

NWX-DOI-BUR OF IND AFFAIRS (US)

**Moderator: Larry Roberts
September 5, 2014
12:30 pm CT**

Coordinator: Thank you for standing by. At this time all participants will remain in a listen only mode until the question and answer portion of the call. Today's call is being recorded.

Should you have any objections to the recording you may disconnect at this time. I will now turn the call over to Mr. Larry Roberts, Mr. Roberts you may begin when ready.

Larry Roberts: Thank you, good afternoon everyone. My name is Larry Roberts I'm the Principle Deputy Assistant Secretary and I really appreciate everyone participating in this public meeting this afternoon.

All of your comments here will be transcribed as part of the record and on the Part 83 rule revision. So we have a power point that we're going to walk through. It can be found on www.bia.gov.

On that Web site there is a button for the proposed Part 83 regulation. If you click on that button you will see the followup point that we're going to walk through, a link to that page.

So the Powerpoint will take roughly 20 to 30 minutes to go through and then we're going to open the line up for comments on the proposed rule. We have a number of people participating today.

So what we would like is for everyone to try to remit their initial comments to five minutes or less and then if there's time after everyone's had a chance to speak that wants to we will open it up for a second round of comments on a rule.

The other thing that I would stress is what is most helpful for the department is aside from just comments on the rule itself we - comments on specific situations are not being addressed by the proposed rule it's a general - a rule making of general applicability across the United States.

And so with that we're going to turn it to the Powerpoint. I have a number of people in the room with me today, folks that have been doing a lot of hard work on the proposed rule.

And so we will go around the table here and introduce ourselves and then we'll go ahead and get started. So Larry Roberts, Principle Deputy Assistant Secretary for Indian Affairs.

Stephen Simpson: I'm Stephen Simpson I'm in the Solicitor's Office at Interior.

Lee Fleming: I am Lee Fleming, Director of the Office of Federal Acknowledgement.

(Kelly Hemry): (Kelly Hemry), Senior Advisor for the Assistant Secretary for Indian Affairs.

Katie Klass: Katie Klass I work in the Solicitor's Office.

Larry Roberts: Okay so with that we've going to go ahead and get started. With regard to background there is a number of ways in which the Federal Government can acknowledge or recognize tribes.

The Federal Government has recognized tribes through judicial court action, judicial court decisions through congressional legislation and then administratively by the Department of the Interior.

Prior to 1978 the department reviewed petitions by groups seeking federal acknowledgement of Indian tribes on an ad hoc basis. And so in 1978 the department promulgated regulations to establish a uniform process for the review of those petitions. That's the Part 83 process that we're working under now.

In 1994 approximately 20 years ago the department published revisions to those regulations and one of the primary changes to that was to incorporate a previous federal acknowledgement into the regulatory review process.

In 2000, 2005 and 2008 the department published guidance to address internal (prophesying) changes as we review and administer various petitions. A lot of questions have been asked of sort of what is the need for revisions.

And so over the years many have criticized the process as broken and some of the criticisms that the department has heard is that it takes to long, that it's burdensome and it's expensive, that it's unpredictable and that it's not transparent.

And so in 2009 Secretary, then Secretary Salazar testified before the Senate Committee on Indian Affairs and in response to questions from the Senate Committee, Secretary Salazar committed to examining ways to improve the Part 83 process.

So in 2010 the department, the assistant secretary's office, solicitor's office, the office of federal acknowledgement began work on draft revisions to the Part 83 process.

In 2010 the department again testified before the Senate Committee of Indian Affairs and at that time estimated that the department will issue a proposed rule in approximately a year.

So fast forward to 2012 the department again testified before the Senate Committee of Indian Affairs and was asked why a proposed rule had not been issued with that year timeframe.

And the department identified guiding principles or goals in terms of any reforms to the public acknowledgement process. And so in late 2012 Assistant Secretary Washburn and I joined the department.

Secretary Salazar then asked Assistant Secretary Washburn to move this regulatory effort forward and in 2013 Assistant Secretary Washburn testified before (unintelligible) committee on tribal issues and promised a release of a discussion draft.

And so in June of 2013 the assistant secretary released a discussion draft developed by the working group. The goals of the discussion draft are to increase transparency, to increase timeliness to move petitions more quickly to the (unintelligible).

To be more efficient both internal within the department but also being mindful of limited resources by all parties that have an interest in the process by providing for flexibility to account for the unique histories of tribal

communities and maintaining the integrity, the accuracy and the integrity of the process itself.

So last summer in July and August the department held a number of public meetings and tribal consultations on the discussions (unintelligible). We received a - over 350 comment submissions, over 20000 different letters or phone letters and different signatories to comment letters.

And from those comments we, the team worked on developing a proposed rule. And so they reviewed all the comments received on the discussion draft, they rewrote the rule to meet plain language requirements and then we submitted the rule to OMB for a broader review by OMB and the (unintelligible) family.

And so the proposed rule was published in May of this year and initially had a comment period that was set to expire on August 1 and in response to a number of different requests to extend that comment period we've extended it through the end of this month, the end of September, September 30.

So with that I'm going to turn it over to Steve Simpson from our Solicitor's Office. What we're going to do now is talk about an overview of the proposed rule. We're going to talk about the revisions or proposed revisions of the process.

We're going to talk about proposed revisions and clarifications of the criteria, we're going to talk about clarification of previous federal acknowledgement and clarification of the burden of proof and then we're going to talk about the allowance of re-petitioning under limited circumstances and additional numerous requirements.

And so again we really appreciate everyone's time today in participating in this meeting and, you know, we expect that a proposed rule will change as we move forward with the final rule making based on all of the good comments that we receive through this process.

So with that I'm going to turn it over to Mr. Simpson from the Solicitor's Office.

Stephen Simpson: Thank you Larry. Again this is Stephen Simpson I'm with the Office of the Solicitor in the Department of the Interior. As Larry mentioned I'm going to talk about the revisions to the process for acknowledgement and then revisions and clarifications to the criteria for acknowledgement.

First with the process we - the process of the current rule, the current regulations begins with a letter of intent. This was a general letter that just said we intend to enter the process.

It did not have any detail, it was not a - it was not really required to be a research document or anything like that and that was to be followed was followed by a documented petition.

Because that letter really doesn't help the process that much and we got a lot of letters of intent that were never followed up on we are proposing to eliminate the letter of intent and to begin the process by a petition or filing a complete documented petition instead.

Then they would go, the petition would go through a phase review the current process is just a - doesn't really have phases this just is straight through. The first phase of the proposed phase review is to whether the dissent criterion, criterion is meant - is met I'm sorry.

Then we would review whether criteria A, which is the brief, which is a brief narrative that I'll talk more about in a moment. D, which is the tribal governmenting documents, F, which is membership in federally recognized tribes and G, which is determination criterion are met. Then as those are all passed you go - the petitioner would go into phase two.

This is divided as two sub-phases, phase 2A would be a separate phase and if the petitioner asserts we would only do that if the petitioner asserts that phase 2A applies, which is where we would review whether they have a state reservation of the U.S. held land for the petitioners since 1934. And I'll come back with a little more explanation of those soon.

If the petitioner does not assert that that phase applies then there would be - it would be phase 2B, which is review for the community criterion, criteria B and the political influencer authority when criterion C and the petitioner would have to meet all seven of those criteria in some way in order to be acknowledged.

Once that review is complete the department would issue a - and the proposed rule would issue a proposed finding, the Office of Federal Acknowledgement would issue that.

There would be a public comment on that. If the proposed finding's comment is positive and we don't get certain kinds of comments that are laid out in the proposed rule then the Assistant Secretary Indian Affairs would automatically issue a positive final determination.

If that proposed finding is negative that the petitioner should not be acknowledged then the petitioner may elect to have a hearing before an office

of hearings and appeals judge in the department. And that judge would then make a recommended decision to the assistant secretary.

