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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

FILES

CAUTION!

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FILE NO.

FILE NO. REVISED PROPOSED REGULATIONS AND COMMENTS JUNE 1, 1978

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15 July 1977

Ack 7/18/77
LG

Director of Indian Services
Bureau of Indian Affairs
18th and 'C' Streets, N.W.
Washington, D. C. 20245

Dear Sir:

I am writing to you on behalf of California Indian Legal Services, which is a federally-funded legal services program which has provided full legal representation to eligible individual California Indians and Indian Tribes for about ten years. We have represented dozens of Tribes and hundreds, if not thousands, of individuals, and frequently encounter problems dealing with federal recognition of Tribes and eligibility of individual Indians for federal services. For this reason, CILS wishes to comment on the proposed "Procedures Governing Determinations that Indian Group is a Federally Recognized Indian Tribe" published on June 16, 1977 at 42 F.R. 30647.

Our comments appear below and are divided into the following sub-categories: (1) general comments, (2) comments on specific provisions, and (3) comments on the internal consistency of the proposed text.

GENERAL COMMENTS

1. The 30-day period for the receipt of comments is far too short. CILS has been unable to contact certain unrecognized groups (e.g., the San Juan Capistrano Tribe, various Chumash Bands, etc.) even to inform them of the publication of the proposed regulations, much less to solicit and convey their views. This topic is at least as important and should be subject to at least as full an airing as the proposed regulations regarding water codes on reservations. The period for receipt of comments on those proposed regulations has been extended well beyond its initial 30 days in order to allow full comment by all affected parties; the period on these proposed regulations should be at least as long, considering the fundamental and sweeping nature of the

(24)-10

issue. Given more time, CILS could present the views of presently unrecognized tribes to you. Due to the shortness of time, all we can present is what we think our clients' views might be if they had been contacted, had had time to consider the question, and had had time to formulate their views.

2. The regulations purport to address only the issue of federal recognition for tribes. However, it is likely that the non-recognition of an individual Indian's tribe will be used by federal agencies (and perhaps others) to deny federal services and federal benefits to the otherwise eligible individual. This is in disregard of the Snyder Act (25 U.S.C. §13) which authorizes such services and benefits for "Indians throughout the United States", not only for Indians whose tribes are federally recognized. See the Court of Appeal's rejection of the narrow reading of "tribe of Indians" as only federally recognized tribes, rather than all tribes, in 25 U.S.C. §177. Joint Tribal Council of the Passamoquoddy Tribe v. Morton, 528 F.2d 370 (1st Cir., 1975).

Thus, we urge that a proviso be added to the regulations to the effect that no individual's right to or eligibility for services or benefits from the United States shall be impaired by reason of his tribe's lack of federal recognition.

3. The American Indian Policy Review Commission (AIPRC) has proposed procedures under which a non-recognized Indian group can seek and obtain federal recognition. These procedures were developed after extensive research, and after contacts with and input from individual non-recognized tribes. Hearing on the proposed recommendations are scheduled for September of this year before the Senate Select Committee on Indian Affairs.

In many respects, the AIPRC procedures provide a broader-based, more realistic, and more flexible approach to the subject of federal recognition than do the proposed regulations. It is strongly recommended that approval of the proposed regulations be deferred until the Senate hearings are conducted on the final AIPRC report on Unrecognized Tribes.

4. The regulations also ignore a crucial fact: the government which now purports to confer recognition on certain select Indian groups (those who can meet the federal criteria) is the same government which historically was

instrumental -- through termination legislation, incompetent administration of Indian affairs, neglect and ignorance -- in causing the disintegration of the culture and social and political cohesiveness ("sense of social solidarity" if you may) of these and other Indian groups. It is indeed ironic that the federal criteria for recognition, contained in §54.7(c), reflect many of those same elements of tribal existence which the federal government actively sought to destroy. Because of this, the regulations should include remedial provisions for Indian groups who cannot satisfy the criteria enumerated in §54.7(c).

Many Indian tribes in California have been splintered, factionalized and, in some instances, have ceased to exist as such, because of the affirmative efforts (termination), as well as neglect, of the federal government. These Indian groups should be afforded the opportunity, through remedial provisions, to establish the reasons why they cannot satisfy the federal criteria for federal recognition. If these reasons are directly related to past actions by the federal government, there should be a mechanism for waiver of certain criteria depending upon the circumstances of the petitioning group.

SPECIFIC COMMENTS

1. Section 54.2

The language of §54.2, disclaiming application of the proposed regulations "to any group which has already been recognized by the Secretary of the Interior", creates a major ambiguity in the proposed regulations.

Historically, the process of obtaining recognition by the federal government has not been characterized by definite criteria or established procedures. Tribes have obtained recognition through various avenues, many of which were untainted by the type of formalistic approach which is proposed today. In the past, the process of recognition has often been adopted to accommodate the unique history and circumstances of a particular tribe, rather than requiring the tribe to sustain the burden of tailoring itself to fit criteria devised by the federal government, criteria which purport to be applicable to all tribes whatever their cultural, historical, ethnological, and geographical origins and characteristics.

Many times "recognition", in a broad sense, has

been accorded an Indian Group at an administrative level far removed from the Office of the Secretary of the Interior. BIA local and area office officials, working on a day-to-day basis with Indian groups, "recognized" tribes, even where official recognition by the Department of the Interior was not forthcoming. In other instances, recognition is evident from the actions of the federal government in dealing with a particular Indian group, despite the absence of formal recognition by the Secretary of the Interior. The Death Valley Shoshone Band is an excellent example of de facto recognition. It appears as though all of these groups will have to proceed under the proposed regulations in order to obtain recognition "by the Secretary of the Interior". Because of this, §54.2, as drafted, does not have the definitional flexibility to accommodate the various approaches which have, in the past, been used to establish federal recognition.

2. Section 54.3

Although this point is not clear in the proposed regulations, §54.3 implies that all petitions for recognition must be filed within a one-year period, and those not filed within that period, even if otherwise meritorious, would be rejected solely for lateness. This deadline would work a great hardship on those groups who do not hear of the requirement in time, or who are unable to prepare a properly-documented petition in time.

Similar one-year filing periods in the past have proven disastrous for California Indians. E.g., their unwitting failure to register their pre-1848 land titles under an 1851 statute establishing a federal commission to register all such land titles cost California Indians nearly all of their aboriginal lands; see the Supreme Court's glib description and endorsement of this casual assault on the Indian land base in California in Barker v. Harvey, 181 U.S. 481 (1903), which authorized the U. S. Cavalry to forcibly oust the Cupeno people from their ancestral lands for failure to register their title within a similar one-year period which had never been brought to their attention.

A more recent debacle concerns the original one-year period for the filing of applications for individual California Indians to share in the award of the Court of Claims which was intended to compensate them for the loss

of their ancestral lands for reason such as that just described. See 25 U.S.C. §§659-663 and 25 C.F.R. §43e in general, and 25 U.S.C. §663 and 25 C.F.R. §43e.5(a) in particular. Many thousands of California Indians did not learn of this one-year filing period (ending on September 21, 1969) in time to file properly-documented applications, and were thus denied their share of this pittance of their birthright because of the one-year deadline. CILS represents 2,089 of these late applicants in Angle, et al. v. Andrus, et al., U.S.D.C., E.D. Cal., No. S02867-TJM, a class action in federal court seeking damages for the federal government's mismanagement of the one-year deadline.

In short, given the disastrous consequences of similar one-year filing periods on California Indians, we urge that there be no time restriction, at all. If there must be a time limit, it should be much longer than one-year (perhaps 10 years as AIPRC has recommended) and it should be accompanied by a vigorous campaign to inform potential petitioners of the deadline, and there should be a provision applying the deadline only to those groups who are contacted and informed of the deadline and who affirmatively choose not to petition.

3. Section 54.6

§54.6 implies that all petitioning groups must have a functioning tribal government, a current membership roll, and organic documents. This is a heavy, unfair, and unreasonable burden on tribes which, often due to the conduct of the United States itself, lack these attributes. This requirement is particularly harsh, unnecessary, and irksome in the case of tribes who lack these attributes but are still otherwise qualified for federal recognition. For example, the Yurok Tribe in California is definitely federally recognized (see Short v. U. S., 486 F.2d 561, Ct. Cls., 1973) but would be ineligible for such recognition under these regulations because it lacks a functioning tribal government, a tribal roll, or other erganic documents.

Therefore, §54.6 should encourage the submission of such items, but should not require them to be submitted if not available.

4. Section 54.7(b)

It will be impossible for the Commissioner to prepare the individual written reports required by §54.7(b) for persons who, like the 2,089 plaintiffs in Angle, et al. v. Andrus, et al., supra, cannot demonstrate their ancestry because the BIA rejected their applications to have this ancestry recognized solely for lateness in filing, and not on the merits. For such persons as these, the regulations should be amended to require the Commissioner to make a determination of the substantive merits of each such individual's application to share in an award of the Court of Claims, whether he considers that application to be timely or not, and to provide a copy of it to each of the members of the petitioning group within a short stated time after the receipt of the petition, so that the individuals and petitioner may submit further data if appropriate.

This provision should also be amended to require the Commissioner to make his findings and conclusions within a specific period of time subsequent to receipt of a petition.

5. Section 54.7(c)

More than one test/approach should be used in making the decision on federal recognition. This would provide more flexibility than presently exists under the test proposed in §54.8(b). The following two approaches are recommended, in addition to the above-referenced remedial provisions:

(a) An Indian group should be allowed to establish its status as a domestic dependent soveriegn by satisfying criteria (1) - (5) and (10) of this section. By eliminating the additional requirement that one of criteria (6) - (9) also be satisfied, this approach would enable Indian groups which have maintained historical and cultural unity, despite being ignored or neglected by the federal government, to establish that they are entitled to formal recognition. However, vague terms and phrases, such as "sense of social solidarity" (criterion (1)) and "political unity" (criterion (3)) should either be clarified or construed in a sense favorable to the petitioning group.

(b) An Indian group which can establish that it

satisfies one or more of criteria (6) - (9) of §54.7(c) is entitled to a presumption that it is a domestic dependent sovereign. This presumption is a realistic one because an Indian group which can establish at least one of criteria (6) - (9) will most likely be able to satisfy criteria (1) - (5) and (10), but the converse would not necessarily be true. Once the presumption is established (by submitting a petition with supporting documentation), the burden would then be upon the federal government to establish that the petitioning group does not satisfy criteria (1) - (5) and (10).

By allowing such a presumption, the recognition process would, presumably, be expedited for those Indian groups that can easily meet criteria (1) - (5) and (10) as well as one of criteria (6) - (9).

Under both approaches, procedures should be developed specifying a time period during which the Commissioner is to submit proposed findings and conclusions. An additional time period, during which the petitioning group may submit new evidence or comment, as appropriate, before the Commissioner enters his final findings and conclusions, should also be included.

6. Section 54.7(c)(5)

This section is ambiguous. All of the 40 + rancherias in California were "the subject of Congressional legislation terminating the Federal relationship" (i.e., the Act of August 18, 1958; 72 Stat. 619, as amended). Does this mean that no such terminated rancheria can petition for federal recognition, even a rancheria whose termination has been declared illegal and void? See e.g., Duncan, et al. v. Andrus, et al., U.S.D.C., N.D. Cal., Nos. C-71-1572-WWS and C-71-1713-WWS, final judgment entered March 22, 1977. The regulation should be amended to allow a petition to be filed at any time by such a group if its termination is, or may be determined to be, void, voidable, or otherwise illegal or unauthorized.

7. Section 54.8(d)

This section should be amended to make clear that a "final" determination by the Commissioner or Secretary is

"final" within the administrative context, but not "final" in the sense of prohibiting judicial review under the normal devices for judicial review of administrative action, such as the Administrative Procedure Act (5 U.S.C. §701, et sec.).

COMMENTS ON INCONSISTENCIES IN THE TEXT

The use of the phrase "federally recognized Indian tribe" throughout the proposed regulations is inconsistent with the definition given that phrase in §54.1(f).

"Federally Recognized Tribe" is defined as

> any Indian group within the United States that the Secretary of the Interior acknowledges to have had and should continue to have the status of a domestic dependent sovereign. [Emphasis added]

By its terms, the definition states that acknowledgement of status by the Secretary is the formal and final step in obtaining federal recognition. Under the proposed regulations, acknowledgement of a certain status - that of a domestic dependent sovereign - is recognition.

The text of §54.6(a) is, therefore, misleading because it states that a recognition petition should include facts which

> the petitioners believe will establish that their group is a federally recognized Indian tribe . . .

How can an Indian group produce facts establishing that they are a recognized Indian tribe if acknowledgement by the Secretary confers recognized status, and acknowledgement is the very act they are petitioning for? This question is even more perplexing in view of §54.2 which states

> these regulations shall not apply to any group which has already been recognized by the Secretary of the Interior.

To resolve this ambiguity, the phrase "domestic

dependent sovereign" should be substituted for the phrase "federally recognized Indian tribe" in §54.6(a). That section would then read:

> A statement of the facts and arguments which the petitioners believe will establish that their group is a domestic dependent sovereign which has been and should continue to be dealt with as such by the United States.

These same amendments should be made to the language of §54.4, §54.7(a), and §54.8(a).

The use of the phrase "federally recognized Indian tribe" in §54.8(b) and §54.8(c) is equally confusing. How can the Commissioner determine that an Indian group is or is not federally recognized when recognition requires acknowledgement of a certain status - that of a domestic dependent sovereign - by the Secretary? It would be more accurate again to substitute the phrase "domestic dependent sovereign" for the phrase "federally recognized Indian tribe". The Commissioner would then be making the determination, based on the criteria contained in §54.7(c)(1)-(10), that the Indian group is a domestic dependent sovereign. This determination could be upheld or rejected by the Secretary. If the Secretary failed to act within the 30-day period specified in §54.8(d) then the petitioning group's status as a domestic dependent sovereign would then be deemed acknowledged, thus satisfying the definition of "federally recognized tribe" set forth in §54.1(f). Accordingly, the second sentence of §54.8(d) should be amended to read:

> If the Secretary takes no action within such thirty-day period, the Commissioner's determination shall be final, and the petitioning group's status as domestic dependent sovereign shall be deemed to be acknowledged by the Secretary.

* * *

We hope that these comments will assist you in preparing a set of final regulations which will enable groups of California Indians to seek federal recognition in a way which will not impose unreasonable or unnecessary burdens

on them and will not require them to make a higher or more burdensome showing than Indian groups elsewhere. If we can be of further assistance, please feel free to call on us.

Sincerely yours,

Stephen V. Quesenberry

STEPHEN V. QUESENBERRY
ART BUNCE

SVQ/sw

w9, 6-27-78 J.

June 22, 1978

Director, Office of Indian Services
Bureau of Indian Affairs
18th and "C" Streets, N.W.
Washington, D. C. 20245

Dear Sir:

I am writing in regard to the Federal Recognition Project of the Bureau of Indian Affairs, and I am specifically commenting on the Proposed Rule published in the Federal Register on June 1, 1978.

In the Summary and otherwise, the publication refers to providing "procedures for acknowledging that certain American Indian tribes exist". The title of the publication reads "PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE." Further, written comments are requested to be addressed to you, Attention: Federal Recognition Project. All underscorings are mine. In this same vein I refer to Subsection 54.2 (Purpose) in which apparently "acknowledgment" is to mean some sort of stage approaching full recognition. All of these parts and references I realize are not meant to confuse but they indeed do.

I respectfully submit that in attempting a piecemeal or group by group approach to "acknowledgment" or "recognition" the Bureau will be creating a monumental headache for all concerned. There are actually very few entities in this country which are not federally recognized, but which have historical continuity with an identifiable Indian tribe and can be considered tribes today in the sociological and political senses and also have a corporate interest in land. Present Bureau staff is quite capable of making appropriate recommendations to the Secretary as to which such entities form viable tribes. Some very small groups such as the Pamunkeys of Virginia can be readily identified as viable tribes; other very large groups such as the Lumbees of North Carolina do not in any sense constitute Indian tribes. The very fact of the publication of the Proposed Rule at least suggests that the background and contemporary situations of the many entities seeking recognition are unknown. I repeat that this is not the case. Furthermore, the Bureau's approach, if implemented, can only result in the prolonged and expensive sorting of a huge barrel to find the few acceptable apples which would have been visible at the top.

Since there is not yet a clear definition of long-time "federally recognized" tribes and groups and their membership, I submit that there should be one either before any "newcomers" are recognized, or at least that both the old and new should be recognized together. I further submit that only with a legislative mandate, albeit long overdue, can the Department of the Interior and other federal agencies properly and safely proceed. Accordingly, there is enclosed a proposed bill, dated June 21, 1978, "To establish criteria for recognition of American Indians by the Federal Government and for entitlement to special federal services for Indians, and for other purposes." The situation of tribes and groups not presently recognized is provided for in Section 3.

Your attention to this letter and the enclosed proposed bill is much appreciated. Should any details be needed concerning the identity and situations of viable tribes which are not presently recognized, particularly on the Eastern Seaboard, I may be reached during the day at my office in the Bureau of Indian Affairs, Room 2620 of the Main Interior Building, telephone extension 4623.

Sincerely,

Stephen E. Feraca

Stephen E. Feraca
1539 Inlet Court
Reston, Virginia 22090

June 21, 1978

A BILL

To establish criteria for recognition of American Indians by the Federal Government and for entitlement to special federal services for Indians, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, citizens of the United States who are enrolled with those Indian tribes and groups maintaining a relationship with the Federal Government, as such entities are identified pursuant to the provisions of this Act, shall be recognized as American Indians by the Federal Government; and entitlement to special federal services for Indians shall be limited to federally recognized Indians, further qualified on the basis of need and residence as defined in this Act, any provisions to the contrary of previous legislation notwithstanding.

Sec. 2. For the purposes of this Act the term "Indian" shall include Aleuts and Eskimos; the phrase "Indian tribes or groups" shall include tribes, nations, bands, pueblos, communities, Alaska tribal and village organizations, Alaska Native groups as defined in Section 3 of the Act of December 18, 1971, 85 Stat. 688, as amended, and similar entities recognized by the Secretary of the Interior (hereinafter "Secretary"); and the phrase "reservations or other lands" shall include reservations, pueblos, colonies, rancherias, tribal trust lands and communities within the State of Oklahoma,

federal lands lawfully occupied by Indian groups, and Indian villages in the State of Alaska, hereinafter called "Alaska Native Villages," as such villages are defined in the Act of December 18, 1971, supra.

Sec. 3. The Secretary shall publish in the Federal Register, within six months of the date of this Act, a complete list of Indian tribes and groups currently maintaining a special service relationship, because of their status as Indians, with the Federal Government. The list shall include tribes or groups on the Eastern Seaboard and elsewhere which have not heretofore been the recipients of special federal services to Indians but possess, in the Secretary's view and to his satisfaction, historical continuity with an Indian tribe, tribal lands and a viable tribal organization and membership criteria, and formally request of the Secretary, within six months of the date of this Act, inclusion in the list. The list shall be titled "Federally Recognized Indian Tribes and Groups" and shall carry as a subheading and sublisting "Alaska Native Groups." Each entry shall include the official name of the tribe or group, the generally accepted name of a tribe or group lacking formal organization and a notation indicating organizational status. Each entry shall also include

indication of the existence of approved tribal enrollment criteria, or the absence of enrollment criteria, or the existence of a tribal roll which has been closed and made final pursuant to the provisions of federal legislation; and each entry shall include the proper name of the reservation or other lands and location by State, or the name of the Alaska Native Village, associated with the tribe or group listed; Provided, That, tribes or groups in the following categories shall not be so listed: (a) all tribes and groups whose special relationship with the Federal Government has been terminated pursuant to legislation enacted for this purpose; (b) all groups of Indians and persons of Indian ancestry who have no relationship with the Federal Government other than an interest in claims pending in, or awards granted by, the Indian Claims Commission, the United States Court of Claims or other federal courts, or State courts; and (c) all tribes or groups not heretofore recognized who do not have or occupy tribal lands or who do not lawfully occupy federal lands; and Further Provided, That, the Secretary shall maintain and keep current, in a manner consistent with the provisions of this Act, the list of Federally Recognized Indian Tribes and Groups by deleting therefrom the name of any tribe or group whose special relationship with the Federal Government is terminated subsequent to the initial publication of the

list, and by adding or amending thereto for the purposes of accomodating newly organized entities previously listed or to effect corrections in the data contained. No entities shall be added to the list in the absence of enabling legislation.

Sec. 4. From and after the date of this Act, persons not recognized as Indians pursuant to the provisions of Sections 1, 2, 3 and 5, shall not be entitled to any of the special services performed by the United States for Indians because of their status as Indians, all statutes of the United States that affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States, including those pertaining to fishing, hunting, and trapping, shall apply to them in the same manner they apply to other persons within their jurisdictions, with the following exceptions: Persons not members of or eligible for membership with federally recognized tribes or groups but who are, as of the date of this Act, (a) attending federal Indian boarding schools on the basis of Indian blood quantum or through other arrangements, (b) participating in special federal Indian programs for employment assistance or adult vocational training or (c) are participating, as Indians, in any federally sponsored training, education or health programs, together with persons who are receiving such benefits under the provisions of legislation terminating the special federal

relationship with their tribes or groups, shall be permitted to complete such education, employment, training or health programs under the terms contracted for or agreed upon.

Sec. 5. (a) For the purposes of effecting the provisions of this Act the Secretary is authorized and directed to assist the tribes and groups listed pursuant to Section 3 of this Act in maintaining their membership rolls and in developing approved enrollment criteria and formal organization. For those tribes and groups having no desire or need for formal organization, and who are unable, within one year of the date of this Act, to develop approved enrollment criteria, the Secretary shall compile rolls comprised of the names of the Indians domiciled on or in the reservations or other lands concerned, including the Alaska Native Villages, and shall in such situations take into consideration the ethnic or tribal identity of the group or groups historically associated with the lands concerned, or the identity of the groups for whom the reservations or other lands concerned were specifically established or the common economic pursuits of such domiciliaries. Until formal enrollment criteria are developed for the Creek, Choctaw, Chickasaw and Osage Tribes of Oklahoma, the Federal Government shall continue to recognize living enrollees whose names are found on the closed rolls of these tribes, and all descendants of those whose names are found on the

said closed rolls if said descendants possess one-quarter or more blood quantum from any single one of these tribes, and all descendants recognized by the governing bodies of these tribes, provided such descendants derive from persons whose names are found on the closed rolls of these tribes.

(b) In bringing current the tribal rolls, and in otherwise effecting the provisions of this Act, the Secretary shall, notwithstanding provisions to the contrary of previously approved enrollment criteria of tribes or groups, cause the names of all noncitizens to be deleted from the rolls, and shall publish rules and regulations to prohibit enrollment with more than one tribe or group and to prohibit the enrollment of noncitizens. In the absence of current tribal rolls and until such are fully established, special federal services for Indians shall be extended to persons who are eligible for membership according to approved enrollment criteria, or who are domiciled on those reservations or other lands containing tribes or groups lacking enrollment criteria, including Alaska Native Villages, and are recognized by the Secretary to be affiliated with such entities.

Sec. 6. Members of federally recognized tribes and groups, and Indian individuals owning or having an interest in non-reservation lands held in trust by the Federal Government,

shall not be entitled to any special federal services to Indians unless such individuals or communities demonstrate need for such services pursuant to regulations and procedures established by the Secretary, and where applicable jointly by two or more federal departments or agencies; and unless such individuals physically reside within or such communities are found within the exterior boundaries of the reservations or other lands concerned. Individual eligibility for such special federal services shall be further based on physical residence on the reservations or other lands concerned for a period of six months prior to receipt of such services, with the exception of participation in education or health programs. Members of federally recognized tribes or groups who lawfully reside on reservations or other lands not held by their parent tribes or groups shall be eligible, if qualified in terms of need, to receive special federal services to Indian individuals. In establishing regulations and procedures defining criteria for entitlement to special federal services for Indians, no federal department or agency shall impose blood quantum restrictions differing from those included in the approved enrollment criteria of federally recognized tribes or groups.

Sec. 7. None of the provisions of this Act shall affect the rights or privileges extended to individual Indians or Indian groups by any of the several States or

subdivisions thereof, or alter the status of persons regarded as Indians in the communities in which they reside, or deny to any person the right to participate in those Indian claims awards which are directed by the Congress to be shared by persons other than the members of federally recognized tribes or groups, or interfere with the activities of the Indian Arts and Crafts Board or the Institute of American Indian Arts of Sante Fe, New Mexico.

Sec. 8. The Secretary is authorized and directed to publish rules and regulations to effect the provisions of this Act, including the disposition of enrollment appeals, in which the determination of the Secretary shall be final. The provisions of this Act shall apply to the activities, programs, procedures, regulations and philosophy of all federal departments and agencies.

SEP 14 1978

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April 18, 1978

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2609 Interior Building
Washington, D.C. 20245

RE: 25 CFR 54.6
Proposed Rules
Lac Vieux Desert Band

Dear Bud:

It was a pleasure meeting you at the National Converence on Recognition of Indian Tribes in Nashville. I appreciate your understanding of the problems that Sub-section 54.6(c)(2) presents for the Traditional Kickapoo Tribe of Texas.

