PART 61—PREPARATION OF ROLLS OF INDIANS

Sec.
61.1 Definitions.
61.2 Purpose.
61.3 Information collection.
61.4 Qualifications for enrollment and the deadline for filing application forms.
61.5 Notices.
61.6 Application forms.
61.7 Filing of application forms.
61.8 Verification forms.
61.9 Burden of proof.
61.10 Review of applications by tribal authorities.
61.11 Action by the Director or Superintendent.
61.12 Appeals.
61.13 Decision of the Assistant Secretary on appeals.
61.14 Preparation, certification and approval of the roll.
61.15 Special instructions.


SOURCE: 50 FR 46430, Nov. 8, 1985, unless otherwise noted.

§ 61.1 Definitions.

As used in these regulations:

Act means any act of Congress authorizing or directing the Secretary to prepare a roll of a specific tribe, band, or group of Indians.

Adopted person means a person whose natural parents' parental rights have been given to others to exercise by court order.

Approved roll means a roll of Indians approved by the Secretary.

Assistant Secretary means the Assistant Secretary of the Interior for Indian Affairs or an authorized representative acting under delegated authority.

Basic roll means the specified allotment, annuity, census or other roll designated in the Act or Plan as the basis upon which a new roll is to be compiled.

Commissioner means the Commissioner of Indian Affairs or an authorized representative acting under delegated authority.

Descendant(s) means those persons who are the issue of the ancestor through whom enrollment rights are claimed; namely, the children, grandchildren, etc. It does not include collateral relatives such as brothers, sisters, nieces, nephews, cousins, etc. or adopted children, grandchildren, etc.

Director means the Area Director of the Bureau of Indian Affairs area office which has administrative jurisdiction over the local field office responsible for administering the affairs of the tribe, band, or group for which a roll is being prepared or an authorized representative acting under delegated authority.

Enrollee(s) means persons who have met specific requirements for enrollment and whose names appear on a particular roll of Indians.

Lineal ancestor means an ancestor, living or deceased, who is related to a person by direct ascent; namely, the parent, grandparent, etc. It does not include collateral relatives such as brothers, sisters, aunts, uncles, etc., or adopted parents, grandparents, etc.

Living means born on or before and alive on the date specified.

Plan means any effective plan prepared under the provisions of the Act of October 19, 1973, Pub. L. 93–134, 87 Stat. 466, as amended, which authorizes and directs the Secretary to prepare a roll of a specific tribe, band, or group of Indians.

Secretary means the Secretary of Interior or an authorized representative acting under delegated authority.

Sponsor means any person who files an application for enrollment or appeal on behalf of another person.

Staff Officer means the Enrollment Officer or other person authorized to prepare the roll.

Superintendent means the official or other designated representative of the Bureau of Indian Affairs in charge of the field office which has immediate administrative responsibility for the affairs of the tribe, band, or group for which a roll is being prepared.

Tribal Committee means the body of a federally recognized tribal entity vested with final authority to act on enrollment matters.
§ 61.2 Purpose.

The regulations in this part 61 are to govern the compilation of rolls of Indians by the Secretary of the Interior pursuant to statutory authority. The regulations are not to apply in the compilation of tribal membership rolls where the responsibility for the preparation and maintenance of such rolls rests with the tribes.

§ 61.3 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in § 61.4 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

§ 61.4 Qualifications for enrollment and the deadline for filing application forms.

(a) The qualifications which must be met to establish eligibility for enrollment and the deadline for filing application forms will be included in this part 61 by appropriate amendments to this section; except that, when an Act or Plan states the qualifications for enrollment and the deadline for filing application forms and specifies that the regulations contained in this part 61 will apply, amendment to this section will not be required for the procedures contained in this part 61 to govern the preparation of the roll; provided further, the provisions contained in this part 61 that were in effect when the regulations were amended to include paragraphs (r), (s), (w), (x), (y), and (z) shall control the preparation of the rolls under paragraphs (r), (s), (w), (x), (y), and (z) of this section.

(b) Pembina Band of Chippewa Indians.

(1) Pursuant to section 7(a) of the Act of December 31, 1982, Pub. L. 97-403, 96 Stat. 2022, a roll is to be prepared and used as the basis for the distribution of an apportioned share of judgment funds awarded the Pembina Chippewa Indians in dockets numbered 113, 191, 221 and 246 of the Court of Claims of all persons who:

(i) Are of at least ¾ degree Pembina Chippewa blood;

(ii) Are citizens of the United States;

(iii) Were living on December 31, 1982;

(iv) Are not members of the Red Lake Band of Chippewa Indians, the Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe of the Rocky Boy’s Reservation, or Minnesota Chippewa Tribe, or the Little Shell Band of Chippewa Indians of Montana; and

(v) Are enrolled or are lineal descendants of persons enrolled:

(A) As Pembina descendants under the provisions of the Act of July 29, 1971 (85 Stat. 158), for the disposition of the 1863 Pembina Award, or

(B) On the McCumber roll of the Turtle Mountain Indians of 1892, or

(C) On the Davis roll of the Turtle Mountain Indians of 1904; or

(D) As Chippewa on the tentative roll of the Rocky Boy Indians of May 30, 1917, or the McLaughlin census report of the Rocky Boy Indians of July 7, 1917, or the Roe Cloud Roll of Landless Indians of Montana; or

(vi) Are able to establish Pembina ancestry on the basis of any other rolls or records acceptable to the Secretary.

(2) Application forms for eligibility must be filed with the Superintendent, Turtle Mountain Agency, Bureau of Indian Affairs, Belcourt, North Dakota 58316, by March 10, 1986. Application forms filed after that date will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for eligibility.

(3) Each application for enrollment as a member of any of the tribes specified in paragraph (b)(1)(iv) of this section, except the Red Lake Band of Chippewa Indians, which may be rejected by the tribes shall be reviewed by the Superintendent to determine whether the applicant meets the qualifications for eligibility as a descendant of the Pembina Band of Chippewas under paragraph (b)(1) of this section. Each rejection notice shall contain a statement to the effect that the application is being given such review.

(c) Cherokee Band of Shawnee Indians.

(1) Pursuant to section 5 of the Act of December 20, 1962, Pub. L. 97-372, 76 Stat. 1815, a roll is to be prepared and
used as the basis for the distribution of an apportioned share of judgment funds awarded the Shawnee Tribe in dockets 64, 335, and 338 by the Indian Claims Commission and in docket 64-A by the U.S. Court of Claims of all persons of Cherokee Shawnee ancestry:

(i) Who were living on December 20, 1982;

(ii) Who are lineal descendants of the Shawnee Nation as it existed in 1854, based on the roll of the Cherokee Shawnee compiled pursuant to the Act of March 2, 1889 (25 Stat. 994), or any other records acceptable to the Secretary including eligibility to share in the distribution of judgment funds awarded the Absentee Shawnee Tribe of Oklahoma on behalf of the Shawnee Nation in Indian Claims Commission docket 334-B as a Cherokee Shawnee descendant; and

(iii) Who are not members of the Absentee Shawnee Tribe of Oklahoma or the Eastern Shawnee Tribe of Oklahoma.

(2) Application forms for enrollment must be filed with the Director, Muskogee Area Office, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401, by May 9, 1986. Application forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(d) Miami Indians of Indiana. (1) Pursuant to section 3 of the Act of December 21, 1982, Pub. L. 97-376, 96 Stat. 1828, a roll is to be prepared and used as the basis for the distribution of an apportioned share of judgment funds awarded the Miami Tribe of Oklahoma and the Miami Indians of Indiana in dockets 124-B and 254 by the U.S. Court of Claims of all persons of Miami Indian ancestry:

(i) Who were living on December 21, 1982;

(ii) Whose name or the name of a lineal ancestor appears on:

(A) The roll of Miami Indians of Oklahoma and Indiana prepared pursuant to the Act of June 2, 1972 (86 Stat. 199), or

(B) The roll of Miami Indians of Indiana of June 2, 1985, or

(c) The roll of "Miami Indians of Indiana, now living in Kansas, Quapaw Agency, I.T., and Oklahoma Territory," prepared and completed pursuant to the Act of March 2, 1895 (28 Stat. 903), or

(D) The roll of the Eel River Miami Tribe of Indians of May 27, 1889, prepared and completed pursuant to the Act of June 29, 1888 (25 Stat. 223), or

(E) The roll of the Western Miami Tribe of Indians of June 12, 1891 (26 Stat. 1003); and

(iii) Who are not members of the Miami Tribe of Oklahoma.

(2) Application forms for enrollment must be filed with the Director, Muskogee Area Office, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401, by May 9, 1986. Application forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(e) Cow Creek Band of Umpqua Tribe of Indians. (1) Pursuant to section 5 of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100-139, a tribal membership roll is to be prepared comprised of all persons who are able to establish that they are of Cow Creek or other Indian ancestry indigenous to the United States based on any rolls or records acceptable to the Secretary and were not members of any other Federally recognized Indian tribe on July 30, 1987; and:

(i) Who are named on the tribal roll dated September 13, 1980, the so-called Interrogatory No. 14 roll;

(ii) Who are descendants of individuals named on the tribal roll dated September 13, 1980, the so-called Interrogatory No. 14 roll, and were born on or prior to October 26, 1987; or

(iii) Who are descendants of individuals who were considered to be members of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the treaty entered between such Band and the United States on September 19, 1853.

(2) Application forms for enrollment must be filed with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380
§ 61.4 25 CFR Ch. I (4-1-99 Edition)

by June 1, 1990. Application forms filed after that date will be rejected for inclusion on the tribal membership roll for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(f) Cow Creek Band of Umpqua Tribe of Indians descendants. (1) Pursuant to section 6(a)(1) of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100-139, a roll of nontribal members eligible to participate in the Higher Education and Vocational Training Program and the Housing Assistance Program of the Cow Creek Band of Umpqua Tribe of Indians is to be prepared of individuals:

(i) Who are descended from persons considered members of the Cow Creek Band of Umpqua Tribe of Indians for purposes of the treaty entered into between such band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854;

(ii) Who did not share or are not descendants of persons who shared in the distribution of funds under the Act entitled “An Act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes,” approved August 13, 1954 (25 U.S.C. 564 et seq.), or under the Act entitled “An Act to provide for the termination of Federal supervision over the property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, and for other purposes,” approved August 13, 1954 (25 U.S.C. 691 et seq.); and

(iii) Who were 50 years or older as of December 31, 1985.

(2) Application forms for enrollment must be filed with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P. O. Box 539, Siletz, Oregon 97380 by April 25, 1988, and with the Cow Creek Band of Umpqua Tribe of Indians. Application forms filed after that date will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for eligibility for inclusion on the roll of persons eligible to participate in the Elderly Assistance Program of the Cow Creek Band of Umpqua Tribe of Indians.

(g) Cow Creek Band of Umpqua Tribe of Indians descendants. (1) Pursuant to section 6(a)(2) of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100-139, a roll of nontribal members eligible to participate in the Elderly Assistance Program of the Cow Creek Band of Umpqua Tribe of Indians is to be prepared of individuals:

(i) Who are descended from persons considered members of the Cow Creek Band of Umpqua Tribe of Indians for purposes of the treaty entered into between such band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854;

(ii) Who did not share or are not descendants of persons who shared in the distribution of funds under the Act entitled “An act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes,” approved August 13, 1954 (25 U.S.C. 564 et seq.), or under the Act entitled “An Act to provide for the termination of Federal supervision over the property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, and for other purposes,” approved August 13, 1954 (25 U.S.C. 691 et seq.); and

(iii) Who were 50 years or older as of December 31, 1985.