In either case the assistant secretary would then issue a final determination. That determination, this is a new piece that determination is final for the department.

Under the current regulations there is possibility in certain circumstances for reconsideration of that determination by the anterior board of Indian appeals or for an explicit appeal to the secretary of the interior.

Both of those stats are cut out in the proposed rule because this was in large part because this was the only decision made by an assistant secretary that was then appealable to an appeals board and that - and so we were conforming it to other decisions by an assistant secretary in the department.

Since that final determination is final for the department the immediate review of that under the administrative procedures act would be in federal district court. So it as I said there could be a hearing on the proposed finding under the proposed rule.

The opposite hearings and appeals has also issued proposed procedures for that hearing process. They are asked - those procedures are in the federal register as well.

There is a comment period on those that ends on September 30 at the same time as the proposed rule does promulgate on the proposed rule that Larry mentioned but they - the office of hearings and appeals is asking two questions for comments specifically in that - in those procedures.

First is who should preside over the hearing and issue a recommended decision? The choices are an administrative law judge who is generally independent of supervision and routinely conducts hearings or an administrative judge who reports to the office of hearings and appeals director.

And routinely serves on an (impallic) board like the interior board of Indian appeals or an attorney designated by the office of hearings and appeals director reports ultimately to that director and may have no experience conducting hearings.

There is also - there may or may not be any experience in the acknowledgement process for any of those people. So it's who do they report to and how much hearing experience they've had.

The other question that OHA the office of hearings and appeals is asking is whether that judge's decision should be limited to the hearing record or should it include the entire record before the department at that point.

So again those comments are due at the end of this month at the same time that the ones on the proposed changes to the acknowledgement process. The two more cases to that foster the acknowledgement process, there is proposed a - that the petitioner may withdraw their petition at any time before the proposed finding is issued.

The office of federal acknowledgement would then cease their consideration of the petition upon withdraw. And the petitioner can decide to resubmit but that petition will be placed at the bottom of the numbered register of petitions and may not keep its initial priority number.

This is to try and conserve the resources of the office of federal acknowledgement while giving flexibility to the petitioner. Finally to keep the process as transparent as possible the department will post to the Internet those portions of the petition and a proposed finding and the reports that are releasable under federal law.

So if they are subject to the Privacy Act, to the Freedom of Information Act and other disclosure requirements but we will post to the Internet everything we can. So with that we'll move into the changes and clarifications to the criteria themselves for acknowledgement.

The first criterion A under the current rule requires that external observers identify the petitioner as Indian and it requires that those external identifications are required from 1900 to the present and we check every 10 years to see if there are any.

We're proposing to change that to a requirement of a brief narrative of the petitioner's existence as a tribe before 1900 to give a context for the rest of the petition. The petitioner can still use external identification evidence to support that criterion or others but we are changing that first one.

We are also making some changes to other criteria the next one criterion B, which is the existence of a community. The current rule says that that analysis and the one for criterion C the political influence on authority should be since historical times, which is first sustained contact of 1789.

We are changing both of those, proposing to change both of those to an analysis of the criteria from 1934 to present. The reason we picked 1934 is in part is to lessen the documentation requirements for these prove since

documentation of community and political authority is going to be easier since 1934 than before.

But also because 1934 is when congress passed the Indian Reorganization Act and was a (Seminole) moment in Indian affairs because the federal government was encouraging tribes to organize and to recognizing that they're - that they had governments and were going to enter into this government to government relationship with tribes.

We've also determined that there is no petitioner that has passed the criterion, these two criteria since 1934 but failed before 1934. So we think this is a reasonable starting point for that analysis.

Under the criterion B for community we are also changing or giving percentages here that at least 30% of the petitioner must show that there is a distinct community for each of the time periods being evaluated.

We are accepting evidence of attendance of school of students in the boarding schools as evidence of community and we have - we are proposing that this community criterion and the political influence on authority criterion will be met if the petitioner has maintained a state reservation since 1934.

Or that the U.S. has held land at any point for the petitioner since 1934 and both of those criteria talk about - criteria talk about these time frames are without substantial interruption.

We are defining substantial, without substantial interruption in a proposed rule to be less than 20 years. So you can have a gap of 20 years or less in the - in your timeframe but a gap of more than 20 years would not be acceptable.

So with the other criteria we have taken criterion D, which is governing documents currently under - the current rule it has to do with governing documents for the petitioner. We have moved that into the consideration of the completed documented petition.

With criterion E, which is dissent from a historical Indian tribe we are clarifying that 80% of the petitioners must - of their membership rule must have descended from a tribe that existed in historical times, which we are defining in the proposed rule as pre-1900.

And allowing that dissent to be traced from a rule prepared by the department or a rule at the - prepared at the direction of congress and otherwise if there is not such a rule we would look at the most recent pre-1900 evidence that we have.

Criterion F, which is membership in a federally recognized tribe we recognized that this process takes a while and so we are saying - we are changing the rule to clarify that if a petitioner has filed the documented petition by 2010 and then ten members of their tribe joining a federal recognized tribe for services available to federally recognized tribe that they will not be penalized for that happening under this criterion.

And finally criterion G, which is that the tribe has not been terminated by congress we are proposing to shift the burden under that criterion to the department to show that a petitioner was terminated as opposed to requiring that the petitioner show that they were not terminated because the department should have better records than the petitioner necessarily would.

And it's going to be easier for us to prove a positive than for the petitioner to try to prove a negative. So with that we'll move into previous federal acknowledgement and Katie is going to talk to you about that.

Katie Klass: Thank you Stephen. In the proposed rule we did not - our intent was not to change previous federal acknowledgement but rather just to put aside and explain how it's already being applied under the current regulation.

The petitioner was first needed to show that it has met the tribal existence, government document, dissent, membership and congressional termination criteria. That would be the first step in going through this process.

Second it would need to establish that it was in fact previously recognized by the federal government and the way that it can do that is to show that it had treaty relations with the United States, that it was a denominated tribe by an act of congress in an executive order or that it was treated by the federal government as having collective rights in tribal lands or funds.

And there's also just sort of and only do I appeal any other evidence that could demonstrate recognition in the past. Once the petitioner demonstrates that it was recognized in the past it has sort of an altered community and political authority process for approving those two criteria.

The first way is by showing that it was - it meets the community criteria at present and then that it can demonstrate the political authority criteria in sort of a tweaked way. And they do that by showing demonstration of substantially continuous historical identification by authoritative knowledgeable external sources of leaders and or a governing body that exercises political influence or authority.

(Unintelligible) one other form of administrative political authority and if it can't show that tweaked political authority criteria that can just demonstrate the community influence and political authority criteria both back to previous acknowledgement.

So that's at work right now under the regulation and we're just trying to clarify that that is how it works. The same thing for the burden of proof in the proposed rule we didn't try to change the burden of proof but rather to clarify what reasonable likelihood actually means.

When we looked at supreme court precedent that defines what reasonable likelihood means to explain 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 provides for repositioning in (omitted) circumstances. A petitioner has to set aside two things to be eligible to repetition. First, if any third parties were involved in an IBA reconsideration or a federal court appeal they have to consent to the repetition.

And then if the petitioner gets that consent or there were no third parties involved then the petitioner goes to a OHA judge and that judge determines whether preponderance of the evidence shows either a change in the regulation for reconsideration or this application is a government proof (warranty) consideration.

And right now OHA is developing its own separate rule at 43CSR for a part K and that rule would provide procedures for how this reconsideration would work. And now I'm going to turn it over to Lee Fleming director of OFA.

Lee Fleming: All right the proposed rule addresses the notice of petition and some of the current regulation passed or still to be performed but there are a couple that are being added to address transparency and integrity.