The Kickapoos were forced out of the Great Lakes Area by Army Order in 1832 and migrated to Kansas and Indian Territory in Oklahoma. The Missionaries tried to convert the Kickapoos to Christianity and for Religious freedom, the Traditional Kickapoos moved to the Fort Duncan Area of Texas and lived in what is now Eagle Pass, Texas and Naciemento, Mex. In the early 1900's the U.S. Army went into Mexico to remove the Traditional Kickapoos to Oklahoma. They shot and killed a number of Indians and captured some of the Tribal Members returning them to Oklahoma. Most of the Traditional Kickapoos escaped and today there are over 640 Tribal Members, mostly full bloods, living in the Eagle Pass/Naciemento area.

Since the late 1830's until today, they have retained their Indian Religion, Language and Tradition. They speak no English, their children do not go to Public Schools, they do not use Public Hospitals, live in traditional straw houses and continue to maintain their Indian Laws through their Tribal Council form of Local Government.

Some have been entered on the Oklahoma Kickapoo Tribal Rolls. Most of the Traditional Kickapoos are unaware of the fact they are listed on the Oklahoma Kickapoo Roll but [illegible] 00 miles from that Agency and claim no allegance to the Oklahoma Kickapoo Tribe. [illegible] ears they have maintained their identity of a destinct individual Tribe and wish t[illegible] inue their Tribal Government.

Therefore, in behalf of the Traditional Kickapoos, I would appreciate your consider[illegible] f amending Sub-section 54.6(C)(2) to read as follows:

(2) The membership of the petitioning group is composed principally of persons not members of any other Indian eligible for services from the Bureau as an American Indian Tribe. (add) provided, however, that if a petitioning group has maintained a separate Tribal Government and has live[illegible]

in a separate geographical area for more than 100 years but are carried on another Federally recognized Tribes' Roll, they would be eligible for separate Federal Recognition if such members relinquish enrollment within 90 days after final recognition of the petitioning group as an Indian Tribe entitled to receive Federal Services.

have reviewed a copy of Tom Smithson's letter of April 11, 1978, and also feel that e Amendment should be carefully worded as not to eliminate any equally long standing parated Tribes.

. Smithson's alternate proposal which states "and if the Indian Tribe of which they e members gives its consent, by Tribal resolution" is restrictive because the Oklama Kickapoo may be using Traditional Kickapoos for head count purposes and would t agree to withdrawal of membership.

ur assistance in amending this Sub-section in such a way that would not exclude the adtional Kickapoos from Federal Recognition will be greatly appreciated.

ncerely yours,

Walt Broemer

lter W. Broemer
ecutive Director

B/dd

: George White Water, War Chief
Traditional Kickapoo Tribal Council
Texas Indian Commission
Leslie N. Gay, Jr.
Jim Brown
Tom Smithson

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western union Mailgram

1-063913E181 06/30/78 ICS IPMBNGZ CSP WSHC
5043896761 MGM TDBN BATON ROUGE LA 265 06-30 0453P EST

DIRECTOR, OFFICE OF INDIAN SERVICES
BUREAU OF INDIAN AFFAIRS
ATTN FEDERAL RECOGNITION PROJECT
18TH & C STS NW
WASHINGTON DC 20245

(15)

DEAR SIR,

AS THE CHIEF LEGAL OFFICER OF THE STATE OF LOUISIANA THE FOLLOWING COMMENTS ARE OFFERED ON BEHALF OF THE STATE IN RESPECT TO THE PROPOSED REGULATIONS PUBLISHED IN THE FEDERAL REGISTER JUNE 1 1978 ESTABLISHING PROCEDURES FOR RECOGNITION OF INDIAN TRIBES.

THE PROPOSED REGULATIONS DO NOT MAKE THE STATE AT INTEREST A PARTY PRIVY TO THE TRIBAL RECOGNITION PROCEDURE. THIS OMISSION RESULTS IN A GRIEVOUS VIOLATION OF THE RIGHTS OF THE STATES IN THAT HIGHLY SIGNIFICANT LEGAL CONSEQUENCES TO THE STATES CAN BE EFFECTIVE WITHOUT THEIR PARTICIPATION AS A PARTY. I URGE THAT THE PROPOSED REGULATIONS BE AMENDED TO INCLUDE THE STATE AT INTEREST AS A PARTY DIRECTLY CONCERNED IN ALL STEPS IN THE PROCEEDINGS.

THIS COMMENT SHOULD NOT BE CONSTRUED AS REPRESENTING AN OPPOSITION TO THE ADOPTION OF REASONABLE REGULATIONS FOR TRIBE RECOGNITION NOR OPPOSITION TO RECOGNITION OF INDIAN GROUPS AS TRIBES WHERE THE HISTORIC FACTS WARRANT HOWEVER I URGE THAT THE REGULATIONS MUST INCLUDE THE STATE AS A PARTICIPATING PARTY TO THE PROCEEDING IN WHICH A SIGNIFICANT NUMBER OF IT'S CITIZENS WHO HAVE EXERCISED THE STATE CITIZENSHIP FOR MORE THAN 166 YEARS ARE NOW TO BE RECLASSIFIED AND VESTED TOGETHER WITH THE FEDERAL GOVERNMENT WITH NEW AND DIFFERENT RIGHTS SOME OF WHICH CAN BE HIGHLY PREDJUDICIAL TO THE OTHER CITIZENS OF THE STATE AND TO THE STATE ITSELF.

THE ADOPTION OF THE PROPOSED REGULATIONS WITHOUT MAKING THE STATE A PARTY PRIVY TO ALL PROCEEDINGS WOULD VIOLATE CONSTITUTIONAL GUARANTEES FOR WHICH FULL RESERVATION OF THE RIGHT TO SEEK JUDICIAL RELIEF IS HEREBY MADE IN THE FILING OF THE PRESENT COMMENTS.

WILLIAM J GUSTE JUNIOR, ATTORNEY GENERAL
STATE OF LOUISIANA

16:52 EST

MGMCOMP MGM

TEXAS INDIAN COMMISSION

Walt Broemer, Executive Director
1011 Alston, Livingston, Tx. 77351
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June 23, 1978

Director
Office of Indian Services
Bureau of Indian Affairs
18th and "C" Street NW
Washington, D.C. 20245

ATTN: Federal Recognition Project

Gentlemen:

I have reviewed 25 CFR Part 54 published in the Federal Register on June 1, 1978, Proposed Rules for Federal Recognition of Indian Tribes and take only one exception. Section 54.7 (f) reads "The membership of the petitioning groups is composed principally of persons who are not members of any other North American Indian Tribe." This provision would be detrimental to the application by the Traditional Kickapoo Tribe of Eagle Pass, Texas.

Presently you extend Federal Recognition to two Kickapoo Tribes, the Oklahoma Kickapoos and the Kansas Kickapoos. The Traditional Kickapoos seperated from these Tribes in the 1830's and moved to the Eagle Pass Area for religious freedom. Some are listed on the Oklahoma Kickapoo Tribal Roll without knowledge, consent or understanding of the meaning of Tribal Roll affiliations.

All Kickapoos in Texas consider themselves Traditional Kickapoos with no Tribal ties to the Oklahoma or Kansas Tribes. For over 140 years the Traditional Kickapoos have retained their Indian religion, culture and language through Tribal laws enforced by a strong Tribal Council form of local government. These people have a fierce pride in being a destinct individual Tribe even though they are in abject poverty as they speak no English, their children do not go to schools and they live in reed/stick houses cooking with open fires on dirt floors. Their annual per capita income is $160!! In all my life, I have not seen a group of people in this great United States that need help more. If you say, let them go to Oklahoma for help, forget it. In the early 1900's the U.S. Army went to the Religious Grounds in Mexico to remove them to Oklahoma. They shot and killed a number of Kickapoos and captured some returning them to Oklahoma. Most of the Traditional Kickapoos escaped and today there are over 640 Tribal Members, mostly full bloods, living in the Eagle Pass/Naciemento Area.

Therefore, in behalf of the Traditional Kickapoos, I would like to request that you amend Section 54.7 (f) and add "However, if a Tribe with their own

Local Government has lived separate from any other Tribe for more than a 100 years and do not claim membership on any other Tribal Roll, then the Secretary may waive the above rule and give special consideration to said Tribe for Federal Recognition.

Your consideration and assistance will be greatly appreciated by every Tradional Kickapoo Indian.

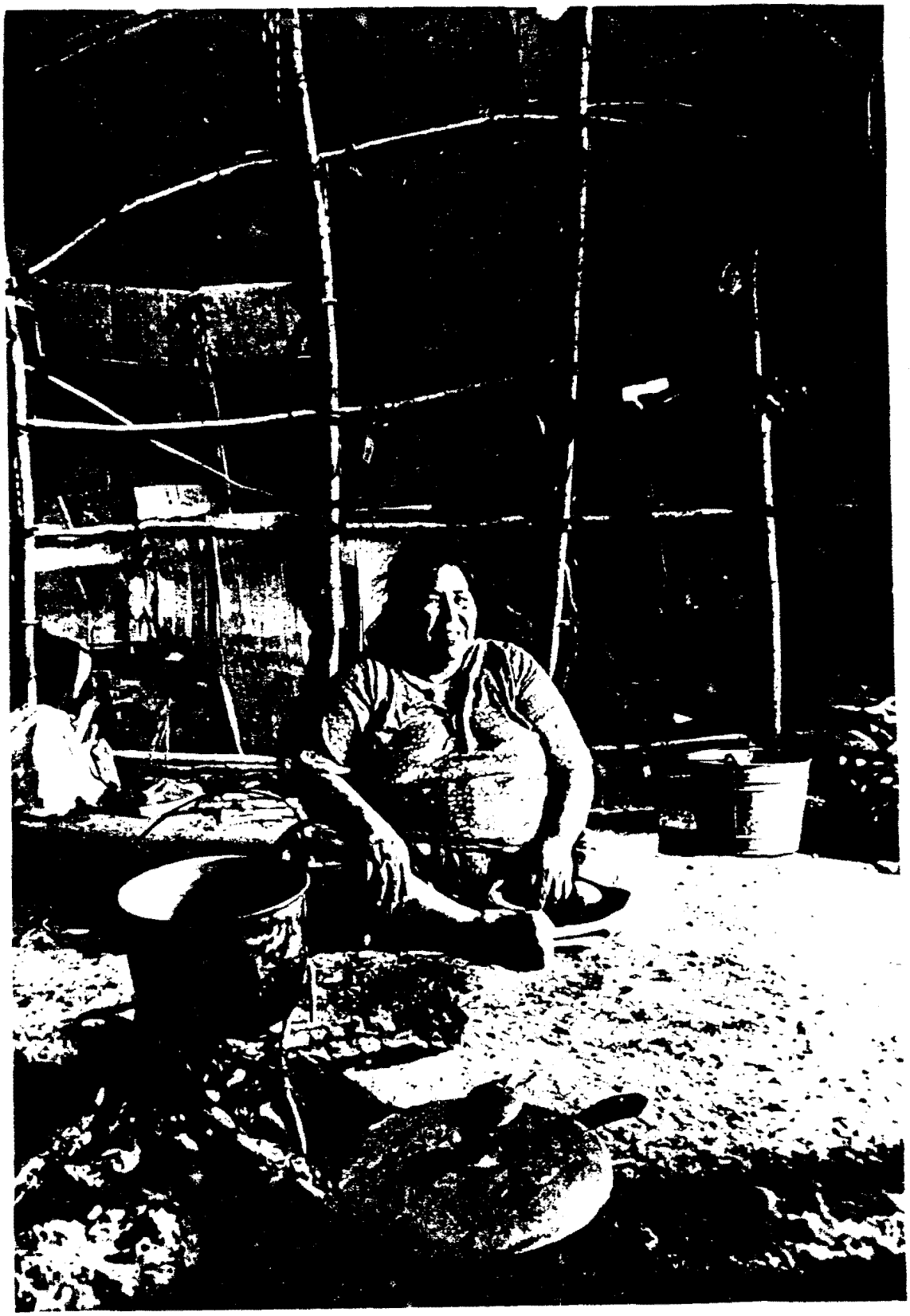
Sincerely,

Walt Broemer

Walt Broemer
Executive Director

cc: George Whitewater, War Chief
Traditional Kickapoo Tribal Council
Texas Indian Commission
Senator John Tower
Senator Lloyd Bentsen
Congressman Abraham Kazen, Jr.

Kickapoo Housing Conditions under the International Bridge in the Flood Plain of the Rio Grande River at Eagle Pass.



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 acknowledgment 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-

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-

~~Hatch~~ FCK

2)440

LAWRENCE H. MIREL
ATTORNEY AT LAW

918 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
202/~~296-0050~~, 466-3030

COUNSEL TO
GOLDFARB AND SINGER

June 27, 1978

(9)

W. 6/28

Director, Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N. W.
Washington, D. C. 20245

Attention: Federal Recognition Project

Dear Sir:

I am writing in response to a publication in the Federal Register of June 1, 1978, of proposed procedures for establishing that an American Indian group exists as an Indian tribe. I understand that comments received prior to July 3, 1978 will receive detailed individual study and discussion.

I would like to call your attention to what I consider to be an important omission in the proposed regulations. Although the proposed regulations give every opportunity to Indian groups to demonstrate their qualification for federal recognition, there are no provisions by which other interested groups might question or challenge the claims of an applicant.

I represent a group of individual land owners in Massachusetts whose title to property that they purchased and paid for has been placed in jeopardy by land claims and the threat of future land claims made by a group of persons claiming to be an Indian tribe. The dispute is currently before a federal district court in Boston, and the claim is based upon the provisions of the 1789 "Non-Intercourse Act". As you know, an essential element of a successful claim under this Act is the tribal status of the claimant. In a related case, in Mashpee, Massachusetts, a federal judge, after a jury trial, found that the claimants were not an Indian tribe. Clearly, if this group had been granted federal recognition by the Department of Interior under the proposed regulations, it would have had a substantial impact on the court's decision.

In the particular situation I am involved in, in Gay Head, Massachusetts, mediation efforts are currently underway, and we are hopeful that a satisfactory agreement can be achieved. It is possible, however, that the mediation attempt will fail and the dispute will go back to the courts. Since the group of persons claiming to constitute an Indian tribe in Gay Head, Massachusetts, will undoubtedly be petitioning for federal recognition under the proposed regulations, and as a finding of tribal status by the Department of Interior would undoubtedly weigh heavily in our pending law suit, my clients have an interest in the ability to challenge any showing that might be made by these persons in Gay Head claiming to constitute an Indian tribe. I see no way under the proposed regulations that such a challenge could be made.

I would like to suggest several places where a challenge provision might be provided for. The first would be in Section 54.9, where a new subsection (c) could be inserted as follows:

> "The Assistant Secretary shall consider, as part of his review of the petition, any information submitted in opposition to the petition by any interested individual or organization. Any such individual or organization may request, and the Assistant Secretary shall, upon such request, provide copies of any materials submitted in support of the petition."

A second place where provision might be made for challenge is in the proposed Section 54.9(f). That section could be amended as follows: Change the final period to a comma and add the following language:

> "and for any individual or organization that has expressed an intent to challenge the petition. Both the petitioner and any challenging party shall have 90 days within which to submit evidence disputing the proposed findings of the Assistant Secretary, and the Assistant Secretary shall consider such additional evidence prior to issuing a final ruling."

A third place where provisions for a challenge might be provided is in Section 54.10(b). A new sentence might be added to that section between the second and third sentences of the draft, to read as follows:

> "Upon receipt of a report of proposed findings which are favorable to the petitioner, any individual or organization wishing to challenge the petition shall have 90 days to present written arguments and evidence to rebut the evidence relied upon."

An essential element in the right to challenge, of course, is the requirement that notice be given of an application for federal recognition. I would propose that the notice provisions in the draft proposal be strengthened as follows:

Add a new subsection (h) to Section 54.7, to read:

> "The petitioner has sent, or caused to be sent, a copy of its petition to all parties with whom it is presently engaged in litigation where the outcome of that litigation could be affected, directly or indirectly, by a favorable decision on tribal recognition. Specifically, a copy has been sent to: [list]."

Add two new sentences to the end of Section 54.8, as follows:

> "The petitioner shall cause to be published, at least once each week for three successive weeks, in a newspaper of general circulation in the community which the petitioner claims to be the locality of the 'tribe', a notice, in a form prescribed by the Assistant Secretary, which will specify that a petition for recognition has been filed, the name and mailing address of the petitioner, and other such information that will identify the entity submitting the petition and the date it was filed. The notice will also indicate where a copy of the petition may be examined, and will specify the procedures for filing challenges to the petition, including eligibility to challenge, form of challenge, and deadline for filing challenges."

Add to the end of Section 54.8(c):

> ", and to the head of the local government of the community which the petitioner claims as its locality, as well as the heads of communities which abut the claimed locality."

My clients, and other land owners similarly threatened by "Indian" land claims, are concerned with having the ability to challenge a claim of tribal recognition before the Interior Department when the issue of tribal status may affect the outcome of litigation they are presently involved in. In addition, they view the ability to challenge a petition for tribal recognition as a possible alternative to expensive and time-consuming litigation. These are not the only circumstances, however, in which the ability to challenge might be

important. For example, I can envision a situation in which a recognized tribe of Indians might wish to challenge the claim of a particular group--perhaps some of the same persons the tribe claims as members--to recognition as a separate tribe. I believe they should have this opportunity.

Thank you for your consideration. I will be happy to discuss these ideas with you or anyone you designate, and I look forward to hearing from you.

Sincerely yours,

Lawrence H. Mirel

Lawrence H. Mirel

LHM:ll

(3)

United States Department of the Interior

OFFICE OF THE SOLICITOR
PORTLAND REGION, 1002 N. E. HOLLADAY ST.
P.O. Box 3621, Portland, Oregon 97208

June 16, 1978

In reply refer to:

Memorandum

To: Scott Keep, Attorney, Division of Indian Affairs

From: Office of the Regional Solicitor, Portland

Subject: Proposed BIA regulations 25 CFR Part 54, Procedures for Recognizing Indian Tribes

I would offer the following comments to you on the revised draft of the proposed regulations on this subject which were published in the June 1, 1978, Federal Register, 43 F.R. 23743. I think these regulations are a vast improvement over the earlier version.

I have two general comments:

1. Section 54.8(b) provides that groups having petitions pending before BIA when the regulations become effective are to be notified within sixty days that their petition is on file. I'm sure that a number of these petitions do not conform to the requirements of section 54.7 for petitions under the new regulations. Therefore, it seems to me that any notice given under this section should specifically direct the group's attention to the final provisions of the new regulations, and particularly of section 54.7, and specifically extend to them an invitation to revise or supplement their petition to bring it more into conformity with the requirements of the new regulation. I realize that section 54.9(b) provides for such opportunity for revision at a later stage in the proceeding. However, a simple notice that a petition is on file and will be treated as a petition under the new regulation may mislead some of the existing petitioners into a false sense of complacency concerning the adequacy of their petition.

2. Various provisions in sections 54.9 and 54.10 provide for notification to the petitioner and for Secretarial review of arguments or evidence submitted by the petitioner in connection with approval of the petition. It seems to me that there should also be express reference to notification to and consideration of the comments or evidence

submitted by any objecting person or party. This would be particularly true with respect to any objections that may be filed by another Indian group, either one already recognized or one seeking recognition, or by a state or local government or governmental entity. Perhaps some term like "objector" could be included in the definition section (section 54.1) to designate such parties and then reference to objector included in these two sections. The definition I would have in mind would be any person or party who had filed written objections to the petition within the time limit specified in the regulations. In that event, section 54.9(d) could be amended to read: "The petitioner and any objector shall be notified * * * ." The same change could be made in subparagraph 54.9(f) and the last sentence of that subparagraph could be amended by adding "and any objector."

In subparagraph 54.10(a) the Assistant Secretary should be required to publish notice of his determination with copies to the petitioner and any objector unless the publication under 54.9(f) is of this same document. Its not too clear whether the two determinations are the same. One refers to proposed findings and the other to an actual determination. Since the latter is the one that is to be reviewed by the Secretary, it seems to me that public notice of determination should be made so that not only the petitioner but objectors may submit their views to the Secretary. In further fulfillment of this, subparagraph 54.10(d) should be amended to say " * * * written arguments and evidence submitted by the petitioner or any objector" and subparagraph (f) amended by inserting the words "and any objector" after the word "involved."

If it is felt that the term "objector" as I have proposed to define it above is too broad and would require individual notification to a large number of individuals or others who simply wanted to voice their objections to the recognition, then, perhaps, a more restrictive term or definition could be used. For example, you might refer to "objecting entity" and define that term in a way so as to limit it to a recognized Indian tribe, an Indian group that has on file a petition for recognition and any state or local governmental entity that would be directly affected by the recognition.

For the Regional Solicitor

George D. Dysart

George D. Dysart
Assistant Regional Solicitor

Copies to:
BIA-Code 440 ((2) Mr. Gay + Mrs. Shepard).
6/20/78

JOSEPH E. BRENNAN
ATTORNEY GENERAL

RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

June 15, 1978

Honorable Forrest Gerard
Assistant Secretary of Interior
for Indian Affairs
Department of Interior
18th and C Street, N.W.
Washington, D.C. 20245

Dear Mr. Gerard:

We understand that the Department is proposing to promulgate rules regarding procedures for establishing that an American Indian Group exists as an Indian tribe. 43 F.R. 23743-23746 (June 1, 1978). On the assumption that such procedures, or a version thereof, will be adopted by the Department of Interior, we thought it prudent to write to you regarding the status of Indian groups in the State of Maine.

As you are aware, the State is now in litigation with several Indian groups involving claims to land under the so-called Trade & Intercourse Acts. In addition, it is possible that there are other latent but presently unasserted claims in Maine. In the event of a trial on any claims in Maine, one of the issues may be the tribal existence or tribal status of these Indian people.

It is our understanding that to date the Department has not issued any order or decision recognizing or extending tribal status to any Indian group in Maine, despite the fact that the Department is now or intends in the future to extend certain programs to Indians in Maine. In view of these facts, we would respectfully request that the Department not process or act upon any requests for recognition, acknowledgment or establishment of tribal status by any Indian group in Maine under these rules or any other rules or procedures without first providing reasonable notice of and an opportunity to be heard with respect to such request to this office. While we agree with the Department's extending various programs to Maine Indians, we

are concerned that any action to recognize, acknowledge or establish the existence of "tribes" in Maine might affect the pending or potential litigation. It would be inappropriate and unfortunate if the Department were to take administrative action on such a request without offering to the State an opportunity to be heard, especially while litigation is pending.

Very truly yours,

John Paterson

JOHN M. R. PATERSON
Deputy Attorney General

JMRP:mfe

cc: Honorable James B. Longley
Honorable Edmund S. Muskie
Honorable William D. Hathaway
Honorable William S. Cohen
Honorable David E. Emery

Code 440

OFFICE OF THE
Deputy Assistant Secretary - Indian Affairs
WASHINGTON

6/12

Dennis Peterson —

The Ass't Secretary &
I met with this group
in Michigan on 6/9. A
prompt response has been
~~promised~~.

George Gardner

BCRO -

June 9, 1978

The Hon. Forrest J. Gerard
Assistant Secretary of the Interior
for Indian Affairs
Four-State Tribal Chairmen Conference
Northern Michigan University
Marquette, Michigan 49855

Dear Mr. Secretary:

I represent the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan. The Band is one of those which has been seeking Federal recognition as a tribe entitled to services of the Bureau of Indian Affairs for some time, although no petition has been filed pending the finalization of proposed Bureau regulations.

The proposed regulation 25CFR Section 54.7(f) as published on June 1, 1978 presents a significant obstacle to the recognition of this clearly eligible Band solely on the basis that many of their members are enrolled in Mole Lake in Wisconsin. The attached copy of my letter to Mr. John A. Shapard dated April 11, 1978 details the problem more explicitly.

On Friday, June 9, 1978, we met with you with representatives of the Mole Lake Band and the Keweenaw Bay Indian Community to express our concern that the regulation be modified. We continue to urge its amendment.

We also believe, however, that the Department could recognise the Band pursuant to Section 54.3(d) because it has "functioned historically and continuously until the present as an autonomous entity" notwithstanding intermarriage with and enrollment in the Mole Lake Band.

We urgently urge your Department's action in revising the proposed regulation, or in the alternative, when the petition is submitted, recognition of the Band on the theories advanced here.

Respectfully,

Thomas L. Smithson
Attorney for the Lac Vieux Desert Band

54.8 Notice of receipt of petition.

A statement should be added to provide limited period public review and comment. An example is given below.

Notice of Receipt

Pursuant to the [redacted] is the official recipient for [redacted] and is required to publish [redacted]. The following is [redacted]. The date of receipt [redacted]. Under the guidelines [redacted] period for public review and comment on [redacted] is [redacted] days; the date of submission of comments is July 31, 1978. The thirty (30) day period for each final statement begins the day the statement is made available to the [redacted] and to commenting parties.

