assistant Secretary for Indian Affairs.

Prior to 1978, the Department reviewed petitions by groups on an ad hoc basis from those groups that were seeking Federal acknowledgement as Tribes. In the 1978, the Department promulgated regulations to establish a uniform process to review these petitions and that's what today is known as the Part 83 Process.

In 1994, the regulations were revised. One of the major revisions was to provide a process for previous Federal acknowledgement. And then in 2000, 2005 and 2008, the Department has issued guidance to essentially address the internal processing of petitions.

In terms of revisions to the process, we've heard many criticisms that the process is broken, that it takes too long and that it's burdensome, that it's expensive. There's views that it's unpredictable or not transparent. And so those are some of the criticisms we've heard about the process externally.

In 2009, then Secretary Salazar testified before the Senate Committee on Indian Affairs and was asked about the Part 83 process. And as part of that testimony before the Senate Committee, he committed to examining ways to improve the process.

So as part of that dialogue with the Congress, in 2010 the Assistant Secretary's Office, the Solicitor's Office, the Office of Federal

Acknowledgement worked on pulling together draft revisions to the Part 83 process.

In 2010, the Department also testified before the Senate Committee on Indian Affairs, and at that point anticipated issuing Proposed Rule within a year.

In 2012, the Department again testified before the Senate Committee on Indian Affairs, and at that point in time the Department was asked what progress had been made on potential revisions to the Proposed Rule. And at that point, the Department identified guiding principles that it was looking at. Basically, how to increase transparency, how to move additions to the process in a more timely fashion, how to be more efficient, be mindful of limited resources by all parties involved in the process by providing greater flexibility to account for the unique histories of travel communities, and then maintaining the integrity of the process.

And so in the fall of 2012, Assistant Secretary Washburn and I joined the Department. And one of the first things that Secretary Salazar asked the Assistant Secretary to do was to continue the work on reforms to the Part 83 process.

And so in the spring of 2013, the Assistant Secretary testified before the House and discussed before the House that he would release a discussion draft on the proposed changes. And in the summer of that year, the Assistant Secretary did release a discussion draft developed the DOI workgroup, some of which are around this table today and many others that have been involved throughout the process.

In July and August 2013, the Department held a number of public meetings and travel consultations on the Discussion Draft. And as a result of those

public meetings and travel consultations, we received over 350 comment submissions and over 2000 different letters and signatories to comment letters.

So what the Department did at that point is a team of folks from the Office of Federal Acknowledgement, the Solicitor's Office and the Assistant Secretary's Office reviewed all the comments received on the Discussion Draft. And basically, took on the task of pulling together a Proposed Rule.

And so one of the changes with the Proposed Rule that is out for comment today is that we've rewritten the rule to meet the plain language requirements under (O and B) or by (O and B). And then after the team pulled together a Proposed Rule, a draft Proposed Rule, we then provided that to (O and B) who circulated it for internal comment by the Federal Family.

And so in May of this year, the Proposed Rule was published in the Federal Register. And written comments on the Proposed Rule are due on September 30th.

So I'm going to turn it over to Liz Appel in the Office of Regulatory Affairs, and she's going to talk about various parts of the Proposed Rule, primarily revisions to the process. But the team here is going to essentially go over - over the next few minutes, we're going to talk about revisions to the process, revisions and clarifications to the criteria, clarifications for previous acknowledgement, clarification for the burden of proof, the allowance for repartitioning under limited circumstances and then additional notice requirements.

And so with that, I'll turn it over to Liz Appel.

Liz Appel: Thank you.

The Proposed Rule would make several changes to the process by which a group can apply for Federal acknowledgement. And then the first change is eliminating the Letter of Intent.

Currently, petitioners interested in petitioning for Federal Acknowledgement, they can submit a Letter of Intent that basically just says that they intend to petition without any additional documentation or information. Instead under the Proposed Rule, the process would be again by filing a complete documented petition. And that follows have the Federal Government usually has its application processes where the application reviews start upon receipt of a complete application.

The next change that would be made to the process is making phased review. So there are seven criteria. And under the Proposed Rule, there are still seven criteria that have to be met. But in the past, all seven criteria have been reviewed whereas under the Proposed Rule, the Proposed Rule would codify phased approach.

And the first phase the Department would first look to see whether the petitioner meets the descent criteria which is Criterion E. And only if they pass they pass that criteria would the petition move forward. If they fail that criterion and they don't descend from a historical Indian tribe, then at that point they would receive a negative proposed finding.

But if they passed and they did descend, then the Department would next review Criteria A which we'll talk about; that's changed a bit, Criterion D which is governing document, F membership and G Congressional termination.

If those criteria are also met, then the Department would move on to the phase of looking at community and political influence (unintelligible). And the reason for holding off on those two criteria in particular until the other criteria are met are because those are the more time intensive and just generally intensive criteria to review. So by separating the review into phases, the intention is to make the process more efficient.

Under the Proposed Rule - well currently, proposed finding is issued by the Assistant Secretary for Indian Affairs. And there's a comment period and then the Assistant Secretary will issue a final determination.

Under the Proposed Rule, the Office of Federal Acknowledgement would instead issue that proposed finding. And then during the comment period on the proposed finding, if the proposed finding was positive and there were no comment from certain parties, then the Assistant Secretary would automatically issue a positive final determination.

And if the proposed finding was negative, then the petitioner could elect to have a hearing before a judge in the Office of Hearings and Appeals, that's an Administrative Judge. And that Administrative Judge would then make a recommended decision to the Assistant Secretary for Indian Affairs for the Assistant Secretary to consider in preparing the final determination.

The other change that the Proposed Rule would make is that the final determination that the Assistant Secretary issues would be final for the Department under the Proposed Rule. So currently, there's an IBIA, Interior Board of Indian Appeals reconsideration that's available on very limited grounds. And the Proposed Rule would delete that administrative reconsideration and instead allow for immediate review in Federal District Court.

And also a point back with regard to the hearing - moving on to the next slide - the hearing on the negative proposed finding if one is elected, there are sorts of civil procedures that have been issued as a rule in a separate rule from this rule by the Office of Hearings and Appeals.

And with regard to that, a couple of questions are posed for public input including who should preside over the hearing and issue the recommended decisions, whether it should be an administrative law judge who is generally independent of supervision and routinely conducts hearings, an administrative judge who reports to the Director of the Office of Hearings and Appeals and routinely serves on an appellate board, or an attorney that the Office of Hearings and Appeals Director can designate. And that would be someone who reports to the OHA Director but may not have experience routinely conducting hearings.

The other question that has posed for public input specifically is whether the basis for the OHA judges recommended decision should be limited to the hearing record or should it more broadly encompass information.

So the last couple of major revisions to the process that the Proposed Rule would make are that the petitioner could withdraw the petition at any time before the proposed findings would be published, and (ILFA) would cease consideration once that withdrawal happened.

The catch is that they would want to resubmit. The petition would be placed at the bottom of the number of registered and may not regain an initial priority number. But currently, the petitioner cannot withdraw once active considerations begin.

And the number change is that the Department will post to the Internet all those portions of the petition and the proposed finding and reports that are already releasable under Federal law. So in an effort to increase transparency rather than waiting for (FOAS) to be issued requesting that information, they will be proactively made available on the Internet.

And next, we have criteria which Stephen Simpson from the Solicitor's Office is going to review.

Stephen Simpson: Thanks Liz. This is Stephen Simpson again from the Solicitor's Office.

As Larry mentioned earlier, there are seven mandatory criteria. There are seven under the current rule and there are still seven. But we are proposing to make changes to all of them.

First, Criterion A under the current regulation requires that external observers, external governments or media sources of other external observers identify the petitioner as Indian. And those identifications are required from 1900 to the present and they are assessed about every ten years.

The Proposed Rule would make changes to that. The external identification evidence can still be provided to support other criteria under the Proposed Rule, but Criterion A has changed to just require a brief narrative of the petitioner's existence as a tribe before 1900, so from historical tribes to give a context for the petition and the petitioner's view as to how they've existed as a tribe.

Then Criterion B that talks about community has been changed. The current criterion requires proof of community back to historical times meaning

generally to the time of first sustained contact or 1789. This is being changed to require the analysis back to 1934.

The reason for 1934 is basically to make documentation easier, but it is also when the Federal Government started focusing on tribes as tribes. And so we have also never had a tribe that passed since 1934 and - I'm sorry, let me rephrase that.

We have never had a tribe petitioner that failed after 1934 but passed before that. And so we feel that this is a good time.

The reason - to use. The reason that, as I said, that the Federal Government was focusing on tribes at that point is because that's when the Indian Reorganization Act was passed and allowing tribes to organize and to enter into the government and government relationships with the Federal Government.

So what is Criterion B? Proposed Criterion B would require that at least 30% of the tribe's population must show just a distinct community for each time period that we are working with. We will accept evidence of attendance of students at Indian boarding schools as evidence of community.