(h) Indians of the Hoopa Valley Indian Reservation. Pursuant to section 5 of the Hoopa-Yurok Settlement Act of October 31, 1988, Pub. L. 100-580, a roll of Indians of the Reservation eligible to participate in certain settlement provisions is to be prepared of all persons:
(1) Who were born on or prior to and living on October 31, 1988; and
(2) Who are citizens of the United States; and
(3) Who were not, on August 8, 1988, enrolled members of the Hoopa Valley Tribe; and
(4) Who meet the criteria to qualify as an “Indian of the Reservation” under one of the following standards established by the U.S. Court of Claims in its March 31, 1982, decision, and the United States Claims Court in its May 14, 1987, and March 1, 1988, decisions in the cases of Short v. United States, (Cl. Ct. No. 102±63):
   (i) Standards A±E which are:
      (A) Allottees of land on any part of the Reservation, living on October 1, 1949, and lineal descendants of allottees living on October 1, 1949;
      (B) Persons living on October 1, 1949, and resident on the reservation at that time, who have received Reservation benefits or services, and hold an assignment, or can make other proof that though eligible to receive an allotment, they have not been allotted, and the lineal descendants of such persons, living on October 1, 1949;
      (C) Persons living on June 2, 1953, who have at least 1/4 degree Reservation blood, as defined in paragraph (h)(6)(i) of this section, have forebears born on the Reservation and were resident on the Reservation for 15 years prior to June 2, 1953;
      (D) Persons of at least 1/4 degree Indian blood, born after October 1, 1949, and before August 9, 1963, to a parent who is or would have been, when alive, a qualified Indian of the Reservation under the standards in paragraphs (h)(4)(i) (A), (B) and (C) of this section, or has previously been held entitled to recover in the Short cases;
      (E) Persons born on or after August 9, 1963, who are of at least 1/4 degree Indian blood, derived exclusively from the qualified parent or parents who is or would have been, when alive, a qualified Indian of the Reservation under the standards in paragraphs (h)(4)(i) (A), (B) and (C) of this section, or has previously been held entitled to recover in the Short cases; or
   (ii) Manifest Injustice Standard which is: Persons who do not qualify under the standards in paragraph (h)(4)(i) of this section, but who it would be manifestly unjust to exclude from enrollment. To qualify under the manifest injustice standard, persons must adequately demonstrate all of the following:
      (A) A significant degree of Indian blood (at least 1/4 degree Indian blood, and
      (B) Personal connections to the Reservation shown through a substantial period of residence on the Reservation (nearly ten years of residence), and
      (C) Personal ties to the land of the Reservation and/or ties to the land through a lineal ancestor; and
(5) Who file or have filed on their behalf application forms for enrollment with the Superintendent, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049, by April 10, 1989. Applications filed after that date will not be considered for inclusion on the roll regardless of whether the applicant otherwise meets the qualifications for enrollment, except for plaintiffs determined to be an “Indian of the Reservation” in the Short cases, who will, if they otherwise meet the requirements of the Act, be included on the roll.
(6) As used in paragraph (h) of this section:
   (i) Reservation blood means the blood of the following tribes or bands: Yurok; Hoopa/Hupa; Grouse Creek; Hunstand/ Hoonsoton/Hoosonston; Miskut/Miscotts/Miscolts; Redwood/Chilula; Saiaz/Nongal/Sliah; Sermalton; South Fork; Tish-tangatan; Karok; Tolowa; Sinkyone/Sinkiene; Wailacki; Wiyot/Humboldt; and Wintun.
   (ii) Short cases means the cases entitled Jessie Short et al. v. United States, (Cl. Ct. No. 102±63); Charlene Ackley v. United States, (Cl. Ct. No. 460±78); Bret Aastadt v. United States, (Cl. Ct. No. 146±85L); and Norman Giffen v. United States, (Cl. Ct. No. 746±85L).
   (i) [Reserved]
(j) Coquille Tribe of Indians. (1) Pursuant to section 7 of the Coquille Restoration Act of June 28, 1989, Pub. L. 101±42, a tribal membership roll is to be prepared comprised of persons of Coquille Indian ancestry:
   (i) Who were born on or before and living on June 28, 1989;
(ii) Who possess at least one-eighth (1/8) degree or more Indian blood;
(iii) Who are not enrolled members of another federally recognized tribe; and
(iv) Whose names were listed on the Coquille roll prepared pursuant to the Act of August 30, 1954 (68 Stat. 979; 25 U.S.C. 771), and approved by the Bureau of Indian Affairs on August 29, 1960;
(v) Whose names were not listed on but who met the requirements to be listed on the Coquille roll prepared pursuant to the Act of August 30, 1954, and approved by the Bureau of Indian Affairs on August 29, 1960; or
(vi) Who are lineal descendants of persons, living or dead, identified in paragraphs (j)(1)(iv) and (j)(1)(v) of this section.

(2) To establish eligibility for inclusion on the tribal membership roll, all persons must file an application form with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380 by January 10, 1991. Application forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(3) For the purposes of establishing eligibility under paragraph (j) of this section, any available evidence establishing Coquille ancestry and the required degree of Indian blood shall be accepted. However, information shown on the Coquille roll prepared pursuant to the Act of August 30, 1954, shall be accepted as conclusive evidence of Coquille ancestry and blood degree information shown on the January 1, 1940, census roll of nonreservation Indians of the Grand Ronde-Siletz Agency shall be accepted as conclusive evidence in determining degree of Indian blood for applicants.

(4) For the purposes of establishing eligibility under paragraph (j) of this section, persons who may be enrolled members of another federally recognized tribe or tribes may submit a conditional relinquishment of membership document in the other tribe or tribes with their application forms. A conditional relinquishment of membership document in the other tribe or tribes with their application forms. A conditional relinquishment will be accepted by the Superintendent only if it is executed by the person himself or herself unless the person is legally incompetent, in which case the legal guardian and only the legal guardian may execute the conditional relinquishment document. In the case of minors, only the parent or legal guardian may execute a conditional relinquishment document.

(k)-(q) [Reserved]

(r) Mdewakanton and Wahpakoota Tribe of Sioux Indians. (1) All lineal descendants of the Mdewakanton and Wahpakoota Tribe of Sioux Indians who were born on or prior to and were living on October 25, 1972, whose names or the name of a lineal ancestor appears on any available records and rolls acceptable to the Secretary of the Interior and who are not members of the Flandreau Santee Sioux Tribe of South Dakota, the Santee Sioux Tribe of Nebraska, the Lower Sioux Indian Community at Morton, Minn., the Prairie Island Indian Community at Welch, Minn., or the Shakopee Mdewakanton Sioux Community of Minnesota shall be entitled to be enrolled under title I, section 101(b) of the act of October 25, 1972 (86 Stat. 1168), to share in the distribution of funds derived from a judgment awarded the Mississippi Sioux Indians.

(2) Applications for enrollment must have been filed with the Director, Aberdeen Area Office, Bureau of Indian Affairs, 820 South Main Street, Aberdeen, S. Dak. 57401, and must have been received no later than November 1, 1973. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Each application for enrollment with any of the tribes named in paragraph (r)(1) of this section which may be rejected by the tribes shall be reviewed by the Director to determine whether the applicant meets the requirements for enrollment as a descendant of the Mdewakanton and Wahpakoota Tribe of Sioux Indians under paragraph (r)(1) of this section. Each rejection notice issued by the tribes shall contain a statement to the effect that the application is being given such review.
§ 61.4

(s) Sisseton and Wahpeton Mississippi Sioux Tribe. (1) All lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe who were born on or prior to and were living on October 25, 1972, whose names or the name of a lineal ancestor appears on any available records and rolls acceptable to the Secretary of the Interior and who are not members of the Devils Lake Sioux Tribe of North Dakota, the Sisseton and Wahpeton Sioux Tribe of South Dakota, or the Assiniboine and Sioux Tribes of the Fort Peck Reservation shall be entitled to be enrolled under title II, section 201(b) of the act of October 25, 1972 (86 Stat. 1168), to share in the distribution of certain funds derived from a judgment awarded the Mississippi Sioux Indians.

(2) Applications for enrollment must have been filed with the Director, Aberdeen Area Office, Bureau of Indian Affairs, 820 South Main Street, Aberdeen, S. Dak. 57401, and must have been received no later than November 1, 1973. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Each application for enrollment with any of the tribes named in paragraph (s)(1) of this section which may be rejected by the tribes shall be reviewed by the Director to determine whether the applicant meets the requirements for enrollment as a descendant of the Sisseton and Wahpeton Mississippi Sioux Tribe under paragraph (s)(1) of this section. Each rejection notice issued by the tribe shall contain a statement to the effect that the application is being given such review.

(t)-(v) [Reserved]

(w) Lower Skagit Tribe of Indians. (1) All persons of Lower Skagit ancestry born on or prior to and living on February 18, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Assistant Secretary, shall be entitled to have their names placed on the roll, to be prepared and used as the basis to distribute the judgment funds awarded the Lower Skagit Tribe in Indian Claims Commission docket 294. Proof of Upper Skagit ancestry will not be acceptable as proof of Lower Skagit ancestry.

(2) Applications for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must have been received by close of business on May 31, 1977. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

(x) Kikiallus Tribe of Indians. (1) All persons of Kikiallus ancestry born on or prior to and living on February 18, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Assistant Secretary, shall be entitled to have their names placed on the roll, to be prepared and used as the basis to distribute the judgment funds awarded the Kikiallus Tribe in Indian Claims Commission docket 263.

(2) Applications for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must have been received by close of business on May 31, 1977. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

(y) Swinomish Tribe of Indians. (1) All persons of Swinomish ancestry born on or prior to and living on December 10, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Assistant Secretary, shall be entitled to have their names placed on the roll, to be prepared and used as the basis to distribute the judgment funds awarded the Swinomish Tribe in Indian Claims Commission docket 233.
§ 61.5

(2) Application for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must have been received by close of business on May 31, 1977. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

(2) Samish Tribe of Indians. (1) All persons of Samish ancestry born on or prior to and living on December 10, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on any records acceptable to the Secretary, shall be entitled to have their names placed on the roll to be prepared and used as the basis to distribute the judgment funds awarded the Samish Tribe in Indian Claims Commission docket 261.

(2) Applications for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must have been received by close of business on May 31, 1977. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

§ 61.6 Application forms.

(a) Application forms to be filed by or for applicants for enrollment will be furnished by the Director, Superintendent, or other designated persons, upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom forms are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing applications shall be furnished with each form. The form shall indicate prominently the deadline for filing application forms.

(b) Among other information, each application form shall contain:

(1) Certification as to whether application form is for a natural child or an adopted child of the parent through whom eligibility is claimed.

(2) If the application form is filed by a sponsor, the name and address of sponsor and relationship to applicant.

(3) A control number for the purpose of keeping a record of forms furnished interested individuals.

(4) Certification that the information given on the application form is true to the best of the knowledge and belief of the person filing the application. Criminal penalties are provided by statute for knowingly filing false information in such applications (18 U.S.C. 1001).

(c) Application forms may be filed by sponsors on behalf of other persons.
(d) Every applicant or sponsor shall furnish the applicant's mailing address on the application form. Thereafter, the applicant or sponsor shall promptly notify the Director or Superintendent of any change in address, giving appropriate identification of the application, otherwise the mailing address as stated on the form shall be acceptable as the address of record for all purposes under the regulations in this part 61.

§ 61.7 Filing of application forms.

(a) Application forms filed by mail must be postmarked no later than midnight on the deadline specified. Where there is no postmark date showing on the envelope or the postmark date is illegible, application forms mailed from within the United States, including Alaska and Hawaii, received more than 15 days and application forms mailed from outside of the United States received more than 30 days after the deadline specified in the office of the designated Director or Superintendent, will be denied for failure to file in time.

(b) Application forms filed by personal delivery must be received in the office of the designated Director or Superintendent no later than close of business on the deadline specified.

(c) If the deadline for filing application forms falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the deadline will be the next working day thereafter.

(d) The provisions of this section shall not apply in the preparation of the rolls under paragraphs (r), (s), (w), (x), (y) and (z) of § 61.4.

§ 61.8 Verification forms.

If the Director or Superintendent is preparing a roll of Indians by adding names of eligible persons to and deleting names of ineligible persons from a previously approved roll, and individuals whose names appear on the previously approved roll are not required to file applications for enrollment, a verification form, to be completed and returned, shall be mailed to each previous enrollee using the last address of record. The verification form will be used to ascertain the previous enrollee's current name and address and that the enrollee is living, or if deceased, the enrollee's date of death. Name and/or address changes will only be made if the verification form is signed by an adult enrollee, if living, or the parent or guardian having legal custody of a minor enrollee, or an authorized sponsor. The verification form may also be used by any sponsor to notify the Director or Superintendent of the date of death of a previous enrollee.

§ 61.9 Burden of proof.

The burden of proof rests upon the applicant or tribal member to establish eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings, or affidavits, may be used to support claim of eligibility for enrollment. Records of the Bureau of Indian Affairs may be used to establish eligibility.

§ 61.10 Review of applications by tribal authorities.

(a) If tribal review is applicable, the Director or Superintendent shall submit all applications to the Tribal Committee for review and recommendations or determinations; except that, in the cases of adopted persons where the Bureau of Indian Affairs has assured confidentiality to obtain the information necessary to determine the eligibility for enrollment of the individual or has the statutory obligation to maintain the confidentiality of the information, the confidential information may not be released to the Tribal Committee, but the Director or Superintendent shall certify as to the eligibility for enrollment of the individual to the Tribal Committee.

(b) The Tribal Committee shall review all applications and make its recommendations or determinations in writing stating the reasons for acceptance or rejection for enrollment.

(c) The Tribal Committee shall return the applications to the Director or Superintendent with its recommendations or determinations and any additional evidence used in determining eligibility for enrollment within 30 days of receipt of the applications by the Tribal Committee. The Director or Superintendent may grant the Tribal Committee additional time, upon request, for its review.
§ 61.11 Action by the Director or Superintendent.

(a) The Director or Superintendent shall consider each application, all documentation, and when applicable, tribal recommendations or determinations.

(b) The Director or Superintendent, when tribal recommendations or determinations are applicable, shall accept the recommendations or determinations of the Tribal Committee unless clearly erroneous.

(1) If the Director or Superintendent does not accept the tribal recommendation or determination, the Tribal Committee shall be notified in writing, by certified mail, return receipt requested, or by personal delivery, of the action and the reasons therefor.

(2) The Tribal Committee may appeal the decision of the Director or Superintendent not to accept the tribal recommendation or determination. Such appeal must be in writing and must be filed pursuant to part 62 of this chapter.

(3) Unless otherwise specified by law or in a tribal governing document, the determination of the Director or Superintendent shall only affect the individual's eligibility to share in the distribution of judgment funds.

(c) The Director or Superintendent, upon determining an individual's eligibility, shall notify the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing of the decision. If an individual files applications on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person involved. Where an individual is represented by a sponsor, notification of the sponsor of eligibility or adverse action shall be considered to be notification of the individual.

(1) If the Director or Superintendent determines that the individual is eligible, the name of the individual shall be placed on the roll.

(2) If the Director or Superintendent determines that the individual is not eligible, he/she shall notify the individual's parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing by certified mail, to be received by the addressee only, return receipt requested, and shall explain fully the reasons for the adverse action and the right to appeal to the Secretary. If correspondence is sent out of the United States, registered mail will be used. If a certified or registered notice is returned as "Unclaimed", the Director or Superintendent shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Director or Superintendent. If the acknowledgment of receipt is not returned, computation of the appeal period shall begin on the date the notice was remailed. Certified or registered notices returned for any reason other than "Unclaimed" need not be remailed.

(d) Except as provided in paragraph (c)(2) of this section, a notice of adverse action is considered to have been made and computation of the appeal period shall begin on the earliest of the following dates:

(1) Of delivery indicated on the return receipt;

(2) Of acknowledgment of receipt;

(3) Of personal delivery; or

(4) Of the return by the post office of an undelivered certified or registered letter.