Copies of [redacted] are available for review [redacted]. Back copies are also available at 15 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Jennie McCoy

(1)

THOMAS L. SMITHSON
LAWYER

1016 Ludington Street, Room 108
P.O. Box 138
Escanaba, Michigan 49829

Bus. 906-789-0422
Res. 906-356-6981

April 11, 1978

Mr. John A. Shapard
Bureau of Indian Affairs
U.S. Department of the Interior
2609 Interior Building
Washington, D.C. 20245

RE: 25 CFR 54.6
Proposed Rules
Lac Vieux Desert Band

Dear Bud:

This will provide the information I promised when we met in Nashville at the National Congress of American Indians' Conference on Recognition of Indian tribes, March 28 and 29, 1978.

You will recall that the Lac Vieux Desert Band, which I represent, was a party to the 1842 and 1854 treaties with the Chippewa. Discontented with the reservation set aside for them, they returned to traditional lands on the Michigan-Wisconsin border and were not permitted to organize separately under the Indian Reorganization Act. Only those members who remained at L'Anse were eligible for membership in the Keweenaw Bay Indian Community. Through inter-marriage, Lac Vieux Desert Band members became closely affiliated with what is now the Mole Lake Band of Chippewas in Wisconsin. Accordingly, although they have remained on the Michigan-Wisconsin border and in the town of Watersmeet in Upper Michigan, many members of the Lac Vieux Desert Band are enrolled at Mole Lake. This tribe is not separately served, but receives some Federal benefits by reason of its occupation of land held in trust for the Keweenaw Bay Indian Community and some individuals may receive services by virtue of enrollment at Mole Lake. As often as not, however, the Great Lakes Agency denies services because Lac Vieux Desert Band members are non-residents of Mole Lake, and the Michigan Agency restricts services because persons are theoretically eligible for services at Mole Lake, notwithstanding their residence in Michigan. Tribal enrollment at Mole Lake was the only available alternative, and members of the Lac Vieux Desert Band are willing to relinquish that membership.

It should be emphasized that this Band has been separate both historically and geographically. It is not a splinter group of discontented members of the Mole Lake tribe nor is it a constituent sub-part of that tribe.

Sub-section 54.6(c)(2) makes mandatory the requirement that:

> (2) The membership of the petitioning group is composed principally of persons who are not members of any other Indian tribe eligible for services from the Bureau as an American Indian tribe.

We are also informed that the regulation would also affect the recognition of a Texas Kickapoo group and perhaps other tribes. The proposed draft does not address the problem of the Lac Vieux Desert Band even with NCAI suggested revisions.

We understand that the objective of this provision is to prevent secession of splinter groups from existing tribes. We are not unsympathetic to that motive. As drawn, this regulation would prevent Federal recognition of a clearly separate band of Lake Superior Chippewas.

To solve this problem, we propose the language below. We sought to draft it in such a way that it would not create problems for such other Federally recognized tribes as the Oglala Sioux (an organization with historical sub-bands), the Shoshone and Arapaho of the Wind River Reservation, (two tribes on the same reservation), or the constituent bands of the Minnesota Chippewa Tribe (confederated bands on separate reservations). Since the regulation must be drafted carefully so as not to upset the structure of existing governments, I have sent copies of this letter to many persons in the hope that others will participate in the re-drafting of 54.6(c)(2) to permit recognition of the Lac Vieux Desert Band without creating organizational problems for other Federally recognized tribes.

The proposed language to be added to section 54.6(c)(2) is as follows:

> Nothing herein shall prevent recognition of any historically and geographically separate band which is not historically and culturally a constituent sub-part of a recognized tribe merely because many members of the petitioning group are enrolled in said recognized tribe,

provided, that such members must relinquish enrollment within ninety (90) days after final recognition of the petitioning group as an Indian tribe entitled to receive Federal services.

As an additional alternative, we request consideration of the following version of 54.6(c)(2):

(2) The membership of the petitioning group is composed principally of persons not members of any other Indian tribe eligible for services from the Bureau as an American Indian tribe, provided, however, that a geographically and historically separate petitioning group may be recognized if members enrolled in another Indian tribe eligible for Federal services relinquish such membership within ninety (90) days of recognition of the petitioning group, and if the Indian tribe of which they are members gives its consent, by tribal resolution, to the separate recognition of the petitioning group at any time.

The Lac Vieux Desert Band respectfully requests that 25 CFR 54.6 (c)(2) be amended to permit their recognition. Please consider these comments prior to the issuance of new proposed rules. If proposed rules should be issued without inclusion of these suggested revisions, we respectfully request that this letter be considered as additional comment on the newly issued proposed rules.

As a final matter, I would like to request that you send me copies of the schematic diagrams of various organizational situations out of which the Bureau has received petitions for recognition.

Thank you for your time in Nashville, and in reviewing this letter.

Sincerely,

Thomas L. Smithson

Thomas L. Smithson
Attorney at Law

TLS:kmc

cc: Ms. Sandy Garrison
Tribal Chairperson
Lac Vieux Desert Band

Mr. Elmer Nitzschke, Field Solicitor
U.S. Department of the Interior

Mr. Alan Parker
Senate Select Committee on Indian Affairs

Mr. Leslie N. Gay, Jr.
Division of Tribal Government Services
Branch of Tribal Relations
U.S. Department of the Interior

Mr. Michael Fairbanks, Superintendent
Michigan Agency
Bureau of Indian Affairs

Mr. George Waters
National Congress of American Indians

Ms. Jeanie Whiteing
Native American Rights Fund

Mr. Walt Broemer, Executive Director
Texas Indian Commission

Mr. Ernest C. Downs

FILE COPY
SURNAME

Shapard 5-17-78
5/18
5/19/78
5/22

Assistant Secretary--Indian Affairs

Director, Office of Indian Services

MAY 25 1978

Procedures for establishing that an American Indian Group exists as an Indian Tribe

We are enclosing a proposed addition of a new part to Subchapter G, Chapter I of Title 25 of the Code of Federal Regulations. It governs the determination that an Indian group exists as an Indian tribe. This is a complete revision of our initially proposed regulations which were published on June 16, 1977. We, therefore, are republishing the regulations as a revised proposal.

We recommend the enclosed proposed addition be approved and transmitted to the Federal Register Division for publication. Interested persons will have 30 days after the date of publication in which to submit their comments and suggestions on the proposed addition to regulations. In order to meet the deadlines which we gave the Senate Subcommittee, top priority should be given to the consideration and publication of this proposal.

SGD Raymond V. Butler

Acting Director, Office of Indian Services

Enclosure

cc: code 100
code 100A (Lavis)
(Surname
Chrony 440
Mailroom
Holdup:BShapard:jm:ext.4045:5/17/78:CassFRP
Secretary's File
Secretary's Reading File (2)
Assistant Secretary--Indian Affairs
Code 100 A
Code 130
Code 850

Title 25 - Indians

CHAPTER I - BUREAU OF INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR

MAY 2 6 1978

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

AGENCY: Bureau of Indian Affairs

ACTION: Proposed rule

SUMMARY: The Bureau proposes revised new regulations which would provide procedures for acknowledging that certain American Indian tribes exist. Proposed regulations were initially published on June 16, 1977. The period for public comment closed on September 18, 1977. Because of the comments received, substantive changes have been made in the initially proposed regulations. Therefore, a second publication of the proposed regulations, with revisions, is in order.

DATES: Comments must be received on or before

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and "C" Streets N.W., Washington, D. C. 20245. Attention: Federal Recognition Project.

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 acknowledgement 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. The period for public comment closed on September 18, 1977. Since that time Bureau staff has consulted with Indian groups and their representatives throughout the country, National Indian organizations, Congressional staff members interested in the regulations, and specialists in the Bureau and other Federal Agencies.

The interest in these regulations has been intense. The suggestions and comments have been thoughtful and copious. The nature and number of the suggestions and comments have emphasized the myriad of approaches which may be taken in developing regulations and procedures to acknowledge tribal existence. While all the approaches appeared to be viable, there is no single "best approach." The following proposed regulations, therefore, are a composite of what we consider to be the best and generally most acceptable thought put

forth. We believe it to be the soundest way to accomplish the Departmental objective of acknowledging the existence of those American Indian tribal groups which have maintained their political, ethnic and cultural integrity despite the absence of any formal action by the Federal Government to acknowledge or implement a Federal relationship.

While there is a large number of American citizens who are of Indian descent in this country, many of them do not and have not ever lived in tribal relations. A group of Indian descendants, living in the same general region, does not necessarily constitute an Indian tribe, even though the individuals may have recently joined together in some formal organization such as a corporation. Under the regulations as proposed, the Assistant Secretary--Indian Affairs would acknowledge only those Indian tribes whose members and their ancestors existed in tribal relations since aboriginal times and have retained some aspects of their aboriginal sovereignty.

The criteria in these regulations are difficult to meet. They can, however, be met with relative ease and at minor expense by tribes which have remained intact throughout history.

There will be a few groups of American Indian descendants which may have existed for a period of time as an Indian tribe but which cannot prove that they meet the criteria. Section 54.10 (b) provides for such groups in that the Secretary shall suggest

other options (if any) under which rejected groups may apply for services and benefits.

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.

Many of the concepts which proved to be bothersome in previous proposals were dealt with in the "Definitions" section. Others are clarified in the text. As a result of the comments, this revision of the initial June 16, 1977, proposed regulations has been so extensive that it must be considered as an entirely new proposal, although the ultimate objective is the same.

The authority for the Assistant Secretary--Indian Affairs to issue these regulations is contained in 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. It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

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

Sec.

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 United States that the Secretary of Interior acknowledges to be an Indian tribe.

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

(h) "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.

(i) "Member of an Indian group" means an individual who is recognized by a group which is not currently acknowledged to be an Indian tribe as meeting its membership criteria and who consents to being listed as a member of that group.

(j) "Member of an Indian tribe" means an individual who meets the membership requirements of the tribe as set forth in the governing document or is recognized collectively by those persons comprising the tribal governing body, and has continuously maintained tribal relations with the tribe.

(k) "Historically or historical" 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 which have ceded territory to the United States.

(l) "Continuously" means extending from generation to generation throughout the tribe's history essentially without interruption. A petitioner, however, shall not fail to satisfy

any criteria herein merely because of fluctuations of tribal activity during various years.

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

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 acknowledgement of tribal existence by the Department is a prerequisite to the protection, services and benefits from the Federal Government available to Indian tribes. Such acknowledgement 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. Acknowledgement shall subject the Indian tribe to the plenary power of Congress and the United States over such tribes.

54.3 Scope.

This part is intended to cover only those American Indian groups indigenous to the United States which are ethnically and culturally identifiable as such, but which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups which can establish a historically continuous tribal existence and which have functioned as

autonomous tribes on an essentially continuous basis since historical times until the present.

This part does not apply to Indian tribes, organized bands, pueblos or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs.

This part is not intended to apply to associations, organizations, corporations or groups of any character, formed in recent times, composed of individuals of Indian descent from several different groups or tribes.

Nor is this part intended to apply to splinter groups, political factions, communities or groups of any character which separated 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 historically and continuously until the present as an autonomous entity.

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 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 acknowledgement that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary--Indian Affairs, Department of the Interior, 18th & "C" Streets N. W., Washington, D. C. 20245. Attention: Federal Recognition 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 Report. The Department shall inform all such groups of the opportunity to petition for an acknowledgement of tribal existence by the Federal Government.

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

(c) Within 90 days after the publication of 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. The petition shall include at least the following:

(a) A statement of facts establishing that the petitioner has been identified historically and continuously until the present as "American Indian, Native American, or aboriginal." Evidence to be relied upon in determining the group's historic and continuous Indian identity shall include at least one 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;

(b) Evidence that a substantial portion of the petitioning group inhabits a specific region 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 historical and essentially continuous tribal political influence or other authority over its members as an autonomous entity until the present. This statement must clearly establish that the petitioner's present internal procedure for making decisions which affect the membership as a whole (tribal government, leadership, group decision-making process or method of operating) evolved from that of the historical tribe; that the present tribal leadership, spokesman or elders have assumed at least some of the rights, obligations and traditions of the historical tribe; and that the present internal procedures are not an effort to reconstitute a defunct system.

(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) Descendency 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 acknowledgement 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 date these regulations are published in final form shall be notified within 60 days from the date of final publication 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.

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

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 to the extent necessary, verification of the factual statements contained therein. In order to verify the facts, the Secretary may also initiate other research by his staff, as deemed necessary and appropriate, to obtain additional information about the petitioner's status.

(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 Recognition Project staff shall establish a priority register including those petitions already pending before the Department.

(d) The petitioner shall be notified when the petition comes under active consideration, and who is the primary Bureau staff member reviewing the petition, his back-up, 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) The Assistant Secretary shall publish his proposed findings in the FEDERAL REGISTER within one year after notifying the petitioner that active consideration of the petition has begun. The Secretary may extend that period up to an additional 180 days upon show of due cause to the petitioner. In addition to the proposed findings, his report shall outline the evidence for the proposed decision. Copies of such evidence shall be available for the petitioner.

54.10 Final action by the Department.

(a) 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 Part 54.7. His decision shall be final if not remanded by the Secretary for reconsideration within 60 days.

(b) The Assistant Secretary shall refuse to acknowledge that a petitioner is an Indian tribe if it fails to satisfy the criteria in Part 54.7. Upon receipt of a report of proposed findings which are unfavorable to the petitioner, the petitioner shall have 90 days to respond, including an opportunity to present written arguments and evidence to rebut the evidence relied upon. 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.

(c) After consideration of the written arguments and evidence rebutting the unfavorable proposed findings, a summary of the Assistant Secretary's conclusion and his final determination as to the petitioner's status shall be published in the FEDERAL REGISTER within 60 days from the expiration of the response period. The Assistant Secretary's decision shall be final for the Department unless it is remanded by the Secretary for reconsideration within 60 days of such publication.

(d) The Secretary in his consideration of the Assistant Secretary's decision may review the petition, staff research, findings, and additional facts obtained from written arguments and evidence submitted by the petitioner after the publication of the preliminary report.

(e) The Secretary shall remand any decision by the Assistant Secretary which in his opinion:

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

(2) the evidence used in making the decision was not reliable, or from reliable sources, or was of little probative value;

(3) the petitioner's or the Bureau's research appears inadequate or incomplete.

(f) Notice of the final decision for the Department shall be mailed to the petitioner, the Governors of the State involved, and published in the FEDERAL REGISTER.

(g) 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 acknowledged tribes and entitled to the privileges and immunities available to other federally acknowledged tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgement shall subject such Indian tribes to the plenary power of Congress and the United States.

(h) While the newly recognized tribe shall be eligible for benefits and services, acknowledgement 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 in response to a request by the Bureau for a supplemental appropriation or inclusion of

an appropriate amount in the next regular Departmental annual appropriation. Such request shall follow a determination of the needs of the newly recognized tribe.

54.11 Determination of needs.

Within 6 months after acknowledgement 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.

/s/ Forrest J. Gerard

Assistant Secretary--Indian Affairs

cc: Assistant Secretary's File
Assistant Secretary's Reading File (2)
Assistant Secretary--Indian Affairs
Code 100A
Code 650
Code 130
IA Surname
IA Chrony 440
IA Mailroom
IA Holdup:bShapard:jm:ext.4045:5/17/78:CassFRP

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:
Tribal Government Services

JUN 6 1978

Dear Interested Party:

Enclosed is a copy of the revised proposed regulations on Federal Acknowledgment of the existence of an Indian group as a tribe. The initial proposal was published on June 16, 1977. In response to the request for comments on that proposal we received 70 written comments, numerous telephone calls and many visits from interested parties. This led to the national conference on the acknowledgment question in Nashville last March. As a result of the input generated by the intense interest in the proposal, it has been extensively rewritten. We, therefore, are again requesting that you study the revised proposed regulations and send us any comments which you might have. Please note that the comment period closes July 3. We hope to be able to publish the final regulations by August and to begin to process petitions under the regulations by early fall.

You may be assured that comments will receive detailed individual study and discussion. If you have any questions or would like to discuss particular points prior to forwarding your comments, call either Les Gay or Bud Shapard at 202-343-4045. Mail any comments you may have to the address which is provided in the regulations.

Copies of the final regulations will be mailed out when they are published. At that time we will explain in some detail what can be expected within the next few months and steps petitioners (both those who have filed and those who have not) may take while the Federal Acknowledgment Project (FAP) staff completes the administrative details necessary to begin consideration of petitions.

Sincerely,

Robert Farrington

ACTING Chief, Division of Tribal Government Services

Enclosure

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Assistant Secretary--Indian Affairs **DATE:** AUG 23 1978

FROM : Acting Director, Office of Indian Services

SUBJECT: Procedures for establishing that an American Indian Group exists as Indian Tribe.

We are enclosing a new part to Subchapter G, Chapter I of Title 25 of the Code of Federal Regulations. It governs the determination that an Indian group exists as an Indian tribe. This part was initially published as a proposal on June 16, 1977, and as a revised proposal on June 1, 1978. There have been no major changes from the revised proposal.

We recommend the enclosed addition be approved and transmitted to the Federal Register Division for publication. The regulations will become effective 30 days after the date of publication. In order to meet the deadlines which we gave the Senate and House Subcommittees, top priority should be given to the consideration and publication of this proposal.

Raymond V. Butler

Acting Director, Office of Indian Services

Enclosure

5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

R 4/13

1) ~~Ricks~~
2). Ted K.

April 7, 1978

Mr. Forrest Gerard
Assistant Secretary of the Interior
for Indian Affairs
Bureau of Indian Affairs
Department of the Interior
Washington D.C. 20240

Dear Forrest:

On Thursday, March 23 I met with you in your office to discuss a range of topics including the development and final publication of procedures for establishing U.S. recognition of certain Indian tribes. For your purposes and mine I am in this letter reviewing the substantive matters we discussed surrounding the topic of U.S. recognition procedures.

We opened the discussions by introducing you to the "Northwest Combined draft" of the recognition procedures entitled Procedures for Establishing that an American Indian Group is an Indian tribe. I advised you of discussions I had had with various Bureau officials (e.g. Bud Shappard, Les Gay, Ted Krenski and George Goodwin) and my intent to have a similar discussion with Rick Lavis. I further advised you of my discussions with Senate Select Committee on Indian Affairs staff with whom the "Northwest draft" was thoroughly reviewed. I also advised you that N.C.A.I. would be considering a series of principles that should guide U.S. policies on U.S. recognition of Indian tribes.

I indicated that the "Northwest Combined draft" offered solutions to all the major problems which were being produced by the Bureau's December 29, 1977 draft regulations and the Senate Committee's proposed legislation. Indeed, it was apparent to me by March 27 with the conclusion of the meeting with Rick Lavis that with the following adjustments and commitments the final regulations could be published by or before June, 1978:

1. The "Northwest Combined draft" would cost an estimated $250,000 to $320,000 for the first year.

2. The office responsible for handling petitions and providing technical assistance should be located in the office of Assistant Secretary - responsible directly to the Assistant Secretary.

3. The "Northwest Combined draft" would eliminate the need for legislation.

4. The regulations should explicitly state as a part of the purpose: "establishment of government to government relations" between a tribe and the United States.

5. Acceptance as a working principle that "gradual increases of economic and technical assistance" to tribes with new relations to the U.S. will be the practice rather than large block outlays ((which is not considered likely or probable anyway).

6. The final regulations must be published no later than June, 1978.

Both your staff and the Senate Committee staff are in basic agreement with the "Northwest Combined draft". As you will note, the N.C.A.I. principles unanimously adopted in Nashville, Tennessee substantially reinforce the "Northwest Combined draft". With the adjustments listed above, I believe you will have a workable and positive package to resolve a long standing problem. I look forward to working closely with you on this effort until its conclusion.

Regards,

Rudolph C. Hyser
Executive Director

RCR/ss

c.c. Rick Lavis, Deputy Assistant Secretary
George Goodwin, Deputy Assistant Secretary
Ted Krenski
Les Gay
Bud Shappard

SMALL TRIBES ORGANIZATION of WESTERN WASHINGTON

P. O. Box 578/Sumner, Washington 98390/(206) 593-2894

April 7, 1978

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Assistant Secretary of the Interior
for Indian Affairs
Bureau of Indian Affairs
Department of the Interior
Washington D.C. 20240

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2. The office responsible for handling petitions and providing technical assistance should be located in the office of Assistant Secretary - responsible directly to the Assistant Secretary.

3. The "Northwest Combined draft" would eliminate the need for legislation.

4. The regulations should explicitly state as a part of the purpose: "establishment of government to government relations" between a tribe and the United States.

ROBERT "OZ" DIRE
TIMOTHY B. ODELL

TELEPHONE: 353-1774

DIRE AND ODELL
ATTORNEYS AT LAW
713 SOUTH BROADWAY
SUITE THREE
EVERETT, WASHINGTON 98204

June 30, 1978

Bud Shapard
Office of Indian Services
Bureau of Indian Affairs
18th and "C" Streets NW
Washington, D.C. 20245

(12)

RE: The Proposed Regulations for Recognition of Indian Tribes

Dear Mr. Shapard:

My name is Timothy Odell, I am an attorney in the State of Washington and I currently represent the Duwamish Indian Tribe. In June of 1977, I hand carried a petition for Federal recognition on behalf of the Duwamish Indian Tribe to the Department of Interior. Since that time both myself and the tribe have been eagerly awaiting the adoption of the regulations for recognition of tribes and I appreciate the opportunity to again comment on the proposed regulations.

I find the regulations not drastically different than those proposed by the Department in the summer of 1977. I feel that the proposed regulations are for the most part, well thought out and they do provide an adequate base upon which to base recognition decisions. However, there are some provisions which I feel are either too restrictive or unduly burdensome.

In reference to section 54.7, FORM AND CONTENT OF THE PETITION, sub-section (a) recites a list of six factors, one of which must apply to a petitioning tribe in order for its petition to be considered. I have no complaint with the six items enumerated, however, I feel that the Department would be making a mistake if it restricted itself to those six criteria alone. It would certainly seem to me that there would be other evidence not contained in one of the six enumerated criteria that might establish a continuous historic Indian identity. I therefore feel that this paragraph is too restrictive and should be amended to read such that one of these six would be desirable but it is not limited to these six particular criteria. As to sub-section (b) of 54.7, I find this paragraph to be totally unacceptable and unduly burdensome to many Northwest Indian Tribes. As I read this paragraph, it is almost incumbent upon the petitioning tribe to live together on an identifiable piece of ground in order to petition the Government for Federal recognition. This would imply that they would have to be living on a reservation. I submit that if a tribe is presently living on a reservation, in most cases it is already a recognized Indian tribe and therefore would not even need to concern itself with these proposals in the first place. I might

cite the Duwamish Tribe as an historic example of an Indian tribe that chose not to be placed on a reservation and lived in harmony with non-Indians from the 1870's until present, but at the same time, maintained their separate Indian identity throughout history. It is my opinion that sub-section (b) of section 54.7 should be stricken altogether from these proposed regulations. As for the rest of the proposed rules, I find them to be quite acceptable and I look forward to the date when a favorable decision is made recognizing the Duwamish Indian Tribe. I do appreciate the chance to comment on your regulations and I do hope that you will find my comments constructive.

Sincerely,

Timothy Odell
DIRE & ODELL
Attorneys for the Duwamish Tribe

TO:jk

NIPMUC TRIBAL COUNCIL
HASSANAMISCO RESERVATION
GRAFTON, MASS. 01519

25 June 1978.

Director, Office of Indian Services
Bureau of Indian Affairs
18th and "C" Streets
Washington, DC 20245

(29)

Att: Federal Recognition Project

Gentlemen;

In regards to the Federal Recognition Project it has been carefully reviewed and certainly is an improvement on the previous draft.

Certainly the identification requirements are clear and we as a presently "unrecognized" Native feel that we certainly qualify. We look forward to the time period when the petition can be forwarded for inspection purposes.

In 54.7 Para (a) states that identity "shall include at least one of the following ". It seems to us that one or more would be a fair criteria. In attempting to put the people into the system, the criteria maybe a little too lenient.
Our questions on clarity from previous draft have been answered.

We certainly have been most concerned that there were split values concerning Indians, those who were BIA and those who werent.

We do hope that this legislation will pass. It has been a long waiting period and hopefully the bill will go forward soon, so that we can all be one people.

Is it possible that the bill could go through as it now exists and pick up any changes on an amendment at a later date. This would expedite the time limit.

Very truly yours,
Cara CiscoeBrough
Chairman
Nipmuc Tribe

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Suite 207 1701 Pennsylvania Avenue, N.W. Washington, D.C. 20006
202 – 343-9484

July 6, 1978

Director
Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, NW
Washington DC 20245

28

Attention: Federal Recognition Project

Dear Sir:

The National Tribal Chairmen's Association takes this opportunity to comment upon your proposed "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," 43 Fed. Reg. 23743 (1978). This most recent proposal, we felt, is an improvement over the version published in June 1977 and incorporates a number of the concepts discussed in NTCA's comments on the earlier proposal. Most importantly, the emphasis of the current proposed rule upon the historical continuity of the entity seeking federal acknowledgment directly addresses the concept that recognition be based upon an enduring political relationship that is established in historical fact. As an organization representative of the federally recognized tribes of the United States, NTCA is greatly concerned that that historical political relationship which is the foundation of the federal trusteeship not be diminished. Our comments on the proposed new rule stem primarily from our commitment to preserving that special federal/tribal relationship.

