

**“Procedures for Establishing that an American Indian Group exists as an Indian Tribe”
(Part 83 Process)
Comments from the Choctaw Nation of Oklahoma**

1) 83.1 Definitions

- A) ***Continuously or continuous:*** What is the reasoning behind changing the language from “first sustained contact with non-Indians throughout the group’s history” to “1934”? We are aware of the Indian Reorganization Act of 1934, where Tribal Councils were granted authority; however, we want to know the reasoning behind the language change.
- B) ***Letter of Intent:*** What is the purpose of doing away with the Letter of Intent? The LOI initiates a process. Is the Department viewing this as an unnecessary step due to the “Documented Petition”? Other agencies use LOI’s still. Is this going to be an across the board move? We want to know the reasoning behind doing away with the LOI.
- C) ***Pages:*** What is the purpose of specifying the exact format of “pages”? Will this be a mandatory format for submissions? Will Tribes be penalized if they submit documents that are not in this format?
- D) ***Sustained Contact:*** If “sustained contact” is going to remain a definition whereas it means the period of earliest sustained non-Indian settlement and/or governmental presence in the local area in which the historical tribe or tribes from which the petitioner descends was located historically, then why is the Department making the “1934” revision? If “historically” is okay in this regard, then should the “1934” date be removed? This seems contradictory.

2) 83.3 Scope

- A) **(d) Splinter groups, political factions, communities or groups.....However, a group that can establish clearly that it has functioned from 1934.....** Again, why is the Department changing functioning “historically” to “1934”? What is the purpose?
- B) **(f) Groups that previously petitioned and were denied Federal acknowledgement under these regulations may not be acknowledged under these regulations.** Where do previously denied groups petition to? What is their process for petitioning again?

3) 83.4 Filing a documented petition.

- A) **(b) Documented petitions:** Again, what is the logic or reasoning behind not filing a letter of intent but instead only submitting a “documented petition”?

4) 83.5 Duties of the Department.

- A) **(a) The Department shall publish in the Federal Register by January 30 each year.....** Why January 30? Why not January 31st since there are 31 days in January?

5) 83.6 General provisions for the documented petition.

- A) **(a) The documented petition may be in any readable form, not to exceed XX pages.....** Why is the Department putting a limit on the number of pages that can be

submitted? Also, this statement says that the documented petition may be in any readable form; however, the definition for “pages” clearly states that the format must be in Times New Roman, 12 point font, etc. This is contradictory. Please clarify and explain the reasoning behind this.

B) (b) The documented petition must include:

(2) An official membership list.....and current residential address. This may cause a hardship on the Tribe. It can be hard to gather all current residential addresses for members. If an old address is used, will these people be discounted? It is very important that all members submitted, whether old or current addresses are used, are counted because this will go toward the Tribe’s user population, which will in turn determine the amount of funding the Tribe receives. Please clarify if an old address is used, if that member will not be counted. This is very important as it ties to dollars.

(C) (g) The specific forms of evidence stated in the criteria in 83.7(c) and 83.7(e) are not mandatory. The criteria may be met alternatively by any suitable evidence that demonstrates that the petitioner meets the requirements of the criterion statement. This language is vague. Consider rewording to make more specific.

6) 83.7 Mandatory criteria for Federal acknowledgment.

A) The mandatory criteria are:

(a)[Deleted] The petitioner has been identified as an American Indian entity..... This was good language. Why was it deleted? Consider keeping this language.

(b) At least XX percent of the petitioning group comprises a distinct community..... Consider leaving the old language from (a) and adding the language from (b) to it with parts of (b) being reworded. It would make more sense to revise parts (a) and (b) instead of completely deleting (a) and replacing it with (b).

(b)(1)(vii) Cultural patterns shared among a significant portion of the group that are different....kinship organization, or religious beliefs and practices..... What is the purpose of removing religious beliefs and practices? This language should stay.

(b)(1)(ix) A demonstration of historical political influence... Again, why is the Department removing “historical” throughout the document? What is the purpose/reasoning behind this?

(b)(2) A petitioner shall be considered to have provided sufficient evidence to demonstrate community at a given point in time if evidence is provided to demonstrate any one of the following:

(i)(ii)(iii) XX percent... How does the department justify what percentage to use? What is the basis for this?

(iii) At least....kinship organization, or religious beliefs and practices... Again, why is the Department removing religious beliefs and practices? This should stay.

(b)(3) The limitations inherent in demonstrating existence as distinct community that has existed since 1934 without substantial interruption..... Again, why is the Department changing the policy to be since 1934? Why can't Tribes use history prior to 1934? What is the purpose?

(c)(1)(iii) There is widespread knowledge, communication and involvement in political processes by most of the group's members. This sentence should be removed as it is more restrictive of Indian people's than it is regular US Citizens. In reality, most Americans aren't knowledgeable or involved in the political process of the US so why should this be imposed on the Indian peoples?

(c)(1)(v) There are internal conflicts which show controversy over valued group goals, properties, policies, processes and/or decisions. What does this mean?

(c)(4) The limitations inherent in demonstrating the existence of political influence.... Again, why the change to 1934?

(e) At least XX percent of.... Again, how is the Department coming up with the percentage?

(f) The membership of the petitioning group is composed principally of personsThe conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity..... (1), (2), (3).... There is old and new language within this section. The old language is fine. What is the reason to change to this new language listed in (1), (2), and (3)? Please explain the intent.

7) 83.10 Processing of the documented petition.

A) (b)(1) This technical assistance review does not constitute...Insofar as possible... "Insofar as possible is VERY vague. Please consider rewording this to be more descriptive.

(c)(1) If the petitioner requests that the materials submitted in response to However, this additional review will not be automatic and will be conducted only at the request of the petitioner. Why is this additional review NOT automatic? Why will this only be conducted at the request of the petitioner? Please explain.

(e)(2) OFA has the discretion...Upon resolution of the technical or administrative problems that are the basis for the suspension, the documented petition will have priority on the number register of documented petitions insofar as possible. This "insofar as possible" language is very vague. Please reword or elaborate.

(i) Within six months after notifying....not to exceed XX pages....not to exceed XX pages.... Again, why is there a page limit? What is the purpose behind this?

(j) Upon publication of the proposed findings....not to exceed XX pages... Again, why is there a limit of the number of pages? What is the purpose behind this? This seems like it could hurt the Tribe.

(k) During the response period....DELETED LANGUAGE which states, In addition, the Assistant Secretary shall, if requested by the petitioner.... The deleted language in (2) was good language. What is the purpose for removing this language?

(l) The petitioner shall have a minimum of 60 days to respond to any submissions by interestedwith arguments not to exceed XX pages, and evidence.... Again, why is there a page limit? Also, the language is vague. Please specify.

(p) If OHA or AS-IA declines to acknowledge that a petitioner....OHA or AS-IA's determination to acknowledge or decline to acknowledge that the petitioner is an Indian tribe shall be final for the Department. Is this saying that there will be no appeal rights and that the final determination will be that of the Department? If so, why would the Department take away a Tribe's appeal rights? Please explain this in greater detail.

(r) A petitioner that has petitioned under this part or under the acknowledgment regulations....OHA or AS-IA's decision whether to allow re-petitioning shall be final for the Department. Again, is this saying that it is at the sole discretion of the Department and that the Tribe has no appeal rights? Please explain the logic behind this.

8) 83.11 Independent review, reconsideration and final action [Deleted].

This entire section was removed. Why would the Department completely removed all appeal rights for Tribes? This is not acceptable. The language that was here was fine. Please explain the logic behind this revision.