(e) In all cases where an applicant is represented by an attorney, the attorney shall be recognized as fully controlling the application on behalf of the applicant and service on the attorney shall be considered to be service on the applicant. Where an applicant is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(f) To avoid hardship or gross injustice, the Director or Superintendent may waive technical deficiencies in applications or other submissions. Failure to file by the deadline does not constitute a technical deficiency.
§ 61.12 Appeals.

Appeals from or on behalf of tribal members or applicants who have been denied enrollment must be in writing and must be filed pursuant to part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal. A copy of part 62 of this chapter shall be furnished with each notice of adverse action.

§ 61.13 Decision of the Assistant Secretary on appeals.

The decision of the Assistant Secretary on an appeal shall be final and conclusive and written notice of the decision shall be given the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable. The name of any person whose appeal has been sustained will be added to the roll. Unless otherwise specified by law or in a tribal governing document, the determination of the Assistant Secretary shall only affect the individual’s eligibility to share in the distribution of the judgment funds.

§ 61.14 Preparation, certification and approval of the roll.

(a) The staff officer shall prepare a minimum of five copies of the roll of those persons determined to be eligible for enrollment. The roll shall contain for each person a roll number, name, address, sex, date of birth, date of death, when applicable, and when required by law, degree of Indian blood, and, in the remarks column, when applicable, the basic roll number, date of the basic roll, name and relationship of ancestor on the basic roll through whom eligibility was established.

(b) A certificate shall be attached to the roll by the staff officer or Superintendent certifying that to the best of his/her knowledge and belief the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Director shall approve the roll.

§ 61.15 Special instructions.

To facilitate the work of the Director or Superintendent, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part 61.

PART 62—ENROLLMENT APPEALS

Sec.
62.1 Definitions.
62.2 Purpose.
62.3 Information collection.
62.4 Who may appeal.
62.5 An appeal.
62.6 Filing of an appeal.
62.7 Burden of proof.
62.8 Advising the tribal committee.
62.9 Action by the Superintendent.
62.10 Action by the Director.
62.11 Action by the Assistant Secretary.
62.12 Special instructions.

SOURCE: 52 FR 30160, Aug. 13, 1987, unless otherwise noted.

§ 62.1 Definitions.

As used in these regulations:

Assistant Secretary means the Assistant Secretary of the Interior for Indian Affairs or an authorized representative acting under delegated authority.

Bureau means the Bureau of Indian Affairs of the Department of the Interior.

Commissioner means the Commissioner of Indian Affairs or an authorized representative acting under delegated authority.

Department means the Department of the Interior.

Director means the Area Director of the Bureau of Indian Affairs area office which has administrative jurisdiction over the local field office responsible for administering the affairs of a tribe, band, or group of Indians or an authorized representative acting under delegated authority.

Secretary means the Secretary of the Interior or an authorized representative acting under delegate authority.

Superintendent means the official or other designated representative of the Bureau of Indian Affairs in charge of the field office which has immediate administrative responsibility with respect to the affairs of a tribe, band, or group of Indians or an authorized representative acting under delegated authority.

Sponsor means any authorized person, including an attorney, who files an appeal on behalf of another person.
§ 62.2 Purpose.

(a) The regulations in this part are to provide procedures for the filing and processing of appeals from adverse enrollment actions by Bureau officials.

(b) The regulations in this part are not applicable and do not provide procedures for the filing of appeals from adverse enrollment actions by tribal committees, unless:

1. The adverse enrollment action is incident to the preparation of a tribal roll subject to Secretarial approval; or
2. An appeal to the Secretary is provided for in the tribal governing document.

§ 62.3 Information collection.

In accordance with the Office of Management and Budget regulations contained in 5 CFR 1320.3, approval of the information collection requirements contained in this part is not required.

§ 62.4 Who may appeal.

(a) A person who is the subject of an adverse enrollment action may file or have filed on his/her behalf an appeal. An adverse enrollment action is:

1. The rejection of an application for enrollment by a Bureau official incident to the preparation of a roll for Secretarial approval;
2. The removal of a name from a tribal roll by a Bureau official incident to review of the roll for Secretarial approval;
3. The rejection of an application for enrollment or the disenrollment of a tribal member by a tribal committee when the tribal governing document provides for an appeal of the action to the Secretary;
4. The change in degree of Indian blood by a tribal committee which affects a tribal member when the tribal governing document provides for an appeal of the action to the Secretary;
5. The change in degree of Indian blood by a Bureau official which affects an individual; and
6. The certification of degree of Indian blood by a Bureau official which affects an individual.

(b) A tribal committee may file an appeal as provided for in §61.11 of this chapter.

(c) A sponsor may file an appeal on behalf of another person who is subject to an adverse enrollment action.

§ 62.5 An appeal.

(a) An appeal must be in writing and must be filed with the Bureau official designated in the notification of an adverse enrollment action, or in the absence of a designated official, with the Bureau official who issued the notification of an adverse enrollment action; or when the notification of an adverse action is made by a tribal committee with the Superintendent.

(b) An appeal may be on behalf of more than one person. However, the name of each appellant must be listed in the appeal.

(c) An appeal filed by mail or filed by personal delivery must be received in the office of the designated Bureau official or of the Bureau official who issued the notification of an adverse enrollment action by close of business within 30 days of the notification of an adverse enrollment action, except when the appeal is mailed from outside the United States, in which case the appeal must be received by the close of business within 60 days of the notification of an adverse enrollment action.

(d) The appellant or sponsor shall furnish the appellant’s mailing address in the appeal. Thereafter, the appellant or sponsor shall promptly notify the Bureau official with whom the appeal was filed of any change of address, otherwise the address furnished in the appeal shall be the address of record.

(e) An appellant or sponsor may request additional time to submit supporting evidence. A period considered reasonable for such submissions may be granted by the Bureau official with
§ 62.6 Filing of an appeal.
(a) Except as provided in paragraph (b) of this section, a notification of an adverse enrollment action will be mailed to the address of record or the last available address and will be considered to have been made and computation of the appeal period shall begin on:
   (1) The date of delivery indicated on the return receipt when notice of the adverse enrollment action has been sent by certified mail, return receipt requested; or
   (2) Ten (10) days after the date of the decision letter to the individual when notice of the adverse enrollment action has not been sent by certified mail return receipt requested and the letter has not been returned by the post office; or
   (3) The date the letter is returned by the post office as undelivered whether the notice of the adverse enrollment action has been sent by certified mail return receipt requested or by regular mail.
(b) When notification of an adverse enrollment action is under the regulations contained in part 61 of this chapter, computation of the appeal period shall be in accordance with §61.11.
(c) In computing the 30 or 60 day appeal period, the count begins with the day following the notification of an adverse enrollment action and continues for 30 or 60 calendar days. If the 30th or 60th day falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the appeal period will end on the first working day thereafter.

§ 62.7 Burden of proof.
(a) The burden of proof is on the appellant or sponsor. The appeal should include any supporting evidence not previously furnished and may include a copy or reference to any Bureau or tribal records having a direct bearing on the action.
(b) Criminal penalties are provided by statute for knowingly filing false or fraudulent information to an agency of the U.S. government (18 U.S.C. 1003).

§ 62.8 Advising the tribal committee.
Whenever applicable, the Superintendent or Director shall notify the tribal committee of the receipt of the appeal and shall give the tribal committee the opportunity to examine the appeal and to present such evidence as it may consider pertinent to the action being appealed. The tribal committee shall have not to exceed 30 days from receipt of notification of the appeal in which to present in writing such statements as if may deem pertinent, supported by any tribal records which have a bearing on the case. The Director or Superintendent may grant the tribal committee additional time, upon request, for its review.

§ 62.9 Action by the Superintendent.
When an appeal is from an adverse enrollment action taken by a Superintendent or tribal committee, the Superintendent shall acknowledge in writing receipt of the appeal and shall forward the appeal to the Director together with any relevant information or records; the recommendations of the tribal committee, when applicable; and his/her recommendations on the appeal.

§ 62.10 Action by the Director.
(a) Except as provided in paragraph (c) of this section, when an appeal is from an adverse enrollment action taken by a Superintendent or tribal committee, the Director will consider the record as presented together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision. The Director shall make a decision on the
appeal which shall be final for the Department and which shall so state in the decision. The appellant or sponsor will be notified in writing of the decision. Provided that, the Director may waive his/her authority to make a final decision and forward the appeal to the Assistant Secretary for final action.

(b) When an appeal is from an adverse enrollment action taken by a Director, the Director shall acknowledge in writing receipt of the appeal and shall forward the appeal to the Assistant Secretary for final action together with any relevant information or records; the recommendations of the tribal committee, when applicable; and his/her recommendations.

(c) The Director shall forward the appeal to the Assistant Secretary for final action together with any relevant information or records; the recommendations of the tribal committee, when applicable; and his/her recommendations when the adverse enrollment action which is being appealed is either:

(1) The change in degree of Indian blood by a tribal committee which affects a tribal member and the tribal governing document provides for an appeal of the action to the Secretary; or

(2) The change in degree of Indian blood by a Bureau official which affects an individual.

§ 62.11 Action by the Assistant Secretary.

The Assistant Secretary will consider the record as presented, together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision. The Assistant Secretary shall make a decision on the appeal which shall be final for the Department and which shall so state in the decision. The appellant or sponsor will be notified in writing of the decision.

§ 62.12 Special instructions.

To facilitate the work of the Director, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part 62.
Subpart C—Indian Child Protection and Family Violence Prevention Program

§ 63.30 What is the purpose of the Indian child protection and family violence prevention program?

§ 63.31 Can both the Bureau of Indian Affairs and tribes operate Indian child protection and family violence prevention programs?

§ 63.32 Under what authority are Indian child protection and family violence prevention program funds awarded?

§ 63.33 What must an application for Indian child protection and family violence prevention program funds include?

§ 63.34 How are Indian child protection and family violence prevention program funds distributed?

§ 63.35 How may Indian child protection and family violence prevention program funds be used?

§ 63.36 What are the special requirements for Indian child protection and family violence prevention programs?

§ 63.37—63.50 [Reserved]


Source: 61 FR 32274, June 21, 1996, unless otherwise noted.

Subpart A—Purpose, Policy, and Definitions

§ 63.3 Definitions.

Bureau means the Bureau of Indian Affairs of the Department of the Interior; Child means an individual who is not married, and has not attained 18 years of age.

Child abuse includes but is not limited to any case in which a child is dead, or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, or soft tissue swelling, and this condition is not justifiably explained or may not be the product of an accidental occurrence; and any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.

Child neglect includes but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child’s welfare, under circumstances which indicate that the child’s health or welfare is harmed or threatened.

Crimes against persons are defined by local law. Adjudicating officers must contact local law enforcement agencies to determine if the crime for which an applicant or employee was found guilty (or entered a plea of nolo contendere or guilty) is defined as a crime against persons.

Family violence means any act, or threatened act, of violence, including any forceful detention of an individual, which results, or threatens to result, in physical or mental injury, and is committed by an individual against another individual to whom such person is, or was, related by blood or marriage or otherwise legally related, or with whom such person resides, or with whom such person has, or had, membership in, an Indian tribe. The minimum standards of character and suitability of employment for individuals ensure that Indian children are protected, and the Indian child protection and family violence prevention programs will emphasize the unique values of Indian culture and community involvement in the prevention and treatment of child abuse, child neglect and family violence.

§ 63.3 Definitions.

Bureau means the Bureau of Indian Affairs of the Department of the Interior; Child means an individual who is not married, and has not attained 18 years of age.

Child abuse includes but is not limited to any case in which a child is dead, or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, or soft tissue swelling, and this condition is not justifiably explained or may not be the product of an accidental occurrence; and any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.

Child neglect includes but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child’s welfare, under circumstances which indicate that the child’s health or welfare is harmed or threatened.

Crimes against persons are defined by local law. Adjudicating officers must contact local law enforcement agencies to determine if the crime for which an applicant or employee was found guilty (or entered a plea of nolo contendere or guilty) is defined as a crime against persons.

Family violence means any act, or threatened act, of violence, including any forceful detention of an individual, which results, or threatens to result, in physical or mental injury, and is committed by an individual against another individual to whom such person is, or was, related by blood or marriage or otherwise legally related, or with whom such person resides, or with whom such person has, or had,
§ 63.3 25 CFR Ch. I (4-1-99 Edition)

intimate or continuous social contact and household access.
Indian means any individual who is a member of an Indian tribe.
Indian child means any unmarried person who is under age eighteen and is either a member of an Indian tribe eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
Indian country means:
(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof; and,
(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Unless otherwise indicated, the term “Indian country” is used instead of “Indian reservation” for consistency.
Indian reservation means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or lands held by incorporated Native groups, regional corporations, or village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).
Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
Inter-tribal consortium means a partnership between an Indian tribe or tribal organization of an Indian tribe, and one or more Indian tribes or tribal organizations of one or more Indian tribes.
Local child protective services agency is an agency of the Federal Government, state, or Indian tribe that has the primary responsibility for child protection on any Indian reservation, or within any community in Indian country.
Local law enforcement agency is that Federal, tribal, or state law enforcement agency that has primary responsibility for the investigation of an instance of alleged child abuse within the involved Indian jurisdiction.
Must is used in place of shall and indicates a mandatory or imperative act or requirement.
Person responsible for a child’s welfare is any person who has legal or other recognized duty for the care and safety of a child, and may include any employee or volunteer of a children's residential facility, and any person providing out-of-home care, education, or services to children.
Related assistance means the counseling and self-help services for abusers, victims, and dependents in family violence situations; referrals for appropriate health-care services (including alcohol and drug abuse treatment); and may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents.
Secretary means the Secretary of the Interior.
Service means the Indian Health Service of the Department of Health and Human Services.
Shelter means the temporary refuge and related assistance in compliance with applicable Federal and tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents.
Tribal organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let, a grant is awarded, or funding agreement is made to an organization to perform services benefiting more than one Indian tribe, the approval of
each such Indian tribe must be a pre-
requisite to the letting or making of
such contract, grant, or funding agree-
ment.