Section 54.1(k)

The definition of "historically or historical" should be designed as nearly as possible to identify an aboriginal Indian entity. Thus the historical tribe should be one in existence at the time of the first European or other foreign contact. As written, the definition is based on contact with officials or citizens of U.S., colonial, or territorial governments or foreign governments which have ceded territory to the United States. We recommend that the definition include all foreign governments, not just those that have

ceded territory. Cession is a legal concept that could be interpreted very narrowly.

Section 54.3(d)

Any splinter group or faction separated from the main body of the tribe should have to prove that it "has functioned historically and continuously until the present as an autonomous Indian tribal entity."

Section 54.7

The recent BIA proposal has deleted the concept of defining Indian tribal existence on the basis of evidence of collective property rights. This criterion was included in the 1977 BIA-proposed rule, 42 Fed. Reg. 30648, Section 54.7(c)(8), and in the Final Report of the American Indian Policy Review Commission, p. 482, and we believe it to be a stern but true test of tribal existence. Any modern petitioning entity should have to show, as one of the mandatory elements of federal recognition, that it historically and continuously has possessed collective tribal rights in land, water, or funds. Perhaps more than any other criterion, the evaluation of property interests will fairly separate true tribal entities from mere voluntary associations of persons claiming some degree of Indian descent.

Section 54.7(a)

As noted above, we agree basically with the concept that federal recognition should be premised upon historical and continuous identification of the entity as Indian. We would, however, strike the reference to "Native American" as a term which introduces needless and harmful ambiguity into the definitions of Indian and Indian tribe.

With regard to the allowable sources of such identification, we are concerned that the sources be reliable and of high quality. We object to the use of the bare fact of state or local governmental identification or receipt of state services to bootstrap a modern entity into a federal relationship, unless the existence of the state relationship is supported by further evidence of the group's Indian ethnic and cultural heritage.

Moreover, we disagree fundamentally with permitting modern recognition to be based on uncritical or unknowledgeable references to a group in newspapers, books, or other records. Subsection (a) should be rewritten to require reliable or reasonable proof based on more than one of the six stated sources of identification, and there should be a specific requirement of proof that the group, at least historically, practiced or manifested an Indian culture.

Section 54.9

The proposed regulations provide for a review process in which the staff of the Assistant Secretary for Indian Affairs must review the petitioner's evidence and is authorized to initiate its own research only for the purpose of verifying the facts presented by the petitioner. This strikes us as being unduly restrictive. The Assistant Secretary should be expressly authorized to conduct research for any purpose relevant to the petition and to consider and rely upon evidence that is actually contrary to that presented by the petitioner. For example, it may be that a given group could present evidence that a certain anthropologist has identified them as an Indian tribe while there may exist equally or more persuasive scholarly opinion that the group is not a tribe. The Department should be allowed to rely on the conflicting opinion or evidence if it is more convincing.

Section 54.10(h)

Since, as a practical matter, the recognition of additional tribes will impact upon the budget of the BIA and the IHS and the availability of funds to existing tribes, we recommend that that impact be made gradual. The present proposal provides for supplemental appropriations for newly acknowledged tribes in the first year of entitlement. We recommend further that budget requests for newly acknowledged tribes appear as a line item in the Bureau's annual requests to Congress for a period of five years after the supplemental appropriation.

Section 54.11

The assessment conducted as a prerequisite to BIA submission of a recommended budget and request for supplemental appropriation should be an assessment not only of tribal need but of tribal capacity and cost effectiveness of the federal program for the tribe and its members.

We thank you for the opportunity to comment. If we can be of further assistance in this matter, please let us know.

Sincerely,

William Youpee
Executive Director

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PETER E. SPRINGER

June 21, 1978

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RECEIVED
JUN 28 1978

wgi-6-28-78-jm

Director
Office of Indian Services
Bureau of Indian Affairs
18th and "C" Streets, N.W.
Washington, D.C. 20245

Attention: Federal Recognition Project

Re: Procedures for Establishing that an American Indian Group Exists as an Indian Tribe, 25 CFR Part 54

Dear Sir:

This firm represents the Tiwa Indian Pueblo of San Juan de Guadalupe, Tortugas, New Mexico, in their effort to obtain federal recognition as an Indian tribe. In this regard, we are submitting the following comments to be considered in the proposed regulations concerning federal recognition of Indian tribes.

Section 54.3(a) is much too restrictive. To establish a "historically continuous tribal experience ... since historical times until the present" will be very difficult for most groups and impossible for others. This is particularly true for individuals who are not members of a federally recognized tribe. These people have had to become self sufficient and travel away from the tribal group in order to survive. Economic necessity has forced many individuals to leave their tribal entity simply in order to make a living and yet if they were federally recognized the individuals would stay together in order to reinforce their tribal heritage. Some individuals have found it necessary to hide their heritage to avoid discrimination and obtain jobs. To now require a reconstruction of that heritage is unfair and contrary to the broad language of the Snyder Act, 25 USC 13. Such a regulation will be subject to legal challenge.

Section 54.3(d) is also limiting in that it does not set forth how a tribe can clearly establish that it has functioned as an autonomous entity. Many groups will be unable to pinpoint exactly when they began to function autonomously, but would be able to show that they do and that they have functioned as such for an extended period of time. Many groups, although separated from the main tribe, cannot gain recognition from the main tribe because of the drain from the main tribe's allotments. The splinter group is placed in the equivocal position of not being able to gain recognition from its parent tribe and not being able to gain recognition from the Department because it is a splinter group from an already-recognized tribe. The scope of the proposed rules should be changed to take into account groups which have been placed in a dubious position because of circumstances beyond their control.

Section 54.7(b) for the same reasons mentioned will be nearly impossible for a group to meet. Simple economic necessity has forced many individuals to move from their original habitation in order to earn a living. Many times this has resulted in other populations moving into what was once an Indian area thus disbursing the Indian community. In order for individuals to take advantage of the spirit of the Snyder Act, 25 USC §13, it should not be a prerequisite that they inhabit an area which is "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." This regulation is also hard to interpret. In whose "view" does the area have to be "American Indian"? The Department's, the local population's, or the Indians'? Such language should not be in the regulations.

Section 54.10(h) should be eliminated. Indians who are not presently recognized should not be penalized further upon recognition by being denied services to which they are entitled. They should be allowed to immediately begin receiving benefits from existing BIA programs. Having to wait for Congressional appropriation of funds will simply further the plight of Native Americans who are in severe economic straits already. Relief should be immediately forthcoming upon recognition. Newly recognized Indians should be able to compete for jobs utilizing Indian Preference, to apply for existing BIA scholarship funds and to

NORDHAUS, MOSES & DUNN
ATTORNEYS AT LAW

use the Indian Health Service facilities. The Snyder Act requires that services be made available to Indians throughout the United States. Denial of programs and services to any Indian is a denial of equal protection and a breach of trust responsibility.

Yours very truly,

NORDHAUS, MOSES & DUNN

By B. Reid Haltom
B. Reid Haltom

BRH:lnd
cc: President Charles Madrid
Mr. Victor E. Roybal, Jr.
Mr. Carlos Sanchez, III
Mr. Louis Roybal

[illegible] E. Brennan
ATTORNEY GENERAL

1) 400
2) 440

acR
7/20/77

RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 7, 1977

N 1/13

Director,
Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D. C. 20245

Re: Proposed Procedures Governing Determination that Indian Group is a Federally Recognized Indian Tribe.

Dear Mr. Director:

On Thursday, June 16, 1977, the Department of Interior, Bureau of Indian Affairs, published in 42 Federal Register 30647-30648 proposed rules governing the method by which the Department of Interior would make determinations that certain Indian groups were or ought to be Federally Recognized Indian tribes. Comments on the proposed regulations are required to be submitted before July 18, 1977. We have reviewed those proposed regulations and would offer the following comments.

Officials of the State of Maine have for many years advocated Federal recognition of the Indians in Maine in order that those Indians might receive the benefit of programs which, although created to improve the social and economic condition of all Indians, have traditionally been only used for the benefit of western Indian tribes. That position by elected officials in Maine long predates the initiation of the current pending Indian land claims litigation. The current proposed regulations insofar as they appear to provide a procedure whereby any Indian group might become Federally recognized is consistent with this long-standing position by the State of Maine. I therefore believe the proposed regulations to be a fair and equitable approach and would in general support their adoption.

However, the regulations as drafted do create several problems which I believe can be cured without interfering with the basic objective of the Department of Interior.

(50)-3

As noted above, I understand that the purpose of recognition would be to make Indian groups in Maine eligible for receipt of benefits pursuant to special Indian legislation. The purpose of the regulation is not to effect or have any impact upon pending land claims or other suits by Indian tribes or groups wherever located. Nevertheless, it is possible that as currently drafted the regulations may have precisely that impact. The definition of "Federally Recognized Tribe" in § 54.1(f) is so worded that the granting of such status to a tribe might well be used as an after-the-fact argument by a tribe or group of Indians in litigation in Maine or elsewhere that for purposes unrelated to the intent of this regulation the particular tribe or group of Indians was as a matter of law entitled to particular status in litigation.

Specifically, one of the issues raised in both the Maine and Massachusetts land claim litigation is the question of whether or not the plaintiff "tribes" are tribes within the meaning of the Nonintercourse Act, 25 U.S.C. § 177. The standard by which tribal status is to be determined under the Nonintercourse Act or any other act which creates certain legal rights for the Indian groups are complicated both factually and legally. Indeed the standard for tribal status appears to have changed significantly over the last 200 or 300 years. All of these issues have yet to be resolved in any actual litigation. It is possible, however, that the extension of Federal recognition under the proposed regulations in 25 C.F.R. Part 54 might be used by an Indian group to argue that they were a tribe for purposes of the Nonintercourse Act or other similar acts.

I believe that it is appropriate to adopt a regulation which would make the Maine and Massachusetts tribes eligible for Federal programs but that it would be most unfair to promulgate a regulation which would conceivably have some effect on the pending land claims. I therefore urge you to amend the definition of "Federally Recognized Tribe" by

(1) deleting the phrase "domestic dependent sovereign"

(2) inserting specific statutory references to federal Indian aid programs to which such Federal recognition would apply, and

(3) adding to the definition a proviso that:

> "provided, however, that such Indian group shall be deemed to be a tribe only for the purposes of eligibility for federally funded programs designed to provide social, economic,

educational or other similar assistance to such groups and that such Indian groups shall not be deemed by these regulations to constitute a tribe for any other purposes."

I believe that amendment of the proposed regulations as suggested above would achieve the end of permitting all Indian groups to be eligible for federally assisted social and economic aid programs and at the same time not affecting one way or the other any pending litigation.

I would appreciate very much your direct response to these comments and your advising us whether or not you intend to implement the same and the reasons for your decision. As I am sure you can appreciate, this is a matter of great significance to the State of Maine and other states who are facing potential claims under the Nonintercourse Act or otherwise from Indian groups.

Sincerely,

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

JEB:jg

cc: Honorable James B. Longley
Maine Congressional Delegation
All East Coast Attorney's General

[4310-02]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 54]

PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

Proposed Rule

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau proposes revised new regulations which would provide procedures for acknowledging that certain American Indian tribes exist. Proposed regulations were initially published on June 16, 1977. The period for public comment closed on September 18, 1977. Because of the comments received, substantive changes have been made in the initially proposed regulations. Therefore, a second publication of the proposed regulations, with revisions, is in order.

DATES: Comments must be received on or before July 3, 1978.

ADDRESSES: Written comments should be directed to: Director, Office of Indian Services, Bureau of Indian Affairs, 18th and "C" Streets NW., Washington, D.C. 20245, Attention: Federal Recognition Project.

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 acknowledgement 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. The period for public comment closed on September 18, 1977. Since that time Bureau staff has consulted with Indian groups and their representatives throughout the country, National Indian organizations, Congressional staff members interested in the regulations, and specialists in the Bureau and other Federal Agencies.

The interest in these regulations has been intense. The suggestions and comments have been thoughtful and

opious. The nature and number he suggestions and comments have mphasized the myriad of approaches which may be taken in developing regulations and procedures to acknowledge tribal existence. While all the approaches appeared to be viable, there s no single "best approach." The following proposed regulations, therefore, are a composite of what we consider to be the best and generally most acceptable thought put forth. We believe it to be the soundest way to accomplish the Departmental objective of acknowledging the existence of those American Indian tribal groups which have maintained their political, ethnic and cultural integrity despite the absence of any formal action by the Federal Government to acknowledge or implement a Federal relationship.

While there is a large number of American citizens who are of Indian descent in this country, many of them do not and have not ever lived in tribal relations. A group of Indian descendants, living in the same general region, does not necessarily constitute an Indian tribe, even though the individuals may have recently joined together in some formal organization such as a corporation. Under the regulations as proposed, the Assistant Secretary—Indian Affairs would acknowledge only those Indian tribes whose members and their ancestors existed in tribal relations since aboriginal times and have retained some aspects of their aboriginal sovereignty.

The criteria in these regulations are difficult to meet. They can, however, be met with relative ease and at minor expense by tribes which have remained intact throughout history.

There will be a few groups of American Indian descendants which may have existed for a period of time as an Indian tribe but which cannot prove that they meet the criteria. Section 54.10(b) provides for such groups in that the Secretary shall suggest other options (if any) under which rejected groups may apply for services and benefits.

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.

Many of the concepts which proved to be bothersome in previous proposals were dealt with in the "Definitions" section. Others are clarified in the text. As a result of the comments, this revision of the initial June 16, 1977, proposed regulations has been so extensive that it must be considered as an entirely new proposal, although the ultimate objective is the same.

It is proposed to add a new Part 54 to Subchapter G of Chapter I of Title 25 of the Code of Federal Regulation 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 Final action by the Department of Interior.
54.11 Determination of needs.

AUTHORITY: 5 U.S.C. 301; secs. 463 and 465 R.S., 25 U.S.C. 2 and 9; 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 United States that the Secretary of Interior acknowledges to be an Indian tribe.

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

(h) "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.

(i) "Member of an Indian group" means an individual who is recognized by a group which is not currently acknowleded to be an Indian tribe as meeting its membership criteria and who consents to being listed as a member of that group.

(j) "Member of Indian tribe" means an individual who meets the membership requirements of the tribe as set forth in the governing document or is recognized collectively by those persons comprising the tribal governing body, and has continuously maintained tribal relations with the tribe.

(k) "Historically or historical" 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 which have ceded territory to the United States.

(l) "Continuously" means extending from generation to generation throughout the tribe's history essentially without interruption. A petitioner, however, shall not fail to satisfy any criteria herein merely because of fluctuations of tribal activity during various years.

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

§ 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 acknowledgement of tribal existence by the Department is a prerequisite to the protection, services and benefits from the Federal Government available to Indian tribes. Such acknowledgement 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. Acknowledgement shall subject the Indian tribe to the plenary power of Congress and the United States over such tribes.

§ 54.3 Scope.

(a) This part is intended to cover only those American Indian groups indigenous to the United States which are ethnically and culturally identifiable as such, but which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups which can establish a historically continuous tribal existence and which have functioned as autonomous tribes on an essentially continuous basis since historical times until the present.

(b) This part does not apply to Indian tribes, organized bands, pueblos or communities which are already acknowledged 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, composed of individuals of Indian descent from several different groups or tribes.

(d) Nor is this part intended to apply to splinter groups, political factions, communities or groups of any character which separated 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 historically and continuously until the present as an autonomous entity.

(e) Further, this part does not apply to groups which are, or the member

of which are, subject to Congressional legislation terminating or forbidding the Federal relationship.

§ 54.4 Who may file.

Any Indian group in the 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 acknowledgement 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 Recognition 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 Report. The Department shall inform all such groups of the opportunity to petition for an acknowledgement of tribal existence by the Federal Government.

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

(c) Within 90 days after the publication of 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. The petition shall include at least the following:

(a) A statement of facts establishing that the petitioner has been identified historically and continuously until the present as "American Indian, Native American, or aboriginal." Evidence to be relied upon in determining the group's historic and continuous Indian identity shall include at least one 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;

(b) Evidence that a substantial portion of the petitioning group inhabits a specific region 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 historical and essentially continuous tribal political influence or other authority over its members as an autonomous entity until the present. This statement must clearly establish that the petitioner's present internal procedure for making decisions which affect the membership as a whole (tribal government, leadership, group decision-making process or method of operating) evolved from that of the historical tribe; that the present tribal leadership, spokesman or elders have assumed at least some of the rights, obligations and traditions of the historical tribe; and that the present internal procedures are not an effort to reconstitute a defunct system.

(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) Descendency 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 acknowledgement 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 date these regulations are published in final form shall be notified within 60 days from the date of final publication 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.

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

§ 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 to the extent necessary verification of the factual statements contained therein. In order to verify the facts, the Secretary may also initiate other research by his staff, as

Notice to objectors

deemed necessary and appropriate to obtain additional information as to the petitioner's status.

(b) Prior to active consideration of the petition, the Assistant Secretary shall [redacted] petitioning for [redacted] additional information [redacted].

(c) Petitions shall be considered on a first come, first serve basis determined by the date of original filing with the Department. The Federal Recognition Project staff shall establish a priority register including those petitions already pending before the Department.

(d) The petitioner shall be notified when the petition comes under active consideration, and who is the primary Bureau staff member reviewing the petition, his back-up, 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) The Assistant Secretary shall publish his proposed findings in the FEDERAL REGISTER within one year after notifying the petitioner that active consideration of the petition has begun. The Secretary may extend that period up to an additional 180 days upon show of due cause to the petitioner. In addition to the proposed findings, his report shall outline the evidence for the proposed decision. Copies of such evidence shall be available for the petitioner.

§ 54.10 Final action by the Department.

(a) 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. His decision shall be final if not remanded by the Secretary for reconsideration within 60 days.

(b) The Assistant Secretary shall refuse to acknowledge that a petitioner is a Indian tribe if it fails to satisfy the criteria in § 54.7. Upon receipt of a report of proposed findings which are unfavorable to the petitioner, the petitioner shall have 90 days to respond, including an opportunity to present written arguments and evidence to rebut the evidence relied upon. 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.

(c) After consideration of the written arguments and evidence rebutting the unfavorable proposed findings, a summary of the Assistant Secretary's conclusion and his final determination as to the petitioner's status shall be published in the FEDERAL REGISTER within 60 days from the expiration of the response period. The Assistant Secretary's decision shall be final for the Department unless it is remanded by the Secretary for reconsideration within 60 days of such publication.

(d) The Secretary in his consideration of the Assistant Secretary's decision may review the petition, staff research, findings, and additional facts obtained from written arguments and evidence submitted by the petitioner after the publication of the preliminary report.

(e) The Secretary shall remand any decision by the Assistant Secretary which in his opinion:

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

(2) The evidence used in making the decision was not reliable, or from reliable sources, or was of little probative value;

(3) The petitioner's or the Bureau's research appears inadequate or incomplete.

(f) Notice of the final decision for the Department shall be mailed to the petitioner, the Governors of the States involved, and published in the FEDERAL REGISTER.

(g) 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 acknowledged tribes and entitled to the privileges and immunities available to other federally acknowledged tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgement shall subject such Indian tribes to the plenary power of Congress and the United States.

(h) While the newly recognized tribe shall be eligible for benefits and services, acknowledgement 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 in response to a request by the Bureau for a supplemental appropriation or inclusion of an appropriate amount in the next regular Departmental annual appropriation. Such request shall follow a determination of the needs of the newly recognized tribe.

§ 54.11 Determination of needs.

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.

FORREST J. GERARD,
Assistant Secretary—
Indian Affairs.

[FR Doc. 78-15318 Filed 5-31-78; 8:45 am]

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Assistant Secretary--Indian Affairs **DATE:** MAY 25 1978

FROM : Director, Office of Indian Services

SUBJECT: Procedures for establishing that an American Indian Group exists as an Indian Tribe

We are enclosing a proposed addition of a new part to Subchapter G, Chapter I of Title 25 of the Code of Federal Regulations. It governs the determination that an Indian group exists as an Indian tribe. This is a complete revision of our initially proposed regulations which were published on June 16, 1977. We, therefore, are republishing the regulations as a revised proposal.

We recommend the enclosed proposed addition be approved and transmitted to the Federal Register Division for publication. Interested persons will have 30 days after the date of publication in which to submit their comments and suggestions on the proposed addition to regulations. In order to meet the deadlines which we gave the Senate Subcommittee, top priority should be given to the consideration and publication of this proposal.

Raymond V. Butler

Acting Director, Office of Indian Services

Enclosure

8010-110

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SURNAME

Signed 8/10/77

Tribal Government Services
BCCO 0387

Honorable James Abourezk
Chairman, Select Committee on Indian
Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Thank you for your letter of July 18, commenting on the proposed regulations governing Federal recognition. Your comments are appreciated and will be helpful as we consider improvement of the regulations.

Paragraph three of your letter, however, indicates that there is some misunderstanding as to the scope of the proposed regulations. The Secretary of the Interior does not have the unilateral authority to recognize previously unrecognized Indian groups. That authority rests with Congress. The procedure initiated through the publication of the proposed regulations is intended to locate those tribal groups which are not presently acknowledged as recognized by the Federal Government in order that such Indian groups may receive the services to which they are entitled.

Indian groups which cannot establish a historical relationship would have to seek legislation before recognition or services would be extended from the Bureau of Indian Affairs. We are aware of the consideration given this problem by the AIPRC, but interpret it as a much broader approach wherein the Congress becomes involved.

Again, we thank you for your interest and comments. We hope that your staff and ours can establish a working relationship to insure that those Native Americans who are entitled, receive the benefits and services which are due them.

Sincerely,

Acting Deputy Commissioner
of Indian Affairs

cc: Code 400 ~~Code 100~~A
Code 101 Code 120

cc: Surname
BCCO
Commr. Reading File
Chrony 440
Holdup:JShapard:dlb:ext. 4045:8/1/77:Rtypd. 8/9/77:
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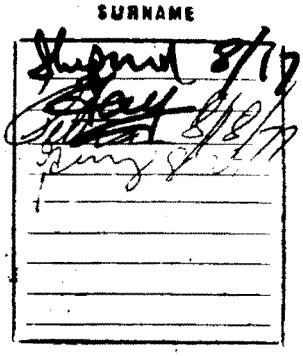

Tribal Government Services
BCCO 8587

Honorable James Abourezk
Chairman, Select Committee on Indian
Affairs
United States Senate
Washington, D. C. 20510

AUG 26 1977

Dear Mr. Chairman:

Thank you for your letter of July 18, commenting on the proposed regulations governing Federal recognition. Your comments are appreciated and will be helpful as we consider improvement of the regulations.

Paragraph three of your letter, however, indicates that there is some misunderstanding as to the scope of the proposed regulations. The Secretary of the Interior does not have the unilateral authority to recognize previously unrecognized Indian groups. That authority rests with Congress. The procedure initiated through the publication of the proposed regulations is intended to locate those tribal groups which at one point had in some manner been given recognition, but are not presently acknowledged as recognized by the Federal Government, in order that such Indian groups may receive the services to which they are entitled.

Indian groups which cannot establish a historical relationship would have to seek legislation before recognition or services would be extended from the Bureau of Indian Affairs. We are aware of the consideration given this problem by the AIPRC, but interpret it as a much broader approach wherein the Congress becomes involved.

Again, we thank you for your interest and comments. We hope that your staff and ours can establish a working relationship to insure that those Native Americans who are entitled, receive the benefits and services which are due them.

Sincerely,

(SGD) THEODORE KRENZKE

Acting Deputy Commissioner
of Indian Affairs

cc: Code 400 Code 100A
Code 101 Code 120
cc: Surname
BCCO
Commr. Reading File
Chrony 440

Mailroom
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Cass. 18-A

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Tribal Government Services
BCCO 8557

Honorable James Abourezk
United States Senate
Washington, D.C. 20510

Dear Senator Abourezk:

Thank you for your letter of July 18, commenting on the proposed regulations governing Federal recognition. Your comments are appreciated and will be helpful as we consider improvement of the regulations.

Paragraph three of your letter, however, indicates that there is some misunderstanding as to the scope of the proposed regulations. The Secretary of the Interior does not have the unilateral authority to recognize previously unrecognized Indian groups. That authority rests with Congress. The procedure initiated through the publication of the proposed regulations is intended to locate those tribal groups which are not presently acknowledged as recognized by the Federal Government in order that such Indian groups may receive the services to which they are entitled.

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Again, we thank you for your interest and comments. We hope that your staff and ours can establish a working relationship to insure that those Native Americans who are entitled, receive the benefits and services which are due them.