When OFA receives a petition and remember the proposed rule is eliminating the letter of intent. So when OFA receives a fully documented petition it will acknowledge the receipt of the petition within 30 days to the petitioner.

Within 60 days the department will publish (numbers) that they received from that petition in the federal register. One of the new proposals is to then post the petition narrative and other information upon the office of federal acknowledgement's Web site.

This definitely will help the transparency as well as reduce fully the Freedom of Information Act request or copies of a groups petition. We will continue to notify the governor and the attorney general in the state where the petitioner resides.

A new proposal is to notify any federal recognized Indian tribes within the state or with a 25 mile radius and we will continue to notify other recognized tribes and any petitioners that appear to have a historical or present relationship with the petitioner or they may be affected by the acknowledgement decision.

Notice to the petitioner and informed parties will be provided with the office of federal acknowledgement again at the review of the documented petition. OFA will issue its proposed finding and then will publish notice of the availability of the proposed finding in the federal register and also post it on its Web site.

Notice to the petitioner and informed parties will be provided when the assistant secretary grant any time extensions, notice will also be provided to the petitioner and informed parties when the assistant secretary begins the review of the petition as well as when he issues the final determination.

Again there will be a published notice of the availability of the fund will be termination in the federal register. Those hopefully will ensure improvements in the transparency and the integrity.

Katie Klass: We had extended the comment period for the proposed rule to September 30 and OHA has done the same thing for their proposed rule. So please send your comments in by September 30.

The preferred method for receiving your comments is email. Please email consultation@bia.gov. And the next steps after the comment phase closes and we get everybody's comments and we'll review the comments and make changes to the rule as appropriate.

And we will publish the federal rule on the federal register and it will not become effective for at least 30 days after application.

Larry Roberts: So with that everyone, this is Larry Roberts, thank you all for again calling in and participating and with that Operator we're ready to take comments on the proposed rule, Operator.

Coordinator: Yes if you would like to ask a question please press star 1 and record your name clearly when prompted. Again if you would like to ask a question please press star 1 and record your name clearly when prompted.

Please hold while the system is accepting questions. Our first question comes from Richard Blumenthal's line. You have an open line you may begin. Again the first question comes from Senator Richard Blumenthal's line, you may begin.

Larry Roberts: Okay Operator if we could - it sounds like the Senator is not connecting could we put him in the queue and go with the (PAC) elected official please?

Coordinator: Yes sure and a question comes from the governor's office of Connecticut. Mr. Luke Bronin you may begin.

Luke Bronin: Yes good afternoon my name is Luke Bronin and I am the general counsel in the office Governor Malloy in Connecticut. The proposed rule threatens dramatic changes to existing acknowledgement regulations that could if adopted have serious and unique consequences for Connecticut.

For this reason I preface my comments made on behalf of the governor by reiterating his profound and continuing displeasure that BIA did not convene a public meeting in Connecticut to hear directly from the citizens about our shared concerns and objections to the proposed rule.

The consequences of federal acknowledgement are obviously significant for states, for municipalities and their citizens and this proposed rule would make dramatic changes both procedural and substantively to the acknowledgement process.

These proposed changes go far beyond the BIA's stated rationale of improving procedure and result instead in a fundamental change to long-standing acknowledgement criteria.

Connecticut has had extensive experience with federal acknowledgement petitions. Three distinct Connecticut groups have had acknowledgement petitions denied by the BIA after lengthy intensive proceedings and litigation.

If the change are adopted as proposed there is a high likelihood that those very same Connecticut petitioning groups will gain acknowledgement without having to demonstrate factually that they have existed as a distinct community with political influence and authority the bedrock requirements of federal acknowledgement.

As each of these petitioning groups makes claims to large areas of privately owned land in Connecticut the result could be at minimum the clouding of title for thousands of Connecticut property owners.

Connecticut's attorney general will submit formal comments on behalf of the state but I will highlight a few principle concerns. First, the third-party consent to repetition.

Although the third party consent provision could protect Connecticut's interest in the finality of previous decisions this protection is open to serious question. Connecticut may not be able to rely on this proposed rule to protect the interest of its citizens.

Litigation on the validity of this requirement is certain but the outcome of such litigation is not. Under present regulations a previously denied petitioner may not repetition that prohibition is appropriate and should remain in place.

Second, the use of state reservations as a proxy for community and political authority. The rationale for using state reservations as a proxy for actual

evidence of community and political authority simply is wrong and entirely unjustified at least in the case of Connecticut.

Indeed the significance of state reservations and the states historical relationship with the petitioning groups was the central issue litigated and determined in the decision of denying acknowledgement to Connecticut based petitioners.

Those decisions found as a matter of fact that the maintenance of state reservations in Connecticut did not demonstrate the existence of community or political authority.

The state reservation proxy provision ought to be eliminated or it's used condition on express agreement by the state that the state reservation in fact demonstrate the states recognition of community and political authority.

Third, ambiguity with respect to petitions by factions of previously denied petitioners. The proposed rule appears to limit to some extent the ability of factions, splinter groups or reorganized groups to repetition.

This is an important consideration for Connecticut because there has been and continue to be petitioners that are factions of groups for which state reservations were established.

The language defining splinter groups or factions is somewhat ambiguous. Therefore the language referring to splinter groups and previously denied petitioners should be modified to clearly include groups associated with, related to or having a common history or state reservation with previously denied petitioners.

This statement is not in exhaust of treatment of Connecticut's concerns and as noted the attorney general will be submitting formal comment. So let me just close by stating that the potential harm to Connecticut and Connecticut citizens is significant and unjustified.

And should this rule become final in its current form we will be forced to exercise every available administrative and legal remedy to oppose it. The existing process for recognition has been in place for a long time and the public and the congress have demonstrated their acceptance of it.

This proposal is dramatic departure to which nobody can be said to have adapted or acquiesced and to which there is no grounding in a congressional delegation authority, thank you.

Larry Roberts: Thank you Mr. Bronin. I appreciate the governor and the governor's office participating in this meeting today and we appreciate the concerns that you've raised on this call and we look forward to written comments as well as we go through that.

As I started off the call by saying specific suggestions are always welcome in terms of (unintelligible) the rule should say and how it should be written. And we will be taking a hard look very carefully and with that we will go to the next caller.

Coordinator: Okay thank you, at this time the next caller is from Senator Blumenthal's office. It's (Richard Kale)'s line you may begin.

Richard Blumenthal: Hi this is Richard Blumenthal can you hear me?

Larry Roberts: Yes Senator we can.

Richard Blumenthal: Great, let me just first of all thank you for giving me this opportunity to comment. I have met with representatives of your offices and I appreciate the responsiveness and obviously I can't claim to speak for our whole delegation to be my colleague Senator Murphy.

But we share very deeply the views that I believe are common to our delegation and I know you'll hear from others in the delegation. But I wanted to personally tell you number one, we greatly respect the sovereignty of federally recognized Native American tribes.

The idea of sovereignty is deeply rooted in our law and so are the contributions made by these tribes culturally and economically to the United States. And we support a fair equitable process to provide federal recognition to those tribes that have maintained their tribal organization and identity over the years.

And therefore I personally supported for example the Mohegan Tribal Nation and the Mashantucket Tribe both excellent citizens of our state as tribes and individuals.

The changes in the BIA process and increase in resources to review pending petitions are necessary in so far as they expedite and add funding but the BIA proposed regulation must be substantially and substantively rewritten.

As outlined by just now it will in essence violate federal law very simply it violates both the spirit and letter of federal law and I'm going to provide written specific comments.

But in summary we oppose the use of a state reservation or any state reservation land as evidence or a criterion for the political influence and authority and distinct community criteria.

The long-standing bar against petitioning groups being granted the ability to repeat their petition violates federal law, gives them in effect a second lengthy review process and the prohibition against that second petition should be maintained in accordance with existing law.