§ 63.4 Information collection.
The information collection require-
ment contained in §63.15, §63.33 and
§63.34 will be approved by the Office of
Management and Budget under the Pa-
perwork Reduction Act of 1995, 44
U.S.C. 3507(d), and assigned clearance
number _______.

§§ 63.5±63.9 [Reserved]

Subpart B—Minimum Standards of
Character and Suitability for
Employment

§ 63.10 Purpose.
The purpose of this part is to estab-
lish:
(a) Procedures for determining suit-
ability for employment and efficiency
of service as mandated by the Indian
Child Protection and Family Violence
Prevention Act; and
(b) Minimum standards of character to
ensure that individuals having regular
contact with or control over Indian
children have not been convicted of
certain types of crimes or acted in a
manner that placed others at risk or
raised questions about their trust-
worthiness.

§ 63.11 What is a determination of suit-
ability for employment and effi-
ciency of service?
(a) Determinations of suitability measure
the fitness or eligibility of an appli-
cant, volunteer, or employee for a par-
ticular position. Suitability for em-
ployment does not evaluate an appli-
cant’s education, skills, knowledge, ex-
perience, etc. Rather, it requires that
the employer investigate the back-
ground of each applicant, volun-
teer, and employee to:
(1) Determine the degree of risk the
applicant, volunteer, or employee
brings to the position; and
(2) Certify that the applicant’s, vol-
unteer’s, or employee’s past conduct
would not interfere with higher per-
formance of duties, nor would it create
an immediate or long-term risk for any
Indian child.

(b) Efficiency of service is the employ-
er’s verification that the applicant or
employee is able to perform the duties
and responsibilities of the position, and
his/her presence on the job will not in-
hbit other employees or the agency
from performing their functions.

§ 63.12 What are minimum standards
of character?
Minimum standards of character are
established by an employer and refer to
identifiable character traits and past
conduct. An employer may use char-
acter traits and past conduct to deter-
mine whether an applicant, volunteer,
or employee can effectively perform
the duties of a particular position
without risk of harm to others. Min-
imum standards of character ensure
that no applicant, volunteer, or em-
ployee will be placed in a position with
regular contact with or control over
Indian children if he/she has been found
guilty of or entered a plea of nolo
contendere or guilty to any offense
under Federal, state, or tribal law in-
volving crimes of violence, sexual as-
sault, sexual molestation, sexual ex-
ploration, sexual contact or prostitu-
tion, or crimes against persons.

§ 63.13 What does the Indian Child
Protection and Family Violence
Prevention Act require of the Bu-
reau of Indian Affairs and Indian
tribes or tribal organizations re-
ceiving funds under the Indian Self-
Determination and Education As-
sistance Act or the Tribally Con-
trolled Schools Act?
(a) The Bureau of Indian Affairs must
compile a list of all authorized posi-
tions which involve regular contact
with or control over Indian children;
investigate the character of each indi-
vidual who is employed, or is being
considered for employment; and, pre-
scribe minimum standards of character
which each individual must meet to be
appointed to such positions.
(b) All Indian tribes or tribal organiza-
tions receiving funds under the author-
ity of the Indian Self-Determination
and Education Assistance Act or the
Tribally Controlled Schools Act of 1988
must conduct a background investiga-
tion for individuals whose duties and
§ 63.14 What positions require a background investigation and determination of suitability for employment or retention?

All positions that allow an applicant, employee, or volunteer regular contact with or control over Indian children are subject to a background investigation and determination of suitability for employment.

§ 63.15 What questions should an employer ask?

Employment applications must:
(a) Ask whether the applicant, volunteer, or employee has been arrested or convicted of a crime involving a child, violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons;
(b) Ask the disposition of the arrest or charge;
(c) Require that an applicant, volunteer or employee sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application; and
(d) Inform the applicant, volunteer or employee that a criminal history record check is a condition of employment and require the applicant, volunteer or employee to consent, in writing, to a record check.

§ 63.16 Who conducts the background investigation and prepares the determination of suitability for employment?

(a) The Bureau of Indian Affairs must use the United States Office of Personnel Management (OPM) to conduct background investigations for Federal employees. The BIA must designate qualified security personnel to adjudicate the results of background investigations.
(b) Indian tribes and tribal organizations may conduct their own background investigations, contract with private firms, or request the OPM to conduct an investigation. The investigation should cover the past five years of the individual’s employment, education, etc.

§ 63.17 How does an employer determine suitability for employment and efficiency of service?

(a) Adjudication is the process employers use to determine suitability for employment and efficiency of service. The adjudication process protects the interests of the employer and the rights of applicants and employees. Adjudication requires uniform evaluation to ensure fair and consistent judgment.
(b) Each case is judged on its own merits. All available information, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.
(c) An adjudicating official conducts the adjudication. Each Federal agency, Indian tribe, or tribal organization must appoint an adjudicating official, who must first have been the subject of a favorable background investigation.
(1) Indian tribes and tribal organizations must ensure that persons charged with the responsibility for adjudicating employee background investigations are well-qualified and trained.
(2) Indian tribes and tribal organizations should also ensure that individuals who are not trained to adjudicate these types of investigations are supervised by someone who is experienced and receive the training necessary to perform the task.
(d) Each adjudicating official must be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for suitability.
(e) The adjudicating official must review the background investigation to determine the character, reputation, and trustworthiness of the individual. At a minimum, the adjudicating official must:
(1) Review each security investigation form and employment application and compare the information provided;
(2) Review the results of written record searches requested from local law enforcement agencies, former employers, former supervisors, employment references, and schools; and
§ 63.21 Are there other factors that may disqualify an applicant, volunteer or employee from placement in a position which involves regular contact with or control over Indian children?

Yes.
(a) An applicant, volunteer, or employee may be disqualified from consideration or continuing employment if it is found that:

1. The individual's misconduct or negligence interfered with or affected a current or prior employer's performance of duties and responsibilities.
2. The individual's criminal or dishonest conduct affected the individual's performance or the performance of others.
3. The individual made an intentional false statement, deception or fraud on an examination or in obtaining employment.
4. The individual has refused to furnish testimony or cooperate with an investigation.
5. The individual's alcohol or substance abuse is of a nature and duration that suggests the individual could not perform the duties of the position.
or would directly threaten the property or safety of others.

(6) The individual has illegally used narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation.

(7) The individual knowingly and willfully engaged in an act or activities designed to disrupt government programs.

(b) An individual must be disqualified for Federal employment if any statutory or regulatory provision would prevent his/her lawful employment.

§ 63.22 Can an employer certify an individual with a prior conviction or substantiated misconduct as suitable for employment?

(a) The Bureau of Indian Affairs must use Federal adjudicative standards which allow the BIA to certify that an individual is suitable for employment in a position that does not involve regular contact with or control over Indian children. The adjudicating officer must determine that the individual's prior conduct will not interfere with the performance of duties and will not create a potential for risk to the safety and well-being of Indian children.

(b) Indian tribes and tribal organizations must identify those positions which permit contact with or control over Indian children and establish standards to determine suitability for employment. Those standards should then be used to determine whether an individual is suitable for employment in a position that permits contact with or control over Indian children. If not, the individual may only be placed in a position that does not permit contact with or control over Indian children.

§ 63.23 What rights does an applicant, volunteer or employee have during this process?

(a) The applicant, volunteer, or employee must be provided an opportunity to explain, deny, or refute unfavorable and incorrect information gathered in an investigation, before the adjudication is final. The applicant, volunteer, or employee should receive a written summary of all derogatory information and be informed of the process for explaining, denying, or refuting unfavorable information.

(b) Employers and adjudicating officials must not release the actual background investigative report to an applicant, volunteer, or employee. However, they may issue a written summary of the derogatory information.

(c) The applicant, volunteer, or employee who is the subject of a background investigation may obtain a copy of the reports from the originating (Federal, state, or other tribal) agency and challenge the accuracy and completeness of any information maintained by that agency.

(d) The results of an investigation cannot be used for any purpose other than to determine suitability for employment in a position that involves regular contact with or control over Indian children.

(e) Investigative reports contain information of a highly personal nature and should be maintained confidentially and secured in locked files. Investigative reports should be seen only by those officials who in performing their official duties need to know the information contained in the report.

§ 63.24 What protections must employers provide to applicants, volunteers and employees?

(a) Indian tribes and tribal organizations must comply with the privacy requirements of any Federal, state, or other tribal agency providing background investigations. Indian tribes and tribal organizations must establish and comply with personnel policies that safeguard information derived from background investigations.

(b) The Bureau of Indian Affairs must comply with all policies, procedures, criteria, and guidance contained in the Bureau of Indian Affairs Manual or other appropriate guidelines.

(c) Federal agencies exercising authority under this part by delegation from OPM must comply with OPM policies, procedures, criteria, and guidance.
§§ 63.25-63.29 [Reserved]

Subpart C—Indian Child Protection and Family Violence Prevention Program

§ 63.30 What is the purpose of the Indian child protection and family violence prevention program?

The purpose of this program is to develop tribally-operated programs to protect Indian children and reduce the incidence of family violence on Indian reservations.

§ 63.31 Can both the Bureau of Indian Affairs and tribes operate Indian child protection and family violence prevention programs?

Yes. However, tribes are encouraged to develop and operate programs to protect Indian children and reduce the incidence of family violence in Indian country.

§ 63.32 Under what authority are Indian child protection and family violence prevention program funds awarded?

The Secretary is authorized to enter into contracts with Indian tribes, tribal organizations, or tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450 et seq., for the development and establishment of Indian child protection and family violence prevention programs. This includes compacting with tribes under the Self-Governance program procedures.

§ 63.33 What must an application for Indian child protection and family violence prevention program funds include?

In addition to the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450 et seq., contracting requirements, each application must provide the following information:

(a) The name and address of the agency or official to be responsible for the investigation of reported cases of child abuse and child neglect, the treatment and prevention of incidents of family violence, and the provision of immediate shelter and related assistance for victims of family violence and their dependents;

(b) Projected service population of the program;

(c) Projected service area of the program; and

(d) Projected number of cases per month.

§ 63.34 How are Indian child protection and family violence prevention program funds distributed?

(a) Funds will be distributed, subject to the availability of appropriations, and:

(1) In any fiscal year that the appropriation exceeds 50 percent of the level of funding authorized for this purpose by the Act, 49 percent must be distributed equally to all tribes and tribal organizations and 49 percent must be distributed on a per capita basis according to the population of children residing in the service area. Two percent of the annual appropriation will be set aside for distribution to tribes demonstrating special circumstances.

(2) In any fiscal year that the appropriation does not exceed 50 percent of the level of funding authorized for this purpose by the Act, funding must be distributed in equal amounts to all tribes. Two percent of the annual appropriation will be set aside for distribution to tribes demonstrating special circumstances.

(3) Special circumstances include but are not limited to a high incidence of child sexual abuse, a high incidence of violent crimes, a high incidence of violent crimes against women, or the existence of a significant victim population within the community.

(i) This 2 percent will be subject to discretionary distribution by the Assistant Secretary—Indian Affairs, or his or her designee. Tribes may request these funds through their respective area offices. All requests must demonstrate a high incidence of child sexual abuse, a high incidence of violent crimes, a high incidence of violent crimes against women, or the existence of a significant victim population within the community.

(ii) Special circumstances funds will remain available through the third quarter of each fiscal year. In the
§ 63.35 How may Indian child protection and family violence prevention program funds be used?

Indian child protection and family violence prevention program funds may be used to:

(a) Establish child protective services programs.

(b) Establish family violence prevention and treatment programs.

(c) Develop and implement multidisciplinary child abuse investigation and prosecution programs.

(d) Provide immediate shelter and related assistance to victims of family violence and their dependents, including construction or renovation of facilities to establish family violence shelters.

(e) Purchase equipment to assist in the investigation of cases of child abuse and child neglect.

(f) Develop protocols and intergovernmental or interagency agreements among tribal, Federal, state law enforcement, courts of competent jurisdiction, and related agencies to ensure investigations of child abuse cases to minimize the trauma to the child victim, to define and specify each party's responsibilities, and to provide for the coordination of services to victims and their families.

(g) Develop child protection codes and regulations that provide for the care and protection of children and families on Indian reservations.

(h) Establish community education programs for tribal members and school children on issues of family violence, child abuse, and child neglect.

(i) Establish training programs for child protective services, law enforcement, judicial, medical, education, and related services personnel in the investigation, prevention, protection, and treatment of child abuse, child neglect, and family violence.

(j) Establish other innovative and culturally relevant programs and projects that show promise of successfully preventing and treating family violence, child abuse, and child neglect.

§ 63.36 What are the special requirements for Indian child protection and family violence prevention programs?

(a) Each tribe must develop appropriate standards of service, including caseload standards and staffing requirements. The following caseload standards and staffing requirements are comparable to those recommended by the Child Welfare League of America, and are included to assist tribes in developing standards for Indian child protection and family violence prevention programs:

1. Caseworkers providing services to abused and neglected children and their families have a caseload of 20 active ongoing cases and five active investigations per caseworker.

2. Caseworkers providing services to strengthen and preserve families with children have a caseload of 20 families. If intensive family-centered crisis services are provided, a caseload of 10 families per caseworker is recommended.

3. It is recommended that there be one supervisor for every six caseworkers.

(b) The negotiation and award of contracts, grants, or funding agreements
under these regulations must include the following requirements:

(1) Performance of background investigations to ensure that only those individuals who meet the standards of character contained in §63.12 are employed in positions which involve regular contact with or control over Indian children.

(2) Submission of an annual report to the contracting officer’s representative which details program activities, number of children and families served, and the number of child abuse, child neglect, and family violence reports received.

(3) Assurance that the identity of any person making a report of child abuse or child neglect will not be disclosed without the consent of the individual and that all reports and records collected under these regulations are confidential and to be disclosed only as provided by Federal or tribal law.