Sincerely,

Commissioner of Indian Affairs

cc: Code 400
Code 101
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Code 120
cc: Surname
BCCO
Commr. Reading File
Chrony 440

Mailroom
Holdup:JShapard:dlb:ext. 4045:8/1/77:Cass. 10-A

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

Mr. Theodore G. Krenzke
Director
Office of Indian Services
Bureau of Indian Affairs
18th & C Streets, NW.
Washington, D.C. 20245

JUN 30 1978

Dear Mr. Krenzke:

ANA has reviewed the Bureau's proposed regulations governing recognition of certain Indian tribes. We are pleased to note that many of the suggestions we made regarding a previous set of proposed regulations are reflected in this version.

With the exception of one recommendation, ANA is in support of the regulations as published in the Federal Register on June 1, 1978. The one recommended change, however, is of sufficient magnitude in our opinion that if not implemented the Bureau may face serious problems in the future with respect to who is covered by the term "Indian."

Specifically, the proposed regulations make several references to persons indigenous to the United States or whose ancestors originally resided in what now constitutes United States territory. We strongly urge the BIA to insert the word 'continental' before all such references. Without inclusion of 'continental' Native Hawaiians may be construed as a sub-group of Indians. While certain pieces of federal legislation do specify Native Hawaiians as Native Americans, in no instance is the term 'Native American' made synonomous with the term 'Indian.' Rather, Native Americans as a group are comprised of several distinct sub-groups, Indians being one and Native Hawaiians being another.

There are three specific places in the proposed regulations where we recommend insertion of the word 'continental': Section 54.1(m), Section 54.3(a) and Section 54.7(a).

We appreciate the opportunity to provide you with our comments.

Sincerely,

for A. David Lester
Commissioner
Administration for Native Americans

Rec'd 6/28/78

LAW OFFICES OF
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10

June 21, 1978

Mr. Scott Keep
Attorney
Division of Indian Affairs
Bureau of Indian Affairs
Department of Interior
Washington, D.C.

Re: Proposed BIA regulations for recognition of Indian Tribes (25 CFR Part 54)

Dear Mr. Keep:

I am attorney for the Tulalip Tribes and believe I discussed these matters above mentioned with you approximately a year or a year and a half ago.

I have seen the June 1, 1978 publication of the Federal Register regarding the above and, knowing of the Tulalip Tribes substantial interest in the recognition or non-recognition of other ethnic groups as Indian tribes, I would appreciate it if the regulations were so worded as to allow intervention by recognized tribes who would have a special interest by reason of location or pecuniary or proprietary right in the ultimate recognition of a new group as an Indian tribe.

This intervention should give the intervenor (objector) opportunity to be heard and participate in the making of the record before the Secretary has the matter submitted to him for final approval. Such intervening objector should also have due notice and opportunity to take issue with any final decision, or, a final determination having been made for submittal to the Secretary for such one's approval, take issue with that final determination before Secretary approval is finally given.

As you know, a great deal of evidence concerning a petitioning group's history exists de hors the records of the Bureau of Indian Affairs in any particular agency or region and intervening objecting tribes, if given opportunity, could often provide a substantial body of fact concerning a particular group's ability to meet the criteria set forth in the regulations which would be of great value to the Secretary at the time of a final determination, and which, therefore, could eliminate in some substantial measure the dangers of Court litigation over the Secretary's final decisions.

Such matters as these are of a highly volatile and personal nature inasmuch as many recognized tribes feel they have suffered the indignities of the reservation system and now when about to have recognition of their internal sovereignty and ability to govern themselves with all of the benefits that such implies, are being requested to share that status with those of similar blood who became assimilated into the non-Indian society and enjoyed the freedom as citizens of that community.

In many instances the recognized tribes feel that the present thrust for recognition is being done by those who breached their promises to the United States at the time of treaty making and such ones should not be entitled to the benefits those treaties give by reason of their breach thereof.

There further exists the continuing legal question of whether or not the Congress intended the Secretary to have powers to recognize Indian tribes or, to the contrary, the Congress has always kept unto itself this social-political decision.

Obviously the greater the record and opportunity to be heard on the subject, the better the chances are that the Secretary's opinion and final determination will meet with accepted approval.

Yours truly,

Lewis A. Bell

LEWIS A. BELL

LAB:gh

cc: Wayne Williams

Copy to:
BIA - Code 440
Regional Sol. Portland
6/28/78

Chinook Indian Tribe, Inc.
P.O. Box 372, Ilwaco, Washington 98624
Phone (206) 642-3728
Letter Reference No. _____

June 30, 1978

Director, Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D.C 20245

(14)

Dear Sir:

The proposed rules (25 CFR Part 54) published in the Federal Register on June 1, 1978 are greatly improved over those previously proposed.

The Chinook Tribe had initial contact with the United States Government in 1805. The bands of the Chinook entered into Treaties with the United States in 1851. These Treaties were never approved by the Congress of the United States.

The Chinook Tribal members continue to live in their ancestral areas and have maintained traditional tribal relationships. The following comments regarding the proposed rules are based upon our past, the present, and possible effects on our future.

The comments are as follows:

54.7 (b) Placement of a comma between the words "region" and "or" would remove ambiguity. Logically, the petitioner could then satisfy either "...inhabits..", or "...lives in a community..", and "..members are..". As written it is not clear if the anded phrase applies to both ored phrases.

In addition, do the phrases "specific region" and "specific area" both refer to the same geographical tract?

54.7 (f) A number of Chinooks are members of other Tribes for various reasons. Perhaps an option could be offered here, such as following the word "tribe" place a comma and the phrase "or the member has stated in writing that the petitioning tribe is the preferred membership.".

54.7 (g) A number of Chinook Indians reside in Oregon. Some, but not all of these members in Oregon may be affected by prior Congressional legislation terminating Oregon tribes. An appropriate phrase might address this situation for the general case.

Director, Office of Indian Services June 30, 1978

In the event the Chinooks should petition for Federal recognition, we would rather the rules for the petition include our comment on paragraph 54.7 (b), and include consideration of our other comments.

Other than where we have commented, the rules and procedures appear clear and straight forward.

Sincerely,

Carlton L. Rhoades
Chairman

Carlton L. Rhoades
32217-25th Ave., S.W.
Federal Way, WA 98003
(206) 838-1422

SMALL TRIBES ORGANIZATION of WESTERN WASHINGTON

P. O. Box 578/Sumner, Washington 98390/(206) 593-2894

June 29, 1978

Mr. John A. Shapard Jr.
Division of Tribal Government Services
Branch of Tribal Relations
Bureau of Indian Affairs
18th & C Streets NW
Washington D.C. 20245

(16)

Dear Mr. Shapard:

Per CFR Federal Register Publication 4310-02, I am herewith supplying comments on the proposed rules concerning "Procedures for establishing that an American Indian group exists as an Indian tribe":

1. Section 54.2, last sentence, delete "acknowledgement shall subject the Indian tribe to plenary power of Congress and the United States over such tribes".

2. In Section 54.7, paragraph b, delete the words "and distinct from other populations in the area".

3. Section 54.7, paragraph f, add the word "enrolled" between the words "not members".

4. Section 54.10, paragraph g, again delete "acknowledgement shall subject such Indian tribes to the plenary power of Congress and the United States".

It is hoped that these minor changes can be made.

Sincerely yours,

Rudolph C. Ryser
Executive Director

RCR/sms

c.c. Mr. Scott Keepe

CREEK INDIAN NATION

East Of The Mississippi River
POST OFFICE BOX 201
FLORALA, ALABAMA
36442

Arthur R. Turner
Principal Chief
Tele. Res.
904-834-2728

May 27, 1978

Director, Office of Indian Services
Bureau of Indian Affairs
18th and "C" Streets N.W.
Washington, D. C. 20245

(13)

Dear Friend;

In reply to your letter of June 6, 1978 I have met with my Council and we have explored the procedutes for establishing that an American Indian Group exists as an Indian Tribe.

We agree 100% that the regulations as published July 16, 1977 to be the present best approach to the proposed regulations as outlined in Section 54.7.

We would appreciate very much if this preposed rule could continue to be used to qualify for recognition.

Sincerely,

Arthur R. Turner

Arthur R. Turner

United States Senate

SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, D.C. 20510

8587

July 18, 1977

Mr. Ted Krenzke, Director
Office of Indian Services
Bureau of Indian Affairs
Room 4058
18th & C Streets, N.W.
Washington, D. C. 20245

Dear Mr. Krenzke:

On June 16, 1977, the Bureau of Indian Affairs (BIA) published proposed regulations to govern determination that an Indian group is a federally recognized tribe. (42 Fed. Reg. No. 116, pp. 30617-18). Comments were invited by July 18, 1977.

As you know, the American Indian Policy Review Commission (AIPRC) received a significant amount of testimony on the matter of Indian tribes which have been denied recognition by the Department of the Interior. It appears there has been no procedure or guidelines whatever in the past to govern extension of federal recognition.

To the extent the Bureau is now proposing a formal policy in favor of extending recognition to tribes presently lacking a formal relationship with the Federal Government, I applaud your effort. However, I find numerous problems in the regulations. Among other things, the proposed regulations consistently refer to tribes which believe they "have" the status of federally-recognized tribes. What is really at issue here are tribes which have not previously been accorded federal recognition. It is not a question of whether they "have" recognition, but whether they are "entitled" to recognition.

The proposed regulations would allow presently unrecognized tribes only one year in which to file a petition for recognition. These proposed regulations are premised on statutory authority of considerable age; the introductory remarks indicate that there has been an ongoing problem for a number of years in determining whether a tribe is entitled to recognition; testimony before the AIPRC indicated that with many of the less sophisticated tribes a considerably greater period of time would be required for them to collect their evidence and prepare their petitions. In short, the one year time period is not dictated by the legal authority

you rely upon and is definitely too short a time period for most unrecognized tribes to comply.

The requirement that presently unrecognized tribes include in their petitions "a list of all current members of the group" (§ 54.6(b)) and that they be prepared to provide additional information, including but not limited to age, Indian ancestory, nature of tribal affiliation, and addresses of individual members (§ 54.7(b)) -- this requirement is one which many if not most presently recognized tribes could not supply. Certainly, this is a prohibitive requirement to set up as a condition precedent to recognition. It may well be reasonable to require once a tribe has been recognized, is beginning to organize, and has access to federal aid.

The definitional guidelines set forth in § 54.7(c) appear in considerable measure to track the recommendations of the AIPRC report. However, they are not as broad as AIPRC's recommendations. But the most limiting feature appears in § 54.8(b) which requires that a petitioning tribe must meet paragraphs 1 through 5 and paragraph 10 of the definitional requirements plus one of the remaining paragraphs (6 through 9) which require that such tribe (1) has been or is descended from a tribe that was a party to a treaty with the United States; (2) has been designated a tribe by an Act of Congress, Executive Order or judicial decision; and (3) has been treated by a state or another Federal agency as having collective rights in land, water, funds or hunting and fishing rights; or (4) has received services from a state or federal agency. While this procedure will undoubtedly qualify some tribes for recognition which have not previously been recognized, it is still far too limiting and will cut out some of the smaller tribes in the greatest need of recognition. Worse yet, the limitations prescribed are actually more restrictive than those presently available to the Bureau as described in the letter of Acting Commissioner LaFollette Butler to Senator Henry Jackson dated June 7, 1974 (See Report of Task Force #9, Vol. II, pg. 306).

Thus, it seems that what first appears to be a step forward turns out to be a step backward. As you know, the Select Committee on Indian Affairs is presently formulating legislation to provide for federal recognition of tribes not now recognized. I do not suggest that you refrain from your present effort to extend recognition to presently unrecognized tribes. I do, however, recommend that you revise your proposed regulations in light of the comments supplied in this letter. At the very least, new regulations should not be more restrictive than past Bureau policy and practices.

Very truly yours,

James Abourezk
Chairman

ALASKA FEDERATION OF NATIVES, INC.

Integrity, Pride in Heritage, Progress

W91-7-C-78

June 25, 1978

(17)

Robert Pennington, Acting Chief
Division of Tribal Government Services
Bureau of Indian Affairs
Department of the Interior
Washington, D.C. 20245

Dear Mr. Pennington:

Enclosed are comments on the "Procedures for establishing that an American Indian Group exists as an Indian Tribe".

The recommended changes reflect the feelings of entities that would be most impacted by these proposed rules, and are therefore the position of the Alaska Federation of Natives, Inc.

If the procedures are again found unacceptable and are again published for comment, please allow at least 45 days for comment. It is extremely difficult to respond on such short notice (our office received the Federal Register on the 16th of June).

Thank you for your time and consideration. If you have any questions, please call us for clarification.

Sincerely,

Clifford A. Black
Executive Vice President
Human Resources

Enclosure

550 WEST EIGHTH AVENUE ANCHORAGE, ALASKA 99501 • PHONE (907) 274-3611

COMMENTS ON THE PROPOSED REGULATIONS ON FEDERAL ACKNOWLEDGEMENT OF THE EXISTENCE OF AN INDIAN GROUP AS A TRIBE

I. Introduction. Because of the special legal status of Alaska Natives , the proposed BIA regulations on acknowledgement of Indian groups as tribes be read as extinguishing the rights of Alaska Natives to organize as tribes under the Composite Alaska Reorganization Act (49 Stat 1230). As such, the regulations would violate the trust responsibility of the federal government towards Alaska Natives and contravene recent legislative pronouncements relating to Alaska Natives. To avoid this problem, the following recommended changes are submitted for your consideration.

II. Recommended changes.

a) Sec. 54.3 Scope. A section (f) should be added to specifically except Alaska Natives from the effect of the regulations and allow them to continue to organize under the BIA regulations issued pursuant to the Composite Alaska Reorganization Act.(See Attachment)

b) Sec.54.7 Form and Content of the Petition. Subsection (b), requiring evidence that"a substantial portion of the petitioning group inhabits a specific region or lives in a community viewed as American Indian and distinct from other populations in the area"... and subsection (c), " A statement of facts which establishes that the petitioner has maintained historical and essentially continuous tribal political influence or other authority over its' members as an autonomous entity until the present,"both ignore the special historical and legal background of Alaska Natives. If it is decided that Alaska Natives will not be excepted from the petitioning procedure set forth by these regulations, Alaskan groups should be excepted from these two provisions and instead be allowed to show:

1) cultural continuity from before the treaty of cession,
2) recognition that individuals are Natives elegible for federal services by virtue of being enrolled under the Alaska Native Claims Settlement Act, and
3) existence of a defined community or association as defined by the instructions for organization under the Composite Alaska Reorganization Act.

III. Analysis. The special status of Alaska Natives has been repeatedly recognized by the federal government. In the Treaty of Cession(15 Stat 539) the federal government stated that," The inhabitants of the ceded territory... with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages and immunities of the United States and shall be maintained and protected in the free enjoyment of their liberty, property and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country." The Act of May 17,1884 declared that," The Indians or other persons in (Alaska) shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them, but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress."(23 Stat 26). The Alaska Statehood Act (72 Stat 339, sec.4) stated that,"As a compact with the United States said state and its people do agree and declare thar they forever disclaim all right and title... to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos or Aleuts... or is hled by the United States in trust for said natives..."

Although aboriginal title to land was recognized, and a trust relationship developed between the United States and Alaska Natives, no agreements or treaties were signed between native groups and the United States. In spite of the absence of a treaty base for the Federal-Native relationship, the benefits of the Indian Reorganization Act were extended to Alaska by the terms of the original act and supplemented by the Composite Alaska Reorganization Act.(49 Stat 1230) Section (1) of the act provided that,"groups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common bond of occupation, or association or residence within a well-defined neighborhood, community, or rural district may organize to adopt constitutions and to receive charters of incorporation and Federal loans under sections 16, 17 and 10 of the Act of June 18, 1934.

In the Handbook of Federal Indian Law, Felix Cohen explains that this [illegible] language (from the language in the original Indian Reorganization Act) was developed for Alaska Natives because of their special situation:"The natives unquestionably considered and treated as being under the guardianship and protection of the federal government at least to such an extent as to bring them within the spirit if not the exact letter, of the laws relative to American Indians..." [illegible] "The type of organization authorized by the Act (the IRA) was the organization of Indian bands or tribes, or the Indians residing on a reservation. However, since

of the natives in Alaska do not live on reservations and are not grouped as bands or tribes, as in the states, and since most of the natives live in native villages or communities and many groups of natives work in particular kinds of occupations or have other ties that bind their interests together..." the statutory language was altered to allow different kinds of IRA groups to be formed in Alaska.

According to BIA regulations issued to implement this legislation (see attachments) three types of IRAs can be established in Alaska:

a) A corporation with a charter for municipal and public activities and to engage in business. Such a charter would be granted to a group comprising all native persons in a community,

b) A charter giving authority to engage in business and to provide for the common welfare (excluding municipal and public powers). Such a charter would be given to a group comprising all native persons in a community.

c) A charter giving authority to engage in business and provide for the welfare of its' members (excluding municipal and public powers). This type of charter could be granted to"a group not a community but comprising person having a common bond of occupation or association, or of residence within a definite neighborhood."

In an explanation of the Composite Alaska Reorganization Act, John Collier stated that specific powers,"which may be obtained through a Federal charter of incorporation under section 17 of the Reorganization Act may be found even more useful to an Alaskan native group than those appropriate to a constitution which are set forth in section 16 of that act. A charter of incorporation is a document granted by the government to a group of individuals which enables that group to carry on its affairs just as one individual himself could do. The group, thus made into a corporation, can make contract, buy and sell property, borrow and loan money, run a business, go to court and sign its own name." (See attachments)

In the minds of the major architects of Indian policy at that time, the Alaska Reorganization Act was designed less to establish a reservatin-like system in Alaska with tribes exercising civil and criminal jurisdiction over its members than it was to allow groups to organize as tribes to form corporate entities recognized by U.S. and state law to conduct business and encourage the economic development of Alaska Natives. Several groups organized as tribes under section (a) of the instructions and at least one group organized under section (c). (See attachments.

PL 85-615 (72 Stat 545) extended to Alaska civil and criminal jurisdiction provisions of PL-280 (18 USC 1162 and 28 USC 1360) after territorial courts ruled that the territory had no jurisdiction over crimes within "Indian country" in Alaska. This legislation served to divest the Alaska native groups of any remaining civil or criminal jurisdiction they may have retained over tribal members in conflict with state laws of general applicability. (Santa Rosa v. Kings County, 532 F2d 655). But it was not intended by this Act to undermine or destroy such tribal governments as did exist or result in coversion of the affected tribes into little more than private voluntary organizations, (Bryan v. Itasca County 426 US 373). Native groups continued to have extensive powers not specifically abrogated by Congress over internal tribal relations . The special ward-guardian relationship continued, and native lands held in trust by the federal government were immune from state encumbrance or taxation. (Santa Rosa v. Kings County)

The Alaska Native Claims Settlement Act further reduced some of the political powers of Native groups in ambiguous language. (85 Stat 688) Section 2 (b) declared that; "the settlement should be accomplished rapidly,...with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States government and the state of Alaska." Section 2(c) of the act qualified this broad policy statement by declaring that, "no provision of this act shall replace or diminish any right, privilege or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace , or diminish any obligation of the United States or of the state of Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or of Alaska; the Secretary is authorized and directed, together with other appropriate agencies of the United States government, to make a study of all Federal programs primarily designed to benefit native people and report back to Congress with his recommendations for future management and operation of these programs..." Analysis of the two clauses is rendered difficult by the fact that only a tax provision on lands and the abrogation of reservation areas implemented this policy language in specific legislative language. However, an analysis of the affect of this language on existing native rigths is possible.

Section 2(b) contains three major provisions: the settlement should be accomplished without;

1) establishing any permanent racially defined institutions, rights, privileges or obligations. This language could be interpreted broadly to outlaw any

existing or future racially defined institutions. Such a definition would violate the constitutionally protected right to assemble, and the generally held rights of United States citizens to incorporate for profit or non-profit purposes and to join together in private social or religious organizations. Read more closely to avoid the constitutional question, this clause could be interpreted prohobit separate tribal political institutions with wide ranging powers. Even so read, under accepted canons of judicial construction, powers not specifically abrogated would probably still exist in Alaska tribal groupings.

2)"Without creating a reservation system or lenghty trusteeship or wardship". This clause was implemented specifically by section 19 (a), revocation of existing reservations in Alaska and by ~~section~~ section 21 which provides that revenues from the Alaska Fund would not be subject to taxation until after distribution as dividends and that real property interests tranferred under the act would not be taxable until developed or until the end of twenty years. This section could be read broadly to imply a termination of the Federal-Alaska-Native wardship- trustee relationship. Such an interpretation however would contradict established court decisions. Once it is found that a fiduciary relationship based on a specific statute, treaty or agreement exists, "any withdrawal of trust obligations by Congress must have been 'plain and ambiguous' to be effective."(Decoteau v.District County Court, 420 US 425, Passamaquoddy v. Morton 528 F2d 370, 388 F.Supp 649, Menominee v. U.S. 391 US 404). The language used in the Native Claims Act departs from the procedure used in other termination actssuch as Klamath (25 USC 564 a-w), which specifically declare that the intent of the act is to terminate all federal services. Under section 2(c)of the Native Claims Act, the contiuation of "federal programsprimarily designed to benefit native people" is envisaged. Since Congress was fully aware of the means by which termination could be effected and did not use clear termination language in the Native Claims Act,the courts will not infer an intent to terminate."A congresssional determination to terminate must be expressed on the face of the Act or be clear from the surrounding circumstances or legislative history" (Bryan v Itasca County 426 US 373, citing Mattz v. Arnett, 412 US 481). The conference reports accompanying the legislation (House Report No. 92-523, Conference Report No. 92-746, 1971 USCCAN 2192) do not expand upon the language 2(b) and in fact seem to studiously avoid comment on the section. Subsecuent cases (Edwardson v. Morton 369 F.Supp 1359, U.S. v. Atlantic Richfield 435 F.Supp 1009) characterize the Act as being designed primarily to resolve title questions of Alaska lands and to compensate Alaska Natives for loss of aboriginal title to lands occupied in Alaska.

3)"without adding to the categories of property and institutions enjoying special tax privileges or to the legislation enjoying special relationships between the United States government and the state of Alaska." This language does not act retroactively to abrogate existing statutory provisions providing tax advantages or special relationships for Alaska Natives. As such, the Native Claism Acy does not affect federal services provided under the Snyder Act,(25 USC 13), the Johnson-O'Malley Act (25 USC 452 et seq), the Indian Reorganization Act and other federal Indian legislation enacted prior to the Alaska Native Claims Settlement Act. Congress itself has contradicted the provision prohibiting legislation establishing special relationships by enacting the Indian Self-Determination Act.

Language in the Indian Self-Determination Act (25 USC 450 a (b)) seems to restrict considerably the scope of the policy statements analyzed above. The policy statement in the Self-Determination Act reaffirmed Congress' "commitment to the maintenance of the Federal government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning conduct and administration of those programs and services". In 25 USC 450 b, "definitions", "Indian" is defined to include "any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act." This language shows a clear congressional intent to maintain recognition of Alaska Native groups as "tribes" for the purpose of receiving federal benefits and for the purpose of maintaining the special Federal-Indian trust relationship.

As a result of the contradictory policy statements, three pieces of legislation are currently co-existing ;the Indian Reorganization Act, the Alaska Native Claims Settlement Act and the Indian Self-Determination Act. In attempting to reconcile the three, one rule to follow is that, in the absence of some affirmative showing of an intention to repeal earlier legislation, the only justification for repeal by implication is when the earlier and later statutes are irreconcilable. When there are two acts on the same subject, the rule is to give effect to both if possible.(Morton v.Mancari 417 US 535, Maynor v. Morton 510 F2d 1254). Under this rule at least some of the benefits of the Indian Reorganization Act would survive the Native Claims Settlement Act, and the broad policy language of the Naitve Claims Settlement Act would be limited to specific revocations of Native rights. All rights not expressly abrogated would continue to exist. At the least, Native people would be allowed to organize as tribes to receive

federal services. "Although the IRA was primarily designed for tribal Indians, and neither Maynor nor his relatives had any tribal designation, organization or reservation at that time, it is clear from the language of the statute that some benefits of the Act were also open to any non-reservation Indian would could prove that he possessed at least one-half Indian blood. Among these benefits was the right to petition the Secretary to establish a reservation for such individuals which, if granted, would afford them access to a wide range of federal Indian services (as members of a recognized Indian group on a reservation)" (Maynor v. Morton 510 F2d 1254)

Another rule to follow in interpeting the conflicting policy statements is that where ambiguities appear in statutes dealing with Indian matters, disputed issues must be resolved in favor of the Indians (Worcester v. Georgia 31 US 350, Bryan v. Itasca County 426 US 373, McClanahan v. Arizona Tax Commission 411 US 164. Kimball v. Callahan 493 F2d 564 , Choate v. Trapp 224 US 665). Application of this rule to the conflicting language would result in a legal status of Slaska Native groups closely analagous to that of Indian tribes in states where criminal and civil jurisdiction have been ceded to the state. A trust relationship would still exist and the Native groups that organize would be exempt from local regulation and subject only to state laws of general application (see Santa Rosa).