This criterion could also be met if there was a state reservation maintained since 1934 or the U.S. held land at any point for the petitioners since 1934. Those are the changes to that criterion and most of the rest of it is the same.

Criterion C, concerning political influence and authority, also is moving - the analysis period is moving to 1934 for the same reasons as it was under Criterion B. It is also met with those same other criteria. If there's a state

reservation maintained since 1934 for the petitioner or the United States held land at any point for the petitioner since 1934.

Both of these are without substantial interruption. We are defining that in the Proposed Rule to be less than 20 years as a gap. So if you've got a gap of more than 20 years for each one of those, it's a problem if you've got gap of less than 20 years it may not be.

So the other criteria- right, so the former Criterion D which had to do with tribal governing document still exists but it is actually being talked about more under the documented position - petition requirements rather than under the criteria.

Criterion E concerning descent, the Proposed Rule specifies that 80% of the petitioner's members must be descend from a tribe that existed in historical times which is defined in the rule as a pre-1900, and allows descent to be traced from a role prepared by the Department or direction of Congress. And otherwise, we look at the most recent evidence from before 1900 for that rule.

Criterion F on membership, which requires that the petitioner's members not be a member of any federally recognized tribe, is being revised. We understand that the process for acknowledgement can take some time and so we are proposing to say that if a petitioner who filed by 2010 and then had members joining a federally recognized tribe after that time for to gain services that a federally recognized tribe can get would not be penalized under this criterion for those people who joined the federally recognized tribe.

And finally Criterion G which requires the petitioner was not terminated by Congress. We are keeping that criterion the same but shifting the burden such that the department needs to show that the petitioner was terminated as

opposed to the petitioner having to show that they were not terminated. So it's on us to do that, not on the petitioner.

And with that, Katie Klass, also from the Solicitor's Office, will tell you how that changes in the case of previous federal acknowledgement.

Katie Klass: Thank you Stephen.

The Proposed Rule does not intend to change previous federal acknowledgement, but rather we try to clarify how it actually works right now.

The way it works is first, a petitioner needs to satisfy A, the tribal existence criterion; D, the government document criterion; E, the descent criterion; F, membership; and G, Congressional termination.

Next, the petitioner establishes that they were in fact previously federal acknowledged. And the way they do that is by showing (previous) relations with the United States by showing that they were denominated a tribe by an act of Congress or an Executive Order, or by showing that they were treated by the Federal Government as having collective rights in tribal lands (unintelligible).

And they after they demonstrate that they were acknowledged in the past, the way that they meet B, community and C, political authority, is a little bit shifted.

First, they can show B, community at present, and then C, back to previous federal acknowledgement through a demonstration of substantially continuous historical identification by authoritative knowledgeable external sources of

leaders and/or a governing document body that exercises political influence or authority together with one other form of evidence in the political authority criterion.

And if they can't demonstrate that sort of tweaked political authority criterion, they can show B, community and C, political authority back to previous federal acknowledgement.

Similarly, the Proposed Rule does not intend to change the burden of proof. It's still reasonable likelihood. Instead, we look to Supreme Court president to flush out what it in fact that means. And we have stated that it requires more than a mere possibility that something is true, but it does not require more likely than not.

The Proposed Rule also allows for repetition in limited circumstances. The petitioner has to show two things.

First, if any third parties were involved in an IBIA reconsideration or a federal court appeal, they have to consent to the repetition. And if they do consent or if there were no third parties, the second thing a petitioner has to show is that they have to show an OHA judge that a preponderance of the evidence shows either a change in the regulations (weren't) reconsideration, or a misapplication of the burden of proof (weren't) reconsideration.

And Liz talked a little bit before about how OHA is also developing a rule. It's 43CFR4 Subpart K. And they way that we petitioning would be addressed is handled in that rule.

And now I'm going to turn it over to Lee from OFA.

Lee Fleming: I wanted to present what improvements in transparency and integrity are in the Proposed Rule and as reflected in the notice to the petitioners and interested parties.

When OFA receives a petition, and that would be a complete documented petition addressing the seven criteria, then the department will acknowledge the receipt to the petitioner within 30 days.

Within 60 days, the Department will publish notice of the receipt in the Federal Register. We will post the petitioner's narrative and other information on the Office of Federal Acknowledgement's Web site, and individual petitioners need to realize that privacy information the department will take pains to protect the privacy. But petitioners need to be aware that narratives will be posted. This will help reduce the (foa) requests.

There will be notifications to the governor and the Attorney General in the state where the petitioner resides. Federal recognized Indian tribes will be notified within the state or within a 25 mile radius.

And there will also be notification to other recognized tribes and any other petitioners that may be affected by the acknowledgement decision or may have a historical or present relationship with the petitioner.

There will also be notification to the petitioner and informed parties when the Office of Federal Acknowledgement begins review of the documented petition. There will be notification when OFA issues the proposed finding. And in this notification, there will be notice in the federal register as to the availability of the proposed finding as well as again it being posted on the OFA Web site.

There will be notification if the Assistant Secretary grants any time extensions. There will be notification when the Assistant Secretary begins to review a petition, and there will be notification to the petitioner and informed parties when the Assistant Secretary issues the final determination. Again, availability of the notice will be in the Federal Register.

And now I turn it over to Liz Appel.

Liz Appel: Comments on the Proposed Rule were originally due on August 1st; that's been extended to September 30th. So we still have a little less than a month to get comments. And the Office of Hearings and Appeal Rule at 43 CFR for Part K, that comment period has also been extended until September 30th.

Email is the preferred method to submit comments for this rule at Consultation@BIA.gov.

Once we get all the comments in by the end of September, we will review those comments looking at any appropriate changes that may be necessary as a result of comments. And ultimately, the goal is to publish a final rule on the Federal Register.

Once the final rule is published, there will be a delay of at least 30 days following publication for that rule to take effect. And that 30 day delay is required by law to ensure that everyone has time to comply.

With that, I'll hand it over to Assistant Secretary Kevin Washburn has joined us.

Kevin Washburn: Hello everybody and thanks for being on the call. We're really glad to have you. We're anxious to get some great comments about our Proposed Rule.

I think they're ready to open it up for those comments. We would ask people to limit your comments to five minutes.

We won't generally be taking questions from the press; this is an opportunity for the public to participate in this process and to give us their comments.

But why don't we go ahead and begin the process of collecting the comments. Again, thanks everybody for being on the call.

Liz Appel: Operator, will you please open the lines for comments?

Coordinator: Thank you.

At this time, we'll begin the question-and-answer session. To ask a question, please press star 1 on your touchtone phone. Please unmute your phone and record your first and last name clearly when prompted. To withdraw your question, please press star 2.

Once again, if you have a question or comment, please press star 1 and record your name. One moment for our first comment.

Our first comment comes from (Charlie). Your line is now open.

(Charlie): Assistant Secretary Washburn, if I'm not mistaken, it's a (unintelligible) reservation, you stated that you did not think we're going to eliminate the third party involvement. I think that may well be unconstitutional. Because when the rules change for tribal recognition, those tribes were rejected under the old criteria that meet the new criteria should be allowed to reapply, otherwise the old (conart) of separate but equal is going to rear its head.

And the 14th Amendment of the Constitution of fair and equal treatment along with the concept of due process would also be violated.

And one last thing. Your justification of third party involvement was due to the expenditure of time and money, I don't believe that's valid. The BIA has a fiduciary responsibility to the tribes who applied, not opposing it. Using your concept if you want to go on, the Klu Klux Klan could have opposed the Civil Rights Act due to their fiduciary involvement.

And really cutting to the chase, what this is all about is (eight) politicians are continuing to deny the (Triton) People of Connecticut their due process and trying to dictate to the rest of the United States and your agency how it should be done. It really comes down to your perspective of this country, Mr. Washburn.

What do you place a higher value on; political pressure or the Constitution of the United States?

Kevin Washburn: So thank you. And yes, no, we've got very good comments along these lines when we were at (Nashvey). And I have heard them myself and we've got some written comments along the same lines, and we will endeavor not to do anything that's unconstitutional.

We obviously want to be successful with our rule. And if, you know, we do something that's just going to get overturned by the courts later on, that would, you know, we would not view that as very successful.

We've been told that the process is broken and needs to be fixed, and we want to make sure that whatever fixes that we do to this rule of course are constitutional. So thank you for that comment.

And let's move on to the next one.

Coordinator: Our next question comes from James. Your line is now open.

James Semien: Hi, my name is James Semien; S-E-M-I-E-N. I'm with Grand Marais M-A-R-A-I-S Chitimacha community in Louisiana.

I've already submitted my written comments, number 65 and 98 as well as appeared in (Cash Creek Brooks) California meeting for the public.

But basically, I just wanted to make a couple of comments; one comment in particular. It's going to be a blatant statement in reference to the Federal Tribe Chitimacha that appeared at the private meeting in (Marksville) back in July.