And the burden of proof standards should not be weakened or diluted that would undermine the integrity of the process in effect we oppose the lowering of the criteria long-standing standards that have applied to all the tribes that have been granted federal recognition.

A very significant and historic step when it's taken and lowering that bar, diluting and decimating their criteria not only violates federal law but also the respect for the institution of sovereignty in this country.

So along with members of Connecticut's (unintelligible) delegation and state officials I'm strongly in opposition to the current draft and strongly urge the BIA to reject and reform the proposed regulations.

And as I mentioned earlier we're going to be submitting written comments to be joined by our delegation and once again my thanks for letting me participate, thank you.

Larry Roberts: Thank you Senator and thank you for your time today and we will - we hear your concerns and the delegations concerns and we will look forward to those written comments.

Richard Blumenthal: Thank you.

Larry Roberts: Can we go to the next caller please?

Coordinator: Sure, our next caller is Michael Bednarczyk from Senator Chris Murphy's office you have an open line you may begin.

Michael Bednarczyk: Thank you very much, my name is Michael Bednarczyk and I am a legislative aide for Senator Chris Murphy of Connecticut, Senator is not being able to on the call but would like to share the following brief statement to complement our congressional delegations forthcoming written comments.

So here's the statement, the entire Connecticut congressional delegation has been unanimous in expressing our deep concern regarding the proposed rule released in May.

As the rule is currently drafted it contains unique and unfair biases against our state that will result in negative consequences for dozens of Connecticut towns and cities.

This includes a provision that allows previously denied petitioners to repetition and seek and expedited favorable finding as well as the inclusion of a provision that would allow state reservations to be used as a proxy for the most important acknowledgement criteria.

We remain staunchly opposed to these and other provisions. Further, we believe that the substantive criteria of the acknowledgement process should not be changed and that only minor changes to the procedure are needed.

We urge the department to reject the proposed rule in its current form and to consider these and other revisions to the proposed rule. We hope these substantive changes will help lead to a fair and acceptable rule for the Bureau of Indian Affairs, Indian Country and the State of Connecticut.

We will be submitting formal and detailed comments in the coming weeks. That concludes my bosses statement and thank you for allowing us to comment.

Larry Roberts: Okay thank you, thank you for participating today.

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

(Michael Morningstar): Yes I'd like to just a few things on some of these rule changes. I'm the first chairman of (unintelligible) tribe here in Connecticut. And first off I'd like to respond to Richard Blumenthal's office.

They were talking about the existence of us since historical times and the fact that we're on a state reservation they recognize okay and that it shouldn't be a part of the recognition process that we have of reservations.

Now it seems to me that like we're in (unintelligible) and in (unintelligible) there is a tribe charter, you know, they knew and acknowledge us, you know, that we're granted certain lands and all of that and then of course Connecticut granted us a state reservation.

We existed even before the State of Connecticut and the United States. We fought in George Washington's War with the Continental Army and helped the United States independence.

So it's just plain to me that now all of a sudden it was okay to acknowledge this and take our land but now the tribes need to prove that we exist and wait for your acknowledgement in the State of Connecticut.

And another part of what they were talking about in another proposed rule change was I'm saying that I'm understanding the rule for a negative finding and losing the appeal now do these tribes get to resubmit?

As an example (Richard Blumenthal) (Skagit) Tribal Nation was denied and also looking - and also losing the appeal from the BA are they still being allowed to resubmit a petition or is it - or is the original petition reconsidered?

Now and I also want to comment on the State of Connecticut's talking about the splinter groups. Now I represent (Skagit) Indian Tribe and the (Skagit) Tribal Nation was denied by the BIA and in lawsuit appeal and there is splinter groups from (Skagit) Indian Tribe.

Now how can we be penalized because certain members of the tribe decided to splinter off on their own, you know, are we - how are we supposed to stop people have free will to do kind of what they want and tell them that no can't, you know, form a splinter group.

And how are we supposed to enforce that, you know, it just seems to me that it's funny that we have to go through this process and everybody fighting against us because there is actually a lot of land and interest involving powerful people especially in this area in Connecticut (unintelligible) County.

And there is a lot of land and there's a lot of money that's been made off of the land, you know, all these (unintelligible) rights and all that and, you know, the state moves a lot of tax dollars and obviously a lot of very important people

stand to, you know, get back what's rightfully ours to begin with and that's all I have to say with that, thank you.

Larry Roberts: Thank you, next caller please.

Coordinator: At this time our next caller comes from (Ken Star) from Northern Cherokee Nation you have an open line you may begin.

(Ken Star): Yes good day Mr. Assistant Secretary and OCO Lee Fleming. Our comment is this: We recommend that the tribes that have been previously denied should no longer be burdened with third-party interference.

The BIA has rules of criteria that must be satisfied. If there was a failure to be recognized because of a rule that has now been changed their reapplication should be based on the fact that they satisfied the new criteria or not that's why the BIA has these rules.

If a third-party can single handedly determine the outcome of a petition then why would we need a BIA? The fact that a third-party can determine if they can even repetition goes against all legal common sense.

That's like the family of a crime victim determining the guilty party's fate. Why have a judge and jury. Their opinion may make everyone feel better but the family still should be decided by the facts and the case.

If a tribe is allowed to repetition under the guidelines of the BIA then let the BIA decide the outcome according to the facts of the case and not the greed or other bias of a third-party, thank you.

Larry Roberts: Thank you, thank you for your comments. Can we have the next caller please?

Coordinator: Yes our last caller in queue is a private citizen by the name of (Charlie Ethelon) you may begin you have an open line.

(Charlie Ethelon): Good afternoon folks. First of all I'd like to address the barrage that you got from the Connecticut delegation and I apologize that you had to deal with them.

First off Richard Blumenfeld was saying that he thought the Mohegan's were a well deserved, highly recognized tribe. It goes to show that his ignorance about this fact is only superseded by his incompetency as an attorney.

The Mohegan's disbanded during the 1800's for some period, which should have eliminated their ability to become federally recognized, that's number one.

Number two you have Daniel Malloy who was saying there's going be such substantial payoff in this state if those three tribes get their federal recognition.

They aren't specific to what but let me just say that they may worry about the land (crane). I would like to put to them that no tribe in this state has ever or will ever take somebody's land unless it's established throughout original territory.

So they're putting up this big canard to try to disrupt the recognition to those three remaining tribes, which should be federally recognized. I don't have any idea what their outstanding motive is for the opposition that this whole delegation for Connecticut is making toward the BIA.

But I am hoping with all my heart that you people in the BIA will not be intimidated by eight quasi politicians from Connecticut to dictate to the rest of the United States how your agency should be run.

Larry Roberts: Okay thank you Mr. (Ethelon) for your comments and we will be reviewing everyone's comments and considering everyone's comments for the record and so we appreciate you participating today.

(Charlie Ethelon): Thank you.

Larry Roberts: Operator could we go to the next person that wants to make a public comment?

Coordinator: Yes sir, we have one in queue from (Doug Canter)'s line, you have an open line you may begin.

(Doug Canter): Hi, first I'm - my name is (Doug Canter) I am counsel to the National Association of Convenience Stores. I appreciate you having this call to hear from the public on your regulations and we do intend to submit formal comments in response to the regulation that will be more extensive than the comments I can give orally today.

But the proposed rule does raise a number of concerns for us and for the convenient store industry across the country, which includes more than 140,000 stores, 60% of which are single store operators and small businesses.

There has been a long history of public policy problems in the tax arena related to current tribes and in some cases newly recognized tribes when they have set up businesses and sold high tax items typically motor fuels, alcohol

and tobacco products without paying state taxes that other sellers of those products pay.