(4) Assurance that persons who, in good faith, report child abuse or child neglect will not suffer retaliation from their employers.

§§ 63.37-63.50 [Reserved]

PART 67—PREPARATION OF A ROLL OF INDEPENDENT SEMINOLE INDIANS OF FLORIDA

Sec.
67.1 Definitions.
67.2 Purpose.
67.3 Information collection.
67.4 Qualifications for enrollment and the deadline for filing application forms.
67.5 Notices.
67.6 Application forms.
67.7 Filing of application forms.
67.8 Burden of proof.
67.9 Action by Superintendent.
67.10 Appeals.
67.11 Decision of the Area Director on appeals.
67.12 Exhaustion of administrative remedies.
67.13 Preparation, certification and approval of the roll.
67.14 Preparation of a per capita payment roll.
67.15 Special instructions.


SOURCE: 59 FR 3291, Jan. 20, 1994, unless otherwise noted.

§ 67.1 Definitions.

As used in this part:


Adopted person means a person whose natural parents' parental rights have been terminated by court order and persons other than the natural parents have exercised or do exercise parental rights with regard to the adopted person.

Applicant means a person who is making application for inclusion on the roll prepared by the Secretary pursuant to the Act of April 30, 1990, by either personally filing an application or by having a sponsor complete and file an application on his or her behalf.

Assistant Secretary means the Assistant Secretary for Indian Affairs or authorized representative.

BIA means the Bureau of Indian Affairs, Department of the Interior.

Commissioner means the Commissioner of Indian Affairs or authorized representative.

Director means the Area Director, Eastern Area Office, Bureau of Indian Affairs or authorized representative.

Lineal descendant(s) means those persons who are the issue of the ancestor through whom enrollment rights are claimed; namely, the children, grandchildren, etc. It does not include collateral relatives such as brothers, sisters, nieces, nephews, cousins, etc., or adopted children, adopted grandchildren, etc.

Living means born on or before and alive on the date specified.

Secretary means the Secretary of the Interior or authorized representative.

Sponsor means any person who files an application for enrollment or an appeal on behalf of another person.

Superintendent means the Superintendent, Seminole Agency, Bureau of Indian Affairs or authorized representative.

§ 67.2 Purpose.

The regulations in this part govern the compilation of a roll of persons who meet the requirements specified in
§ 67.3 Information collection.
The information collection requirement contained in this part does not require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

§ 67.4 Qualifications for enrollment and the deadline for filing application forms.
(a) The roll shall contain the names of persons of Seminole Indian descent who:
   (1) Were born on or before, and living on April 30, 1990;
   (2) Are listed on or who are lineal descendants of persons listed on the annotated Seminole Agency Census of 1957 as Independent Seminoles; and
   (3) Are not members of an Indian tribe recognized by the Secretary on the most recent list of such Indian tribes published in the FEDERAL REGISTER.
(b) To qualify for enrollment, all persons must file application forms with the Superintendent, Seminole Agency, Bureau of Indian Affairs, 6075 Stirling Road, Hollywood, Florida 33024 by June 19, 1994. An application filed after June 19, 1994 will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

§ 67.5 Notices.
(a) The Director shall give notice to all Area Directors of the BIA and all Superintendents within the jurisdiction of the Director of the preparation of the roll for public display in BIA field offices. Notices shall be placed for public display in community buildings, tribal buildings and Indian centers.
(b) The Superintendent shall, on the basis of available residence data, publish, and republish when advisable, notices of the preparation of the roll in appropriate localities utilizing media suitable to the circumstances.
(c) Notices shall advise of the preparation of the roll and the relevant procedures to be followed, including the qualifications for enrollment and the deadline for filing application forms to be eligible for enrollment. The notices shall also state how and where application forms may be obtained, as well as the name, address, and telephone number of a person who may be contacted for further information.

§ 67.6 Application forms.
(a) Application forms to be filed by or for applicants for enrollment shall be furnished by the Area Director, Superintendent, or other designated persons upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom forms are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing application forms shall be furnished with each form. The form shall indicate prominently the deadline date for filing application forms.
(b) Among other information, each application form shall contain:
   (1) Certification as to whether the application form is for a natural child or an adopted child of the parent through whom eligibility is claimed.
   (2) If the application form is filed by a sponsor, the name and address of the sponsor and the sponsor’s relationship to the applicant.
   (3) A control number for the purpose of keeping a record of forms furnished to interested individuals.
   (4) Certification that the information given on the application form is true to the best of the knowledge and belief of the person filing the application. Criminal penalties are provided by statute for knowingly filing false information in such applications (18 U.S.C. 1001).
   (5) An election by the applicant as to whether the applicant, if determined to meet the qualifications for enrollment, wishes to share in the per capita payment.
   (c) Sponsors may file application forms on behalf of other persons, but may not file elections to share in the per capita payment.
   (1) The election to share in the per capita payment shall be made as follows:
§ 67.9 Action by Superintendent.

(a) The Superintendent shall notify each individual applicant or sponsor, as applicable, upon receipt of an application. The Superintendent shall consider each application and all documentation. Upon determining an individual’s eligibility, the Superintendent shall notify the individual; the parent or guardian having legal custody of a minor or incompetent adult; or the sponsor, as applicable.

(1) Written notification of the Superintendent’s decision shall be sent to the applicant by certified mail, for receipt by the addressee only, return receipt requested.

(2) If a decision by the Superintendent is sent out of the United States, registered mail will be used. If a certified or registered notice is returned as “Unclaimed,” the Superintendent shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Superintendent. If the acknowledgment of receipt is not returned, computation of the period specified for changes in election and for appeals shall begin on the date the notice was remailed. A certified or registered notice returned for any reason other than “Unclaimed” need not be remailed.

(3) If an individual files an application on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person to whom the notice is applicable. Where an individual is represented by a sponsor, notification to the sponsor of eligibility or adverse action shall be considered notification to the individual.

(b) On the basis of an applicant’s election with regard to whether he or
she wishes to share in the per capita payment, the Superintendent’s decision shall also state whether the applicant’s name will be included on the per capita payment roll. If no election has been made by the applicant, parent, or legal guardian on the application form, the individual applicant’s name will not be included on the per capita payment roll.

(1) The eligible individual will have 30 days from notification of his or her eligibility in which to request a change in the election of whether to share in the per capita payment. Computation of the 30-day period will be in accordance with §67.9(a)(2) and §67.9(d). Upon written request received within the 30-day period, to avoid hardship or gross injustice, the Superintendent may grant an applicant additional time, not to exceed 30 days, in which to submit a request for a change in election.

(2) A change in the election of whether to share in the per capita payment can only be made by competent adult applicants; by the legal guardian of an incompetent adult; or, in the case of a minor, by the minor’s parent or legal guardian.

(c) If the Superintendent determines that an applicant is not eligible for enrollment as an Independent Seminole Indian of Florida, the Superintendent shall notify the applicant of the decision and shall fully explain the reasons for the adverse action and explain the rejected applicant’s right to appeal to the Area Director. The decision of the Area Director shall be final and conclusive.

(d) Except as provided in paragraph (a)(2) of this section, a notice of adverse action concerning an individual’s enrollment eligibility or the inclusion or exclusion of an individual’s name on the per capita payment roll is considered to have been made, and computation of the period for appeal shall begin on the earliest of the following dates:

(1) Delivery date indicated on the return receipt;
(2) Date of acknowledgment of receipt;
(3) Date of personal delivery; or
(4) Date of return by the post office of an undelivered certified or registered letter.

(e) To avoid hardship or gross injustice, the Area Director or the Superintendent may waive technical deficiencies in application forms or other submittals. Failure to file by the deadline date does not constitute a technical deficiency.

§ 67.10 Appeals.

(a) Appeals from or on behalf of applicants who have been rejected for enrollment must be in writing and must be filed pursuant to part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal.

(b) A copy of part 62 of this chapter shall be furnished with each notice of adverse action. All sections of part 62 shall be applicable to appeals filed under this part except §§62.10, 62.11 and 62.12.

§ 67.11 Decision of the Area Director on appeals.

(a) The Area Director will consider the record as presented, together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(b) The decision of the Area Director on an appeal shall be final and conclusive, and written notice, which shall state that the decision is final and conclusive, shall be given to the individual applicant, parent, legal guardian, or sponsor, as applicable.

(c) If an individual files an appeal on behalf of more than one applicant, one notice of the Area Director’s decision may be addressed to the person who filed the appeal. The Area Director’s decision must list the name of each person to whom the decision is applicable. Where an individual applicant is represented by a sponsor, notification to the sponsor of the Area Director’s decision is sufficient.

(d) Written notice of the Area Director’s decision on the appeal shall be sent to the applicant by certified mail, to be received by the addressee only, return receipt requested.

(1) On the basis of the individual’s election with regard to whether he or she wishes to share in the per capita payment, the Area Director’s decision
§ 67.12 Exhaustion of administrative remedies.

The decision of the Area Director on appeal, which shall be final for the Department, is subject to judicial review under 5 U.S.C. 704.

§ 67.13 Preparation, certification and approval of the roll.

(a) The Superintendent shall prepare a minimum of three (3) copies of the roll of those persons determined to be qualified for enrollment as an Independent Seminole Indian of Florida. The roll shall contain for each person a roll number or identification number, name, address, sex, date of birth, date of death (when applicable), and the name and relationship of the ancestor on the annotated Seminole Agency Census of 1957 through whom eligibility for enrollment was established.

(b) A certificate shall be attached to the roll by the Superintendent certifying that to the best of his or her knowledge and belief, the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Area Director shall approve the roll.

§ 67.14 Preparation of a per capita payment roll.

(a) The Superintendent shall, based on the roll approved under § 67.12(c), prepare a per capita payment roll. The payment roll shall be comprised of those persons whose names appear on the approved roll and who have elected to share in the per capita payment.

(b) The per capita payment roll shall contain for each person a roll number or identification number, name, and address.

(c) The Area Director shall authorize the distribution of the judgment funds to those persons named on the per capita payment roll.

§ 67.15 Special instructions.

To facilitate the work of the Superintendent and Area Director, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part.

PART 75—REVISION OF THE MEMBERSHIP ROLL OF THE EASTERN BAND OF CHEROKEE INDIANS, NORTH CAROLINA

Sec.
75.1 Definitions.
75.2 Purpose.
75.3 Announcement of revision of roll.
75.4 Basic membership roll.
75.5 Removal of deceased persons from the roll.
75.6 Additions to the roll.
75.7 Applications for enrollment.
75.8 Applications for minors and incompetents.
75.9 Application form.
75.10 Where application forms may be obtained.
75.11 Proof of relationship.
75.12 Enrollment Committee.
75.13 Tenure of Enrollment Committee.
75.14 Appeals.
75.15 Current membership roll.
75.16 Eligibility for enrollment of persons born after August 21, 1957.
75.17 Relinquishment of membership.
75.18 Adoption.
75.19 Distribution of judgment funds.

AUTHORITY: Sec. 2, 71 Stat. 374.

SOURCE: 24 FR 201, Jan. 8, 1959, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.
§ 75.1 Definitions.

As used in this part:

(a) Band means the Eastern Band of Cherokee Indians in North Carolina.

(b) Reservation means the lands of the Eastern Band of Cherokee Indians in the counties of Jackson, Swain, Graham, Cherokee and Haywood in North Carolina.

(c) Tribal Council means the Tribal Council of the Eastern Band of Cherokee Indians in North Carolina.

(d) Announcement means the announcement of the revision of the membership roll issued as required in § 75.3.

(e) Tribal Enrollment Office means the Tribal Enrollment Clerk working in concert with the Enrollment Committee.

(f) Tribal Enrollment Clerk means the individual working in the Tribal Enrollment Office.

(g) Enrollment Committee means the three individuals appointed by the Tribal Council in accordance with § 75.12.


§ 75.2 Purpose.

The regulations in this part are to govern the revision, as authorized by the Act approved August 21, 1957 (71 Stat. 374), of the membership roll of the Eastern Band of Cherokee Indians, North Carolina, prepared and approved in accordance with the Act of June 4, 1924 (43 Stat. 376), and the Act of March 4, 1931 (46 Stat. 1518).

§ 75.3 Announcement of revision of roll.

When the Tribal Council has authorized the expenditure of tribal funds to supply sufficient staff to perform the work necessary to revise the membership roll of the Band and such staff has been employed and when the application forms and other necessary documents have been devised and printed, the Principal Chief, or in his absence the Vice Chief or the Chairman of the Tribal Council shall announce that a revision of the membership roll of the Band shall commence on a specified date. The date specified shall be not less than 15 days nor more than 30 days from the date of issuance of the announcement. A press release should be prepared announcing the date the revision of the roll shall begin, together with other pertinent information such as the membership requirements and where application forms may be obtained. The press release should be distributed to all newspapers and radio stations within the region of the Reservation with a request that it be given wide publicity. Copies of the press release should also be posted in the Agency Office and at various other public places throughout the Reservation as well as in Post Offices of the towns adjacent to the Reservation.

§ 75.4 Basic membership roll.

All persons whose names appear on the roll of the Eastern Band of Cherokee Indians of North Carolina, prepared and approved pursuant to the act of June 4, 1924 (43 Stat. 376), and the act of March 4, 1931 (46 Stat. 1518), shall be members of the Band.

§ 75.5 Removal of deceased persons from the roll.

The name of any person who was not alive as of midnight August 21, 1957, shall be stricken from the basic membership roll by the Tribal Enrollment Office upon receipt of a death certificate or other evidence of death acceptable to the Tribal Enrollment Office.


§ 75.6 Additions to the roll.

There shall be added to the roll of the Band the names of persons living on August 21, 1957, who meet the following qualifications:

(a) Persons born during the period, beginning on or after June 4, 1924, and ending midnight August 21, 1957, who are direct descendants of persons whose names appear on the roll prepared and approved pursuant to the act of June 4, 1924 (43 Stat. 376), and the act of March 4, 1931 (46 Stat. 1518); provided, such persons:

(1) Who applied for membership before August 14, 1963 possess at least \( \frac{1}{3} \) degree of Eastern Cherokee Indian blood, and those persons who apply for membership on or after August 14, 1963,
§ 75.11 Proof of relationship.