I was reading through their comments and concerns, and basically, as reading those comments, it's more - they're just more - it's more fear by these federal tribes that the unrecognized is coming in and taking what they've earned or is due. Basically, it's just more protectionism and a monopolistic type appearance in their written comments as, you know - they're concerned about people coming in and taking what they've worked for.

But the fact remains that people do defend from them from the historical tribe and it's documented; factual documentation. You know, and it's kind of sad that a federal tribe does not know their history -- historical history - especially when somebody comes along and has proven it with hard factual documents.

So I mean Larry Roberts, I thought you did a fair job in responding to their comments being middle of the road and being fair in your response. So I really appreciate. You know, you said you wanted to wait and see the facts. The facts remain we've already proven (John Slon) and (Albert Gasket) wrong at some of their facts which affects the Chitimacha Tribe and some of the people who live and descend from that historical group.

And the other - I have two questions and I would like to see if you guys can respond to them.

The first one is on performance benchmarks for the Bureau with the new regulations that you're proposing. Everyone is familiar with how long it takes to get acknowledged or get a response back. In the proposed draft you're looking to accelerate the process.

Is there going to be a performance benchmark by the Bureau in their performance in getting through the stack of petitions?

And my second question, just briefly, is it not the mandate or is it the mandate of the Bureau to identify all native communities that descend from historical times? Because I feel like that's why the Bureau exists is to identify those groups of communities out there whether it's Louisiana, California, Connecticut, that they do descend from historical groups. And your goal is to identify those people. Thank you.

Kevin Washburn: (James), would you give me a little bit more on that second question?

James Semien: Sure. On the mandate?

Kevin Washburn: Yes, the last part that you said; I didn't quite get what the question is there.

James Semien: My question is is the mandate of the Bureau, is it to identify those groups that exist from historical times in present day or is it just to satisfy federal tribes in acknowledging a minimal amount of people or communities?

Kevin Washburn: I got it; okay, thank you. Yes, I know it's kind of a rhetorical question I guess because yes; no absolutely. Our job is to try to figure out which are the legitimate, you know, people with whom, you know, communities with whom we should have a federal relationship with.

And it's, you know, views of existing federally recognized tribes are important in that. But ultimately, you know, it's a question largely of history and science. You know, who are these groups and did they have, you know, do they meet our factors for legitimacy to be recognized?

So, you know, that is our mandate to figure out who are the groups that objectively meet the criteria so that they can be recognized.

The question on performance benchmarks is an interesting one because this is, you know, it's a complicated process because it involves a fair bit of back-and-forth between our Office of Federal Acknowledgement and, you know, a group of people that may or may not have funding or may not have expert support and that sort of thing. And so we find it takes different amounts of time for different groups to get through the process.

And honestly, a lot of that is not necessarily because of the actions of the, you know, hardworking staff at the Office of Federal Acknowledgement. It's that they, you know, sometimes it's on the other end.

That said, we would love to have views on performance benchmarks. You know, our goal here is to try to get, you know, comments to write the rule well, but as part of that we're happy to hear what people have to say about, you know, what the timelines ought to be for those sorts of things. And you know, we invite your comments. You've got until September 30th to get comments in. And if you have views about that, we would be delighted to hear them.

So thanks for both of those comments and both of those questions. Let's go to the next commentator.

Coordinator: Our next comment comes from (Ken Decombs). Your line is now open.

Kenn Grey Elk: Yes, (oseo), and good to hear from Larry Roberts again. We tried to attend every meeting all over the country to listen to Larry.

I'm Kenn Grey Elk, Principle Chief in Northern Cherokee Nation and (role) citizen.

One if not the only tribes recognized as a sovereign nation by the United Nations, we're here to address the lack of any meetings to represent the groups in the Midwest. All studies made in the last several years would indicate over five million non-federalized Native Americans in Missouri, Arkansas, Kentucky, Tennessee and Georgia. This is probably more than the rest of all the other Native Americans in the U.S. combined.

Here's one of many countless good reasons for more meetings. In June 2012, the Tennessee Commission of Indian Affairs granted four Cherokee drive state recognition. Two federal recognized tribes lobbied to have them removed to non-Cherokee bands were also recognized and they were not

bothered. This can also be verified of course by going to various Web sites like Indians.com.

It would appear that all Midwest tribes are being arbitrarily excluded. A few barely advertised teleconferences are just not enough. The claims of fairness and transparency are not that clear out here.

But there's still plenty of time. There's no need to rush this process. Many of us have been in this fight for 20 to 30 years or longer. Let's all work together to get it done right this time once and for all. This process must be completed to include everyone.

Will the BIA stop short and forever have a great failure clouding what could have been their greatest accomplishment? We hope not.

Please hear our plea. Go back to the drawing board and finish the job. Grant a comment meeting for the Midwest and Mideast tribes. There are millions of us and we are still here. (Whatope).

Larry Roberts: This is Larry Roberts, thank you for your comments. We will consider whether to add more public meetings. I will note that we did have public meetings on the discussion draft in Michigan of last summer and we had a public meeting in Wisconsin this year as well.

And so we thank you for participating on this meeting as well. This is a way to engage everyone in an efficient manner.

And this is all being transcribed. This will all be part of the record. We will consider everyone's comments and so this is many respects much more efficient than traveling around the country in various meetings.

And so thank you for your comment. I think we're ready for the next comment.

Coordinator: Our next comment comes from (Earl Evans). Your line is now open.

(Earl Evans): Thank you. Well first off, I'd like to again say thank you tremendously for all your hard work with coming up with a good (unintelligible) (unintelligible) any other changes is certainly a lot better than what the regulations were previously or rather currently are. So I do commend the BIA staff for taking the time to make the effort that you have in coming up with a good first draft of the Proposed Rule.

But with that said, as with anything, there is some room for improvement. And so a couple of those areas, I would like to respectfully if I could, submit some feedback for you to consider on what's being referred to as the third party intervention concerning the reapplication process for tribes who have been denied.

I would like to suggest rather than allowing third parties to derail that simply by having to agree as to whether or not a tribe should repetition, I would like to suggest simply removing that part and allowing them to simply participate in the hearing process in terms of submitting reasons why the tribes reconsideration may not be - should be heard because of the reasons that the BIA stated in this new draft rule that a tribe could submit for its reconsideration.

And maybe that would be kind of a good middle ground compromise in terms of - because I think if you leave it in to where a third party can alone with itself make the determination based on its feedback as to whether or not a

reconsideration is done, that politicizes the process and I think it also kind of tends to interfere with the trusted relationship, you know, the tribe's relationship with the United States in any manner as opposed to being one of sovereign to sovereign. And it kind of interferes with that.

And just to give you an example, if a state has to go through something that it disagrees with the federal government on and there's some type of reconsideration, a tribe can't come in and intervene and derail that just solely by saying, "No, I don't think it should be heard." And so I think it kind of turns the tables a little bit too much in favor of non-tribal partisan interest to allow someone to so easily derail a tribe from having its arguments heard.

And I would also make the same suggestion in terms of the public notices that go out. I think it's great to be as transparent as possible, but I think that sending out the notices to the states and all the interested parties and everything I think it's going to the extreme. I think just simply publishing the proposed findings in the federal register and leaving it at that would suffice.

And again, I would point the relationship that the states have with the United States court. For example, there's not notices that go out to the tribes on every single state action that occurs. And so I would say that in terms of honoring the relationship that the tribe has with the Federal Government, that the petitioning process and everything that occurs throughout the process should be primarily limited as much as possible to occur between the petitioner and the United States government as opposed to the third party interest.

And the final comment I have is on the - excuse me - the application of the previous acknowledgement and how that effects the regulations.

I think that in terms of previous federal acknowledgement, that limiting that to the three things that you all have stated would not be broad enough to consider all the unique circumstances, especially those of tribes whose treaties predate the inception of the United States for example.

So I would like to respectfully suggest to you to consider redefining previous federal acknowledgement to be any tribe that can show that at any time it was under federal jurisdiction. And I think that if you were to have that in the language so the definition of prior federal acknowledgement, that a tribe illustrates prior acknowledgement by meeting the test of being under federal jurisdiction during any time in its history, I think that will more accurately and correctly capture the various and not-so-circumstances that could be considered as in terms of the different ways tribes have had their relationships with the United States government.

Because unfortunately, throughout the United States history, there's not been very many standardized ways that these things have occurred. All things have occurred differently in a lot of tribal circumstances.

So those are the things that I would like to respectfully ask you to consider as you look at the possible changes to this Proposed Rule. Thank you for your time.

Kevin Washburn: (Earl), this is Kevin Washburn. Let me just thank you for all three of those very compelling and focused comments. You would go in the textbook as good comments because it's very helpful, very specific, so thank you.

I don't know that we need to go into great depth on each of them because you stated, you know, really good points that we need to consider as we go forward.