These legal problems have been exacerbated by tribal sovereignty and stop states from having the normal enforcement tools that they have when dealing with failures or refusals to collect and remit taxes to the state and there are billions of dollars in revenue lost as a - two states as a result of those conflicts.

And these legal problems have gone up to the supreme court multiple times over several decades now. We don't see anything in the proposed rule that would deal with this problem and we think it's incumbent upon the BIA to deal with this problem in a clear eyed way before making any changes to the rule.

And ensuring that there will be enforcement mechanisms and ways to collect taxes with respect to any new tribe that's recognized. Without doing that we do not think that these rules, changes would be responsible or beneficial and they raise a number of issues with respect to who the tribes are that may be recognized, where they may be located.

And again billions of dollars more in state revenues that may be put at risk unless those concerns and the legal problems that have manifest themselves over many years have been dealt with ahead of time. Thank you.

Larry Roberts: Thank you, thank you for participating in the meeting today I really appreciate your comments. Caller could we go to the next person that wants to make comments?

Operator: Sure, the next caller is Thomas Wright from Regional Plan Association, you have an open line.

Thomas Wright: Hi thank you very much for the opportunity to comment my name's Tom Wright I'm the Executive Director of Regional Plan Association, we're the nation's oldest independent regional planning group.

Since 1922 we've been preparing and advocating long-range plans for the New York, New Jersey, Connecticut metropolitan region. We're involved in the 31 counties and 606 municipalities around in New York City and have worked with dozens of municipalities over the past 10 years planning for land use economic development and environmental preservation in those communities.

We have significant concerns about the proposed rule change from this planning and land use perspective. Specifically while the goal of the rule change to increase the transparency, timeliness, efficiency, flexibility and integrity of the process it will potentially have very significant effects on land use environmental preservation and economic activity in the affected communities.

And we would strongly urge that before making a change of this magnitude the BIA should be having a more meaningful process of local input including public hearings in the affected states and communities to provide more local input in the process, which is going to be changing land use so significantly, thank you very much.

Larry Roberts: Thank you, thanks for participating and Operator we will go to the next commentator.

Coordinator: At this time there are no more questions in queue.

Larry Roberts: Okay can you just repeat the directions in terms of how they can get in queue if they would like to make comments?

Coordinator: Sure, if you would like to make a comment or ask a question from the phone lines please press star 1 and record your name. And let's pause we do have some more questions coming in queue. Our first question comes from (Linda Rae Koon) you have an open line you may begin.

(Linda Rae Koon): Hello this is (Linda) can you hear me I think I had you guys on mute?

Larry Roberts: Yes we can hear you.

(Linda Rae Koon): Hi good morning Mr. Roberts, Mr. Simpson how are you today?

Larry Roberts: Good.

(Linda Rae Koon): Good, this is (Linda Rae Koon) representing the Confederated Tribes of Lower Rogue from Oregon and I'm looking for clarification on a proposed rule page 30773.

Lee discussed who cannot be acknowledged to the BIA and I'm looking for clarification on terminating relationship. And do you consider for Oregon or how you look at it for tribes across the nation do you look at public law 588 or do you look at public law 280 when you're considering termination?

Larry Roberts: Well we would look at all federal laws that would be applicable. I don't think that public law 280 generally speaks to termination. So I'm not - I...

((Crosstalk))

(Linda Rae Koon): I'm just curious between the two because public law 588 is usually what's used to refer to the Western Oregon tribes, which is the status that this tribal community is in.

Larry Roberts: Yes and so in terms of - for purposes of today's call I want to emphasize this with all of the folks that have taken time to participate today, which we greatly appreciate the dialogue is for you to provide comments to us on the proposed rule.

We're not in a position today to talk about either how the rule would impact particular parties or to provide greater detail into how it may apply to a particular state or not.

So what we're really looking for as part of this dialogue and this input is input of specific changes that folks would suggest that be made to the proposed rule so that - so we can consider those and take those back as a team and look at that.

And that was of which if we have - we can certainly take - we will consider in taking into account general concerns and general considerations but our team here will then in addressing those concerns and considerations will come up with their own language in terms of how to address those.

And so we really need specifics from all of you either by phone, which I understand it's difficult or in these in person meetings it's much easier to provide written comments and so we would encourage everyone to also submit written comments.

So...

((Crosstalk))

(Linda Rae Koon): Yes and that's great I appreciate it and we will just for folks here in Oregon it's hard to know what do you guys mean by entity or terminating or what public law are you following so that can be addressed because, you know, on that page we have to figure out where we fit into and how can the definition because people have talked about definitions and splinter groups and entities.

And that it is vague and it is gray and that is why we struggle a lot in Oregon I know from talking to people yesterday hearing it on the line that is this rule because the area is gray.

So and it would be great if we can find a way to do recommendations that help meet the guidelines for a lot of other states to assist in this gray area. So it's helpful to know what public law you guys are thinking of when you're looking at entities of terminated tribes.

Larry Roberts: So we would be looking at any laws that are available. I don't know if we've issued decisions in the past on groups that have petitions for acknowledgement from Oregon that have been - that we have determined were terminated by federal law.

But all of our decisions are on our Web site and under that criteria you can take a look. And again I would encourage - this is your opportunity and the public's opportunity to say, you know, this law should or should not be considered a termination statute.

And then you'd provide (unintelligible) to us to see how you think it should be clarified. So I appreciate your comments and we will go to the next caller please.

(Linda Rae Koon): Yes.

Coordinator: Thank you at this time (Ken Star) from Northern Cherokee Nation your line is open.

(Ken Star): Okay my second comment is pertaining to the substantial interruption rule. We recommend that the substantial interruption rule have no time set. Many tribes are now extinct, their language and culture are gone and many of us were on the hairy edge of that for 30 or 40 or 50 years or more and we somehow survived and come back in force again.

If that interruption in our history is more than the 20 years being proposed let it be so. We all had our old history and now we have our new history. The time in between shouldn't matter that time is gone now.

We praise the rule allowing oral history of course. Many people do not keep written history or in some cases the language was not a written language but they're still here.

Whatever time an interruption lasted was not decided by us. Forget 20 years and simply accept that it is what it is, thank you.

Larry Roberts: Thank you, thank you for your comments and we will go onto the commentator please.

Coordinator: Sure, the next line that will be open is (Matthew Gallagher) President of CCM you may begin.

(Matthew Gallagher): Yes thank you today for allowing us to speak. My name is (Matt Gallagher) I'm the Town Manager of the Town of (South Winter), current President of CCM, which is Connecticut Conference of Municipalities. As you know in Connecticut we have 169 local government ranging from various towns and cities in which we represent 162 of them.

I think what is happening here today is that here's already been about 35 or 40 communities in Connecticut that are quite concerned about the changes and how it will affect and impact the environment, the planning, zoning and economic structure of their towns.

Connecticut would be particularly impacted perhaps more than any other state and indeed Pacific divisions in a proposed rule appear not just to impact Connecticut but target the state and especially the state reservation provision.

We are quite concerned and we do feel that in order for the federal government to be more transparent in dealing with this issue that we would request that a public hearing, various public hearings would be held throughout the State of Connecticut so that your agency can hear first hand of the issues and the problems that will be affecting local government.

As you know when decisions are made at the federal level like this it's the local government that bears the burden of the economic, environmental and the planning issues as they're trying to deal with their residents everyday.

We know this issue very clearly we've been dealing with it for a long time. I think you've heard from other representatives of the State of Connecticut.

They were quite concerned about this and then we would hope that in order for the federal government to be more transparent and to come to a better conclusion of its impact on Connecticut that you would hold these various public hearings throughout the State of Connecticut.

So that you can hear firsthand the impacts and the concerns of the citizens of the State of Connecticut as well as our elected officials have on this particular issue and these particular changes.

