

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Merrimack River...	South corporate limit.....	254
	Just upstream west road bridge.	260
	West corporate limit.....	266

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: July 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.
[FR Doc. 78-24235 Filed 9-1-78; 8:45 am]

[4310-02]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

PART 54—PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

Final Rule

August 24, 1978.

AGENCY: Bureau of Indian Affairs, Interior Department.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs publishes final regulations which provide procedures for acknowledging that certain American Indian tribes exist. Various Indian groups throughout the United States have requested that the Secretary of the Interior officially acknowledge them as Indian tribes. Previously, the limited number of such requests permitted an acknowledgment of the group's status on a case-by-case basis at the discretion of the Secretary. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable the Department to take a uniform approach in their evaluation.

EFFECTIVE DATE: October 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. John A. Shapard, Jr., Division of Tribal Government Services, Branch of Tribal Relations, telephone, 202-343-4045, principal author, Mr. John A. Shapard, Jr.

SUPPLEMENTARY INFORMATION: Various Indian groups throughout the United States have requested that the Secretary of the Interior officially acknowledge them as Indian tribes. Heretofore, the limited number of such requests permitted an acknowledgment of the group's status on a case-by-case basis at the discretion of the Secretary. The recent increase in the number of such requests before the Department necessitates the development of procedures to enable the Department to take a uniform approach in their evaluation.

Proposed regulations were published on June 16, 1977. Revised proposed regulations were published on June 1, 1978 (43 FR 23743). The period for public comment closed on July 3. Throughout this period, from June 16, 1977, the amount of consultation and discussion with tribes and other groups on Federal acknowledgment has been unprecedented. Since June 16, 1977, our records show a total of 400 meetings, discussions, and conversations about Federal acknowledgment with other Federal agencies, State government officials, tribal representatives, petitioners, congressional staff members, and legal representatives of petitioning groups; 60 written comments on the initial proposed regulations of June 16, 1977; a national conference on Federal acknowledgment attended by approximately 350 representatives of Indian tribes and organizations; and 34 comments on the revised proposed regulations, published on June 1, 1978.

This is a project in which the Congress, the administration, the national Indian organizations, and many tribal groups are cooperating to find an equitable solution to a longstanding and very difficult problem.

Most of the changes made in the final regulations from the revised proposed regulations were for clarification. The one concept which has been more strongly emphasized in these final regulations is found in §§ 54.8 and 54.9. In these two sections, provision is made for a wider and more thorough notice of receipt of petition. Provision is also made for parties, other than the petitioner, to present evidence supporting or challenging the evidence presented in the petition or in the proposed findings.

This inclusion is in response to numerous requests from the public in the comments on both the initial and the revised regulations. Further, it is a continuation of the policy of open and candid communication with all parties concerned with the Federal acknowl-

edgment project. We, therefore, have included measures which will keep all known concerned parties fully informed.

Persons interested in obtaining information about a petition or comments made in support of or in opposition to a petition should so request in writing. These records will be available on the same basis as other records within the Bureau.

A number of other comments were submitted by the public on the revised proposed regulations which bear a specific response. It must be emphasized that the Department is not attempting to resolve administratively problems which were not resolved by Congress when the Indian Reorganization Act was passed.

There will be groups which will not meet the standards required by these regulations. Failure to be acknowledged pursuant to these regulations does not deny that the group is Indian. It means these groups do not have the characteristics necessary for the Secretary to acknowledge them as existing as an Indian tribe and entitled to rights and services as such.

Groups in Alaska are entitled to petition on the same basis as groups in the lower 48 States. These regulations, however, are not intended to apply to groups, villages, or associations which are eligible to organize under the Alaskan Amendment of the Indian Reorganization Act (25 U.S.C. 473a) or which did not exist prior to 1936.

It must again be emphasized that terminated groups, bands, or tribes are not entitled to acknowledgment under these regulations. Even though many of these groups would be able to easily meet the criteria, the Department cannot administratively reverse legislation enacted by Congress.

It should also be noted that recognition by State government officials or legislatures is not conclusive evidence that the group meets the criteria set forth herein.

The Department received a number of comments concerning § 54.9(f). Some felt that the Assistant Secretary should be required to notify the petitioner of his decision within a specified time after receipt of the petition. Because of the large backlog of petitions presently on file, the size of the staff and other research considerations, the time requirement was considered impractical. We strongly feel the fairest and most practical approach is the one taken in the regulations.

The Department must be assured of the tribal character of the petitioner before the group is acknowledged. Although petitioners must be American Indians, groups of descendants will not be acknowledged solely on a racial basis. Maintenance of tribal rela-

tions—a political relationship—is indispensable.

Finally, the definitions are an integral part of the regulations and should be carefully read as such.

This is a new part 54 to subchapter G of chapter I of title 25 of the Code of Federal Regulations to read as follows:

Sec.