Let me just say a little bit about the third party intervention issue. You know, we will continue to wrestle with this until we figure out, you know, kind of what the right result is I think.

But there is sort of a full spectrum between not allowing any repetition by a group that's already gone through to, you know - the other end of the spectrum would be allowing anyone to repetition, you know, at any time for any reason. And the Proposed Rule has, you know, something somewhere in between those two extremes.

And you know, we're going to need to continue working to figure out exactly, you know, where to draw that line and where on that spectrum this rule should go.

We will take your views and your thoughts about the notice issue and application of previous federal acknowledgement seriously too. Again, thanks so much for giving us very specific and very focused comments. Those are the kinds that help us the best; we appreciate it.

Let's go ahead and go to the next caller.

Coordinator: Our next comment comes from (Dante). You may begin.

(Dante): Hi everybody, this is (Dante). I just wanted to make three comments, and I do agree with what (Earl) has stated.

But on a couple of other things, I was hoping for some clarification. One is on the comment period. So this is the longest, I believe, comment period for this

administration. And I think for us this is going off of some recommendations that were made in 2000, so this is about 14 years in the making.

So we would just encourage BIA to move forward with these after the comment period closes on September 30th, and they've already been delayed once. So we - you know, I'm hoping that this will move forward.

The second comment is in regard to the 1900 historic identification. So just as a point of clarification, you know, there is - what is meant by the nearest next available date and can you give us a little bit more on what the intent of putting that time period in and some of the considerations that will go into the identification prior to 1900.

And then third is on the state relationships. I think there's an expedited review if you have a state reservation that predates 1934.

Land ownership or the land the form of political relationship is just one component of the state relationship. So I would just encourage the consideration of - there are some states that have recognized tribes decades before 1934. And that relationship is ongoing. There have also been other Indian schools formed before that time period decades before that, so those are political relationships that should carry a similar weight as a state reservation or similar consideration.

So I just wanted to throw those three things out and hear your comments on those.

Kevin Washburn: (Dante), thanks so much. That's, again, very focused and very helpful.

Let me just say this about the comment period. This has touched a lot of nerves and so we definitely want to get everybody's viewpoint and give everybody a chance to participate. But we, you know, we do very much hope to move forward and so we will take that as direction to please move forward as expeditiously as possible.

You know, on the latter comment, the state reservation that, you know, the fact that we should - there are other factors that are also relevant other than having state reservations. We would love to get your written feedback as to how to state those other proxies, if you will, for some of these criteria. That would, you know, we would be happy to look at those kinds of things.

We certainly have been explicit in the Proposed Rule about boarding schools and that sort of thing because we think that's important, but we would love to have more thoughts.

I'm going to ask Larry Roberts to respond on the issue about historic identification.

Larry Roberts: Yes and I guess I need a little bit of clarification on your question. Are you referring to the proposed new A or are you referring to Criterion E?

(Dante): Criterion E.

Larry Roberts: So with regard to Criterion E, I think the Proposed Rule is essentially saying that we're going to rely roles that have been prepared by the Department or at the direction of Congress. And if a petitioner doesn't have that specific tribal role, then we're going to rely on whatever the most recent reliable evidences prior to 1900.

So let's say for example we have - the department believes it has reliable evidence for E in 1880. The Department would move forward from 1880 to the present (unintelligible) 1840 it would move forward from 1840 to the present. Whatever the most recent reliable evidence is prior to 1900 which is how the Department has in various cases addressed it in the past, and so we're trying to bring some consistency there.

(Dante): And the consideration is something around 1900 or 1910 would fall into a different category that wouldn't be considered, it would have to be before 1900?

Larry Roberts: That's under the Proposed Rule and so we need your comments on that. But yes, that's how the Proposed Rule addresses it; prior to 1900.

(Dante): Okay. Great, thanks.

Kevin Washburn: Thanks again (Dante) for those very good comments. Let's go to the next caller.

Coordinator: Our next comment comes from (Michael Morningstar). You may begin.

(Michael Morningstar): Yes, hello everyone. I would like to expand Criteria A, a little bit of what the external observer. Okay, you know, I would like to expand on that.

Okay, the BIA needs to realize that a lot of financial and political pressure, there's powerful politicians that limit our time or has (unintelligible) and have reason to be bias (unintelligible) without being recognized. You know, and we're (unintelligible), very awful private schools, utility companies who know that their lease has been up for years but still (unintelligible) turn and into us

and the (Tonic) can itself. You know, you have millions to spend against us basically as a business expense to protect their profits and (unintelligible) rights, you know, from the (unintelligible) that they get from the (unintelligible) to use up our lands.

You know, because in Connecticut, you know, no effort or suggestion in the mid-Atlantic ever exists. You know, and that's in Connecticut's general statute 824 Indians.

You know, it's just that of course, you know, these people have a reason to, you know, be against our recognition because, you know, basically (Tonic) can't - the whole town was basically stolen from us.

And you know, so you have people like (Henry Kissinger), you got like Madeline Albright who went to (Kent) School who is illegally using our land and gaining all kind of profits, you know, from 1906. And then you have Connecticut laying power and now, you know, first white that are using them and basically stole our land.

You know, so it benefits them to fight against our federal recognition. It's basically a business expense to protect their profits and that goes for the whole town.

You know, so I just think that allowing external third parties, you know, to actually fight against us and have millions to spend against us, you know, we are a poor tribe. We are state recognized, you know, since the beginning of the reservation in the 1700s.

You know, they're trying to say that, "Well, you know, you guys were not here." Well we were here but we were hiding because everyone was trying to

kill us. You know, so it's not - you know, we weren't trying to show that we were here, you know, until obviously this part of Connecticut you begin to populate and they realize we exist.

You know, it's just so much money and so much land that's involved that, you know, very important people and very influential people have a biased against us. You know, because they're trying to protect their profits and what they call their land which is stuff that was stolen from us, you know, historically, you know, and still being used.

You know, they can keep it in court because they've got millions and millions and millions against us. So of course they're going to try and say that we did not exist but we've been here since time (unintelligible).

You know, so I just feel that the BIA needs to realize that there is a biased against because a lot of people stand to lose a lot of stuff, you know, if we're recognized. And a lot of land will be returned to us that they're making a lot of money off of.

You know, I mean we don't have but a piece of rock. You know, they've taken all our fields. You know, their growth, you know, to raise livestock, to exist, you know, as a community to go forward, and you know, and strengthen our cultures and traditions. And you know, they're fighting against us.

And you know, the federal government needs to realize that there is a lot of powerful influences against us.

And so I think that needs to be rethought as far as allowing certain ones who have the benefit that would benefit from our being denied for the recognition.

You know, and (unintelligible), like I said; Henry Kissinger, Madeline Albright and many, many other political and influential people, you know.

So that's much that I needed to comment on this issue. And I thank everybody for their patience. Thank you.

Kevin Washburn: Thank you (Mr. (Morningstar), and we hear your frustration and you've stated well the proposals that we have regarding Criterion A which requires external identification.

You know, the things you said are very much what motivated us for the proposed changes to that particular criterion. And so thank you for raising that comment and your other comments as well; we're grateful.

Let's go on to the next comment.

Coordinator: Our next comment comes from (Linda). You may begin.

Linda Rae Coon: Hello. This is Linda Rae Coon and I represent the Confederated Tribes of the Lower Rogue from Oregon. I'm their Culture Resource Specialist. I had an opportunity to give testimony at the hearing in Portland on July 15 and also an opportunity to speak to Mr. Roberts and Mr. Simpson afterwards who gave me excellent information to help me address their issues. And my questions refer back to on the proposed rule the discussion revolving around terminated tribes and center groups. And so I was hoping that maybe some additional comments could be made on that area. At this point in time the (Flets) tribe does consider this community to be a splinter group as does Senator Wyden's office and Congressman DeFazio's office.

Congressman DeFazio made that comment on an August 25 town hall meeting that this tribe is under the jurisdiction of the federal acknowledgement process. However they were terminated in 1956 with the rest of the tribes and that was confirmed in the task force 101976 report by the scholars at University of Oregon that worked on that report. So they were highly identified separate community historically going back several decades in the documentation with the Bureau of Indian Affairs.

And so we're looking to find a way to have better clarification on splinter groups and what groups fall into an act of Congress for recognition. So we don't waste the BIA's time this is a lot of small communities all across the United States need help and need to be restored and so we want to make sure we're using the best process. And so if you could please provide some comments on that, that would be appreciated.

Man:

Well thank you and that's good to know that that's an area of interest. Let me just sort of turn it back on you a little bit. What we need is if we haven't been clear enough in the rule we'd love to have your guidance as to what you would like the rule to be or what you think that, you know, the rule should be so that we can clarify that way when we move towards, you know, the next draft of this rule or the final rule. So, you know, we'd love to have your views on, you know, the - I think the general thing here is that we are interested in recognizing legitimate separate petitioners but we don't encourage tribes to split up.