The exact scope of the rights retained by Alaska Native groups must be determined by future litigation and legislation. However, it is clear that some remnants of the aboriginal rights of the Alaska Natives subsist and that the Federal government has a recognized trust responsibility to protect Native rights. Application of the proposed BIA regulations would restrict the existing rights of Natives to organize under the IRA. As such, the regulations would violate the trust relationship: "...it is the duty of the trustee not to accept any position or enter into any relation, or do any act inconsistent with the interests of the beneficiary... and he cannot assume a position inconsistent with or in opposition to his trust." (90 CJS, Trusts 247) Federal officials must discharge "moral obligations of the highest responsibility and trust" (Seminole v. United States 316 US 286) in carrying out their fiduciary responsibility.

7-6-78 jn

To the Secretery,
And whom it may concern, (18)

This letter is in regard to the BIA Regulations on Federal Recognition of TRIBES.

My name is Tyrone E. Pathoski and I Am enrolled in the Snoqualmie TRIBE.

To begin with - I was very disapointed to learn at our last TRIBAL meeting that our TRIBE might not be able to fish this year for salmon + etc. Because the TRIBE that Sponsored us last last year Doesn't want to this year they say it would mean less fish for them, and other neighboring TRIBES Don't want to Sponser Because it's A hassle for them or cost money or (,,

I don't really understand this Sponsering business and I wonder How much money it take's And for what?,

As for last years Sponser's saying that Sponsering the Snoqualmies for net fishing would reduce their percentage of the fish, it sounds like a greedy \ Excuse to me.

Because, I doubt that there would be very many members of our Tribe fishing since the majority are, old people, - Women, or are to poor to afford nets + boats + etc, or live to far away - or have jobs - and couldn't get out to fish any way,

And I Don't think that a small number of net fishers could hurt the salmon runs for our Tribe's AREA's,

And there must be some kind of records showing how many Snoqualmie members have fished and how much they've caught over the years since Judge Boldt Started the Net Fishing for Indians,

It' probably not very many compared to some of the larger TRIBES,

I think that our tribe has enough, Ethnoligical, historical, legal and political evidence to satisfy criteria, and should be recognized + acknowledged as a Tribe.

And since our Tribe is one of the weaker and vulnerable. Minority Tribes, oppressed by poverty, lack of education, lack of commuication, and lack of Unity, and, lack of political recognition, that it should be the United States Goverment's responsibility and obligation to protect and defend our Inherent and Sovereign, rights, which we are Entitled to, and to Revise the regulations And to appropriate funds for net fishing.

I only wish I could Have known years ago what I Know about Net Fishing Now. It has been just in the last year or two that I've learned how to Net fish and How much money some Indians make at it.

Most of what I've learned I've learned from Some Puyallup Indians and my cousins.

Now Some make hundreds to thousands of Dollars a day net fishing and Now the peninsula Indians make thousands of Dollars a day. I learned that's how Bob Satiacum got his big start years ago and now he pretty rich.

I've learned some about the different salmon runs like, Springers, Kings, Blackmouth, Silvers, Sockeye Chums, Steelhead, and etc, and that every fourth year the natural runs come in, and this year is one of those years.

This year was going to be my first year for net fishing. And I had hoped to catch at least enough to help out my family's food supply. Since salmon cost about 350 to 4.00 a lb, and about 6.00 for Indian Smoked. People like us just couldn't afford those kind of prices.

And I had hoped that some salmon would help my mother's health some. Since her health has been going downhill in the last few years. I was going to give some to a couple of cousins who are less fortunate.

I had also hoped that maybe I could make enough money to get started in my own firewood Business.

I had planned to use the smoker I am building

But the way things look now for the Snoqualmies there won't be any fishing unless there is a revision of the regulations or something is negotiated with the State of another Tribe. So I hope something can be worked out in time.

Virginia E. Pathfield
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July 3, 1978

(19)

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Re: Procedures for Establishing That an American Indian Group Exists as an Indian Tribe.

This submission is made on behalf of the 13th Regional Corporation in response to requests for comments on proposed regulations for establishing that an American Indian Group exists as an Indian Tribe, contained in the June 1, 1978 Federal Register at page 23743.

The 13th at this time wishes to make several points with regard to these proposed regulations. Because of the short time for comments, and the pendency of important matters in the U.S. District Court here, we plan to submit additional material in the near future and respectfully request that the record be kept open for a reasonable period of time.

The 13th submitted comments July 18, 1977 in regard to the proposed regulations published in the June 16, 1977 Federal Register. These comments should be considered supplementary to those.

We note initially that the definition of a tribe may differ under different circumstances. The 13th Regional Corporation has twice been recognized as a tribe by the BIA. In the first instance, the question was raised as to whether the regional corporations created pursuant to the Indian Self-Determination Act, P.L. 93-638. By his memorandum dated May 21, 1976, the Assistant Solicitor held that regional corporations are "tribes" as defined in that Act. A copy of that memorandum is attached to this submission.

In the second instance, a question was raised as to the eligibility of the 13th Regional Corporation as a "tribe" under the Indian Financing Act of 1974, 25 U.S.C. 1641, et. seq. By a memorandum dated June 28, 1977, the Acting Associate Solicitor held that under the

Financing Act of the 13th Regional Corporation was indeed a "tribe." A copy of that memorandum is also attached.

The term "tribe" itself is not one that is easily defined. As Professor Cohen pointed out, the definition and scope of the term changes, depending on how it is used:

> "The term 'tribe' is commonly used in two senses, an ethnological sense and a political sense. It is important to distinguish between these two meanings of the term. Groups that consist of several ethnological tribes, sometimes speaking different languages, have been recognized as single tribes for administrative and political purposes.... The question of tribal existence, in the legal or political sense, has generally arisen in determining whether some legislative, administrative, or judicial power with respect to Indian 'tribes' extended to a particular group of Indians."
>
> Felix S. Cohen, Handbook of Indian Law, 268 (1942 ed.).

In the specific case of Alaska Natives, moreover, tribal questions are significantly different from those presented in the lower forty-eight.

As Cohen has stated, "most of the Natives in Alaska do not live on reservations and are not grouped as bands or tribes as in the States." Cohen, Handbook, supra, at 414.

Congress long ago recognized this fact. In the 1936 amendment to the Indian Reorganization Act, Congress extended the benefits of that Act to:

> "groups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common band of occupation, or association, or residence within a well-defined neighborhood, community, or rural district."

Congressional recognition of the special nature of Alaska Native organization was apparent in the landmark Tlingit and Haida claims case, Tlingit and Haida Indians v. United States, 177 F. Supp. 452, 463 (Ct. Cl. 1959). In that case, the Court of Claims made it very clear that traditional concepts of tribal government and organization were not applicable to Alaskan Native tribes and groups. The issue was construction of Section 2 of the special jurisdiction statute [49 Stat. 388 (1935)] that enabled the plaintiffs to bring suit for the loss of "tribal or community property rights." The Government contended that the Tlingits and Haidas were not organized as "tribes" and thus could not own "tribal property."

The Court of Claims responded by citing evidence that Congress was well aware of Tlingit and Haida organizational structure when it passed a special statute authorizing them to sue for the loss of "tribal" property rights.

The Court stated:

> "To say that Congress authorized non-tribal Indians to sue in connection with the type of property right which Congress knew they did not have, i.e. tribal property, is to say that Congress knowingly performed an absurd and useless act. ... We have no difficulty in concluding that ... when Congress employed the word 'tribal' to describe the property which should be the basis of the suit under the Act, it did not use the word in its usual sense.
>
> The Tlingit and Haida Indians v. United States, 177 F Supp. 452, 463 (Ct. Cl. 1959).

The June 1, 1978 Federal Register notice stated the purpose of the new regulations was to "provide procedures for acknowledging that certain American Indian Tribes exist." Insofar as the proposed regulations are intended to provide some codification of the tests which are currently applied in certain context, such as litigation under the Non-Intercourse Act, they may effectively serve that purpose, in regard to groups in the lower forty-eight. The 13th continues to believe, however, that Alaska Natives present entirely different considerations. See the Alaska Supreme Court's discussion in Atkinson v. Haldane, 569 P2d. 151, 154, (1974).

The 13th interprets §543 of the proposed regulations as recognition of the fact that "tribal" questions must be resolved differently for Alaska Natives.

The 13th Regional Corporation wants to emphasize what it believes the regulations do not cover. Section 54.3, delineating the scope of the regulations, apparently intends to remove the regional corporations from the scope of these regulations. To the extent, therefore, that regional corporations are not included in the intended purpose of the regulations, i.e., to identify new groups which, on the basis of certain historic factors, wish to prove whether they "exist," the exclusion is unexceptionable.

However, these rules cannot be seen as determinative of questions other than that of the "existence" of a Tribe for purposes relating to the Non-Intercourse Act. Specifically, they cannot affect eligibility for funds under the Snyder Act, 25 U.S.C. §13.

The 13th is clearly a "tribe" pursuant to the regulations interpreting the Snyder Act. The regulations contained in 25 CFR 2[illegible] et. seq., which limit eligibility for Snyder Act payments to In[illegible]

living on or near a "reservation," defines the term "reservation" as including "Alaska Native Regions established pursuant to the Alaska Native Claims Settlement Act ..." 25 CFR 20.20. As the 13th is a duly established Native region, 243 U.S.C. §1606(c), its members must be considered "on the reservation" for the purposes of 25 CFR 20.20 regardless of the fact that they do not reside within a common geographic area.

The "on or near the reservation" requirement of 25 CFR 20.20 was apparently promulgated in an effort to cure defects which had resulted in a judicial rejection of the Secretary's informal assertion of a requirement of residence "on the reservation" in order for Snyder Act benefits to be awarded. In Morton v. Ruiz, 415 U.S. 199 (1974), the Supreme Court narrowly held that Congress intended to appropriate Snyder Act funds for unassimilated Indians living in an Indian community near their native reservation; in Lewis v. Weinberger 415 F Supp. 652 (1976), the court held that the Bureau could not limit the provision of contract health services to reservation residents where the rulemaking provisions of the APA had not been invoked. In both cases the court explicitly refrained from deciding the plaintiffs' broader contention that the provision of Snyder Act benefits may not be limited to those Indians who live on or near a reservation. Although the Secretary's issuance of 25 CFR 20.1 et. seq., indicates that he has interpreted these two decisions narrowly, the 13th asserts that a proper reading of the Snyder Act requires including the members of the 13th in the eligible class.

The Snyder Act directs the Secretary, through the Bureau of Indian Affairs, "to provide moneys for the benefit, care, and assistance of the Indians throughout the United States ..." The 13th respectfully submits that, were the Secretary to interpret the term "Indian" as not applying to the members of the 13th Regional Corporation, who are Alaskan Natives by blood, heritage, and self-perception, and who actively participate in Native community affairs through the structure of this corporation, such interpretation would be contrary to the plain meaning, accepted legal definition, and legislative purpose behind Congress' use of the term.

Had Congress intended to qualify the definition of the term "Indian", it could have explicitly done so, as it in fact has done in several other statutory provisions. 25 U.S.C. §4506(b); 25 U.S.C. §479; 25 U.S.C. 1301(1); 25 U.S.C. §1452(b); 43 U.S.C. §1602(b). Absent such qualification, or any compelling reason to the contrary,

courts will give statutory terms their plain meaning. Joint Tribal Council of Passamaquoddy Tribe v. Morton, 388 F. Supp. 649 (1975), Ruiz v. Morton, 462 F2d.818 (9th Cir. 1972). In the Ruiz case, the Appeals Court stated, at 820:

> The Snyder Act provides that benefits are to be made available to Indians 'throughout' the United States, and absent persuasive reasons to the contrary, Courts will give statutory words their ordinary meaning. The ordinary meaning of the preposition 'throughout' is expansive, and it is not the type of restricted word Congress would have used had it intended to limit general assistance to reservation Indians. There is nothing equivocal about the phrase 'throughout the United States,' nor do we find anything in the legislative history that counters its broad thrust. (citation omitted).

As noted above, the Supreme Court upheld the decision, though on narrower grounds.

The plain meaning of the term "Indian" is "the descendants of any pre-Columbian inhabitants of North America." U.S. v. Native Village of Unalakleet, 411 F2d. 1255, 1266 (Ct. Cl. 1969); Pence v. Kleppe, 529 F2d. 135 (9th Cir. 1976). In Frazee v. Spokane County, 69 P. 779 (1902), the Washington Supreme Court, confronting the argument that "Indians" who had severed their tribal relationships must forfeit their tax-exempt status, resolved the issue as follows:

> "In the absence of plain and unequivocal words showing unmistakably that only those still sustaining tribal relations are referred to, we think, when the term "Indians" is used in a statute, and without any other limitation, it should be held to include members of the aboriginal race, whether now sustaining tribal relations or otherwise."

Additionally, several cases have held that application of the term "Indian" is determined by blood rather than by tribal memberships, so that white and black citizens who had become bona-fide members of a tribe were not "Indians" for the purpose of obtaining immunity from prosectuion under state criminal statutes. Alberty v. U.S. 162 U.S. 499 (1895); U.S. v. Rogers 45 U.S. 567 (1846); Lee v. Pero, 94 F2d.28 (7th Cir. 1938).

Even if the term "Indian" is not entirely unambiguous, it is well established that statutes pertaining to the Federal Govern

relationship to Indians are to be liberally construed, for the benefit of the Indians. Passamaquoddy, supra, Santa Rosa Band of Indians v. Kings County, 432 F2d. 655 (1975), cert. denied, 429 U.S. 1038 (1976); U.S. v. Fox, 505 F2d.254 (9th Cir. 1974); Daney v. U.S. 247 F.Supp. 533 (1965) aff'd, 370 F2d. 791 (10th Cir. 1966). Additionally, in Fox, the court perceived that the Snyder Act applied to individual Indians as well as to Indian tribes, stating at 255:

> [W]e recognize that assistance programs established under the Snyder Act are for the special benefit of Indians and Indian communities and must be liberally construed in their favor. (emphasis added)

It is also clearly established that, unless specifically stated otherwise the term "Indian" includes Alaskan Natives. Pence v. Kleppe, 529 F2d.135 (9th Cir. 1976); U.S. v. Native Village of Unalakleet, 411 F2d. 1255 (Ct. Cl. 1969).

Finally, reference to the legislative history of the Snyder Act shows that Congress did not envision its aid as being limited to reservation-bound Indians. In fact, the opposite is true. The Act was passed at a time when Congress was disillusioned with the BIA's self-perpetuating maintenance of an elaborate reservation system. Congress sought to assimilate the Indians -- for the benefit of both the Indians themselves and of the taxpayer. Congressman Kelly, one of the bill's supporters and a member of the Indian Affairs Committee which reported it favorably, gave the following explanation during the House debate of August 4, 1921:

> For an entire generation it has been the express purpose of the American Congress to individualize the Indian, to give them homes of their own, [and] to help them become self-supporting ...
> Congressional Record, 66th Cong. 1st Sess., page 4659.

This point is buttressed by the authorization, contained in the Act as passed, of expenditures for the "civilization" of the Indians. While this paternalistic notion may seem anachronistic, it does indicate that Congress, in passing the Snyder Act, sought to ease the Indians away from reservations by providing the services they needed to gradually assimilate themselves. It would be inappropriate for the Secretary to now contend that he is authorized to interpret the Act so as to establish a system which serves as solely an incentive for Indians to remain on the reservation.

Obviously, the benefits of the Snyder Act should not be extended to every individual who has the requisite volume of "Indian blood"

to be considered an "Indian" in the ethnological sense. However, the term must be construed as including those ethnological Indians who fall within the purpose of the Act. In particular, it extends to individuals who are recognized as "Native Americans" under the Alaskan Native Claims Settlement Act, 43 U.S.C. §1602; who are active members of a "tribe" which is recognized pursuant to that Act and who recognize themselves, and are recognized by others, as Native Americans.

The 13th is now developing historical information as to its members' origins. During the second World War the Government forceably removed many of these from their Alaska ancestral lands. The 13th believes this will have substantial impact on the question of the obligations of the Federal Government toward its wards. This information will be presented to the BIA as it is developed.

Very truly yours,

PRESTON, THORGRIMSON,
ELLIS, HOLMAN, & FLETCHER

By _____
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GREGORY R. DALLAIRE
DIRECTOR

(20

June 28, 1978

Director, Office of Indian Services
Bureau of Indian Affairs
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Washington, D.C. 20245

Re: Comments, Federal Recognition Regulations

Dear Sir:

This letter is written in response to the new proposed procedures for the determination of a tribe's status as a federally acknowledged Indian tribe. On June 1, 1978, these procedures were published in the Federal Register, 43 Fed. Reg. 23743. The period for public comment closes on July 3, 1978.

The proposed procedures are, in general, acceptable so long as they are implemented in a reasonable and non-arbitrary manner. However, we do have certain suggestions for further improvements in these regulations.

Definitions - § 54.1

(j) The definition of a "member of Indian tribe" should be amended to mean:

> ...an individual who meets the membership requirements of the tribe as set forth in the governing document or is recognized collectively by those persons comprising the tribal governing body, has continuously maintained tribal relations with the tribe and is listed on tribal rolls of that tribe if such rolls are kept.

This amendment will help insure that a "member of an Indian tribe" is limited to individuals enrolled in the tribe when formal rolls are kept. This is important since many tribes in the Pacific Northwest and elsewhere do keep formal rolls. Strict reference to such rolls in determining membership for those purposes will add an element of certainty to the process and make it easier to determine who is, and is not, a member of that tribe.

(n) The concept should be fully introduced, or rather reintroduced, into these regulations of an "historic association of groups" that was included in the earlier draft of these regulations but is excluded here. See December, 1977 draft, § 54.1(g). That subsection should again be added to the final regulations as a new § 54.1(n):

> (n)"Historic association of groups" means any longstanding, commonly known, historical contact of two or more Indian groups associated together for political, social, or economic purposes, or for their common good, to the extent they are viewed today as a single entity.
>
> This term and the concept it represents can be incorporated into Part 54 by the modification of the following two criteria as follows:
>
> § 54.1(f)
>
> "Indian tribe" also referred to herein as "tribe" means any Indian group or historic association of groups within the United States that the Secretary of Interior acknowledges to be an Indian Tribe.
>
> § 54.7(a)
>
> A statement of facts establishing that the petitioner has been identified historically and continuously until the present as "American Indian, Native American, or aboriginal." Such Indian identity may include identification as an historic association of groups. Evidence to be relied upon in...

This new definition would provide additional flexibility to the process by acknowledging the diverse factual and historical circumstances under which many present Indian tribes, both recognized and non-recognized, were formed. Many Indian tribes existing today evolved from two or more tribes, bands, or groups that may have existed separately at the time of the first European contact but which have since clearly evolved into one Indian tribe. This amalgamation and fragmentation was often caused by federal policy itself. Any danger that this amendment would require the recognition of "splinter groups" within already recognized tribes is squelched by § 54.7(f) or its equivalent (see discussion below).

Required Petition Contents - § 54.7

This section provides seven criteria that the Department is proposing a petitioner meet to demonstrate tribal existence. These criteria must, of course, conform to the caselaw definition of what is an "Indian tribe" and to accepted principles of constitutional law. Three of the seven criteria will be discussed below.

§ 54.7(b)

The second criterion in the section requires proof that a "substantial portion: of the petitioning tribe "inhabits a specific region" or Indian community and that the ancestors of these members also have inhabited a "specific area." This criterion can be eliminated as unnecessary.

This requirement is largely duplicative of other criteria within § 54.7. It is superfluous toward proof that a group is an "Indian tribe" if the other criteria are satisfied. If in fact a petitioner has both "historically and continuously" been identified as an Indian tribe (§ 54.7(a)) and has operated as an "autonomous entity" (§ 54.7(c)) this criterion in (b) is clearly unnecessary and may prevent the acknowledgment of an otherwise qualified applicant. The real question to be decided by the United States is not the location of the tribe's members, but whether the peitioner is factually an "Indian tribe" which has maintained itself historically, continuously, and autonomously. See § 54.3(a). By requiring petitioners to satisfy this criterion the Department appears to be imposing an irrebuttable presumption of a lack of tribal existence if the group fails to inhabit a specific enough "region." Such irrebuttable presumptions are disfavored under the due process clause of the Fifth Amendment. Vlandis v. Kline, 412 U.S. 441 (1973); National Labor Relations Board v. Heyman, 541 F.2d 796 (9th Cir. 1976). Irrebuttable presumptions will be held unconstitutional unless they rest upon federal policies so compelling as to override the basic requirement of our legal system that questions of fact, herein that of tribal existence, must be resolved by proof. Heyman, supra, at 801.

§ 54.7(c)

Under this requirement the petitioner must demonstrate that it has continuously existed as an autonomous entity. The second sentence of the criterion outlines certain things that must be established in the statement. We recommend that the second sentence be deleted from the final regulations. The sentence requires petitioners to show that:

> ...the petitioner's present internal procedure for making decisions which affect the membership as a whole (tribal government, leadership, group decision-making process or method of operating) evolved from that of the historical tribe; that the present tribal leadership, spokesman or elders have assumed at least some of the rights, obligations and traditions of the historical tribe; and that the present internal procedures are not an effort to reconstitute a defunct system.

There are a number of problems with this sentence which support its elimination. It is, firstly, so vague that it is difficult to know what must be provided by the petitioner. At what point does a "system" become "defunct" such that it cannot be "reconstituted"? If a tribe's internal procedures have evolved dramatically from an earlier "system" or if it has a new system unrelated to the "historic" system may there still be adequate "continuity"? How many are "some...rights, obligations and traditions," and what exactly do these terms include and exclude?

Because petitioners are thus not entirely put on notice of what is required of them, there is some problem criticizing the substance of this sentence. However, there does appear to be at least some danger that this is imposing an unfair requirement upon petitioners.

An examination of United States Indian policy and its impact upon Indians will demonstrate some of the defects potentially inherent in this criterion. It is well documented that during the latter part of the nineteenth centurey and the early part of the twentieth century federal Indian policy had as its objective the destruction of tribal relations and culture. See, F. Cohen, Handbook of Federal Indian Law, 22-23 (1942). The United States government was, to some degree, successful in its implementation of this policy. The functioning of many tribes was disrupted and the cultures of many tribes irreparably lost.

It was only with the passage of the Indian Reorganization Act of 1934 that this policy was reversed and the BIA began to assist Indian tribes to establish formal governmental organizations with written constitutions. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 151-152 (1973). It is important to note, however, that many of these formal tribal governments were, and are, in forms substantially different from the aboriginal forms of tribal organization. As a result of this history, many fully federally recognized tribes can now demonstrate little organizational "continuity" or

or retention of "traditions" from the past up until the present. This fact has been noted by courts in recent years but deemed to be irrelevant to the federal authority over Indians and the continued existence of Indian tribes. Confederated Salish and Kootenai Tribes v. Moe, 392 F. Supp. 1297, 1315 (D. Mont. 1975) aff'd 425 U.S. 474, 477 (1976); see also, Wisconsin Potowatomies v. Houston, 393 F. Supp. 719, 731 (W.D. Mich 1973).

The submitted petitions should therefore be examined with due consideration to the situation of Indian tribes already acknowledged as such by the United States. The imposition of a set of recognition requirements upon petitioning tribes that would require them to demonstrate greater organizational continuity then presently recognized tribes can demonstrate is not only unrealistic but also would raise a serious question of the violation of the Fifth Amendment due process rights of petitioners.

Even assuming that this second sentence as drafted will be applied fairly in practice, it may be largely duplicative of proposed § 54.7(a). As such it could easily be eliminated as unnecessary. Section 54.7(a) requires a showing that the petitioner has been historically and continuously identified as Indian. This identification as "Indian" over time is similar to the requirement that the petitioner has assumed "at least some" "rights, obligations and traditions" of the aboriginal tribe in § 54.7(c). In effect the same evidence will go to prove both (a) and at least part of (c) quoted above.

Procedures for Processing the Petition - §§ 54.9, 54.10

The procedures outlined in these two sections are basically acceptable. However, certain minor changes should be made.

As drafted, § 54.10(a) should be modified. It is assumed, from a reading of § 54.10(c) and (b) that the sixty-day period for Secretarial review does not begin until the Assistant Secretary's final determination is issued. However, subsection (a) does not make that clear. We suggest that the second sentence of (a) be eliminated as unnecessary and confusing.

Certain other changes should also be made to give the petitioner an adequate opportunity to respond to Department actions. The ninety-day period allowed for petitioner's response to the Assistant Secretary's proposed findings should be lengthened to one-hundred and twenty days. § 54.10(b). The increased time may be critical for the preparation of an adequate response, especially for those petitioners who may not have a regular or full-time researcher or attorney available to immediately begin the

preparation. In some cases new time consuming research may have to be undertaken by a petitioner who may have limited resources available for a quick response. For many petitioners the proposed findings may be issued as long as a year or two after the final petition is submitted. The original preparer may be gone at that point and memories would certainly have to be refreshed.

We also feel that after the publication of the Assistant Secretary's final determination the petitioner should have an express opportunity to present additional argument, if it wishes, to the Secretary. While the Secretary is charged with consideration of the petitioner's response to the preliminary report, there is no opportunity to again respond to the final report. Changes may be made in the final report that could require rebuttal. Such an opportunity for additional rebuttal is reasonable and is certainly required by the Fifth Amendment. Koniag, Inc. v. Kleppe, 405 F. Supp. 1360, 1370-1371 (D.D.C. 1975).