54.1 Definitions.

54.2 Purpose.

54.3 Scope.

54.4 Who may file.

54.5 Where to file.

54.6 Duties of the Department.

54.7 Form and content of petition.

54.8 Notice of receipt of petition.

54.9 Processing the petition.

54.10 Reconsideration and final action.

54.11 Implementation of decisions.

AUTHORITY: 5 U.S.C. 301; and sections 463 and 465 of the revised statutes 25 U.S.C. 2 and 9; and 230 DM 1 and 2.

§ 54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, or his authorized representative.

(c) "Department" means the Department of the Interior.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Area Office" means the Bureau of Indian Affairs Area Office.

(f) "Indian tribe," also referred to herein as "tribe," means any Indian group within the continental United States that the Secretary of Interior acknowledges to be an Indian tribe.

(g) "Indian group" or "group" means any Indian aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.

(h) "Petitioner" means any entity which has submitted a petition to the Secretary requesting acknowledgment that it is an Indian tribe.

(i) "Autonomous" means having a separate tribal council, internal process, or other organizational mechanism which the tribe has used as its own means of making tribal decisions independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the Indian culture and social organization of that tribe.

(j) "Member of an Indian group" means an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group.

(k) "Member of an Indian tribe" means an individual who meets the membership requirements of the tribe as set forth in its governing document or is recognized collectively by those persons comprising the tribal govern-

ing body, and has continuously maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls are kept.

(l) "Historically," "historical" or "history" means dating back to the earliest documented contact between the aboriginal tribe from which the petitioners descended and citizens or officials of the United States, colonial or territorial governments, or if relevant, citizens and officials of foreign governments from which the United States acquired territory.

(m) "continuously" means extending from generation to generation throughout the tribe's history essentially without interruption.

(n) "Indigenous" means native to the continental United States in that at least part of the tribe's aboriginal range extended into what is now the continental United States.

(o) "Community" or "specific area" means any people living within such a reasonable proximity as to allow group interaction and a maintenance of tribal relations.

(p) "Other party" means any person or organization, other than the petitioner who submits comments or evidence in support of or in opposition to a petition.

§ 54.2 Purpose.

The purpose of this part is to establish a departmental procedure and policy for acknowledging that certain American Indian tribes exist. Such acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes. Such acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgment shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected.

§ 54.3 Scope.

(a) This part is intended to cover only those American Indian groups indigenous to the continental United States which are ethnically and culturally identifiable, but which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups which can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.

(b) This part does not apply to Indian tribes, organized bands, pueblos or communities which are already ac-

knowledged as such and are receiving services from the Bureau of Indian Affairs.

(c) This part is not intended to apply to associations, organizations, corporations or groups of any character, formed in recent times; provided that a group which meets the criteria in § 54.7(a)-(g) has recently incorporated or otherwise formalized its existing autonomous process will have no bearing on the Assistant Secretary's final decision.

(d) Nor is this part intended to apply to splinter groups, political factions, communities or groups of any character which separate from the main body of a tribe currently acknowledged as being an Indian tribe by the Department, unless it can be clearly established that the group has functioned throughout history until the present as an autonomous Indian tribal entity.

(e) Further, this part does not apply to groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship.

§ 54.4 Who may file.

Any Indian group in the continental United States which believes it should be acknowledged as an Indian tribe, and can satisfy the criteria in section 54.7, may submit a petition requesting that the Secretary acknowledge the group's existence as an Indian tribe.

§ 54.5 Where to file.

A petition requesting the acknowledgment that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary—Indian Affairs, Department of the Interior, 18th and "C" Streets NW., Washington, D.C. 20245. Attention: Federal acknowledgment project.

§ 54.6 Duties of the Department.

(a) The Department shall assume the responsibility to contact, within a twelve-month period following the enactment of these regulations, all Indian groups known to the Department in the continental United States whose existence has not been previously acknowledged by the Department. Included specifically shall be those listed in chapter 11 of the American Indian Policy Review Commission final report, volume one, May 17, 1977. The Department shall inform all such groups of the opportunity to petition for an acknowledgment of tribal existence by the Federal Government.

(b) The Secretary shall publish in the FEDERAL REGISTER within 90 days after effective date of these regulations, a list of all Indian tribes which are recognized and receiving services from the Bureau of Indian Affairs.

Such list shall be updated and published annually in the FEDERAL REGISTER.

(c) Within 90 days after the effective date of the final regulations, the Secretary will have available suggested guidelines for the format of petitions, including general suggestions and guidelines on where and how to research for required information. The Department's example of petition format, while preferable, shall not preclude the use of any other format.

(d) The Department shall, upon request, provide suggestions and advice to researchers representing a petitioner for their research into the petitioner's historical background and Indian identity. The Department shall not be responsible for the actual research on behalf of the petitioner.