And so our notion is not to, you know, allow someone to split off from a tribe and then become recognized independently. That's not, you know, the goal here. And so if you, you know, were interested in helping or, you know, willing to give us some better guidance as to what you think the rule ought to be to get at what our aims are we'd be delighted to hear those. And so feel free

to do that and we'd, you know, just we have to get them in by September 30. But let me just sort of invite you to help us to find why this splinter group ought to be - ought to mean as far as our proposed rule.

Linda Rae Coon: And that's the confusion is the difference between a splinter group and an off reservation community that has existed since historic time and in historic records as a separate community. And that's trying to figure out how to distinguish between the two groups, you know, the best way to do that. And I don't know if Oregon's unique. I don't know if this exists in any other state or if this is something that's highly unusual in that there was a separate authorization community. It was very, very large and a long ways and (unintelligible) reservation that had government relations. In suggesting language I want to make sure it's not something that's just, you know, specific to Oregon, that it would apply to other people too. Because if it's specific to Oregon it may be difficult to get improvement to the language.

Man: Well I'm not sure that's true. I mean we - every, you know, each of these petitioning groups is unique in many respects and the history varies so much from the history of the United States to the southwestern United States to the northwest. And so we do have sort of dramatic differences in historical circumstances and records and other things. So and we, you know, do try to fashion a rule that, you know, works the same across the country but it has to be a rule that accounts for the local, you know, circumstances. So, you know, whether or not it's unique to Oregon or this particular group we'd love to have your views on how it, you know, should work in general or as to the group that you're concerned about most.

Linda Rae Coon: Yes I mean and I - that's for the group and in general too. So if other people are impacted by this, you know, strange set of circumstances and fall into this black hole maybe they can come out of that black hole. And I have one more

question. I was wondering what your definition or opinion of the word successorship? In Oregon it's argued that there should only be one recognized tribe that is the successor tribe for the historic tribes. And so whether you're viewing - so I guess let's put this in general for tribes that would go through the federal acknowledgement process. It has been suggested that that should be a point of denial. And do you have any thoughts on that?

Man: Well let me - yes. So we, you know, we're mostly interested in hearing your thoughts. So that's the goal here and you've given us a sense of for your perspective in some of the things we need to think about. So...

Linda Rae Coon: Okay well that would be a good thing maybe to address and comment, you know. Identify - what does successorship mean?

Man: Yes.

Linda Rae Coon: So I appreciate you guys' time and I love the process, the transfer is great. It's perfect and I want to commend everyone for doing that. Thank you so much.

Man: Well thank you and all the comments are very helpful. We're grateful for the engagement of everybody. So thanks so much. Let's move on to the next comment.

Coordinator: We have a follow up comment from Mr. (Michael Morningstar). You may begin.

(Michael Morningstar): Yes. Hi everyone. I'm (Michael Morningstar), Vice Chairman of Schaghticoke Indian Tribe. I wanted to expand on my Oregon sister's questions about the splinter groups. It's not only Oregon. Here in Connecticut with the Schaghticoke Indian Tribe there's a couple different splinter groups.

Now I'm with SIT and their (unintelligible) chief okay. Now what happened is that there's another group that's trying to claim that there's - through a (unintelligible) tribe and then there's a Schaghticoke Tribal Nation. Okay? So I - the BIA already told (Richard Vilke) at the Schaghticoke Tribal Nation that they could not reform, regroup or reorganize in that the Schaghticoke Indian Tribe was the historic continuation of the tribe.

Now (Alan Russell) and (Gayle Harrison Donovan) claimed that they're real leaders of the Schaghticoke Indian Tribe. Well (Alan) was removed as Chief for ethic violations by a sister (Gayle Harrison Donovan) who then wrote to Vice Chairman I mean from Vice Chairman to Chairman (unintelligible). He had all this done legally according to Connecticut general statutes on our constitution. Now (Gayle Harrison Donovan) resigned and was removed as chief (unintelligible). Then (Jeanette Sorinzer) Fulton Eagle then wrote from Vice Chairman to Chairman and the board was in by the tribal council. And therefore neither (Alan Russell) or (Gayle Harrison Donovan) have any legitimate claim to leadership of the tribal council.

You know? And (Alan Russell) or (unintelligible) were also with Schaghticoke Tribal Nation before some - for a short time which would also disqualify them. The BIA said they cannot reform, regroup or reorganize. Does this not constitute either reforming, grouping or reorganizing? So therefore the only right and logical choice to make is clear, federally recognize Schaghticoke Indian Tribe on their leadership on Chief Fulton Eagle (Jeanette Sorinzer) in their tribal council. And their true and legitimate leadership of the historic people of the Schaghticoke Indian Tribe in Connecticut who fought alongside the Continental Army under George Washington for the United States independent. You know? I mean everything done according to Connecticut general statutes. Our constitution as far as the leadership chain so there should be no doubt, you know, everything is sent to

the government or the state, the attorney generals, you know, BIA to Lee Fleming.

And so and everybody else. But, you know, what happened with this is the fact that now all these other political, you know, and influential people and, you know, private schools and utility companies, you know, they're all claiming now that because of supposedly the splinter tribes that are trying to be recognized along with the rightful Schaghticoke Indian Tribe which saw us, you know, sold with the splinter groups okay. Now the town and the utility companies can (unintelligible) and (Kent) school and (Marlbrit) school and everyone else is saying that they don't know who to negotiate with. You know, that's just a ploy on their part for them to drag this out, you know, another 20, 30 or 40 years.

You know, so I'm just making on a comment on the fact of, you know, recognizing the correct splinter tribe. I mean it's very clear it's all been done legally according to our constitution, Connecticut general statutes. And, you know, we comply with BIA requests for the change of leadership papers, the election, you know, criteria, enrollment criteria and all that. So we done our part all legally and, you know, I mean all of the Is and Ts are crossed. So I'm just trying to say that as far as the splinter groups help those there should be no question whatsoever because it's the only right choice to make.

Man: Okay Mr. (Morningstar) I think we are trying not - we're not - we don't focus on any specific tribe or petitioning group in this process - in this, you know, rulemaking process but we appreciate, you know, your passion for that issue and we've heard you and we will attempt to deal with the, you know, the comments that you've made and consider them carefully as we move forward. So thanks for speaking up. Operator do we have another comment?

Coordinator: There are no other comments in queue. As a reminder if you have a question or a comment please press star one and record your name.

Man: Let's wait a moment longer just to give people a chance.

Coordinator: We have a follow up comment from (Ken). You may begin.

(Ken Woodrow): Yes. Yes guys this has been interesting. It's been educational and I hope you don't mind my passion sometimes. It's been such a long fight it's hard to keep it down. But a question on state reservations. We're a state recognized tribe and we do own property which we've owned for 20 years. Does that qualify as a state recognition. Or I mean does that qualify as a state reservation?

Man: So the short answer is under the proposed rule no.

(Ken Woodrow): Okay.

Man: But the requirement under the proposed rule is that the group has maintained a state reservation since 1934 continuously to the present and is not premised on state recognition. It's premised on a state reservation.

(Ken Woodrow): All right that - yes. I appreciate that answer. We get asked that a lot and I said well I'm just going to have to ask the experts. Thank you.

Man: Thank you.

Coordinator: Our next comment comes from (Kenneth). You may begin.

(Ken Woodrow): Hello. My name is (Ken Woodrow), Chair for the Wuksachi Indian Tribe. I had a question. A memo from the solicitor's office, a memo AM37029 the

meaning of under federal jurisdiction for the purpose of Indian Reorganization Act. Have you guys taken that into consideration?

Man: Yes. And honestly an advocated class from the poster's office to this question. Thank you for the question.

Woman: So just like you said the solicitor recently issued an end opinion sort of talking about and defining what under federal jurisdiction is needed in the context of the criteria litigation. And the solicitor really highlighted that you can be under - a tribe can be under federal jurisdiction while not being federally recognized. So it's important to, you know, keep that distinction and not to conflate the two concepts.

Kevin Washburn: So thank you for that. Next - and by the way and that's - that analysis is whether they were under federal jurisdiction in 1934 which is kind of a historical question so. Now let's move to the next comment.

Coordinator: The next comment comes from (Nancy).

(Nancy): I have a question in regarding to the sampling of a - of the membership - citizenship for the community. I was wondering what type of sampling will be taken that's depending on the population and I was wanting to know what population would be considered, you know, large population.

Kevin Washburn: Well (Nancy) this is Kevin Washburn. We would love to have your views on what you think (unintelligible) that, you know, satisfy the criteria. So, you know, again this is - we haven't decided anything firmly here. So we would ask you for your views on that issue and ask you to, you know, submit them either verbally or even preferably in written comments as to what you think

ought to satisfy that standard. So, you know, we'd love to hear from you on that.

(Nancy): All right. Thank you.

Kevin Washburn: Thank you. Next comment.

Coordinator: The next comment comes from Ms. Linda. You may begin.

