

§ 53.7 Challenges.

Once an official filing has been made, the local Bureau official shall have copies made of the petition and its signatures, and shall keep these copies at the agency or field office for fifteen (15) days, during which time they shall be available for examination by authorized voters of the tribe upon request. During this 15-day period challenges of signatures may be filed with the local Bureau official. Challenges will be considered on the following grounds: (a) Forgery of signatures; (b) lack of proper qualifications of a signer. No challenge will be considered which is not accompanied by supporting evidence in writing. In event an individual's name appears on a petition more than once, all but one of the names shall be stricken.

§ 53.8 Action on the petition.

Within thirty (30) days after the official filing date, the local Bureau official shall forward to the Commissioner through the Area Director, or directly to the Commissioner in the case of a tribe not under the administrative jurisdiction of an Area Director, the original of the petition and its accompanying signatures, together with his recommendations concerning challenges, and his conclusions concerning (a) the validity of the signatures; (b) the adequacy of the number of signatures; (c) the propriety of the petitioning procedure. The Commissioner shall within forty-five (45) days after the official filing date, decide each challenge and the sufficiency of the petition and announce whether an election shall be called. In the event he decides that the petitioning action for any reason is insufficient for the calling of an election, he shall inform the spokesman for the petitioners and the governing body of the tribe of that fact and the basis of his decision; in the event he decides that the petitioning action does warrant the calling of an election, he shall so inform the spokesman for the petitioners and the governing body of the tribe concerned. His decision in such matters shall be final. The procedures for conducting the election, as well as the date for the election, will be determined in accordance with pertinent directives.

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

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

SOURCE: 43 FR 39361, Sept. 5, 1978, unless otherwise noted.

§ 54.1 Definitions.

- (a) "Secretary" means the Secretary of the Interior or his authorized representative.
- (b) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, or his authorized representative.
- (c) "Department" means the Department of the Interior.
- (d) "Bureau" means the Bureau of Indian Affairs.
- (e) "Area Office" means the Bureau of Indian Affairs Area Office.
- (f) "Indian tribe," also referred to herein as "tribe," means any Indian group within the continental United States that the Secretary of Interior acknowledges to be an Indian tribe.
- (g) "Indian group" or "group" means any Indian aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.
- (h) "Petitioner" means any entity which has submitted a petition to the Secretary requesting acknowledgment that it is an Indian tribe.
- (i) "Autonomous" means having a separate tribal council, internal process, or other organizational mechanism which the tribe has used as its own means of making tribal decisions independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the Indian culture and social organization of that tribe.

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

(k) "Member of an Indian tribe" means an individual who meets the membership requirements of the tribe as set forth in its governing document or is recognized collectively by those persons comprising the tribal governing body, and has continuously maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls are kept.

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

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

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

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

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

§ 54.2 Purpose.

The purpose of this part is to establish a departmental procedure and policy for acknowledging that certain American Indian tribes exist. Such acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes. Such acknowledgment shall also mean that the tribe is entitled to the immunities and privi-

leges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgment shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected.

§ 54.3 Scope.

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

(b) This part does not apply to Indian tribes, organized bands, pueblos or communities which are already 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; provided that a group which meets the criteria in § 54.7(a)-(g) has recently incorporated or otherwise formalized its existing autonomous process will have no bearing on the Assistant Secretary's final decision.

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

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

§ 54.4 Who may file.

Any Indian group in the continental United States which believes it should

be acknowledged as an Indian tribe, and can satisfy the criteria in section 54.7, may submit a petition requesting that the Secretary acknowledge the group's existence as an Indian tribe.

§ 54.5 Where to file.

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

§ 54.6 Duties of the Department.

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

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

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

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

responsible for the actual research on behalf of the petitioner.

§ 54.7 Form and content of the petition.

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

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

(1) Repeated identification by Federal authorities;

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

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

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

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

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

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

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

(c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as

an autonomous entity throughout history until the present.

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

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

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

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

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

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

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

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

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

§ 54.8 Notice of receipt of petition.

(a) Within 30 days after receiving a petition, the Assistant Secretary shall

send an acknowledgment of receipt, in writing, to the petitioner, and shall have published in the FEDERAL REGISTER a notice of such receipt including the name and location, and mailing address of the petitioner and other such information that will identify the entity submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined.

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

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

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

§ 54.9 Processing the petition.

(a) Upon receipt of a petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe. The review shall include consideration of the petition and supporting evi-

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

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

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

(f) Within 1 year after notifying the petitioner that active consideration of the petition has begun, the Assistant Secretary shall publish his proposed findings in the FEDERAL REGISTER. The Assistant Secretary may extend that period up to an additional 180 days upon a showing of due cause to the petitioner. In addition to the proposed

findings, the Assistant Secretary shall prepare a report which shall summarize the evidence for the proposed decision. Copies of such report shall be available for the petitioner and other parties upon written request.

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

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

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

(j) The Assistant Secretary shall refuse to acknowledge that a petitioner is an Indian tribe if it fails to satisfy the criteria in § 54.7. In the event the Assistant Secretary refuses to acknowledge the eligibility of a petitioning group, he shall analyze and forward to the petitioner other options, if any, under which application for services and other benefits may be made.

§ 54.10 Reconsideration and final action.

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

(b) The Secretary in his consideration of the Assistant Secretary's decision may review any information available to him, whether formally part of the record or not; where reliance is placed on information not of record,

such information shall be identified as to source and nature, and inserted in the record.

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

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

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

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

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

§ 54.11 Implementation of decisions.

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

(b) While the newly recognized tribe shall be eligible for benefits and services, acknowledgment of tribal existence will not create an immediate entitlement to existing Bureau of Indian Affairs programs. Such programs shall become available upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly recognized tribe.

(c) Within 6 months after acknowledgment that the petitioner exists as an Indian tribe, the appropriate Area

Office shall consult and develop in cooperation with the group, and forward to the Assistant Secretary, a determination of needs and a recommended budget required to serve the newly acknowledged tribe. The recommended budget will be considered along with other recommendations by the Assistant Secretary in the usual budget-request process.

PART 55—ORGANIZATION OF THE YUROK TRIBE—VOTING FOR TRIBAL INTERIM GOVERNING COMMITTEE

Sec.

55.1 Definitions.

55.2 Purpose.

55.3 Qualifications for voting.

55.4 Preparation and posting of initial voters list.

55.5 Appeals.

55.6 Final voters list.

AUTHORITY: 5 U.S.C. 301, R. S. § 463 and 465, 43 U.S.C. 1457, 25 U.S.C. 2 and 9, and Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

SOURCE: 44 FR 24539, Apr. 25, 1979, unless otherwise noted.

§ 55.1 Definitions.

(a) "Voters" means persons eligible to participate in the nomination and election of an interim Yurok tribal governing committee.

(b) "Interim Yurok tribal governing committee" means a committee of persons nominated from and by the voters and elected by the voters to serve as the temporary governing body of the Yurok Tribe, with special responsibility for drafting a tribal constitution for adoption by the tribe and approval by the Secretary of the Interior.

(c) "Adult" means a person 18 years of age or older.

(d) "Reservation" means the Hoopa Valley Indian Reservation, as extended.

(e) "Living" means born on or prior to and living on the date specified.

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

(g) "Director" means the Area Director, Bureau of Indian Affairs, Sacramento Area Office, or his authorized representative.