If the applicant’s parents or other Eastern Cherokee ancestors through whom the applicant claims enrollment rights are unknown to the Tribal Enrollment Office, the Tribal Enrollment Office may request the applicant to
§ 75.12 Enrollment Committee.

The Tribal Council shall appoint either from within or without the membership of the Council, but not from without the membership of the Band, a committee of three (3) persons to serve as the Enrollment Committee. The Enrollment Committee shall review all applications for enrollment filed in accordance with the existing regulations, and shall determine the qualifications of the applicant for enrollment with the Band. The Enrollment Committee may perform such other functions relating to the enrollment and membership in the Band as the Tribal Council may from time to time direct.


§ 75.13 Tenure of Enrollment Committee.

The members of the Enrollment Committee shall be appointed to serve a term of office of 2 years by each newly elected Tribal Council.


§ 75.14 Appeals.

Any person whose application for enrollment has been rejected by the Enrollment Committee shall have the right to appeal to the Tribal Council from the determination made by the Enrollment Committee. Provided, That such appeal shall be made in writing and shall be filed in the office of the Principal Chief for presentation to the Tribal Council within sixty (60) days from the date on which the Enrollment Committee issues notice to the applicant of his rejection. The applicant may submit with his appeal any additional data to support his claim to enrollment not previously furnished. The decision of the Tribal Council as to whether the applicant meets the requirements for enrollment set forth in this part shall be final. The Tribal Council shall review no applications for enrollment except in those cases where the rejected applicant appeals to the Council in writing from the determination made by the Enrollment Committee.


§ 75.15 Current membership roll.

The membership roll of the Eastern Band of Cherokee Indians shall be kept current by striking therefrom the names of persons who have relinquished their membership in the Band as provided in § 75.17 and of deceased persons upon receipt of a death certificate or other evidence of death acceptable to the Tribal Enrollment Office, and by adding thereto the names of individuals who meet the qualifications and are accepted for membership in the Band as set forth in this part.


§ 75.16 Eligibility for enrollment of persons born after August 21, 1957.

(a) Persons possessing one-sixteenth or more degree Eastern Cherokee Indian blood and born after August 21, 1957, may be enrolled in either of the following manners:

(1) An application to have the person enrolled must be filed by or on behalf of the person by the parent or recognized guardian or person responsible for his care, which application shall be accompanied by the applicant’s birth certificate or by other evidence of eligibility of the applicant for enrollment that the Tribal Enrollment Office may require.

(2) In the absence of such application within 6 months after a person’s birth, the Tribal Enrollment Office shall be authorized and encouraged to obtain evidence relating to the eligibility of the person for enrollment in the Eastern Band, and present an application in his behalf to the Enrollment Committee which may proceed to enroll the person if the evidence submitted meets the criteria.

(b) A person adopted in accordance with applicable laws by either tribal
§ 75.19 Distribution of judgment funds.

The membership roll of the Eastern Band of Cherokee Indians of North Carolina will be brought up to date as of October 10, 1974, to serve as the basis for distributing certain judgment funds awarded to the Band in Indian Claims Commission dockets 282-A through L.

(a) Filing of and action on applications shall be in accordance with regulations in this part 75, except as otherwise provided in paragraphs (b) through (g) of this section.

(b) In lieu of notice provisions contained in §75.3, the Commissioner of Indian Affairs or his authorized representative shall provide notice of the bringing up to date of the membership roll through publication of these amended regulations in the Federal Register and through appropriate press releases and other public notices.

(c) Application forms may be obtained from the Tribal Enrollment Office of the Eastern Band of Cherokee Indians, Council House, Cherokee, North Carolina 28719. Completed applications must be received by the Tribal Enrollment Office no later than midnight January 8, 1975.

(d) Requests for applications for enrollment in the Band received after midnight of the deadline date will not be furnished until after the funds have been distributed.

(e) In lieu of the procedures given in §75.14, appeals from rejected applicants must be in writing and filed pursuant to part 62 of this subchapter, a copy of
which shall be furnished with each notice of rejection.

(f) The Tribal Council and the Superintendent shall attach separate statements to the roll certifying that to the best of their knowledge and belief, the roll contains only the names of those persons who were determined to meet the requirements for enrollment. The roll shall then be submitted through the Area Director to the Commissioner for approval.

(g) To facilitate the work of the Tribal Enrollment Committee the Commissioner may issue special instructions not inconsistent with the regulations in this part 75.


PART 81—TRIBAL REORGANIZATION UNDER A FEDERAL STATUTE

Sec.
81.1 Definitions.
81.2 Purpose and scope.
81.3 Group eligibility.
81.4 Assistance from the Department of the Interior.
81.5 Request to call election.
81.6 Entitlement to vote.
81.7 Adoption, ratification, or revocation by majority vote.
81.8 Election board.
81.9 Voting districts.
81.10 District Election Boards.
81.11 Registration.
81.12 Voting list.
81.13 Eligibility disputes.
81.14 Election notices.
81.15 Opening and closing of polls.
81.16 Interpreters.
81.17 Electioneering.
81.18 Manner of voting.
81.19 Absentee voting.
81.20 Ballots.
81.21 Counting of ballots.
81.22 Contesting of election results.
81.23 Posting and certifying election results.
81.24 Approval, disapproval, or rejection action.


§ 81.1 Definitions.

As used in this part:

(a) Adult Indian means any Indian as defined in paragraph (i) of this section who has attained the age of 18 years.

(b) Amendment means any modification, change, or total revision of a constitution or charter.

(c) Authorizing Officer means the Bureau of Indian Affairs official having authority to authorize the calling of a Secretarial election.

(d) Cast ballot means an official ballot that is cast in the proper manner at the proper time by a duly registered voter. A ballot is cast by duly placing it in the ballot box or, in the case of absentee voting, when the ballot is duly received through the mail by the election board.

(e) Charter means the charter of incorporation the Secretary may issue to a reorganized tribe pursuant to Federal Statute.

(f) Commissioner means the Commissioner of Indian Affairs or his/her authorized representative.

(g) Constitution or Constitution and Bylaws means the written organizational framework of any tribe reorganized pursuant to a Federal Statute for the exercise of governmental powers.

(h) Federal Statute means one of the following: (1) The Act of June 18, 1934, 48 Stat. 984, as amended (Indian Reorganization Act); (2) the Act of June 26, 1936, 49 Stat. 1967 (Oklahoma Indian Welfare Act); or (3) the Act of May 1, 1936, 49 Stat. 1250 (Alaska Native Reorganization Act).

(i) Indian means: (1) All persons who are members of those tribes listed or eligible to be listed in the Federal Register pursuant to 25 CFR 83.6(b) as recognized by and receiving services from the Bureau of Indian Affairs; provided, that the tribes have not voted to exclude themselves from the Act of June 18, 1934, 43 Stat. 984, as amended; and (2) any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood.

(j) Invalid ballot means an official cast ballot discovered at the time the votes are counted which does not comply with the requirements for voting or is not an official ballot. An invalid ballot is not to be counted for determining the number of cast ballots.
(k) Member means any Indian who is duly enrolled in a tribe who meets a tribe's written criteria for membership or who is recognized as belonging to a tribe by the local Indians comprising the tribe.

(l) Mutilated ballot means an official ballot that has been damaged to the extent that it is not possible to determine the choice the voter intended to make. There are two kinds of mutilated official ballots:

(1) A ballot that is mutilated and not cast. In this case, the mutilated ballot may be exchanged for a new one. If the need arises to exchange a mutilated absentee ballot, no additional time will be provided for the new ballot to be received by the election board.

(2) A ballot that is mutilated and cast. A mutilated cast ballot is to be counted in the same manner as a spoiled cast ballot.

(m) Officer in Charge means the Superintendent, Administrative Officer, or other official of the local unit of the Bureau of Indian Affairs (or a Bureau employee that such person might designate) having administrative jurisdiction over a tribe.

(n) Official ballot means a ballot prepared by the Bureau of Indian Affairs for use in an election pursuant to this part. It is possible that an official ballot may be found to be either spoiled or mutilated at the time the votes are counted.

(o) Registration means the act whereby persons, who are eligible to vote, become entitled or qualified to cast ballots by having their names placed on the list of persons who will be permitted to vote.

(p) Reorganized tribe means a tribe whose members have adopted a constitution pursuant to a Federal Statute.

(q) Reservation means any area established by treaty, Congressional Act, Executive Order, or otherwise for the use or occupancy of Indians.

(r) Revocation means that act whereby the adult members of a tribe vote to abandon their constitutional form of government as opposed to their voting to amend or totally revise it.

(s) Secretarial election means an election held within a tribe pursuant to regulations prescribed by the Secretary as authorized by Federal Statute (as distinguished from tribal elections which are conducted under tribal authority. (See Cheyenne River Sioux Tribe v. Andrus, 566 F. 2d 1085 (8th Cir., 1977), cert. denied 439 U.S. 820 (1978)).

(t) Secretary means the Secretary of the Interior or his/her authorized representative.

(u) Spoiled ballot means an official ballot that has been marked in such a way that it is not possible to determine the intent of the voter, a ballot that has not been marked at all, or one that has been marked so as to violate the secrecy of the ballot. There are two kinds of spoiled official ballots:

(1) A ballot that is spoiled and not cast. In this case, the spoiled ballot may be exchanged for a new one. If the need arises to exchange a spoiled absentee ballot, no additional time will be provided for the new ballot to be received by the election board.

(2) A ballot that is spoiled and cast. A spoiled cast ballot is to be counted in tabulating the total votes cast in conjunction with determining whether the required percentage of the qualified voters has participated in the election.

(v) Tribal government means that entity established pursuant to a tribal constitution as empowered to speak for the tribe or in the absence thereof any group or individual that is recognized by the tribal members as empowered to speak for the tribe.

(w) Tribe means: (1) Any Indian entity that has not voted to exclude itself from the Indian Reorganization Act and is included, or is eligible to be included, among those tribes, bands, pueblos, groups, communities, or Alaska Native entities listed in the Federal Register pursuant to §83.6(b) of this chapter as recognized and receiving services from the Bureau of Indian Affairs; and (2) any group of Indians whose members each have at least one-half degree of Indian blood for whom a reservation is established and who each reside on that reservation. Such tribes may consist of any consolidation of one or more tribes or parts of tribes.

(x) Voting district means a geographical area established to facilitate a tribal election process.
§ 81.2 Purpose and scope.

(a) The purpose of this part is to provide uniformity and order in:
(1) Holding Secretarial elections for voting on proposed constitutions when tribes wish to reorganize,
(2) Adopting constitutional amendments,
(3) Ratifying and amending charters,
(4) Revoking constitutions, and
(5) Facilitating the calling of such elections by the Secretary under provisions of a Federal Statute.

(b) This part may also be used as a guideline by tribes wishing to hold constitutional elections that are not held pursuant to a Federal Statute.

(c) Where a discrepancy might appear to exist between these regulations and a specific requirement of the statute governing the reorganization of a tribe or ratification and amendment of charters, the regulations shall be interpreted to conform with the statute.

(d) As much as possible, Secretarial elections shall be scheduled so as to avoid their being held at the same time as tribal elections in order to avoid the confusion that results from different requirements for each kind of election.

§ 81.3 Group eligibility.

(a) No tribe which has voted to exclude itself from the provisions of the Indian Reorganization Act, or is otherwise precluded by law, may be reorganized under a Federal Statute. Tribes wishing to reorganize or a reorganized tribe seeking to amend its constitution and bylaws or wishing to vote to revoke such document shall do so under the regulations in this part.

(b) Charters issued to reorganized tribes shall be ratified or amended under the regulations in this part.

§ 81.4 Assistance from the Department of the Interior.

Representatives of the Department of the Interior will cooperate with and offer advice and assistance (including the proposing of amendments), to any tribe in drafting a constitution and bylaws, an amendment, a charter or charter amendment, or in revocation of constitutions. Any payments that might be necessary to non-Bureau staff assisting in the conduct of the election shall be made from tribal funds.

§ 81.5 Request to call election.

(a) The Secretary shall authorize the calling of an election to adopt a constitution and bylaws or to revoke a constitution and bylaws, upon a request from the tribal government.

(b) The Secretary shall authorize the calling of an election to adopt a constitution and bylaws pursuant to a Federal Statute upon receipt of a petition bearing the signatures of at least 60 percent of the tribe's adult members.

(c) The Secretary shall authorize the calling of an election to ratify a charter at the time the charter is issued, but he/she may issue a charter to a reservation-based tribe only upon petition by at least one-third of the adult members of the tribe. No ratification, however, shall be valid unless the tribe has a constitution adopted and approved pursuant to the relevant Federal Statute.

(d) The Secretary shall authorize the calling of an election on the adoption of amendments to a constitution and bylaws or a charter when requested pursuant to the amendment article of those documents. The election shall be conducted as prescribed in this part unless the amendment article of the constitution and bylaws or the charter provides otherwise, in which case the provisions of those documents shall rule where applicable.

(e) If the amendment provisions of a tribal constitution or charter have become outdated and amendment can not be effected pursuant to them, the Secretary may authorize an election under this part to amend the documents when the recognized tribal government so requests.

(f) Any authorization not acted upon within 90 days (tribes in Alaska shall be granted 120 days) from the date of issuance will be considered void. Notification of the election date as provided for in § 81.14 shall constitute the action envisioned in this section. Extension of an authorization may be granted upon a valid and reasonable request from the election board. Copies of authorizations shall be furnished the requesting tribe or petitioners.

(g) In those instances where conflicting proposals to amend a single constitutional or charter provision are submitted, that proposal first received
§ 81.6 Entitlement to vote.