And therefore as president representing 162 municipalities I would hope that you would make yourself available to come to Connecticut, hold those public hearings, look at this issue and see what's in the best interest of the community and the people of the State of Connecticut as well as the residents of United States of America and I appreciate you allowing me to speak today thank you.

Larry Roberts: Thank you, thank you for your comments we will consider your request I just want to emphasize that one of the things that is nice about this call is that it is open to the public and it's easy for everyone to participate in the call.

It's being transcribed just like all of our public meetings and all of our tribal consultations and it will be on the Internet for everyone to read and so but we will consider your request and I appreciate you participating in the call today. Operator if we could move to the next person that would like to make a comment please.

Coordinator: Our next call is from - caller is (Harry Wallace) you may begin you have an open line.

(Harry Wallace): Yes thank you for allowing me this opportunity to speak today. My name is (Harry Wallace) I'm elected Chief of the (Akiachak) Nation in New York on Long Island.

And our nation was - has dealt with a series of bombardments of law suits that by billionaire's and municipalities that have attempted to attack our sovereignty.

Our sovereignty has remained intact because the judge - the courts have acknowledged that we have a common law relationship that under the Montoya criteria for recognition that we have always maintained a cohesive government, we maintain our relationship with our land and we maintain the relationship with our people.

Unfortunately we are continually attacked by outsiders in an attempt to challenge our sovereignty on a regular routine basis and its cost us significant amounts of money and significant amounts of time lost in dealing with other issues that are relevant and our important to our nation.

The problem that we have is that these regulations that you propose do not take into account the myriad of law suites that we've had to endure in defending ourselves because the regulations do not acknowledge.

Although the statute that lists all those that are federally recognized does acknowledge that lawsuits that fulfill the Montoya criteria are one of the ways in the past in which nations were recognized but this legislation does not consider that.

So we continually are forced to defend ourselves in lawsuit after lawsuit on the basis of the fact that we do not - we are not simply not on your list. And

what I feel is that in the courts where the burden of proof is higher than what your rules and regulations have proposed.

Why if the burden of proof is by a preponderance of the evidence or by clear and convincing evidence both of which we have satisfied in a federal district court, in a state court where we have met those burdens with adversaries in an adversarial proceeding and not in a proceeding of administrative review.

So my proposal is that these regulations take into account that if tribes have gone through this process and have common law recognition whether it be from federal or state courts that they should not have to go to submit through this lengthy process once again because they've already done it once why should they have to continue doing it again and again.

And endure the cost and the lengthy burden and time and expense and delay of proceeding again through an administrative process when they've dealt with it in a judicial manner. And so I thank you again for an opportunity to speak and I hope to be submitting written comments regarding this in the past, in the future, in the near future. Thank you for this opportunity.

Larry Roberts: Thank you, thank you very much for participating in today's call. So Operator we will go to the next caller.

Coordinator: Sure, and that caller is (Michael Morningstar) you have an open line you may begin.

(Michael Morningstar): Hello, I'm (Michael Morningstar) (Skagit) Indian Tribe. I know that the last time I spoke you gave an awful lot to digest but I'm still searching for our clarification on a certain rule as far as the understanding the rule for a negative finding through BIA for acknowledgement.

And then that tribe then losing the appeal again, I'm trying to figure out whether or not they get to go ahead be denied and lose the appeal and then now being allowed to either resubmit the petition or have their petition reconsidered.

I'm just trying to find a clarification on that and also one other point I'd like to make. I'd like to grieve with the gentlemen from North Carolina as far as the 20 year interruption, you know, and you community and all of that.

The states, you know, at least our state I can't speak for everyone of course but the State of Connecticut here, you know, they, you know, they purposely, you know, the states are purposely trying to interrupt the community and, you know, political influence and everything that we had.

You know, so they were doing this on purpose so I believe also that that 20-year rule should just be, you know, eliminated, you know, totally. It's just because, you know, states were purposely, you know, trying not to, you know, just in, you know, trying to interrupt us in, you know, basically, you know, continue to make us an instinct people if you will.

And with that I'm done so if you could please clarify at least that first part of that rule please that would be great, thank you.

Larry Roberts: Sure we'll take a shot at that Mr. (Morningstar) thank you for calling in today and so I'm going to ask Katie Klass from the Solicitor's office here to provide a brief summary of the proposed rule on this particular issue.

(Michael Morningstar): Okay thank you.

Katie Klass: I think your question was whether when a petitioner comes through and repetitions after being originally denied acknowledgement whether they need to resubmit material.

And under the proposed rule they do not need to resubmit materials but they are welcome to supplement their petition if they choose to.

(Michael Morningstar): Then let me ask because maybe I'm just not getting it or what I'm plugged about is someone was - if a tribe submits their petition if the denied (unintelligible) recognition then goes through the appeals process, loses that are they now being allowed to be - reconsider or resubmit.

Katie Klass: Well under the proposed rule if they go through some sort of, you know, litigation it sounds like there would be a third-party if there was litigation so that third-party would first need to consent to the repetition and then, you know, and then they would go through that process.

(Michael Morningstar): Okay well I just believe that if you go through your say acknowledgement and you've already been denied okay and then you lose the appeal it just seems like, you know, it kind of got blown out of the water, you know, and told not to, you know, in certain instances that they couldn't reform or regroup, reorganize.

You know, and it seems like that - I thought that was like (unintelligible) determination stuff and now it's being pulled back and they're allowed to go through the whole process again?

Larry Roberts: The proposed rule allows for repositioning in limited circumstances as Katie Klass described and so there's a process. It's not a process that would allow everyone to repetition if there were third-parties they would have to repetition

but even if there weren't third-parties before a group could repetition they would have to show a couple of things before the office of hearings and appeal judge to decide whether they could start the process...

((Crosstalk))

(Michael Morningstar): Now is the original - do they have to petition all over again or is the original petition that is already in the BIA is that going to be reconsidered or do they have to start the whole process all over again?

Larry Roberts: So it's (unintelligible) if it were - if a group were allowed to repetition they could supplement their original petition is how the proposed rule suggests addressing that situation.

(Michael Morningstar): Okay, all right thank you very much I got it now.

Larry Roberts: Thank you, thank you and Operator we will go to the next caller.

Coordinator: Sure the next caller the recorded name was (Sheila) from (unintelligible) you have an open line you may begin.

Woman: Okay unfortunately my daughter had to leave to pick up my granddaughter so this is her mom speaking. We just wanted to make the comment that we are glad to see that BIA is now trying to fix and correct something that was wrong right from the get go.

And that was on the East Coast the process was never fair to the tribes on the East Coast and anyone who knows their history knows that's true. And we just wanted to add our comment to that that we're pleased that they're trying to

make it so that the tribes who were not given the fair opportunity to meet these, which I really are unfair anyways that we have to go through this.

But if the fact of the matter is they are trying to correct a wrong and we say applaud to BIA for that.

Larry Roberts: Okay thank you for your comments, thanks for participating today.

Woman: You're welcome.

Coordinator: Our next call is from (Jeff Hazus) your line is now open.

(Jeff Hazus): Good afternoon my name is (Jeff Hazus) I'm Chairman of the Fort Sill Apache Tribe. Our name is Fort Sill Apache but we were Chiricahua of Warm Springs Apaches recognized by the court of claims to be the successors to those Apaches living between the Rio Grand and San Pedro Rivers in Southern New Mexico and Arizona.

On behalf of Fort Sill I want to thank you for this consultation and the opportunity to express the tribes concerns regarding the proposed Part 83 regulations.

I applaud the departments efforts to repair what the department recognizes is a broken and unpredictable federal acknowledgement process and present the following comments.

First I have some general comments, we request the department clarify and define the rule that Part 83 is a formal codified continuation of the department's federal acknowledgement process and to the existing on or before 1978 when the federal acknowledgement regulations were adopted.