Linda Rae Coon: Hello this is Linda Rae Coon again with the Confederate Tribes of the Lower Rogue. And I just have a question on roll and how those are going to be used based on what's on page 30776 of the proposed rules in the federal register. And again I don't know if I'm just talking about Oregon or the rest of the United States. But in Oregon there were federal censuses done starting I believe in 1900. I know I have records going back to there and what they called Indian population censuses that were separate from the regular federal censuses where different members of tribes that identify which tribe they're associated with, what their mother was associated with, their father and where they were born. What category does that type of Indian population identification come under for rolls? Would it be it's part of what's considered under I federal official records since historic times to show descent of a tribe?

Lee Fleming: This is Lee Fleming. I'm familiar with some of the federal census enumeration roles. There were special Indian population schedules for 1910 and 1900. I believe our proposed rule is talking about lists that were prepared by the federal government. And so it's possible that those maybe considered. But if they don't fall within what is anticipated there are other types of historical lists that predate 1900 that you might want to consider and there are the annual BIA censuses that were authorized by an act of Congress in 1885 and it requires annual lists of Indian peoples and that's offered through the National

Archives Records Administration. Those rolls basically range from 1885 through 1940 but you want to be focusing on possible lists prior to 1900.

Linda Rae Coon: Yes I'm familiar with those lists. The tribes that I represent as their Cultural Resource Specialist are on that list because in Oregon again I don't know if they did in the rest of the country they kept a separate list for what's identified as public domain Indians or for sectional (latees). So all of these people are on those census records. They can all be found on ancestry.com, you know, going back to that time. So it's good to know that those are available. The only thing is some of those records don't identify tribal affiliation where the 1900 and 1910 records do provide that data to help show connection to the historic tribe.

Man: Great. Thank you for that comment. We appreciate it. Let's go to the next comment.

Coordinator: We have a comment from (Kenneth Woodrow). You may begin. (Kenneth) your line is now open.

(Kenneth Woodrow): I was calling to find out about the 28 applications that were done in California for the land judgments. Would they be viable? Because a lot of information on there was done that was affidavit and also done, you know, under federal law to complete a census. Is that a census in California? Could that be used?

Man: So I think that that's a question that we need you to provide comment on in terms of, you know, what lists do you think we should be using. The way the proposed rule is written is descent from a roll directed by Congress or prepared by the Secretary for and it's for specific groups or tribes. It's not a generic Indians of California list. That would not fall within that first category of the E1. And so we - again this is an opportunity for all of you to provide

comments on what you like about the proposed rule, what should be changed about the proposed rule and then we will consider those comments. So we appreciate you participating today.

(Kenneth Woodrow): Thank you.

Man: Thank you. Let's go to the next comment.

Coordinator: Next comment comes from (James). You may begin.

(James Simian): Hey this is (James Simian) again from (Grant Merritt) community in Louisiana. I just wanted to get your feedback on two comments or two additional questions that I have. On - the first one is on the 1934 state reservation in the state of Louisiana generally no - from my knowledge there is no current group, community, tribe that has ever been or have received since 1934 a state reservation. Primarily the people that I know of or the group live on land that's been inherited from 300 or 220 years ago. So they currently still live on that same land whether it's every community or other communities further down the Bayou. So technically the rule doesn't apply to that group but they have still lived on that land for 220 years. So I was kind of getting your feedback on how do you view that in terms of the 1934 rule.

And then I just wanted to make one other comment on post self-identity. In the state of Louisiana generally there are only two types of races. You can self-identify as Native American (unintelligible) outlying areas everyone says well you're not this. You're this straight across. And so over the course of time people just stopped saying who they are and they just lived as (unintelligible) tucked away in the back bayous or just don't interact with the outside. So I just wanted to get your comment - your feedback on those two comments. Thanks.

Kevin Washburn: Well let me say on the first issue on the state reservation issue my, you know, sense is -- this is Kevin Washburn -- my sense is you actually kind of have analyzed that sort of correctly as we've expressed it in the proposed rule. And it does apply to state designated reservations. It does not necessarily apply just to land that has long been owned. So if you think the rule should be different than what we've proposed you're, you know, we would invite you to submit a comment that, you know, kind of gives us a way to state that criteria that's, you know, that captures the way you think things ought to be so that we consider it.

The second issue that you recognized, the issue of, you know, old data, historical records where, you know, we live today at a time when people fill out their census forms. They can mark, you know, numerous races and, you know, give much more robust explanation of their identities. And we recognize that's not always been true and that's one of the great challenges of doing this kind of work. And so it's always been an issue and something that we, you know, our ethnologists and our anthropologists have to work hard to figure out. And so, you know, again if you've got some guidance on that and a specific criterion that you think we should change to account for those issues we would invite your, you know, you to submit a recommendation or something like that to help us better deal with that issue. It is a challenging issue and we would, you know, we'd love to have your guidance on what you think we should do going forward. Thank you. Let's go to the next comment if any.

Coordinator: I'm showing no other comments in queue. One moment. We have a comment from (Kenneth).

(Ken Woodrow): Yes I was calling - being in California we have services on Educational Welfare and Social Services but they are administered by the State of

California through the federal government. Does that qualify as state recognition? Thank you.

(Roy Roberts): This is (Roy Roberts). I don't know whether it qualifies as state recognition or not but the rule isn't - the proposed rule isn't focused in any way, shape or form on state recognition. It's focused on a state reservation under a couple of the criteria but state recognition is not addressed in the proposed rule.

(Ken Woodrow): Thank you. Let's go on to the next comment.

Coordinator: The next comment comes from (Michael). You may begin.

(Michael Morningstar): Yes hi. Representing the Schaghticoke Indian Tribe again. Now first the we were just talking about all the census and the lack of (unintelligible) of and course back in, you know, back in historic times and all that where (unintelligible) basically wrote down whoever they wanted. And of course back in them days there wasn't really a spot for a Native American. So depending on the year or who the person was they could put down that you were either black or white. They might not even put down that you were Indian no matter where it was. And another thing with that is, you know, as far as the tribal enrollment goes with a lot of it basically depending on what the overseer of the reservation put down. And a lot of times if you did not receive aid, you know, be it commodities, you know, sugar, coffee or aspirin kind of help and - or you chose not to even go to the overseer.

Because you've got to remember, you know, back in them days we were not happy with the Caucasian race at that point in time because we felt that we were (unintelligible). So a lot of us, you know, a lot of our families chose not to receive the aid. So you never - we never made an overseer's list. We took care of ourselves and then there was a lot of people that lived - a lot of the

tribes that lived off the reservation proper in the very surrounding communities because we have to remember back in historic times now I'm talking, you know, back in the 1700s and 1800s, you know, that there was a lot of times where we didn't have - there was no such thing as (unintelligible) to us. You know, so the surrounding communities like around, you know, we're talking about the Kent Reservation here in Connecticut.

Now there was a lot of our tribal members that lived in Cornwall, (Shanter) which are bordering towns that before they existed as a town line it was all Schaghticoke basically. And, you know, so you didn't live on the reservation proper and you would rather starve than go to the overseer and ask for help. And if you were lucky enough to have enough land to be able to grow your own food and raise your own livestock then feed some of the tribal people then they made those overseer lists, you know, and maybe weren't on certain censuses. And meaning that they were on certain census depending on who the person was that fill out the census they could either spell your name wrong or, you know, put down if it was summertime and you were a dark Indian they'd put down black. You know, or if you were a very light Indian they'd put down white. They didn't put down Indian. You know, so that's my...

Man: Okay thanks. Thank you. Thank you very much for your comments and we're going to - we appreciate that and we're going to move on to the next caller.

Coordinator: Our next comment comes from Ms. (Lorraine Garcia). You may begin.

(Lorraine Garcia): Hello yes. Good afternoon. I'm from the Chihene Nde Nation of New Mexico and we're sort of in a unique position because we fell under consecutive treaties during the Spanish era and then the Mexican era and of course during the transitional phase of the United States jurisdiction we did have peace treaties and peace compacts. But because we fell in between that era of 1870

where Indian identification was taken away from, you know, not only us but from other tribes that were transitional into the United States in the southwest. And we, you know, do have those consecutive treaties, peace treaties, and peace compacts also under the United States where they allowed the settlers - the Indian natives allowed the settlers to be - come work on our farms and also to contract with settlers for oxen and cattle but yet we fall under the identity of non-Indian because of that 1870. But we are on 1900 and 1910 even 1920 censuses but our Indian designation is crossed out due to the fact that we were not placed on reservations because we didn't go to war with the United States. So that - I know that falls under the criteria of the 1900 but I would like to ask if that has been addressed at all and any comments.

Kevin Washburn: Well let me say - (Lorraine) let me say this. This is Kevin Washburn. We'd love for you to address it if you've got a - share your viewpoint on that issue. We've got a stack of comments and so issues somewhat close to that have been addressed but we'd love to have your take on things and to hear, you know, your views as to how those issues should be considered in the criteria. So feel free to give us your own comments on that.