§ 54.7 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge tribal existence. All the criteria in paragraphs (a)-(g) of this section are mandatory in order for tribal existence to be acknowledged and must be included in the petition.

(a) A statement of facts establishing that the petitioner has been identified from historical times until the present on a substantially continuous basis, as "American Indian," or "aboriginal." A petitioner shall not fail to satisfy any criteria herein merely because of fluctuations of tribal activity during various years. Evidence to be relied upon in determining the group's substantially continuous Indian identity shall include one or more of the following:

(1) Repeated identification by Federal authorities;

(2) Longstanding relationships with State governments based on identification of the group as Indian;

(3) Repeated dealings with a county, parish, or other local government in a relationship based on the group's Indian identity;

(4) Identification as an Indian entity by records in courthouses, churches, or schools;

(5) Identification as an Indian entity by anthropologists, historians, or other scholars;

(6) Repeated identification as an Indian entity in newspapers and books;

(7) Repeated identification and dealings as an Indian entity with recognized Indian tribes or national Indian organizations.

(b) Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.

(c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present.

(d) A copy of the group's present governing document, or in the absence of a written document, a statement describing in full the membership criteria and the procedures through which the group currently governs its affairs and its members.

(e) A list of all known current members of the group and a copy of each available former list of members based on the tribe's own defined criteria. The membership must consist of individuals who have established, using evidence acceptable to the Secretary, descendancy from a tribe which existed historically or from historical tribes which combined and functioned as a single autonomous entity. Evidence acceptable to the Secretary of tribal membership for this purpose includes but is not limited to:

(1) Descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes;

(2) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being an Indian descendant and a member of the petitioning group;

(3) Church, school, and other similar enrollment records indicating the person as being a member of the petitioning entity;

(4) Affidavits of recognition by tribal elders, leaders, or the tribal governing body, as being an Indian descendant of the tribe and a member of the petitioning entity;

(5) Other records or evidence identifying the person as a member of the petitioning entity.

(f) The membership of the petitioning group is composed principally of persons who are not members of any other North American Indian tribe.

(g) The petitioner is not, nor are its members, the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship.

§ 54.8 Notice of receipt of petition.

(a) Within 30 days after receiving a petition, the Assistant Secretary shall send an acknowledgment of receipt, in writing, to the petitioner, and shall have published in the FEDERAL REGISTER a notice of such receipt including the name and location, and mailing address of the petitioner and other such information that will identify the entity submitting the petition and the date it was received. The notice shall

also indicate where a copy of the petition may be examined.

(b) Groups with petitions on file with the Bureau on the effective date of these regulations shall be notified within 90 days from the effective date that their petition is on file. Notice of that fact, including the information required in paragraph (a) of this section, shall be published in the FEDERAL REGISTER. All petitions on file on the effective date will be returned to the petitioner with guidelines as specified in § 54.6(c) in order to give the petitioner an opportunity to review, revise, or supplement the petition. The return of the petition will not affect the priority established by the initial filing.

(c) The Assistant Secretary shall also notify, in writing, the Governor and attorney general of any State in which a petitioner resides.

(d) The Assistant Secretary shall also cause to be published the notice of receipt of the petition in a major newspaper of general circulation in the town or city nearest to the petitioner. The notice will include, in addition to the information in section (a) of this part, notice of opportunity for other parties to submit factual or legal arguments in support of or in opposition to the petition. Such submissions shall be provided to the petitioner upon receipt by the Federal acknowledgement staff. The petitioner shall be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

§ 54.9 Processing the petition.

(a) Upon receipt of a petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe. The review shall include consideration of the petition and supporting evidence, and the factual statements contained therein. The Assistant Secretary may also initiate other research by his staff, for any purpose relative to analyzing the petition and obtaining additional information about the petitioner's status, and may consider any evidence which may be submitted by other parties.

(b) Prior to actual consideration of the petition, the Assistant Secretary shall notify the petitioner of any obvious deficiencies, or significant omissions, that are apparent upon an initial review, and provide the petitioner with an opportunity to withdraw the petition for further work or to submit additional information or a clarification.

(c) Petitions shall be considered on a first come, first serve basis determined by the date of original filing with the Department. The Federal acknowl-

edgement project staff shall establish a priority register including those petitions already pending before the Department.

(d) The petitioner and other parties submitting comments on the petition shall be notified when the petition comes under active consideration. They shall also be notified who is the primary Bureau staff member reviewing the petition, his backup, and supervisor. Such notice shall also include the office address and telephone number of the primary staff member.