Thank you for your consideration of these comments.

Sincerely,

The Cowlitz Indian Tribe
and Steilacoom Tribe of
Indians

By,

Jeffrey S. Schuster
Attorney at Law

JSS:sld

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DEPARTMENT OF ANTHROPOLOGY
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June 30, 1978

Director, Office of Indian Services
Bureau of Indian Affairs
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Washington, D. C. 20245

Attention: Federal Recognition Project

The new regulations regarding identification of American Indian groups for federal recognition are a great improvement over the earlier ones. Nevertheless they remain vague and even confusing on several points.

The key words or phrases in connection with which the vagueness persists are "tribe," "tribal relations," and "tribal character." "Tribe" is subject to a wide range of interpretations, and the ambiguity of the word has not been eliminated in the present regulations. The implication of a tribe being an organized political body with central authority runs through the various sections of the regulations. Perhaps it is intended to have this implication. However, if that is the intent, it would seem to be an arbitrary definition not useful in interpreting the situation of modern Indian groups.

The most generally accepted technical definition of "tribe" is something like the following: a tribe consists of people living in different local groupings who share common customs and beliefs and, usually, a common language(See E. R. Service Primitive Social Organization, Random House, 1964, for example). The first definition of the word in Webster's New International is along these lines; it is not till a third definition is given that "central authority" is included. But aside from formal definitions, the implication that a group of Indians in the United States must have maintained political organization with central authority from aboriginal times should be expressly avoided in the regulations. It must be recognized that the very great majority of Indians at the time of first European contacts did not live under centralized political organization and authority. Only a few could be so characterized like the Iroquois and possibly the Creeks. However, the Creeks and some others like the tidewater Virginia Indians actually developed their confederacies in response to white contact and encroachment, not before.

The great majority of Indians lived in local groupings, whether bands, villages, towns, or other types of communities, which were each autonomous. These local communities were capable of banding togethe for specific purposes, such as military protection or aggression, but they did not live continuously under a central political authority. There were nevertheless groups of bands or villages which shared common cultural traits and sense of identity with one another, and usually a common language. These groupings (not organizations) of similar peoples

were referred to by Europeans at the time of early contacts (pre-[redacted] is referred to in the regulations as "aboriginal [redacted]" not "tribes." The label of "tribe" then came gradually to be [redacted]tuted for nation during the 19th century.

[redacted]opis existed in autonomous villages without central [redacted]thority, except for some specific military purpose as in the [redacted]struction of the village of Awatovi. This was true also of all the Rio Grande Pueblos. The Papagos existed in autonomous villages up until the time of the Indian Reorganization Aact in 1937, thus not having "tribal" organization until that year. All the Apache bands were autonomous communities and even fighting units until encouraged to form "tribal" organization by the Bureau of Indian Affairs after 1934. The Navajos lived in autonomous local groupings until contacts with whites finally led to the institution of a "tribal" organization at Fort Sumner during their incarceration. We could go on listing the various Indian peoples to the number of more than a hundred and sixty who were not characterized by central political organization until after many years of contact with whites, some instituting such organization early , as in the case of the Cherokees in the 19th century, and others much later, as in the case of the Papagos in the 20th century.

It cannot be assumed that any Indian group within the territory of what became the United States could have maintained [redacted] rity from aboriginal times. The forced migrations, population [redacted] removals, concentrations, separation of single "nations" [redacted] more (as in the case of Shawnees, Cherokees, Potawatomis [redacted] Pimans, etc.), and interferences with the "tribal governments" stimulated under contact conditions cannot be presumed to have left any groups "intact throughout their history," as the regulations suggest in one place. Recognizing these historical conditions, the provisions of the regulations on this point must be regarded as pertaining to no identifiable reality of the present day.

Probably nevertheless "tribal relations" and "tribal character" are as good phrases as any for naming the phenomena with which the regulations are concerned. In using them, they must be clearly defined. First, the implication of political organization as a necessary condition for persistence of tribal relations should be explicitly eliminated. Then a positive meaning of tribal relations should be made clear and emphasized. It should be said that tribal relations consist in the maintenance of native cultural traits in common (often including [redacted]anguage, but not necessarily always) and the maintenance of a sense [redacted] collective identity as an Indian group.

[redacted]llective identity is not used in the regulations, presumably because [redacted] is usually regarded as extremely vague and indefinable. Yet "ethnic [redacted] used, a term which is even more loosely used than identity. Self-identification of Indians is now used by the U. S. Census and other fact-gathering agencies. It should be used in the problems of federal recognition, but only if clearly understood. It is useful if understood to refer to the employment of a group term by individuals to indicate common identification with others using that term. The identification rests on awareness of common historical experience and shared attitudes towards whites and other Indians. It is the historical experience of the group which is absolutely unique to them and which they have common sentiments about.

The persistence of common cultural traits and of the particulars sense of identity of the different Indian groups has depended on the existence of various kinds of organization other the political forms which Indians have been forced to abandon. Thus religious customs and beliefs distinctive of various Indian groups have been maintained through church or other forms of religious organization. Churches and religious associations have also maintained and intensified the sense of identity of Indian groups. These organizations have not necessarily been continuous in their existence since "aboriginal times." They have developed as Indians have adapted to the changing circumstances of life in the United States. Some have died out and then been revived in new forms. The point is that there have been ups and downs in the continuity of the various Indian churches and ceremonial and other associations. The continuity appears in them not merely in particular forms of organization, but in the symbols and meanings of identity and in the religious and other tribal values which they express in the changing forms.

Therefore, "clubs" and other associations should not be ruled out as criteria for the persistence of an Indian group and its eligibility for federal recognition. In fact, their existence is a signal that the Indians who have them, in many cases, have a special interest in themselves as Indians and have devised practical means for nourishing and maintaining their Indian heritage.

I present these points in the hope that they may be helpful in the difficult matter of formulating regulations regarding federal recognition of Indians.

Sincerely,

Edward H. Spicer

Edward H. Spicer
Professor Emeritus

North Carolina
Department of Administration
P.O. Box 27228 Raleigh 27611 (919) 733-5998

James B. Hunt, Jr., Governor
Joseph W. Grimsley, Secretary

N.C. Commission of Indian Affairs
A. Bruce Jones, Executive Director

June 30, 1978

(22)

Director
Office of Indian Services
Bureau of Indian Affairs
18th and C streets, NW
Washington, DC 20245

Attention: Federal Recognition Project

Dear Sir or Ms.:

We are responding to your request for comments to the recently proposed BIA regulations on federal recognition of Indian tribes, as published in the Federal Register, volume 43, number 106, June 1, 1978.

We would like to begin by making some comments about the Supplementary Information section of the proposed regulations.

While the requirements of the petition, as listed in secition 54.7, would seem to allow recognition of many Eastern, non-reservation Indians, it is the explanation in the "Supplementary Information" section that seems to put a restrictive interpretation on the requirements of section 54.7. The fourth paragraph of the "Supplementary Information" section appears to be most harmful to the recognition efforts of many non-Reservation Indians, especially those on the East Coast, The last sentence of that paragraph states that ". . . only those Indian tribes whose members and their ancestors existed in tribal relations since aboriginal times. . . " would be acknowledged under the regulations as proposed.

There are many East Coast non-reservation Indian people who, while maintaining personal identity and community tribal relations as Indian, have not maintained formal tribal structure throughout history. **Many of these people have resumed their formal tribal structure in recent years.**

Causes of this phenomenon are complex, but some of the contrubuting factors have been:

1) earlier contact with European settlers, with resulting assimilation of European culture; East Coast Indians were exposed to Europeans up to 200 years earlier than were many Western Indians.

2) discrimination against Indians, who were often included with Blacks as "persons of color."

Since state governments in the East were established much earlier than those in the West, the East Coast Indians tended to establish relationships with the states instead of with the federal government. Western Indians often established relationships with the federal government before statehood was granted to their territories. State governments have recognized these people as Indian, even though formal tribal structures were not in operation. For years, several North Carolina counties had separate schools fof Indians, Whites, and Blacks. The Indian schools were often established by state legislation.

There are Indian tribes in North Carolina which have had suppression of their Indian identify forced upon them. They maintained their Indian communities amongst themselves, while state and local governments made only two distinctions among races - white or colored. Their present internal procedures are not just an effort to reconstitute a defunct system but are instead an assertion of a right that was denied to them for so many years. These people are Indian and they should be recognized as such.

The non-federally recognized Indian groups of North Carolina: The Coharie, Haliwa, Lumbee, Person County, Tuscarora and the Waccamaw-Siouan, have maintained Indian tribal relations since aboriginal times. They have maintained relationships with state government. They have continued to maintain their Indian identity. Recently revised state legislation fully recognizes their Indian heritage dating back to aboriginal times.

Our specific comments are in relation to this perspective. The regulations as presently developed would place a hardship on the Eastern Indian groups. With a few changes, the regulations would allow bona fide Indian groups to qualify, and would protect eastern tribal groups, as well as exclude non-Indian groups attempting to get on the "bandwagon" under this legislation. Our comments will be listed by section.

54.1 (f) Indian tribe . The regulations should reflect the idea that a group which, for some reason, does not qualify for acknowledgment or funds under these regulations should not lose altogether its identity as an Indian tribe.

54.1 (i), (j) Member of Indian group
Member of Indian tribe
These sections need to reflect the aforementioned concern.

54.7 (a) The words "and continously" need to be stricken. Eastern groups have more than 200 years of history behind them, with various changes in governmental structure and law. They should not be penalized for this fact of Eastern United States life. The groups have been repeatedly and consistently identified as Indian. This should be sufficient without a test of continuousness.

54.7 (b) Many Western groups do not now inhabit their aboriginal lands, for example: the NezPerce, and tribes in Oklahoma. Some Eastern groups have also been forced to move. A definition of community needs to be added. The test should be one of local knowledge and reputation, rather than one of contiguousness or borders. Since many Eastern groups were never reservated, their communities (although distinct) are formed differently from those of Western tribes.

54.7 (c) A majority of the Eastern groups are descendants of tribes which remained East after the Europeans forced many Indian groups West. They were not allowed to practice formal tribal government. They were required to submit to state governmental authorities. The tribal authority was maintained to the present, but in a way distinct from the Western groups. The regulation should reflect this difference in culture.

Further, we hope that the entire regulation and petition process will be re-evaluated into a two tier process. First, your office would recognize all bona fide Indian groups on the basis of criteria designed to recognize the cultural differences between reservated, non-reservated, Eastern and Western groups. After all the Indian people were recognized, section 54.11 would set up a procedure whereby each group would prove its needs for support. Funding would not be an automatic result. Rather, Indian money would go to the areas of greatest need. This approach would stop quarrels over Indian heritage in part motivated by a fear of loss of needed funding.

This is not the time for a bitter struggle over Indian identification. We need to quickly recognize those groups which have been suffering and rejoicing as Indians for years. And then, united as Indians, we need to work to find resources to meet the needs of our nationwide Indian community.

If you have any questions or if we may be of further service to you, please do not hesitate to contact us.

Most Sincerely,

A. Bruce Jones

A. Bruce Jones
Executive Director

ABJ:slj

'81 - 7-6-78 jm

Northwest Florida Creek Indian Council

P. O. Box 462, Pensacola, Florida 32592, 904-432-9639

(Serving as Administrative Council for FTECI)

June 28, 1978

(23)

Director
Office of Indian Services
Bureau of Indian Affairs
18th and "C" Streets N.W.
Washington, D. C. 20245

Dear Sir:

Pursuant to the provision for comments on FR Doc. 78-15318/25 CFR Part 54, Procedures for Establishing that An Indian Group Exists As An Indian Tribe, we submit the following recommendations.

1. 54.1 (f) may be construed as conflicting with 54.1 (i) and 54.1 (j) inasmuch as (f) assumes by "tribe" a group that has been acknowledged as such by the Secretary, the import being that there are no unacknowledged tribes even though (j) appears to assume there are yet-to-be acknowledged tribes; but since (i) makes the same assumption, the distinction between "group" and "tribe" remains unclear.

   We believe the intent is that "group" shall be the term designating unacknowledged petitioners, and that "tribe" shall designate a petitioner that meets the requirements of the Secretary. However, since we already knew this we further infer that (j) stipulates that a tribe is characterized by either recognizing its members collectively through its tribal governing body or setting forth membership requirements in its governing document; whereas a petitioner lacking this characteristic is a "group" (i. e., unacknowledged)--which lands us back in the original confusion, since some meeting the requirements of (j) are not acknowledged by the Secretary.

   We sympathetically recommend that these terms be clarified. We also suggest that (f) carries implications perhaps unintended by the Department of the Interior:--to wit, that a substantive reality (in this instance a people or community indigenous to a region and having common and traditional ties attributable to that indigenous character and to common racial origin) might be arbitrarily non-ented by the decision of a State official whether

deliberately or as the result of mistaken judgement. For this reason also, we suggest the phraseology of (f) be changed so that its purport is unmistakable.

2. The last sentence of 54.3(a) absolves the United States Government of any part in the willful destruction of the economy, government, culture, and traditions of Indians choosing to remain in their homeland; whereas, it is historically beyound dispute that not only did that Government (and the Governments of its States) with deliberation and foresight persist in this effort, but also carried this endeavor into the Indian Territory, among the Creeks of the Creek Nation in Oklahoma, intending to deprive Eastern and Western Creeks alike of lands, self-determination through sovereignly administered governance, faith in their right to culture and traditions, and anything but individual enrollment in official censuses and allotments as evidences of their Creek Indian identity. The chaos wreaked by the Government upon unremoved Indians renders it totally insupportable, manifestly unjust--and subject to challenge--that this same Government require that the continuity of such a group be proved not to have been disrupted. If the Government desires in truth to deal with Indian peoples through their governments, it should be careful not to add to its history an act (or requirement) which perpetuates an earlier effort to extinguish such a people.

   The last sentence of 54.3(a) is offensive, because it is unjust and is a carte blanche for the perpetuation and condonement of earlier, repeated injustices including the violation of a people's innate right to have its identity acknowledged and legally protected. We strongly urge the deletion of the last sentence of 54.3(a).

3. The same objections urged for 54.3(a) are urged for 54.7(a) and 54.7(c), with the following recommendations:

   a. 54.7(a) should be phrased to clearly limit the applicability of the terms "historically and continuously", "historic and continuous", "longstanding", and "repeated" to those groups whose continuity or longstanding characteristics were not disrupted by actions of the United States Government or its States or the unprevented acts of their citizens; or it should be plainly stated that a lack of continuity resulting from such disruption by the Government shall not be construed as a prohibition of the subject group's qualifying under this section.

   b. 54.7(c) should be deleted--for the reasons already stated and also because a tribe should be able to form its own rules and procedures for governing itself. The tribe should not have its rules and procedures of government determined by the B. I. A. Furthermore, the Government or its offices

> cannot both require traditionary governance by the tribe (as in 54.7(c)) and at the same time impose or recommend its own governmental formulae (as in Section 16 of the Indian Reorganization Act (48 Stat. 984)) without seeming to disavow its own declared interest in Indian self-determination.

The imposition of extraneous types of government upon traditional peoples was a fundamental error of the United States. Justice cannot consist of requiring a people to prove they remained essentially unaffected by this error.

In conclusion, we maintain that a tribe shall have the sole right to determine whether it is a tribe, and the Government's right is to decide whether it shall acknowledge its obligation to a tribe, in accordance with equitable and historically justified criteria. To require universally of all petitioners the requirements of 54.1(f), 54.1(i), 54.1(j), 54.3(a), 54.7(a), and 54.7(c) would be neither equitable nor historically justified.

Respectfully,

J. E. Waites

J. E. Waites, Chairman
Tribal Council
Florida Tribe of Eastern
Creek Indians

JW/cg

MICHIGAN INDIAN LEGAL SERVICES
3041 N. Garfield Rd.
Traverse City, Michigan 49684
(616) 947-0122

June 30, 1978

WJ1 - 7-6-78; m.

(24)

Director, Office of Indian Services
Bureau of Indian Services
Bureau of Indian Affairs
18th and "C" Streets, N.W.
Washington, D.C. 20245
Attention: Federal Recognition Project

RE: Proposed procedures for establishing that an American Indian Group exists as a tribe.

TO: Federal Recognition Project,

While I believe that the recently published set of proposed regulations on tribal recognition are an improvement over the first proposed set of regulations, I am compelled to suggest the difficulties I foresee under the new regulations:

1. Definition of autonomous. Subsequent to the definition of "autonomous" the Bureau explains that "Autonomous must be understood in the context of the Indian culture and social organization of that tribe." Well said, but, unfortunately, seen as an afterthought. Many tribes throughout the United States of America do/did not have organized councils or processes for making tribal decisions, but rather exercised an ad hoc system whenever it was necessary for a tribal decision or position to be made. The idea of narrowly defined or tightly organized structures or mechanisms is a non-Indian bureaucratic view of how a group should operate. It is not sensitive to the reality of the operation of tribal groups. Even during the treaty era, it was often the U.S. agent who sought or forced the selection of a tribal chief or "headman" who would speak for the tribe or band. The tribe/band was recognized by the federal government, otherwise it would not have had treaty relations with the tribe/band. To facilitate the negotiations, the federal government required the tribe or bands to appoint an Indian spokesman.

To require a history, essentially continuous history of an artifically created governing procedure or body ignores the reality of the Indian way of life, especially for those groups who have been wrongfully ignored and neglected by the federal government because the government failed to help them reorganize in the 1930's and '40's.

Along the same lines, the requirement in Section 54.7 (c) that:

> The petitioner has maintained historical and essentially continuous tribal political influence or other authority over its members as an autonomous entity until the present. This statement must clearly establish that the petitioner's present internal procedure for making decisions which affect the membership as a whole... evolved from that of the historical tribe ...

This language agains presupposes that the Indian group historically had some type of structured, definable governing body or procedure. Surely, Indian groups who can show essentially continuous existence in a specific region, distinct from other populations and recognized by other Indian and non-Indian groups an/or governments as an Indian community or group are tribes. The fact that they may or may not have or in the past did not have a political structure should not preclude them from receiving federal recognition. We must ask how the Department expects Indian groups who were ignored or deprived of their right to reorganize in the 1930's and "40's because of bureaucratic and monetary considerations are expected to exert political influence over their members when they had no political control over their lives having been deprive of the right to exercise their inherent soverignity over their members by the federal government's neglect and lack of support. Unless the federal government has recognized an Indian group as a tribe and assisted it in creating reservations over which the tribe can exercise political authority, the group is going to have had to continue to survive as best it could over state and local governmental units.

Nor should a group which has been deprived of its right to federal recognition be penalized because it has adjusted to the demands of the white society in order to preserve its own separate existence by possibly incorporating under state law in order to receive funding from non-BIA funding sources to better their members' lives or adjusting its governing structure to that which was required by state or county governments who continued to serve the Indian community as a separate and distinct population.

The relevant fact is that the group is and always has been a separate and distinct Indian population and has had relations with federal, state or local governmental units as such. The Bureau should stop trying to define Indian tribes with non-Indian precepts.

2. I find the fact that there is no mandatory time constriction on the Bureau to consider petitions which are submitted pursuant to these regulations. While Section 54.9 (f) requires that publications of proposed findings within one year after notifying the petitioner that active consideration has begun (unless the Secretary extends the period an additional 180 days), there is no deadline as to when the Bureau is to begin active consideration. Given the Bureau's inaction on petitions which have been filed by Indian groups all the way back into the 1930's, the possibility that a group's petition could be ignored or set aside is too great without a deadline for beginning initial consideration. Many Indian tribal groups have waited in vain for many, many years already and to be told now that there's no telling when their group will receive consideration under the new regulations demands too much of these long neglected people.

I suggest that first the Bureau give priority on consideration to those groups who have filed petitions in the past to receive the first priority based on the original filing date. Therefore, if an Indian group can show that it has petitioned the government in the past for recognition or reorganization and the Department failed to assist the group in reorganizing, then that group should be given priority in consideration as of the original filing date. An example of such a group is the Ottawas of the Grand Traverse area who sent two petitions, one in 1935 and another in 1943 when they failed to get a positive response to the "35 petition. Both petitions were turned down not on their merits but because the Department did not want the financial burden of reorganizing the Ottawas in Michigan. Senate Bill 2375 would give this group a priority date of 1935, they should not have to begin all others and possibly end up at the bottom of the list for consideration.

Senate Bill 2375 also improves on the proposed regulations because it would require at least a preliminary report on the groups petition within two years of filing the petition. Two years, I believe, is overly long, one year from the date of filing the petition should be sufficient time for the Bureau to give at least initial consideration of the peition. Then if the tribal group has failed to collect necessary evidence of their existence as an Indian tribe, the Bureau can notify them of the need for additional substantiating documentation. The petitioning group should then have sixty days to respond, as would be permitted in Senate Bill 2375. The Bureau should then be required to make its recommendation on the petition within the following 90 days. If more substantiating evidence is not necessary, the Bureau should recommend recognition within one year of the filing of the petition.

3. Section 54.10 (h) is obviously objectionable. If a group is recognized as an Indian tribe, the federal government admits its preexisting trust obligations. Possibly, tribal groups who have been receiving assistance from state or local governments would be denied these benefits once their recognized by the federal government. The members of the group would then be left in a worse position than they were in prior to recognition while they waited an indefinate time for Congress to act on a request for additional appropriation. The government has deprived Indian tribal groups of benefits to which they are rightfully entitled. The Bureau in promulgating these regulations had begun to address its abdication of responsibilities to the so-called non-recognized Indian tribes. The promise implicit in these regulations to reverse years of neglect should not end with a hallow victory wherein the "newly" recognized tribe is still without federal services.

Respectfully submitted,

Eleesha M. Pastor

EMP/cs

HALE AND DORR
COUNSELLORS AT LAW
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TELEPHONE
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25

June 28, 1978

Director
Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D.C. 20245

Attention: Federal Recognition Project

Re: Proposed Rule For Procedures For Establishing That An American Indian Group Exists As An Indian Tribe

Dear Sir:

We are counsel to the Town of Mashpee and other defendants in a suit commenced in the United States District Court for the District of Massachusetts by the alleged Mashpee Tribe ("the plaintiff"). In that capacity, we submit the following comments on the proposed regulations concerning federal recognition of Indian tribes published in the Federal Register on June 1, 1978.

First, the proposed regulations make no provision for objections and presentation of evidence by interested parties other than the petitioning Indian group. One of the determinative issues in the litigation in which we were involved was the plaintiff's status, vel non, as an Indian "tribe" within the meaning of the Nonintercourse Act. 25 U.S.C. §177. On January 6, 1978, a jury determined that the plaintiff was not such an Indian tribe. Any action now taken by the Department of the Interior or the Bureau of Indian Affairs concerning the question of the plaintiff's tribal status may be argued by the plaintiff to have an impact upon that jury determination. For this reason, it would be inappropriate and would violate the defendants' right to be heard granted to them by the U.S. Constitution and the Administrative Procedure Act, 5 U.S.C. §551 et seq., for the Department of the Interior to make any decision on the plaintiff's

claimed tribal status without affording to the defendants their due process rights. Therefore, we submit that the regulations should provide for the presentation of evidence and arguments by interested parties other than the petitioning group during the processing of the petition as well as after an initial determination that the petitioning group is an Indian tribe.

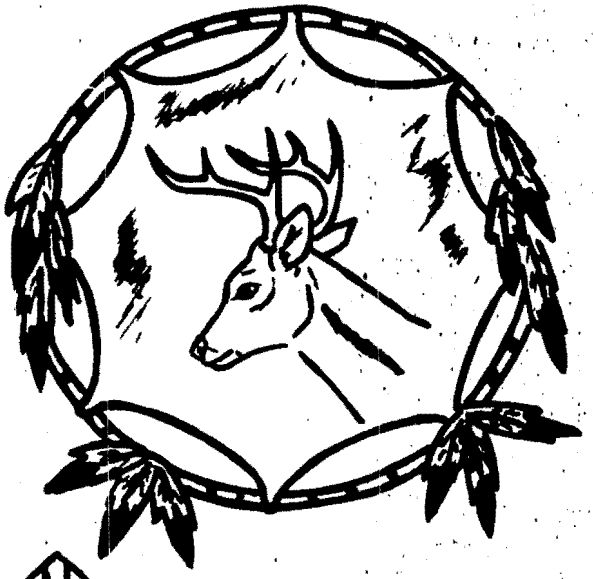
Second, Section 54.3(c) provides that the proposed regulations do not apply to "associations, organizations, corporations or groups of any character, formed in recent times, composed of individuals of Indian descent from several different groups or tribes". We submit that this subsection is unduly limited. Specifically, the proposed regulations should not apply to any such recently constituted entity even if the entity is composed of individuals of Indian descent from the same tribe, nation, group or band. The proposed regulations should not apply to any recently constituted entity.