We're - we don't - we haven't really, you know, the comment period isn't closed. So we don't have an encyclopedic list of all the categories of the different comments just yet. We will do that as we work - go forward but we don't technically start analyzing all the comments thoroughly until we've got the comment period closed. So thank you for your comment and let's go onto the next caller.

Coordinator: Our next comment comes from (Kenneth Woodrow). You may begin.

(Kenneth Woodrow): Hello. I needed to clarify what I was trying to get to is through federal jurisdiction the federal government gives the state of California money to administer our programs. Is that under federal jurisdiction?

Kevin Washburn: What - so let me just say this (Ken). We need you to give us views on a rule as to what - how you think, you know, these issues should be considered. So you're welcome to provide a comment to us that says this is something that you think should be considered under federal jurisdiction. Although the under federal jurisdiction question as we said earlier doesn't really have much to do with this process, the tribal recognition. The under federal jurisdiction question typically gets analyzed in the analysis of the (Cochiri) decision for land into trust. So under federal jurisdiction is just not a relevant concept to the things that we are talking about on this - as to this rule. So the comment, you know, going down that rabbit hole isn't particularly effective to helping us move forward with how to draft this rule. So but having said that, you know, we would be delighted if you'd submit written comments that explain, you know, how you think those issues should be considered to the extent that they are relevant under our rule. So thank you for the comment and the question and let's move to the next comment.

Coordinator: We have a comment from (Michael Morningstar). You may begin.

Kevin Washburn: And Mr. (Morningstar) we - you've spoken to us several times. I would ask you, you know, I won't cut you off here but I'd ask you to focus your comment specifically on aspects of the rule that you think need to be addressed and so that we can keep your comments very, you know, relevant. I know that there's a lot of passion and there's a lot of other things that interest you around this general subject but we would ask you to focus your comments on specific issues you would like addressed in our proposed rule or our final rule.

(Michael Morningstar): Okay thank you. I'll try to keep this partly brief. Just I wanted to add a little bit to my sister's comments from Arizona, (Lorraine). Now the Schaghticoke Indian Tribe okay now we are say a recognized tribe for now and have been since the start of time, since before it was the United States when it was just Connecticut. Now we fought alongside George Washington, the Continental Army, for independence for the United States. So we never were at war with the United States. So therefore we never had to sign a treaty with the United States. You know, so that's as far as that goes with our - as a criteria for recognition. I'm just saying that so to respond to the United States side and we were recognized before there was even a state of Connecticut or a United States that while it was (unintelligible) Connecticut. You know, we fought alongside George Washington so we never fought against the United States.

So therefore we never had a treaty. And, you know, so that's for I'm just worrying about, you know, that requirement for recognition that, you know, the treaties and all that too that, you know, there's many tribes that fought with the United States or never fought against the United States. So therefore there was no federal recognition of us because they weren't a treaty and we didn't have to make a treaty against them for the loser of a war. So that's all I have.

Man: Thank you Mr. (Morningstar). Next comment.

Coordinator: There are no other comments at this time.

Man: All right let's hold - let's wait for just a moment in case there's someone who hasn't gotten a chance to speak up yet that would like to participate.

Coordinator: Our next comment comes from (Jerome). You may begin.

(Jerome Fredericks): Good afternoon. This is (Jerome Fredericks) from the Antelope Valley Indian Community in Coleville, California. And I have a specific question about section 83.12, what are the criteria for previously federally acknowledge petitioners. Towards the tail end of the first paragraph there, A, is says - I'm reading it here. For purposes of federal law with which it carried on a government to government relationship at some prior date including but not limited to evidence that the petitioner had one, two, and three, you know, the criteria you guys have for like treaties with the United States. When it says not limited to what does that mean?

(Katy): I should have said this in my presentation. This is (Katy). The three ways which you prove you get federal acknowledgement are not all inclusive. So, you know, if there's other evidence that demonstrates previous federal acknowledgement that that can be provided and can be sufficient for establishing previous federal acknowledgement.

(Jerome Fredericks): Okay and I have one other question regarding previous federal acknowledgement. When it comes to Indian cannons of construction and I interpreted it in the best to the Indians. Because they were previously recognized has that been taken into account when composing this section?

(Katy): That is an interesting question. The Indian cannon of constructions come into play when the department (unintelligible) statute that attack Indians. So we have to, you know, we have to discuss that here.

(Jerome Fredericks): Yes because one thing I'm kind of concerned about is the substantial interruptions standard whereas if an Indian tribe has been basically abandoned for 30 or more years although they were never terminated aren't they still an Indian tribe and they would be deserving to fall under Indian cannons and construction when viewing the evidence?

(Larry Roberts): So this is (Larry Roberts). That's a very helpful comment. We will definitely consider that as part of our rulemaking process here and take a closer look at that. I don't think that we have an answer for you today. The primary purpose is to hear comments from you all and evaluate those across the team as a report with the final rule. So we appreciate you participating today and again if you want to submit any written comments that elaborate on that point you're more than welcome to do so. We just ask that you get them in by email or mail by September 30. Next caller?

Coordinator: Once again if you have a question or comment please press star one and record your name. Our next comment comes from (Leo). You may begin.

(Leo Pergson): Hello Kevin?

Kevin Washburn: Yes I'm here.

(Leo Pergson): Hi. Hi Kevin. (Leo Pergson) from the (Shookinacha) band Choctaw. Hello? Can you hear me?

Kevin Washburn: Yes. I can hear you. Yes where are you located?

(Leo Pergson): I'm in Willows, California but we relocated from Mississippi to the Indian country in 1887. We were under the 14th article of the 1830 treaty. But I just wanted to talk to you because I wanted to say that when we started federal recognition in 2013 we went through a lot of trouble with the OFA and part 83 and with the director so forth and so forth. Well I have to tell you that that process is set up for people and I want to make this clear to everyone. Without that process you couldn't have the time to - if you give time to people through

that process to be transparent it allows the government and the Department of the Interior to see the transparency in each tribe.

So the process there is a good process. It is broken in many ways but without it where would we be anyway Kevin. I mean where would we be. And I'm - my main concern is not to - I want to see the process revamped and reconstructed and re-reviewed and so forth but I just want to touch bases with you and let you know that everybody out there that's a tribe or has been a tribe has provisions and specific solid evidence that they are a tribe from historical time that once one door closes with the OSA or wherever it closes you don't stop being a tribe. You're a tribe forever. Your tribe has been established since historical time. And if you can establish them criteria with the Department of the Interior.

Now we were lucky because we have tribal advisory through the BIA but not all tribes have that luxury and so when we started with the BIA we had nothing. We had nothing. We had advice to file for a petition for federal acknowledgement. So my main thoughts today with Kevin Washburn is I think I basically think you're doing a great job and without it where would we be without the process. It needs to be fine-tuned. It needs to be fixed but that goes with anything, any process. It's long and involved. That's a government relationship and it's not easy for either part to take part in that to establish yourselves as a tribe. We made good progress. We make great steps to - with the Bureau of Indian Affairs. We've made great steps with the Department of Interior and although I've had my bumpy roads with the OSA, you know, that comes with part of the process. I mean how many years did it take us to get here? It took us 170 years to be recognized under a treaty, under the 14th article 1833. It wasn't easy. It's not easy for anybody but that's part of the process. I just wanted to say hi Kevin.

Kevin Washburn: Thank you for your comments and let me just underscore one thing that Mr. (Pergson) said. This - yes this does not tell people whether they're a tribe or not but whether they're going to suffer federal recognition or not in essence as a tribe. So that's - that's a very good point. So thank you Mr. (Pergson) for those comments and let's go to the next caller.

Coordinator: Our next comment comes from (Chief Quiet Hawk). You may begin.

Kevin Washburn: Mr. (Quiet Hawk). Perhaps you have us on mute. Are you there?

(Chief Quiet Hawk): Okay I'm here. We'd like to thank you for your revising the regulations in regard to the federal recognition. However, the third party rule seems to imply that nothing has changed in the system which allows the state legislature to keep us from reapplying. If in fact you are fixing a broken system the tribes who have been denied under that broken system would still be basically kept out under the same broken system.

Kevin Washburn: Thank you (Chief Quiet Hawk). We - yes we - that's exactly right. We have different views perhaps about what is broken about the system and there's a lot of different views about what is broken about the system. And I know that kind of everyone's got a slightly different perspective on that. But we are desperately - we're working hard, working very earnestly to try to repair a system that everybody sort of seems to agree is broken or lots of people agree is broken. Let's go on to the next caller. Thank you.

Coordinator: Our next comment comes from (Jerome).

(Jerome Fredericks): Hi. This is (Jerome Fredericks) again. I just wanted to thank you before I was cut off on my last call or my last comment period but I'd also like to let all the petitioners know that I did make comments already and they are on the

www.regulationsaboutgov Web site. So if they wanted to check out my comments it was regarding under federal jurisdiction and why I think it should be applied to the federal acknowledgement process. Thank you again. Bye.