(e) A petitioning group may, at its option and upon written request, withdraw its petition prior to publication by the Assistant Secretary of his finding in the FEDERAL REGISTER and, may if it so desires, file an entirely new petition. Such petitioners shall not lose their priority date by withdrawing and resubmitting their petitions later, provided the time periods in paragraph (f) of this section shall begin upon active consideration of the resubmitted petition.

(f) Within 1 year after notifying the petitioner that active consideration of the petition has begun, the Assistant Secretary shall publish his proposed findings in the FEDERAL REGISTER. The Assistant Secretary may extend that period up to an additional 180 days upon a showing of due cause to the petitioner. In addition to the proposed findings, the Assistant Secretary shall prepare a report which shall summarize the evidence for the proposed decision. Copies of such report shall be available for the petitioner and other parties upon written request.

(g) Upon publication of the proposed findings, any individual or organization wishing to challenge the proposed findings shall have a 120-day response period to present factual or legal arguments and evidence to rebut the evidence relied upon.

(h) After consideration of the written arguments and evidence rebutting the proposed findings, the Assistant Secretary shall make a determination regarding the petitioner's status, a summary of which shall be published in the FEDERAL REGISTER within 60 days from the expiration of the response period. The determination will become effective in 60 days from publication unless earlier withdrawn pursuant to § 54.10.

(i) The Assistant Secretary shall acknowledge the existence of the petitioner as an Indian tribe when it is determined that the group satisfies the criteria in § 54.7.

(j) The Assistant Secretary shall refuse to acknowledge that a petitioner is an Indian tribe if it fails to satisfy the criteria in § 54.7. In the event the Assistant Secretary refuses to acknowledge the eligibility of a petitioning group, he shall analyze and forward

to the petitioner other options, if any, under which application for services and other benefits may be made.

§ 54.10 Reconsideration and final action.

(a) The Assistant Secretary's decision shall be final for the Department unless the Secretary requests him to reconsider within 60 days of such publication. If the Secretary recommends reconsideration, the Assistant Secretary shall consult with the Secretary, review his initial determination, and issue a reconsidered decision within 60 days which shall be final and effective upon publication.

(b) The Secretary in his consideration of the Assistant Secretary's decision may review any information available to him, whether formally part of the record or not; where reliance is placed on information not of record, such information shall be identified as to source and nature, and inserted in the record.

(c) The Secretary may request reconsideration of any decision by the Assistant Secretary but shall request reconsideration of any decision, which in his opinion:

(1) Would be changed by significant new evidence which he has received subsequent to the publication of the decision; or

(2) A substantial portion of the evidence relied on was unreliable or was of little probative value; or

(3) The petitioner's or the Bureau's research appears inadequate or incomplete in some material respect.

(d) Any notice which by the terms of these regulations must be published in the FEDERAL REGISTER, shall also be mailed to the petitioner, the Governors and attorney generals of the States involved, and to other parties which have commented on the proposed findings.

§ 54.11 Implementation of decisions.

(a) Upon final determination that the petitioner is an Indian tribe, the tribe shall be eligible for services and benefits from the Federal Government available to other federally recognized tribes and entitled to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes with a government-to-government relationship to the United States as well as having the responsibilities and obligations of such tribes. Acknowledgment shall subject such Indian tribes to the same authority of Congress and the United States to which other federally acknowledged tribes are subject.

(b) While the newly recognized tribe shall be eligible for benefits and services, acknowledgment of tribal existence will not create an immediate entitlement to existing Bureau of Indian Affairs programs. Such programs shall

become available upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly recognized tribe.

(c) Within 6 months after acknowledgment that the petitioner exists as an Indian tribe, the appropriate Area Office shall consult and develop in cooperation with the group, and forward to the Assistant Secretary, a determination of needs and a recommended budget required to serve the newly acknowledged tribe. The recommended budget will be considered along with other recommendations by the Assistant Secretary in the usual budget-request process.

GEORGE V. GOODWIN,
Deputy Assistant Secretary—
Indian Affairs.

[FR Doc. 78-24674 Filed 9-1-78; 8:45 am]

[8320-01]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 2—DELEGATIONS OF AUTHORITY

Authority to Issue Subpoenas

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: This amendment delegates subpoena authority to the General Counsel and the Deputy General Counsel and redesignates positions already exercising subpoena authority to reflect the recent implementation of the Office of the Inspector General within the Veterans Administration. While the exercise of this authority within the Office of the General Counsel is expected to be infrequent, a need has been experienced in connection with the conduct of certain investigations and cases by that office. In addition minor editorial changes have been made.

EFFECTIVE DATE: August 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Neal C. Lawson, Assistant General Counsel, Veterans Administration, Washington, D.C. 20420, 202-389-3294.

SUPPLEMENTARY INFORMATION: On page 12892 of the FEDERAL REGISTER of March 28, 1978, there was published notice of proposed regulatory development to amend § 2.1 relating to delegation of authority to employees to issue subpoenas.