This is to ensure that all tribes regardless of the date of the federal acknowledgement are treated equally, the rights of tribes dependence on establishing a government-to-government relationship with United States and through the federal acknowledgement process.

Second, we recommend that the department incorporate into the (unintelligible) a formal consultation process similar to the process instituted by the department in Part 292.

As presently directed the proposed Part 83 regulation contemplates (unintelligible) a meaningful consultation with federal recognized tribes that may be affected by the departments decision on a petition.

Also the proposed regulation should recognize as in many cases a tribe's presence extends beyond the location of its present headquarters. Accordingly Fort Sill recommends that the department provide notice to federally recognized tribes who have lands held in trust in the same state as the petitioner.

Being in consultation to those tribes' headquarters are within arbitrary distance from the petitioners those tribes in an inferior status and secretary to state - secondary to states and other entities would face no such limits.

Now I have some comments on specific proposed regulations. First is 83.4B it concerns the circumstances under which a group previously denied acknowledgement under Part 83 may repetition for federal acknowledgement.

Fort Sill commends that the department include within this session a process for consultation with nearby federally recognized tribes before a decision of the office of hearings and appeals is made.

And it's just a personal comment that it's - wanted a more transparent process than you're re-hearing cases that may have occurred on what is eventually not the transparent process and those who were not notified previously should have the opportunity to be involved.

Criteria 8311B and C require that the petitioner demonstrate community and political authority from at least 1934 to the present. First setting a starting year for demonstration of community and political authority at 1934 via passage of the Indian Reorganization Act may very well reduce the burden of the (unintelligible).

But the designation of 1934 is the date from which the petitioner must prove community and political authority as an arbitrary designation is not on tribal history with the unique circumstances surrounding particular tribes within state on a shift in U.S. policy that has little to do with the federal acknowledgement.

Also recognize that the (unintelligible) reconsider 1934 as the starting year of the criteria B and C and consider alternatives options that would take into consideration unique history in circumstances of the petitioning groups.

On criteria 83.10E, which requires at least 80% of (unintelligible) individuals who can establish dissent from the historic tribe we have three primary concerns.

First, historical in the proposed regulations means 1900 or earlier just as with the starting date for demonstration of cultural and political existence this state is arbitrary.

It fails to take into consideration the unique history and circumstances of tribal and petitioning groups throughout the nation. Fort Sill objects to the designation of the ending date for purposes of establishing quote historical unquote times and instead recommends that the department adopt a more flexible standard that takes into account the particular petitioning groups history.

Second, for (unintelligible) the designation of the executive standard for purposes of dissent for a tribe that existed in historical times. We recommend that the department further clarify in this section the tribe from which the petitioner claims dissent as a (unintelligible) counsel part.

Third, Fort Sill recommends that the department include a proposed regulation 83.10E2I a limitation that any federal rule used to establish the connection under criterion 8310. - 83.10E not be used by any existing federally recognized tribe for the same purpose or for purposes of determining membership in the tribe.

On regulation 83.22 they contemplate the 90-day comment period following receipt of distribution of a documented petition. Fort Sill recommends that the comment period be expanded to 120 days particularly since the letter of intent process was generally put - potentially affected tribes on notice of a petition well in advance of comment periods is now being eliminated.

But those regulations 83.35 and 83.36 contemplate a 90-day comment period then up to a 60-day extension. The proposed regulation would cut the current comment timeframe in half. Fort Sill recommends that the department adopt 120-day comment period with a possible of a 60-day extension.

And finally proposed regulation 83.44 designates the assistant secretary's decision as final for the department eliminating the current provisions review with the Interior Board of Indian Appeals. Fort Sill objects to the elimination of the IBIA appeals process on the departments stated grounds that the IBIA carries a heavy case load resulting in delays and issuing decisions.

Elimination of the IBIA process would effectively preclude current federally recognized tribes from participating in the appeals process. The IBIA's case load problem would be more appropriately resolved by increasing staffing levels within the IBIA where there's an eliminating review by the IBIA a body with particular experience with respect to federal tribal government-to-government relations.

Those are my comments, we will be submitting more detailed comments before the comment period ends, thank you.

Larry Roberts: Thank you Chairman, thank you for the detailed comments those are all extremely helpful and I really appreciate the time that you and your staff have taken to compile those, we look forward to your written comments.

I will on a couple of points you raised the question of we should be looking at a tribes presence in the state as opposed to an arbitrary or arrays of 25 miles or something like that.

And so I just want to clarify for everyone that the proposal proposes notifying every tribe in the same state as the petitioner as well as those tribes that are within a 25 mile radius I believe of the petitioning group.

So it would include those federally recognized tribes that are across state boundaries for example. And the other thing I just wanted to make everyone

aware of is we're not proposing changing the current notice that we provide already under the existing rules to federally recognize tribes or other petitioners that appear to have an interest in the petition.

We already notify those tribes regardless of where they're located in the country and we under the proposal we would continue to do so. So but I appreciate your comments on that and I appreciate your comments on all of the aspects of the rule and with that we will go to the next caller.

Coordinator: Sure, our next question comes from (Ken Star) from Northern Cherokee Nation again you may begin.

(Ken Star): Yes my third and final comment is on our community and we'd like to see Section 3, paragraph B of the community amended in a number of ways. And we have to ask ourself what is a community, how is a distinct community determined, is it a town, is it a geographical area?

Some states in the Midwest and the Southeast of course pass laws making communities difficult or in the case of Missouri for one illegal. We recommend that in states where the legislature passed anti-Indian laws variances in the criteria for community and in political influence be granted or consideration given for those very unusual circumstances, thank you.

Larry Roberts: Thank you, thank you for that comment and Operator we will go to the next caller.

Coordinator: At this time there are no more callers in queue.

Larry Roberts: Okay well can you just repeat the instructions in case somebody does want to make a comment?

Coordinator: Sure if you would like to make a comment or ask a question from the phone lines please press star 1 and record your name. Again if you would like to make a comment or ask a question please press star 1 and record your name, thank you.

Larry Roberts: Okay well if we have no more folks that want to make a comment today I really appreciate you all participating in this public meeting. I want to emphasize that everything, all of the comments that you've made today will be transcribed and put on our Web site.

And I want to emphasize that the comment period is set to close on September 30 of this year so please send your questions or your comments I should say on the proposed rule to consultation@bia.gov.

And with that Operator are there any additional folks that would like to make a comment?

Coordinator: You did have two repeat callers pop in queue again. The first one was (Jeff Hazus).

Larry Roberts: Okay great thank you.

Coordinator: You have an open line.

(Jeff Hazus): Okay, Chairman Hazus the Fort Sill Apache Tribe, two comments in response to your comments. In terms of location I want to ensure that determination of a charged location in the state is whether or not it has trust land within that particular state.

Larry Roberts: Okay, you're right that is not clear on our proposed rule and we will take a look at that.

(Jeff Hazus): And the second one is that there has been and my understanding is an active application that would be relevant to us and we have not received notification. So...

Larry Roberts: Okay, do you know which one that is sir?

(Jeff Hazus): ...well I can (contact you) outside of the call.

Larry Roberts: So is that - that would be fine Chairman and what I would suggest is that you contact also Director Lee Fleming and his contact information is on the OFA Web site for federal acknowledgement and you can feel free to contact him.

He's here with us today so he's been on this call and so he'll be looking forward to either a call or an email from you Chairman.

(Jeff Hazus): Thank you, we'll be in touch.

Larry Roberts: Okay, are there any other - Operator are there any other folks that would like to make comment today?

Coordinator: Yes the last one is queue is from (Michael Morningstar) you may begin.

(Michael Morningstar): Yes hi, I'd like to thank everyone for their patience but I do have some concerns on stuff that sent from the Senator's office here in the State of Connecticut from Senator Murphy's office and also from Senators Blumenthal's office as far as them being against the fact that a recommended tribe with a state reservation should be granted for recognition.