Kevin Washburn: Thanks Mr. - thank you Mr. (Fredericks) for providing us written comments. That's exceedingly helpful. So thank you for that. Let's go onto the next comment.

Coordinator: We have a follow up from (Kenneth). You may begin.

(Ken Woodrow): Yes I'm - for me I'm just trying to understand the process itself. And it looks like it's working out pretty good.

Kevin Washburn: Thank you. We said the process, you know, we are in this rulemaking process. So we've got a set of regulations, part 83, the regulations of part 83 and we have proposed changes to those regulations. And this proposed rule is subject to public comment and the public comment period lasts until September 30 and at the beginning of the call our staff here went over a summary of what the proposed changes are. And we will accept comments about those proposed changes until September 30. And after September 30 we will begin in earnest going through each of the comments, the written comments that we've gotten and look back over the verbal comments that we have gotten and, you know, take another run through the rules to see how if at all it should be changed, the proposed rules should be changed as we attempt to create a final rule that, you know, addresses our chief goals and addresses, you know, concerns that have come up during this process.

So that's basically how it works. We will eventually issue a final rule and that final rule again will try to account for the things that we talked about when we said that we thought the process was broken such that it takes too long. It's too

burdensome. It's too expensive. It's unpredictable. Those kinds of things that people have said over and over about the process. We're trying to make it more efficient, make it easier for the Office of Federal Acknowledgement to do its job and to maintain the rigor that they already apply but make things happen more quickly. So those are the goals and that's basically the process and how it will unfold. We can't give you a, you know, date for our final rule but we're - once the comment period closes we will spend the next few months carefully going through those comments and trying to work up a final rule. So that's the process and thanks for the question. It's good to sum it up for everyone. Let's go to the next comment if any.

Coordinator: I'm showing no other comments in queue.

Kevin Washburn: All right let's give it again another minute or two just in case there's someone who hasn't spoken yet that would like to. All right well it looks like no one else is queuing up. Let me just say thank you to everybody that participated in the call. Oh no maybe we got someone. Did we get another?

Coordinator: We did. We have two more comments in queue. The first one comes from (Gregory). You may begin.

(Greg Richardson): Yes. This is (Greg Richardson), Director of the North Carolina Commission of Indian Affairs in Raleigh, North Carolina. First of all I just want to thank (you kin) for all of the work that you all are doing to revamp this process. It's really needed and thank you so much for moving things forward in this process. The comment is that and I'm sure you've heard this before so I'm chiming in here a little late but there's a lot of discussion about the third party proposal and I know you're getting that loud and clear. So I just want to say from the North Carolina Commission of Indian Affairs we represent seven tribes in North Carolina that are competing - all state

recognized that are competing for federal recognition. And 122,000 population here so we have a very large constituency. So they need to hear loud and clear about the third party proposal that's been discussed.

I would also encourage work to be completed by September 30. I know that there's some who think that there should be an opportunity to extend the period past September 30. But, you know, at some point we've got to move forward and I'd like to encourage that we hold to that September 30 date. Also in the process if analysis could be done somehow to figure out a way to reduce the cost of petitioning. As you know there is a tremendous cost associated on the part of petitioners to prepare their petitions and get them in place. So I think extreme efforts need to be taken to figure out a way to cut down on the cost of - costs that are associated with the petitioning process.

And then finally here in the east, mid-east coast we sell them here from the Bureau of Indian Affairs and we see the announcements in the Federal Register where there are hearings and comments - comment periods being held at various locations across the country. But we - and I don't mean this (Ken) to be, you know, a criticism. It's just an observation. I'd like to see more of a presence of the Bureau of Indian Affairs in - on the east coast and particularly North Carolina since we have such a large American Indian population here. We've extended invitations previously to your predecessor and I believe on one occasion to you (Ken) and we'd like to have some visibility down here at some of our conferences. We need information. We need understanding. We'd like to be heard as well. So those are my comments and thank you again for what you're doing.

Man: Thank you Mr. (Richardson). We're grateful for all those comments and questions. And let me just say just specifically as to that - the second to the last comment. A big goal of this whole effort is to make this process more

efficient and hold the costs down so that tribes, you know, don't have - legitimate groups don't have to spend, you know, millions of dollars to obtain recognition. We, you know, would like to accomplish that. We want it to be a rigorous process but we don't want it to be an excessively costly process. So thank you for all those comments though and thank you for your work in - with Indian tribes. We appreciate that. Let's go to the next comment.

Coordinator: Our next comment comes from (Charlie). You may begin.

(Charlie): (Unintelligible). On a most conservative basis when do you anticipate on a most conservative basis that this - your proposed regulations will go over to the OMB for their final 45 days?

Man: It's just too hard to tell. You know, we have to, you know, look at all of the comments that we've received and, you know, they frankly they've been lengthy and we expect to get a lot more because we, you know, we've frequently had the experience that a lot of the comments don't come in until right before the deadline. So we have to look very carefully at each one of those. So, you know, it's just too - I don't want to make any predictions because it's, you know, then I'll get hung for being wrong. But so, you know, the near end term is probably 60 days. The far end term is two years perhaps. I, you know, it can be anywhere in between there. So it's - this is - it's going to be a lot of work. So I can't really - I can't tell you for sure.

(Charlie): Okay. Thank you very much.

Man: Thanks for the comment and let's go on to the next comment.

Coordinator: Our next comment comes from (Jerome).

(Jerome Fredericks): Hi. This is (Jerome Fredericks) calling again and I did have one quick general question or rather more if you guys could clarify in the section regarding previous acknowledgement. If you could put in there something to the effect of evidence that can be used to establish the last point of federal acknowledgement.

Man: Okay. Thank you. That's very specific. We appreciate that. Duly noted. Let's go on to the next comments.

Coordinator: Our next comment is from Ms. (Linda). You may begin.

Linda Rae Coon: Hello. One final question for you all. This refers to page 30773 on the proposed rules for the categories of groups that will not be acknowledged, one, two and three. As I mentioned before Senator Wyden and Congressman DeFazio have many times publicly claimed that this group must go through federal acknowledgement although we have documentation from the organization and from other scholarships that indicates that that's incorrect. However, they will not work with the community until they go through your process. They've made that very clear. How can these proposed rules be - or what can we make for recommendations to figure out how those types of groups should make applications because that's what they want us to do. But we'd like to streamline that process and so it doesn't become burdensome on the BIA in trying to help the other groups that must go through your process. Is there a phase that these kind of groups can go through that can be as brief as possible to give some type of answer as to, you know, what category they are, you know, one, two or three on that page. Thank you.

Kevin Washburn: Well thank you. So I - we are working really hard on this process so that it's an efficient, fair rigorous process and then frankly having done so we are going to encourage this as the primary means for any petition group that

wishes to have federal recognition that does not now have it. It is true that some groups can, you know, not go through that process. As an example a group that has been terminated by Congress. You know, we don't have the power to overrule Congress. So if a group's been terminated by Congress this process is never going to be for them until, you know, they get Congress to, you know, back off, you know, or to let them go through the process.

So there are some groups that will, you know, admittedly never get to go through this process but, you know, short of that we would like any other group to go through the process. We think this is the primary basis that should be used for obtaining federal recognition by a group that doesn't presently have it because - and we're working, you know, spending a lot of staff time and a lot of money trying to make it a very fair, you know, and more efficient process. So we don't - we're not interested in, you know, creating other processes or other expedited processes. We're trying to make sure that this is an expedited process in ways where it's appropriate to do so. But again we are not interested in creating other processes.

This is the primary process for obtaining recognition from the federal government. This is the primary administrative process and essentially the only administrative process for doing so. Thank you for the question. Let's go on to the next comment if any.

Coordinator: I'm showing no comments in queue. As a reminder please press star one and record your name if you have a question or comment at this time.

Kevin Washburn: Operator I think maybe we are - we will be having another one of these sessions on Friday, on the 5th, September 5. So I think what we'll do is go ahead and shut this one down and others, you know, will be able to go ahead and join that call if they wish to make comments. As a reminder everybody is

welcome to submit written comments and we would be delighted to receive those. They have to be received by September 30, 2014. The best way to get them to us is to email them to consultation@bia.gov. So again I think I've said it before but thank you to everyone who joined the call and especially to those folks who submitted comments and especially, especially to those who submitted very specific comments because those are the ones that help us best.

And again I want to thank everybody for participating and invite you to join us again for the call this Friday if you, you know, after you've had a chance to mull this stuff over. You might have additional comments at that time. So and I want to thank the staff who helped cover for me while I was in another meeting before this started. Thanks for the great summary. And the - we will look forward to doing our next session on Friday. Thanks everybody for participating. Good bye.

Coordinator: Thank you for your participation. You may disconnect at this time.

END