(a) If the group is a tribe, or tribes, of a reservation and is acting to effect reorganization under a Federal Statute for the first time:

(1) Any duly registered adult member regardless of residence shall be entitled to vote on the adoption of a constitution and bylaws.

(2) Duly registered adult nonresident members and ill or physically disabled registered adult resident members may vote by absentee ballot (see §81.19).

(b) If the group is composed of the adult Indian residents of a reservation:

(1) Any adult duly registered member physically residing on the reservation shall be entitled to vote.

(2) Absentee voting shall be permitted only for duly registered residents temporarily absent from the reservation, ill, or physically disabled.

(c) If the group is a tribe, or tribes, without a reservation as defined in this part, any duly registered member shall be entitled to vote on the adoption of a constitution and bylaws by either arriving at a polling place or by requesting, properly completing, and timely casting an absentee ballot as determined by the election board pursuant to the relevant Federal Statute; provided, that outside of Alaska and Oklahoma, a reservation shall be established for the tribe before it becomes entitled to vote on the adoption of a constitution.

(d) For a reorganized tribe to amend its constitution and bylaws, only members who have duly registered shall be entitled to vote; provided, that registration is open to the same class of voters that is entitled to vote in the Secretarial election that effected its reorganization, unless the amendment article of the existing constitution provides otherwise.

(e) For a reorganized tribe to revoke its constitution and bylaws, only members who have duly registered shall be entitled to vote; provided, that registration is open to the same class of voters as was entitled to vote in the Secretarial election that effected its reorganization, unless the amendment article of the existing constitution provides otherwise.

(f) For a reorganized tribe to ratify a charter or to adopt a charter amendment, any adult member who has duly registered shall be entitled to vote, provided that if the tribe is of a reservation, only duly registered members physically residing on the reservation shall be entitled to vote.

§ 81.7 Adoption, ratification, or revocation by majority vote.

Except as it may be further limited by this part, a constitution and bylaws, amendments thereto, or charter and charter amendments shall be considered adopted, ratified, or revoked if a majority of those actually voting are in favor of adoption, ratification, or revocation. The total vote cast, however, must be at least 30 percent of those entitled to vote, unless, with regard to amendments, the constitution provides otherwise. The names of persons appearing on the registration list who have not reached eighteen years of age by the date of the election, shall be removed from the list of registered voters when determining whether the required percentage of participation has been achieved. Unless the existing constitution or charter provides otherwise, none of the actions cited in this section shall become effective until they are approved by the Secretary. The validity of any charter ratification shall be dependent upon the tribe first having reorganized. Duly ratified charters shall be revoked or surrendered only by Act of Congress.

§ 81.8 Election board.

(a) There shall be an election board consisting of the officer in charge acting as chairman and at least two representatives of the tribal governing body or an authorized representative committee. Where such persons may be unwilling or unable to serve, the chairman shall select at least two adult
§ 81.9 Voting districts.
If: (a) Voting districts have not already been designated for tribal elections in the tribal constitution or by tribal election ordinance or resolution; and (b) in the election board’s judgment voting districts are needed, the board shall establish them and designate a polling place for each district. Where a reservation exists, no voting district may be established beyond its boundaries.

§ 81.10 District Election Boards.
(a) Where voting districts have been established by the tribal constitution, ordinance, resolution, or by the election board, the election board shall appoint district election boards for each district, which shall have the duties prescribed above for the election board except that they shall return to the election board:
(1) The ballots (in marked and locked boxes);
(2) All unused ballots, and
(3) Their certifications of the district election results on the certification forms prescribed by the election board.
(b) The board will compile the election results for the entire reservation and transmit them together with the aforementioned ballots and ballot boxes to the officer in charge.

§ 81.11 Registration.
(a) Only registered voters will be entitled to vote, and all determinations of the sufficiency of the number of ballots cast will be based upon the number of registered voters. The election board, upon receipt of authorization to conduct an election, shall notify by regular mail all adult members of the tribe, who to its knowledge are eligible to vote pursuant to § 81.6 of the need to register if they intend to vote. Any tribal member who, to the election board’s knowledge, will become 18 years of age within 150 days (180 days for Alaska tribes) from the date of authorization and who is otherwise eligible to vote shall also be notified and shall be eligible to register, provided that such a person shall not be entitled to vote if election day falls before the individual’s 18th birthday. This notice shall be sent to an individual’s last known address as it appears on the records of the local unit of the Bureau of Indian Affairs having jurisdiction. Each notice addressed to a tribal member not residing on the reservation shall be accompanied by a preaddressed registration form (BIA Form 8302) which shall set forth the following information in the upper right corner:
(1) OMB Clearance Number 1076-003, Expires June 30, 1983;
(2) The name and address of the person desiring to register;
(3) A statement with a signature line attesting that the individual is a tribal member and is at least 18 years of age, or will be within 150 days, (180 days for Alaska tribes) from the date of authorization; and
(4) The three following statements: “Completion of and return of this registration form is necessary if you desire to become qualified to vote in the forthcoming constitutional or charter election.” “This form, upon completion and return to the election board, shall be the basis for determining whether you qualify to have your name placed upon the list of registered voters and receive a ballot” and “completion and return of this form is voluntary.” Members who qualify as absentee voters and wish to cast an absentee ballot must complete and return the above registration form before, or in conjunction with, requesting an absentee ballot in sufficient time to permit compliance with § 81.12.

(b) The following records shall be kept for all notices:

(1) Names and addresses of persons to whom notices are mailed;
(2) Date of mailing; and
(3) A copy of each return registration request (including from whom received and date and time of receipt).

Tribal members living on the reservation who desire to vote must register with the election board in the manner it determines in time to permit compliance with § 81.12. Registration procedures for such Indians shall be included in the notice of the need to register to resident members.

§ 81.13 Eligibility disputes.

The election board shall determine the eligibility of any written claim to vote presented to it by one whose name does not appear on the official list of registered voters as well as any written challenge of the right to vote of anyone whose name is on the list. Its decision shall be final. It shall rule on all claims no later than ten days before the election. Any claim not presented at least ten days before the election shall be disallowed. Nonresident claimants successfully appealing omission from the list shall immediately be furnished an absentee ballot. Omission of names from the voters list due to late registration, if notification (pursuant to § 81.14) has been timely mailed, shall not be considered grounds for challenge.

§ 81.14 Election notices.

Not less than 30 nor more than 60 days notice shall be given of the date of the election. Such notice shall include the location of where the results will be posted. The notice shall also advise that persons must register if they intend to vote. The election board shall determine whether the notice will be given by television, radio, newspaper, poster, or mail, or by more than one of these methods and whether in an Indian language in addition to English. A copy of any written election notice may be mailed to each registered voter and shall be posted at the local administrative unit of the Bureau of Indian Affairs and elsewhere as directed by the election board. At any time after receiving Secretarial authorization to hold the election, the board shall make available to the adult members of the tribe the text of any amendment or proposed constitution and bylaws, amendment thereto, charter, or charter amendment. The election board may determine the manner and timing of the distribution. However, the text shall be posted at least within the local administrative unit of the Bureau and the tribal headquarters within two days following the giving of notice of the election date by the election board.

§ 81.15 Opening and closing of polls.

If polling places are established, the polls shall remain open from 8 a.m. to
7 p.m., local time, unless different hours are set by the election board and the voters are informed of this in the election notice.

§ 81.16 Interpreters.

Interpreters, where needed, may be provided to explain the manner of voting to any voter who asks for instructions; provided, that all reasonable precautions are taken to ensure that the interpreter does not influence the voter in casting the ballot. The interpreter may accompany the voter into the booth upon the latter's request.

§ 81.17 Electioneering.

There shall be no electioneering during voting hours within 50 feet of any voting place. Sample ballots will be permitted in the voting booth.

§ 81.18 Manner of voting.

(a) Registered voters may vote by arriving at the appropriate polling place within the prescribed voting hours telling officials their names and addresses, signing their signature or mark on the voting list, and by marking and placing in the ballot box the ballots which will be handed to them. Voting shall be by secret ballot.

(b) Voting may take place at the same time regarding the adoption of a constitution, the ratification of a charter, or the amendment of such documents; provided, that entitlement to vote for the proposal is consistent with §81.6 of this part and, provided further, that no charter shall be considered ratified if the proposed constitution is not adopted and approved.

(c) The election board may choose not to use polling places and provide for the issuance and receipt of ballots entirely through the United States Postal Service. In that event, the election board shall use the appropriate procedures set forth in this part relating to absentee balloting.

§ 81.19 Absentee voting.

(a) Nonresident members who have registered may vote by absentee ballot except as prohibited by §81.6. Also, whenever, due to temporary absence from the reservation, illness, or physical disability, a registered and otherwise eligible voter is not able to vote at the polls and notifies the election board, the voter shall be entitled to vote by absentee ballot. Upon his or her request, the election board shall give or mail absentee ballots to registered voters who may be entitled to receive them pursuant to §81.6. At the same time, such voters will also be provided a copy of the proposal to be voted upon when the full text does not appear on the ballot. Appropriate records shall be kept of those from whom requests are received and the date they were received. The election board shall allow an absentee voter no less than ten days from the mailing out of an absentee ballot to receive and return the ballot. This period shall not be afforded absentee voters desiring to exchange a mutilated or spoiled ballot less than ten days before the election date. While requests for absentee ballots received less than ten days before an election will be promptly honored, no absentee ballot will be counted if received later than either the close of the polls or after some other deadline established by the election board. The election board shall furnish election officials the names of individuals who have been given or had mailed to them an absentee ballot.

(b) Accompanying the absentee ballot shall be:

1. An inner envelope bearing on the outside, the words "Absentee Ballot,"
2. Instructions for completion of the absentee ballot,
3. A copy of the proposed amendment, and
4. A preaddressed outer envelope, imprinted on the back with a certificate as follows:

I, (name of voter), hereby certify that I am a qualified voter of the (name) Tribe of Indians; that I will be 18 years of age or over at the election date and am entitled to vote in the election to be held on (date of election); and that I cannot appear at the polling place on the reservation on the date of the election because (indicate one of the following reasons): I am a nonresident voter; or I expect to be temporarily absent from the reservation; or because of illness; or physical disability; or because no polling place has been established. I further certify that I marked the enclosed ballot in secret.

Signed: (voter's signature).
§ 81.20 Ballots.

(a) Ballots are to be prepared clearly and simply so that it is easy for the voters to indicate a choice between no more than two alternatives. For example, if a tribal council or the petitioners propose to reduce the one-half degree blood quantum required to qualify for membership but want the voters to decide whether it should be one-fourth or one-eight, it would not be appropriate to put those two alternatives on the ballot. Doing so, would deny the voters an opportunity to vote for keeping the one-half degree blood quantum. Neither would it be appropriate to include all three blood quantum alternatives. Rather, those proposing the change should decide which blood quantum is to be submitted to the voters. The ballot in the Secretarial election would then give the electors the choice of marking either "yes" or "no." A vote against the proposed change would be in favor of keeping the one-half degree blood quantum in the example.

(b) In preparing ballots for proposed amendments, care should be taken to ensure that:

(1) Each proposed amendment addresses only a single question.

(2) If a proposed amendment conflicts with other provisions of the document being amended, the ballot shall be prepared so that the question includes all changes in those other directly related provisions in order to avoid contradictions within the document.

(3) When more than one amendment is being submitted to the voters at a given election, the proposals shall be identified with alphabetical designations rather than numerical. The first of the several proposals would be labeled "Proposed Amendment A," the next would be "Proposed Amendment B," etc. Those amendments that are adopted and approved would then be assigned consecutive numbers to follow those assigned any earlier amendments that may have been made to that governing document. A statement similar to the following shall appear on each of the proposed amendments and shall be completed following the election:

Having been duly adopted and approved, Proposed Amendment (A,B,C, etc.) is hereby designated as Amendment No. — to the (Constitution, Charter, etc.) of the (name of tribe) Tribe.

(c) The election board will supply all ballots. Each ballot shall be stamped in red ink on its face in the same place:

OFFICIAL BALLOT

(Facsimile Signature)

CHAIRMAN, ELECTION BOARD

(d) Should any voter spoil or mutilate a ballot in the course of voting at a poll, the voter shall destroy it in the presence of the election officials and furnish the voter with another ballot.

(e) Any spoiled or mutilated absentee ballot may be exchanged for a new one by returning it to the election board with a request for another. The board shall honor the request promptly and note the dates of related actions. No extension of time will be granted for receipt of exchanged ballots that might not be cast on time.
§ 81.21 Counting of ballots.

All duly cast ballots are to be counted. Even though it will not be possible to determine the intent of the voter regarding spoiled and mutilated ballots, they are to be counted for purposes of determining whether the required percentage of voters have cast their ballots in the election. Invalid ballots shall not be counted for purposes of determining the required percentage of votes cast.

§ 81.22 Contesting of election results.

Any qualified voter, within three days following the posting of the results of an election, may challenge the election results by filing with the Secretary through the officer in charge the grounds for the challenge, together with substantiating evidence. If in the opinion of the Secretary, the objections are valid and warrant a recount or new election, the Secretary shall order a recount or a new election. The results of the recount or new election shall be final.

§ 81.23 Posting and certifying election results.

(a) The results of the election shall be posted in the local Bureau of Indian Affairs office, tribal headquarters, and at other appropriate public places determined by the election board.

(b) The election board shall certify the results of the election on the following form and transmit them to the local unit of the Bureau of Indian Affairs:

Certificate of Results of Election

Pursuant to a Secretarial election authorized by the (title of authorizing officer) on (date), the attached Constitution and Bylaws (Amendment, Charter or Charter Amendment) of the (name of tribe) was submitted to the qualified voters of the tribe and on (date), was duly (adopted) (ratified) (rejected) or (revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled or mutilated in an election in which at least 30 percent (or such “percentages” as may be required to amend according to the constitution) of the (number) members entitled to vote, cast their ballot in accordance with (appropriate Federal statute). Signed: (By the chairman of the election board and board members.)