Now I'd like to say that, you know, the state in our case with the (Skagit) Tribe in Connecticut the way it seems to read to me and I am a paralegal but the way it seems to read is that when there are no longer any (Skagit) Indians residing on the reservation it shoots back to the state.

Now I have been in conversation with our Connecticut (unintelligible) coordinator and of course my displeasure with that (unintelligible) statute I would think and I explained to him I said so I said basically like if my parents own land and they die it goes back to the state, you know, it just seems like that should not be obviously the case.

So what I'm saying is that the State of Connecticut obviously has very vested viewpoint on this and stands (unintelligible), you know, and, you know, on our reservation particularly, you know, in the 40s and 50s and stuff what happened was if an elder died the state would come in and bulldoze or burn the house on the reservation so that nobody else could move in there.

And of course on a reservation you can't get a mortgage to buy a house, you know, to build a house because the bank can't foreclose. So unless you have cash and build a house and, you know, we're a poor people and, you know, the towns around here make sure that we stay that way so we can't fight them.

But, you know, it just seems to me that that was a purposeful way of destroying the community and people and so therefore, you know, we're on a state reservation and they're doing everything in their power to ensure that we now recognize that the land doesn't still stay with us who, you know, we were here before the town existed, before the State of Connecticut existed or the (County) of Connecticut existed.

And they're still trying to throw us off our land and they're still doing the same thing they've been doing for 500 years and, you know, all we want is what's right and what's rightfully ours, you know, and, you know, just treat us like human beings instead of some savages, you know, lesser men.

You know, just because the land was here when everything - and we were kind, you know, don't think that just because we were kind and gentle that you could just take everything from us and that we (unintelligible) with it.

You know, we helped the United States, we helped the State of Connecticut and this is how we get repaid and this goes for all of the tribes seeking recognition and with that, that's all I have to say.

Larry Roberts: Okay thank you for your comments I appreciate that. Operator, are there any additional individuals that would like to make a comment?

Coordinator: No the queue is clear.

Larry Roberts: Okay can you just provide instructions one last time in case anybody wants to make a comment?

Coordinator: If you'd like to make a comment or ask a question from the phone lines please press star 1 and record your name. We did get one that just came in from (Joshua's Rolley)'s line, you have an open line.

Larry Roberts: Okay, hello.

(Joshua Rolley): Can you guys hear me?

Larry Roberts: Yes we can hear you.

(Joshua Rolley): I just want a little bit of clarification. So when the notification is to come into a tribal the petition that it has I guess relevance to them, how does that come, that notification?

Larry Roberts: I'm going to ask Mr. Fleming to address the question of how a federally recognized tribal petitioner receives notice of another petitioner that's come in that may be relevant to that tribe or other petitioner.

Lee Fleming: Generally when a petitioner submits a documented petition the department will take a look at what state that group is located and under the proposed rule we are to notify the petitioner and then identify any other federally recognized tribes for other petitioners that may be interested or affected by an acknowledgement decision.

And they are provided a courtesy copy of the letter that acknowledges the receipt of the petition from the petitioning group. So...

Larry Roberts: (Unintelligible) if a petitioner were to identify themselves as some group of the Oneida Tribe the office of federal acknowledgement presumably would notify the federally recognized Oneida Tribes as well as any other petitioner that claims to have some dissent from an Oneida Nation.

Lee Fleming: That's correct and also we have on our Web site a list of petitioners by state. So if a group is assigned a petition number anyone could go to the Web site, check the list of petitioners by state and then under each state the groups are listed by their petition numbers where we have the formal name of the group, the contact information and the address of the petitioning group.

So that is useful information for any entity out there that may want to monitor to see what groups are being added to the process.

(Joshua Rolley): And so then if we're notified are we then able to make comments? The reason I ask is because there are several Choctaw groups out there that we do feel deserve to be federally recognized but then there are those who are completely fake and so we're kind of worried about the new process if those who are just off the wall fake would be allowed to receive recognition.

Larry Roberts: So we would provide notice from under the existing rules and or the proposed rules to not only all tribes that would indicate an interest in being involved in the process but we would - anyone else that wants to be notified and involved in the process we would provide that information to them.

Lee Fleming: Right anybody can write in and request to be - participate in the process. And when an entity contacts us we add them to the contact sheet so that whenever a technical assistance letter extends the entity that had written in and had requested to be kept informed will be provided courtesy copies of that type of communication as well as any other types of general communication.

(Joshua Rolley): Thank you and I have one last comment, I was just about to say that I do not believe that states or any other third-party should have any influence on a tribe being federally recognized, that's all I got to say.

Larry Roberts: Okay thank you for your comments, Operator are there any other individuals that would like to make a comment?

Coordinator: No at this time the queue is clear.

Larry Roberts: Okay if there is anybody that wants to make a comment please indicate on your phone as the Operator has directed and we'll just give it a minute or two here in case there is anyone else that would like to make a final comment.

Coordinator: Excuse me there is a comment from (Lance Guns) line.

Larry Roberts: Okay, thank you.

Coordinator: You have an open line you may begin.

(Lance Guns): Yes good afternoon this is (Lance Guns) I thank you for allowing me to speak for a few minutes. I have actually a concern, is one of our concerns about this third-party participation.

When we were going through our federal recognition process and we got right to the very end a third-party came in out of nowhere basically a bogus third-party, actually two of them and delayed our federal recognition.

We had to go through the IBIA process and at the end of the day, you know, it was showing that they were bogus. So I am just concerned that there is no mechanism in there, in this for bogus third-party people coming out of the woodwork, you know, just to interrupt the flow of a petitioners petition.

That is a concern of ours (unintelligible) we will be submitting some comments but how is that going to be addressed if at all?

Larry Roberts: So at this point what we're doing is we will - when we receive all the comments at the end of the comments period we will have a team that will review all of those comments and all comments will be responded to either in the preamble or even the final rule.

The substantive comments obviously that's something like what you've just raised on the phone here. So that's probably will be responded to as part of the process.

(Lance Guns): Okay, all right well thank you for allowing me just to ask that question.

Larry Roberts: Yes, thank you, thank you for participating today. All right Operator - go ahead.

Coordinator: Yes I'm sorry our next question and final question in queue comes from (Michael Morningstar)'s line again, you may begin.

(Michael Morningstar): Yes hello and again thank you for your patients to everyone that's listening to what I had to say and I'd just like to thank everyone for the clarification on certain issues that we had.

And I just want to comment on all the proposed rule changes that, you know, as far as I'm seeing it, it seems that my tribe, (Skagit) Indian Tribe (unintelligible) Connecticut under the leadership of (Janette Storesinger), Chief Swooping Eagle should not have any problem receiving federal recognition at all.

I'm just like I said I'm just looking at all the proposed rules changes and the rules and the way it stands it seems like there should be no problem that there's only one clear choice to make is granting federal recognition to the (Skagit) Indian Tribe under the leadership of (Janette Storesinger), Chief Swooping Eagle, thank you.

Larry Roberts: Okay, thank you. Operator do we have any additional individuals that would like to make a comment?

Coordinator: No there are no more questions in queue.

Larry Roberts: Okay, well we appreciate everyone participating today. I will - it's about 3:15, this is the final opportunity for comments here. If we don't have any additional comments we will be closing this public meeting but that doesn't mean you can't submit written comments, which are extremely helpful to us.

And those comments would need to be received by the department by September 30 and so if you have any additional comments please submit those in writing and if you'd like to make any final comment for purposes of this meeting today please indicate that on your phone.

Okay, well with that I really appreciate everyone's participation on the call today and we look forward to receiving your written comments as well, thank you very much.

Coordinator: Thank you this concludes today's call.

END