Finally, Section 54.1(l) defines the word "continuously". That subsection further provides that continuity of existence is not adversely impacted by "fluctuation of tribal activity during various years". This caveat is extremely broad and ambiguous and could easily subsume the continuity requirement. If such a caveat is to be included, it should clearly indicate that some degree of autonomous tribal activity is necessary.

Thank you for your time and attention.

Sincerely,

James D. St. Clair



Route 1, Box 262
Crescent City
California 95531
June 25, 1978

26

Director
Office of Indian Affairs
Bureau of Indian Affairs
18th & "C" Streets NW
Washington, D.C. 20245

ATTN: Federal Recognition Project

Dear Director:

Our group has studied the Proposed Rules and recognize the rules as written. However, we seem to find no rules regarding any group of Indians of a once recognized tribe (who do exist), through no fault of their own were omitted when other tribal members of their group were deeded tribal property; and these individual Indians were also omitted from the "Community" property at the time of termination.

These Indians we're speaking of have never been terminated.

Thank you for taking this into consideration.

Yours truly,

Andree L. Bower, Representative
Tribal Members of Del Norte County, Inc.

Native American Rights Fund

1506 Broadway • Boulder, Colorado 80302 • (303) 447-8760

June 30, 1978

(27)

Director, Office of Indian Services
Bureau of Indian Affairs
18th and "C" Streets, N.W.
Washington, D.C. 20245

Attention: Federal Recognition Project

Dear Sir:

Enclosed please find our comments on the Proposed Procedures for Establishing that an American Indian Group Exist as an Indian Tribe published in the Federal Register on June 1, 1978.

Sincerely yours,

Jeanne S. Whiteing

Jeanne S. Whiteing

JSW/jt
Enclosure

COMMENTS ON PROPOSED PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE PUBLISHED IN THE FEDERAL REGISTER ON JUNE 1, 1978

Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302

By: Jeanne S. Whiteing
Thomas N. Tureen

COMMENTS ON PROPOSED PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

I. GENERAL COMMENTS

In the first proposed set of regulations published on June 16, 1977, we were concerned about the purpose of the regulations and the approach taken in making determinations as to eligibility for federal services and the exercise of tribal powers. The new proposed regulations published on June 1, 1978 are more in line with our initial comments and now reflect what we think is the appropriate purpose and approach. Our comments will therefore be confined to specific parts of the proposed regulations.

II. SPECIFIC COMMENTS

§ 54.1 Definitions

(k) "Historically" or "historical"

For almost every Indian tribe, history predates white contact. The existence of tribes did not begin with white contact; therefore, there is no reason to rely solely on that part of a tribe's history beginning with white contact. Certainly, most recorded history will date from white contact, but tribal history should be accorded as much weight as post-white contact recorded history. Although we do not mean to suggest that tribes must show tribal existence for a longer

period of time than the proposed regulations require, any evidence of tribal existence before white contact should be given full consideration.

(l) "Continuously"

The two parts of this definition appear to be contradictory; an activity must be "without interruption" but can fluctuate. Such a definition can only cause confusion.

Throughout the proposed regulations, the term "continuously" is used in connection with tribal existence and the requirement of exercise of political influence and other authority over members. We agree completely that tribal existence and tribal activity is subject to fluctuation, particularly where a several hundred year time span is involved. Therefore, continuity cannot be expected nor required. We believe that a better approach, and one that achieves essentially the same result, is to require either (1) "substantially continuous" tribal existence and activity, or (2) "historical" and "significant" tribal existence and tribal government. The added explanation that fluctuations in tribal activity will not cause the petitioner to fail to satisfy the criteria should remain in the definition. Further comments have been made wherever the word "continuous" is used.

(m) "Indigenous"

See comments below on § 54.3(a).

§ 54.3 Scope

(a) We do not agree with limiting the scope of the regulations to indigenous tribes. On what basis can the

Department of the Interior deny that non-indigenous groups are Indian tribes if they are able to meet the criteria in the regulations, and what purpose is served by such a denial? The number of non-indigenous groups is very small and it is extremely unlikely that there will be others. Therefore, any burden on the federal government is likely to be minimal.

Implicit in the limitation is the idea that the trust responsibility of the United States extends only to indigenous tribes. It is doubtful that such a limitation can be legally supported, particularly where the group can show it has been recognized in the past as an Indian tribe.

The special relationship between the federal government arises under specific treaties, agreements and statutes. See, McClanahan v. Arizona Tax Commission, 411 U.S. 164 173, 179 (1973). For any non-indigenous tribes having treaties or agreements, the trust responsibility has clearly been established, and only Congress can repudiate the relationship; it cannot be repudiated through administrative action. Where the federal relationship is based upon a statute, for example 25 U.S.C. § 13 (Snyder Act), which applies to "Indians throughout the United States," there must be some congressional indication to exclude non-indigenous tribes. If a non-indigenous Indian group is within the jurisdiction of the federal government and is an Indian tribe as a factual matter, then legislation applicable to tribes generally is applicable to those groups, unless Congress has indicated otherwise. To our knowledge, there is no such indication in

any Indian legislation that Congress intended to exclude non-indigenous tribes.

The federal government already recognizes at least one tribe which is not indigenous to the United States -- the Metlahkatla Tribe in Alaska. See, Alaska Pacific Fisheries v. United States, 248 U.S. 78 (1918); Territory of Alaska v. Annette Island Packing Co., 289 F. 671, 674 (9th Cir. 1923). If these regulations reflect the formulation of a federal policy different than the congressional policy articulated in the Metlahkatla cases, then it is invalid. Only Congress can decide to exclude certain non-indigenous tribes from Indian legislation, which is otherwise applicable to tribes generally.

See comments below concerning continuous tribal existence and tribal governments.

(c) It is unclear what purpose is served by the addition of language concerning legislation "forbidding the federal relationship." If such legislation exists, it is, in effect, termination legislation and is included within that term.

§ 54.7 Form and Content of the Petition

It should be made clear that criteria (a)-(g) in this section are mandatory in order for tribal existence to be acknowledged. As it now reads, it appears that the various criteria are merely items that should be included in the petition rather than substantive criteria which must be met.

(a) See comments above on the terms "historically" and "continuously".

Continuous identification as an Indian tribe, particularly using the outlined factors, is a difficult concept. Is repeated identification equivalent to continuous identification? How often must identification take place in order to satisfy the repeated requirement? We think the term "historically" conveys the same meaning without as much confusion as the terms "continuous" and "repeated".

A showing of historical identification essentially conveys a sense of continuity and repetition. Moreover, if assurance about the present status of the group is necessary, the regulations could require that the petitioner has been identified "historically until the present" as an American Indian, etc.

(c) See comments above on the terms "historically" and "continuously".

Our comments on this section are as follows:

(1) This section requires a showing of historical and continuous exercise of authority over members. For many tribes, the fact that the federal government has refused to acknowledge and support them for periods of up to two hundred years or more means that it was extremely difficult, if not impossible, to maintain a continuous tribal government. It is difficult to see, then, why these tribes must now suffer for what the federal government has done, or failed to do, in the past. The showing of significant retention of traditional types of authority over members historically until the present, as suggested above in the context of identification as a tribe,

would seem adequate to ensure the existence of tribal government.

The regulations explicitly recognize that there are "fluctuations" in the organization of tribal governments, and that this fact should not cause the petition to fail. Yet, the regulations go on to require a continuous tribal government. The recent Supreme Court case, United States v. John, et al. (decided June 23, 1978), confirms that even though there may be no tribal entity at certain times, the tribe's existence as a tribe is not impaired. See, Slip Opinion, p. 16, n.20. The fact that the government of the Mississippi Choctaws was defunct at times throughout their history did not prevent either the federal government or the courts from dealing with them as a tribe. Nor did it matter that the Mississippi Choctaws were a remnant of a larger group, a factor which in all likelihood contributed to the absence of an operational government at certain times.

Finally, the policy behind the Indian Reorganization Act of 1934 also confirms that a continuous tribal government is not necessary to tribal existence. The purpose of the IRA was to assist tribes in reorganizing their tribal governments, many of which were either non-functional or barely operating. See, H.R. No. 1804, 73d Cong., 2d Sess. (1934); S. Rept. No. 1080, 73d Cong., 2d Sess. (1934); H.R. No. 2049 (Conference Report), 73d Cong., 2d Sess. (1934). For these reasons, we believe that the requirement of a continuous tribal government be eliminated, and that instead petitioners must show exercise

of tribal authority over members historically until the present.

(2) We do not understand the requirements that internal decision-making procedures evolve from the historical tribe and that the present leadership must have assumed the rights and obligations of the historical tribe. The entire requirement is vague in terms of meaning and purpose. Thus, it is not at all clear what kind of showing satisfies the requirement. If a tribe is organized as a constitutional government and at the same time retains a strong traditional leadership and methods of dealing with internal matters, is the criteria still satisfied? Many tribes, recognized and non-recognized, have both traditional and constitutional governments, both of which may operate independently from the other. These groups are tribes, however.

We think we understand the purpose of the criteria, but many groups will not fit neatly into the mold contemplated. Moreover, the entire requirement may become unnecessary if our suggested approach is adopted; that is, a showing of historical and significant retention of tribal authority over members.

(e) Although we see no problem with requiring a membership list, it is a very heavy burden in terms of time and resources to require, in effect, certification of the list for purposes of the petition. Even currently recognized tribes would find it an impossible task to certify each of its members with the type of evidence that is being required. Moreover, roll certification is the responsibility of the Bureau of

Indian Affairs for the purpose of determining individual eligibility for services. It can be a costly and time-consuming task, is not necessary for determining tribal existence, and certainly is an onerous requirement to be included in a petition.

§ 54.9 Processing the Petition

(f) The regulations require that the Assistant Secretary publish his proposed findings within one year after notifying the petitioner that active consideration of the petition has begun. However, there is nothing to ensure prompt consideration of the petition. A petitioner could wait years, as many groups already have, before its petition comes under active consideration. We suggest that active consideration of petitions be undertaken within six months of the time of filing and that the proposed findings be published within one year of that time, with a possible 180-day extension. This is a maximum time period of two years for the entire process, which certainly is adequate.

§ 54.10 Final Action by the Department

(a) The question of when a decision becomes final should be clarified. Who makes the final decision -- the Assistant Secretary or the Secretary? At what point does the decision become final? The proposed procedures are confusing and need clarification.

(b) The period for response to the Assistant Secretary's proposed findings should be expanded to 120 or 180 days. If the response requires additional research or

additional information, more time than 90 days would be needed.

(c) The finality of the Assistant Secretary's decision is again unclear. If it is subject to Secretarial approval, it is not really a final decision; it does not become final for 60 days. And, if the Secretary remands the decision, there should be a specific period of time in which the Assistant Secretary must reconsider the petition. A 60-day period should be sufficient.

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Box Elder, Mont.
S.R. 231. Ed A-851
59201

Honorable - C.K. Andrus.

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Dear Sir,

In regards to proposed regulations and changes in procedures to Constitute a tribe group or organization of Indian people.

I personally feel, that being Assiniboine Indian and Member of the Ft Peck Excvation, also as the Chairman of the Assiniboine Council.

I do believe in Treaties and Treaty ~~Ct~~ rights of the American Indian. Up to date we have been deprived of funds to travel, to properly adjudicate our affairs. also Communication like it is has been for the past 50 yrs. from National to local level.

I feel that according to the Self determination policy. we are intended to these privileges and we are Not able to achive any thing due to political purposes, at the local level.

Being poor people and on the wrong side of the fence politically we are in bad help.

We would appreciate any thing you could lend us for help. We know the time limitations is not to very far off. for us to get our Claims in to Court. and to point us are Working for these purposes. We also feel it is the U.S. Government obligation to see that these things are done

right. that is by treaty obligation

Our organization has been working for years to try to work for the best interest of all its people, including children and great Grand children. It is not the duty of the Ft Peck Tribes to do this, but it is also their obligation. to help according to the present Constitution I hope you can understand my Situation.

Respectfully
J. A. Boyd.
Exe Chair Man of
Assiniboine Council.

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HELEN C. HARVEY
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KENT, WASHINGTON
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Director, Office of Indian Services
Bureau of Indian Affairs
18th and "C" Streets N.W.
Washington, D.C. 20245

Re: Comments, Federal Recognition Regulations

Dear Sir:

This letter is written in response to the new proposed procedures for the determination of a tribe's status as a federally acknowledged Indian tribe. On June 1, 1978, these procedures were published in the Federal Register, 43 Fed. Reg. 23743. The period for public comment closes on July 3, 1978.

The proposed procedures are, in general, acceptable so long as they are implemented in a reasonable and non-arbitrary manner. However, we do have certain suggestions for further improvements in these regulations.

Definitions - § 54.1

(j) The definition of a "member of Indian tribe" should be amended to mean:

> ...an individual who meets the membership requirements of the tribe as set forth in the governing document or is recognized collectively by those persons comprising the tribal governing body, has continuously maintained tribal relations with the tribe and is listed on tribal rolls of that tribe if such rolls are kept.

This amendment will help insure that a "member of an Indian tribe" is limited to individuals enrolled in the tribe when formal rolls are kept. This is important since many tribes in the Pacific Northwest and elsewhere do keep formal rolls. Strict reference to such rolls in determining membership for those purposes will add an element of certainty to the process and make it easier to determine who is, and is not, a member of that tribe.

(n) The concept should be fully introduced, or rather reintroduced, into these regulations of an "historic association of groups" that was included in the earlier draft of these regulations but is excluded here. See December, 1977 draft, § 54.1(g). That subsection should again be added to the final regulations as a new § 54.1(n):

> (n)"Historic association of groups" means any longstanding, commonly known, historical contact of two or more Indian groups associated together for political, social, or economic purposes, or for their common good, to the extent they are viewed today as a single entity.
>
> This term and the concept it represents can be incorporated into Part 54 by the modification of the following two criteria as follows:
>
> § 54.1(f)
>
> "Indian tribe" also referred to herein as "tribe" means any Indian group or historic association of groups within the United States that the Secretary of Interior acknowledges to be an Indian Tribe.
>
> § 54.7(a)
>
> A statement of facts establishing that the petitioner has been identified historically and continuously until the present as "American Indian, Native American, or aboriginal." Such Indian identity may include identification as an historic association of groups. Evidence to be relied upon in...

This new definition would provide additional flexibility to the process by acknowledging the diverse factual and historical circumstances under which many present Indian tribes, both recognized and non-recognized, were formed. Many Indian tribes existing today evolved from two or more tribes, bands, or groups that may have existed separately at the time of the first European contact but which have since clearly evolved into one Indian tribe. This amalgamation and fragmentation was often caused by federal policy itself. Any danger that this amendment would require the recognition of "splinter groups" within already recognized tribes is squelched by § 54.7(f) or its equivalent (see discussion below).

Required Petition Contents - § 54.7

This section provides seven criteria that the Department is proposing a petitioner meet to demonstrate tribal existence. These criteria must, of course, conform to the caselaw definition of what is an "Indian tribe" and to accepted principles of constitutional law. Three of the seven criteria will be discussed below.

§ 54.7(b)

The second criterion in the section requires proof that a "substantial portion: of the petitioning tribe "inhabits a specific region" or Indian community and that the ancestors of these members also have inhabited a "specific area." This criterion can be eliminated as unnecessary.

This requirement is largely duplicative of other criteria within § 54.7. It is superfluous toward proof that a group is an "Indian tribe" if the other criteria are satisfied. If in fact a petitioner has both "historically and continuously" been identified as an Indian tribe (§ 54.7(a)) and has operated as an "autonomous entity" (§ 54.7(c)) this criterion in (b) is clearly unnecessary and may prevent the acknowledgment of an otherwise qualified applicant. The real question to be decided by the United States is not the location of the tribe's members, but whether the peitioner is factually an "Indian tribe" which has maintained itself historically, continuously, and autonomously. See § 54.3(a). By requiring petitioners to satisfy this criterion the Department appears to be imposing an irrebuttable presumption of a lack of tribal existence if the group fails to inhabit a specific enough "region." Such irrebuttable presumptions are disfavored under the due process clause of the Fifth Amendment. Vlandis v. Kline, 412 U.S. 441 (1973); National Labor Relations Board v. Heyman, 541 F.2d 796 (9th Cir. 1976). Irrebuttable presumptions will be held unconstitutional unless they rest upon federal policies so compelling as to override the basic requirement of our legal system that questions of fact, herein that of tribal existence, must be resolved by proof. Heyman, supra, at 801.

§ 54.7(c)

Under this requirement the petitioner must demonstrate that it has continuously existed as an autonomous entity. The second sentence of the criterion outlines certain things that must be established in the statement. We recommend that the second sentence be deleted from the final regulations. The sentence requires petitioners to show that:

> ...the petitioner's present internal procedure for making decisions which affect the membership as a whole (tribal government, leadership, group decision-making process or method of operating) evolved from that of the historical tribe; that the present tribal leadership, spokesman or elders have assumed at least some of the rights, obligations and traditions of the historical tribe; and that the present internal procedures are not an effort to reconstitute a defunct system.

There are a number of problems with this sentence which support its elimination. It is, firstly, so vague that it is difficult to know what must be provided by the petitioner. At what point does a "system" become "defunct" such that it cannot be "reconstituted"? If a tribe's internal procedures have evolved dramatically from an earlier "system" or if it has a new system unrelated to the "historic" system may there still be adequate "continuity"? How many are "some...rights, obligations and traditions," and what exactly do these terms include and exclude?

Because petitioners are thus not entirely put on notice of what is required of them, there is some problem criticizing the substance of this sentence. However, there does appear to be at least some danger that this is imposing an unfair requirement upon petitioners.

An examination of United States Indian policy and its impact upon Indians will demonstrate some of the defects potentially inherent in this criterion. It is well documented that during the latter part of the nineteenth centurey and the early part of the twentieth century federal Indian policy had as its objective the destruction of tribal relations and culture. See, F. Cohen, Handbook of Federal Indian Law, 22-23 (1942). The United States government was, to some degree, successful in its implementation of this policy. The functioning of many tribes was disrupted and the cultures of many tribes irreparably lost.

It was only with the passage of the Indian Reorganization Act of 1934 that this policy was reversed and the BIA began to assist Indian tribes to establish formal governmental organizations with written constitutions. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 151-152 (1973). It is important to note, however, that many of these formal tribal governments were, and are, in forms substantially different from the aboriginal forms of tribal organization. As a result of this history, many fully federally recognized tribes can now demonstrate little organizational "continuity" or

or retention of "traditions" from the past up until the present. This fact has been noted by courts in recent years but deemed to be irrelevant to the federal authority over Indians and the continued existence of Indian tribes. Confederated Salish and Kootenai Tribes v. Moe, 392 F. Supp. 1297, 1315 (D. Mont. 1975) aff'd 425 U.S. 474, 477 (1976); see also, Wisconsin Potowatomies v. Houston, 393 F. Supp. 719, 731 (W.D. Mich 1973).

The submitted petitions should therefore be examined with due consideration to the situation of Indian tribes already acknowledged as such by the United States. The imposition of a set of recognition requirements upon petitioning tribes that would require them to demonstrate greater organizational continuity then presently recognized tribes can demonstrate is not only unrealistic but also would raise a serious question of the violation of the Fifth Amendment due process rights of petitioners.

Even assuming that this second sentence as drafted will be applied fairly in practice, it may be largely duplicative of proposed § 54.7(a). As such it could easily be eliminated as unnecessary. Section 54.7(a) requires a showing that the petitioner has been historically and continuously identified as Indian. This identification as "Indian" over time is similar to the requirement that the petitioner has assumed "at least some" "rights, obligations and traditions" of the aboriginal tribe in § 54.7(c). In effect the same evidence will go to prove both (a) and at least part of (c) quoted above.

Procedures for Processing the Petition - §§ 54.9, 54.10

The procedures outlined in these two sections are basically acceptable. However, certain minor changes should be made.

As drafted, § 54.10(a) should be modified. It is assumed, from a reading of § 54.10(c) and (b) that the sixty-day period for Secretarial review does not begin until the Assistant Secretary's final determination is issued. However, subsection (a) does not make that clear. We suggest that the second sentence of (a) be eliminated as unnecessary and confusing.

Certain other changes should also be made to give the petitioner an adequate opportunity to respond to Departmental actions. The ninety-day period allowed for petitioner's response to the Assistant Secretary's proposed findings should be lengthened to one-hundred and twenty days. § 54.10(b). The increased time may be critical for the preparation of an adequate response, especially for those petitioners who may not have a regular or full-time researcher or attorney available to immediately begin the

preparation. In some cases new time consuming research may have to be undertaken by a petitioner who may have limited resources available for a quick response. For many petitioners the proposed findings may be issued as long as a year or two after the final petition is submitted. The original preparer may be gone at that point and memories would certainly have to be refreshed.

We also feel that after the publication of the Assistant Secretary's final determination the petitioner should have an express opportunity to present additional argument, if it wishes, to the Secretary. While the Secretary is charged with consideration of the petitioner's response to the preliminary report, there is no opportunity to again respond to the final report. Changes may be made in the final report that could require rebuttal. Such an opportunity for additional rebuttal is reasonable and is certainly required by the Fifth Amendment. Koniag, Inc. v. Kleppe, 405 F. Supp. 1360, 1370-1371 (D.D.C. 1975).

Thank you for your consideration of these comments.

THESE COMMENTS WERE SENT TO ME BY JEFFERY SCHUSTER AND I AGREE WITH THEM SO I,M SENDING THEM ON BEHAVE OF MY SELF A COUNCIL MEMBER OF THE SNOQUALMIE TRIBE

SINCERELY,
HELEN C. HARVEY
COUNCIL MEMBER SNOQUALMIE
SNOQUALMIE INDIAN TRIBE

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HURON POTAWATOMI

ATHENS INDIAN RESERVATION

FULTON, MICHIGAN 49052

June 30, 1978

Director Office of Indian Services
Bureau of Indian Affairs
18 and "C" Streets N.W.
Washington, D.C. 20245

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ATTENTION: Federal Recognition Project

Dear Director:

The Bureau of Indian Affairs must understand more fully that one of its responsibilities is to make sure that the messages it gets from the Indian people are properly sorted out and that all Indian rights, both unrecognized and recognized are considered on an equal basis before any regulations are promulgated.

This proposed rule (25 CFR Part 54) reflects the position expressed by N.C.A.I.'s leadership that recognition of the rights of unrecognized Tribes would somehow diminish the rights of recognized tribes.

Sincerely,

Myron P. Schwoebell
Assistant Director

CC:
Congressman Brown
U.S. Senator Griffin
Chuck Selee
Michigan Commission on Indian Affairs

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

July 11, 1978

7TH FLOOR
2-3-4 LOYOLA BUILDING
NEW ORLEANS 70112

Director, Office of Indian Services
Bureau of Indian Affairs
18th and C Streets, N.W.
Washington, D.C. 20245

Attention: Federal Recognition Project

Dear Sir:

As chief legal officer of the State of Louisiana, the following comments are offered on behalf of the State in respect to the proposed regulations published in the Federal Register June 1, 1978 establishing procedures for recognition of Indian tribes.

The proposed regulations do not make the state at interest a party privy to the tribal recognition procedure. This omission results in a grievous violation of the rights of the states in that highly significant legal consequences to the state can be effected without their participation as a party. I urge that the proposed regulations be amended to include the State at interest as a party directly concerned in all steps in the proceedings.

This comment should not be construed as representing an opposition to the adoption of reasonable regulations for tribe recognition, nor opposition to recognition of Indian groups as tribes where the historic facts warrant. However, I urge that the regulations must include the state as a participating party to the proceedings in which a significant number of its citizens, who have exercised state citizenship for more than 166 years, are now to be reclassified and vested, together with the Federal Government, with new and different rights, some of which can be highly prejudicial to the state and its citizens.

The adoption of the proposed regulations without making the state a party privy to all proceedings would violate constitutional guarantees, for which full reservation of the right to seek judicial relief is hereby made in the filing of the present comments.

Yours very truly,

William J. Guste, Jr.

WILLIAM J. GUSTE, JR.

WJG,Jr/sl

AMERICAN INDIAN NURSES ASSOCIATION, INC.

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July 20, 1978

Director, Office Of Indian Services
Bureau of Indian Affairs
18th And "C" Streets, N.W.
Washington, D.C. 20245

RE: Recognition Of Indian Tribes--
Proposed Regulations

Although the deadline for submitting comments has passed, the American Indian Nurses' Association wishes to submit the following comments for your record.

1. Tribes which have been terminated are not eligible for recognition according to these regulations even though they would meet the established criteria.

2. Section 54.7 part (a) includes evidence of identification by all sorts of governments, organizations and scholars but does not allow identification by other Indian Tribes.

It is our feeling that these two deficiencies need correction.

Sincerely,

Jess Burris
Administrator

JB/jla

cc: AAIA

AMERICAN INDIAN NURSES ASSOCIATION, INC.

July 20, 1978

Director, Office Of Indian Services
Bureau of Indian Affairs
18th And "C" Streets, N.W.
Washington, D.C. 20245

RE: Recognition Of Indian Tribes--
Proposed Regulations

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Sincerely,

Jess Burris
Administrator

JB/jla

cc: AAIA