Date: __________________________

§ 81.24 Approval, disapproval, or rejection action.

(a) Action to approve or disapprove constitutional actions will be taken promptly by the authorizing officer following receipt of the original text of the material voted upon and the original of the Certificate of Results of Election from the officer in charge.

(1) When required and granted, the authorizing officer shall furnish a tribe with written approval of constitutional actions. In the absence of an election challenge, the approval shall be issued promptly following the expiration of the contest period. Copies of his/her written approval, the Certificate of Results of Election, and the text of the material voted upon shall be transmitted to the Commissioner of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245.

(2) When a proposed constitution or charter action is rejected by the voters, the authorizing officer shall indicate in writing to the tribe his/her awareness of the election results and send to the Commissioner of Indian Affairs in Washington, DC, copies of the communication, the Certificate of Results of Election and the text of the material voted upon.

(3) When the authorizing officer disapproves a constitutional action, he/she shall in writing promptly notify the tribe of the determination and furnish the Commissioner of Indian Affairs in Washington, DC, a copy of the communication along with the Certificate of Results of Election and the text of the material voted upon.

(b) Where Secretarial approval of proposed constitutional and charter actions is required in conjunction with authorization of an election, copies of the formal approval shall immediately be furnished the Commissioner of Indian Affairs in Washington, DC, by the authorizing officer and be followed in accordance with paragraph (a)(1) of this section by copies of the Certificate of the Results of Election and the text of the material voted upon as soon as it is available.
Bureau of Indian Affairs, Interior

PART 82—PETITIONING PROCEDURES FOR TRIBES REORGANIZED UNDER FEDERAL STATUTE AND OTHER ORGANIZED TRIBES

§ 82.1 Definitions.

(a) Area Director means the Director of the Bureau Area Office having administrative jurisdiction over the petitioners' tribe.

(b) Bureau means the Bureau of Indian Affairs.

(c) Charter means a charter of incorporation the Secretary may issue to a recognized tribe pursuant to a Federal Statute.

(d) Commissioner means the Commissioner of Indian Affairs or his/her authorized representative.

(e) Constitution or Constitution and Bylaws means the written organizational framework of any tribe for the exercise of governmental powers.

(f) Eligible, entitled, or qualified voter means the status achieved by a tribal member who meets the requirement of a tribal constitution or election ordinance to vote in a tribal election; provided, that where a tribe has reorganized pursuant to a Federal Statute, to be an entitled or a qualified voter for purposes of this part, the tribal member must be at least 18 years of age and be eligible to register for voting in a Secretarial election (see part 81 of this chapter).

(g) Federal Statute means one of the following: (1) The Act of June 18, 1934, 48 Stat. 964, as amended (Indian Reorganization Act); (2) the Act of June 26, 1936, 49 Stat. 1250 (Alaska Native Reorganization Act), or (3) the Act of May 1, 1936, 49 Stat. 1250 (Alaska Native Reorganization Act).

(h) Local Bureau Official means the Superintendent, Field Representative, or other line officer of the Bureau of Indian Affairs who has local administrative jurisdiction over the tribe concerned.

(i) Local Bureau unit means the Bureau office having local administrative jurisdiction over the tribe concerned.

(j) Member means any person who is duly enrolled in a tribe, who meets a tribe's written criteria for membership, or is recognized as belonging to a tribe by the local Indians comprising that tribe.

(k) Organized tribe means any tribe that has adopted a constitution outside of a Federal Statute.

(l) Reorganized tribe means any tribe that has adopted a constitution pursuant to a Federal Statute.

(m) Secretarial election means an election held within a tribe pursuant to regulations prescribed by the Secretary (as distinguished from tribal elections which are conducted under tribal authority (See Cheyenne River Sioux Tribe v. Andrus, 566 F.2d 1085 (8th Cir., 1977), cert. denied 439 U.S. 820 (1978)).

(n) Secretary means the Secretary of the Interior or his/her authorized representative.

(o) Spokesman for the petitioners means the authorized voter of a tribe initiating a petition or designated by the initiators of a petition to speak on their behalf.

(p) Tribe means any Indian entity that is listed or is eligible to be listed in the Federal Register pursuant to §83.6(b) of this chapter as recognized and receiving services from the Bureau that has adopted a constitution approved by the Secretary or the Commissioner.

§ 82.2 Purpose and scope.

The purpose of this part is to provide uniformity and order in the formulation and submission of petitions requesting the Secretary or the Commissioner to call elections to amend tribal constitutions, to issue charters pursuant to a Federal Statute, and for such other purposes where constitutions and
§ 82.3 Applicability to tribal groups.

The regulations in this part apply:
(a) To any tribe which provides in its constitution for petitioning the Secretary or the Commissioner to call elections to amend the tribal constitution;
(b) To any tribe whose constitution or charter provides for petitioning to effect any other action by the Secretary or Commissioner; and
(c) To those tribal members at least 18 years of age who, pursuant to a Federal Statute, may wish to petition the Secretary to issue a charter to their tribe.

§ 82.4 Entitlement to petition.

All members eligible to vote in elections conducted by a tribe shall be entitled to sign petitions to effect actions by the Secretary or Commissioner within the scope of § 82.2; provided, that where a tribe is reorganized pursuant to a Federal Statute, only persons eligible to register for Secretarial elections may petition.

§ 82.5 Sufficiency of a petition.

(a) The numerical sufficiency of any petition submitted pursuant to this part shall be based upon a number determined by the local Bureau official:
(1) By consultation with the tribal governing body regarding the current number of tribal voters; or
(2) For reorganized tribes, the number of members considered eligible to register for a Secretarial election and who are at least 18 years of age.
(b) The number shall be made available to the spokesman for the petitioners upon request along with a cutoff date when, for purposes of the petition, no further names will be added.

§ 82.6 Petition format.

Petitions may consist of as many pages as are necessary to accommodate the signatures of the petitioners. However, each sheet of a petition must set forth at least a summary of the objectives of the petitioners and must show the date upon which the petition was signed by each individual as well as the current mailing address of each signer.

§ 82.7 Notarization of petition signatures.

(a) Signatures to a petition must be authenticated in one of the following ways:
(1) Through having each signer subscribe or acknowledge his/her signature before a notary public;
(2) Through having the collector of signatures appear before a notary and sign, in his/her presence, on each sheet of the petition, a statement attesting that the signatures were affixed on the dates shown and by the individuals whose names appear thereon, and that to the best of his/her knowledge the signatories are eligible, entitled, or qualified voters.
(b) Only an eligible, entitled, or qualified tribal voter shall be recognized as a valid collector of petition signatures.

§ 82.8 Filing of petitions.

All petitions submitted pursuant to this part must be filed with the local Bureau official having administrative jurisdiction over the tribe. No petitions will be accepted until a spokesman for the petitioners declares that he/she wishes to make an official filing. Once a declaration of the official filing is made and the petition is given to the local Bureau official, that official shall immediately enter on the petition the date of receipt (this date becomes the date of official filing) and shall inform the spokesman for the petitioners that no additional signatures may be added and that no withdrawal of signatures will be permitted. The local Bureau official shall also acknowledge, in writing, receipt of the petition, indicating the exact number of signatures which are attached and the official filing date. Upon this written acknowledgment of the petition, the local Bureau official shall publicly post at the local Bureau unit serving the tribe a statement of the matter proposed in the petition. This statement shall remain posted for a period of 30 days from the official filing date.
§ 82.9 Challenges.
(a) Once an official filing has been made, the local Bureau official shall immediately have copies made of the petition and its signatures. The local Bureau official shall keep these copies at the Agency or field office for 15 days following the date of official filing, 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.
(b) Challenges will be considered on the following grounds:
(1) Forgery of signatures; and
(2) Lack of proper qualifications of a signer.
No challenge will be considered which is not accompanied by supporting evidence in writing. In the event that an individual’s name appears on a petition more than once, all but one of the names shall be stricken.

§ 82.10 Action on the petition.
(a) Within 30 days after the official filing date, the local Bureau official shall forward to the Area Director, or when the Area Director is the local Bureau official, directly to the Commissioner, the original of the petition and its accompanying signatures, together with recommendations concerning challenges and conclusions concerning:
(1) The validity of the signatures;
(2) The adequacy of the number of signatures; and
(3) The propriety of the petitioning procedure.
(b) The Area Director or the Commissioner, as the case may be, shall within 45 days after the official filing date decide upon each challenge and announce whether the petition shall be acted upon. If a decision is reached that the petitioning action is for any reason insufficient, the spokesman for the petitioners and the governing body of the tribe will be so informed and given the reasons for the decision. If a petitioning action warrants action by the Secretary or Commissioner, the spokesman for the petitioners and the governing body of the tribe concerned will be so informed. The decision in such matters shall be final. The procedures for implementing any action initiated by the acceptance of a petition will be determined in accordance with pertinent directives and regulations.

§ 82.11 Duration of petition.
Any petition submitted under this part, shall be considered only for the purpose stated therein. Once a petition has been acted upon, it shall not be used again.

PART 83—PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

Sec.
83.1 Definitions.
83.2 Purpose.
83.3 Scope.
83.4 Filing a letter of intent.
83.5 Duties of the Department.
83.6 General provisions for the documented petition.
83.7 Mandatory criteria for Federal acknowledgment.
83.8 Previous Federal acknowledgment.
83.9 Notice of receipt of a petition.
83.10 Processing of the documented petition.
83.11 Independent review, reconsideration and final action.
83.12 Implementation of decisions.
83.13 Information collection.


SOURCE: 59 F.R. 9293, Feb. 25, 1994, unless otherwise noted.

§ 83.1 Definitions.

As used in this part:
Area Office means a Bureau of Indian Affairs Area Office.
Assistant Secretary means the Assistant Secretary—Indian Affairs, or that officer’s authorized representative.
Autonomous means the exercise of political influence or authority independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the history, geography, culture and social organization of the petitioning group.
Board means the Interior Board of Indian Appeals.
§ 83.1

Bureau means the Bureau of Indian Affairs.

Community means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. Community must be understood in the context of the history, geography, culture and social organization of the group.

Continental United States means the contiguous 48 states and Alaska.

Continuously or continuous means extending from first sustained contact with non-Indians throughout the group’s history to the present substantially without interruption.

Department means the Department of the Interior.

Documented petition means the detailed arguments made by a petitioner to substantiate its claim to continuous existence as an Indian tribe, together with the factual exposition and all documentary evidence necessary to demonstrate that these arguments address the mandatory criteria in § 83.7(a) through (g).

Historically, historical or history means dating from first sustained contact with non-Indians.

Indian group or group means any Indian or Alaska Native aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.

Indian tribe, also referred to herein as tribe, means any Indian or Alaska Native tribe, band, pueblo, village, or community within the continental United States that the Secretary of the Interior presently acknowledges to exist as an Indian tribe.

Indigenous means native to the continental United States in that at least part of the petitioner’s territory at the time of sustained contact extended into what is now the continental United States.

Informed party means any person or organization, other than an interested party, who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner.

Interested party means any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner.

Interested party” includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

Letter of intent means an undocumented letter or resolution by which an Indian group requests Federal acknowledgment as an Indian tribe and expresses its intent to submit a documented petition.

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.

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

Petitioner means any entity that has submitted a letter of intent to the Secretary requesting acknowledgment that it is an Indian tribe.

Political influence or authority means a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the group.
§ 83.3 Scope.

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

(b) Indian tribes, organized bands, pueblos, Alaska Native villages, or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs may not be reviewed under the procedures established by these regulations.

(c) Associations, organizations, corporations or groups of any character that have been formed in recent times may not be acknowledged under these regulations. The fact that a group that meets the criteria in § 83.7 (a) through (g) has recently incorporated or otherwise formalized its existing autonomous political process will be viewed as a change in form and have no bearing on the Assistant Secretary’s final decision.

(d) Splinter groups, political factions, communities or groups of any character that separate from the main body of a currently acknowledged tribe may not be acknowledged under these regulations. However, groups that can establish clearly that they have functioned throughout history until the present as an autonomous tribal entity may be acknowledged under this part, even though they have been regarded by some as part of or have been associated in some manner with an acknowledged North American Indian tribe.

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

(f) Finally, groups that previously petitioned and were denied Federal acknowledgment under these regulations or under previous regulations in part 83 of this title, may not be acknowledged under these regulations. This includes reorganized or reconstituted petitioners previously denied, or splinter
§ 83.4 Filing a letter of intent.

(a) Any Indian group in the continental United States that believes it should be acknowledged as an Indian tribe and that it can satisfy the criteria in § 83.7 may submit a letter of intent.

(b) Letters of intent requesting acknowledgment that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW., Washington, DC 20240. Attention: Branch of Acknowledgment and Research, Mail Stop 2611-MIB. A letter of intent may be filed in advance of, or at the same time as, a group’s documented petition.

(c) A letter of intent must be produced, dated and signed by the governing body of an Indian group and submitted to the Assistant Secretary.

§ 83.5 Duties of the Department.

(a) The Department shall publish in the Federal Register, no less frequently than every three years, a list of all Indian tribes entitled to receive services from the Bureau by virtue of their status as Indian tribes. The list may be published more frequently, if the Assistant Secretary deems it necessary.

(b) The Assistant Secretary shall make available revised and expanded guidelines for the preparation of documented petitions by September 23, 1994. These guidelines will include an explanation of the criteria and other provisions of the regulations, a discussion of the types of evidence which may be used to demonstrate particular criteria or other provisions of the regulations, and general suggestions and guidelines on how and where to conduct research. The guidelines may be supplemented or updated as necessary. The Department’s example of a documented petition format, while preferable, shall not preclude the use of any other format.

(c) The Department shall, upon request, provide petitioners with suggestions and advice regarding preparation of the documented petition. The Department shall not be responsible for the actual research on behalf of the petitioner.

(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 governor of the state where the group is located, and to other interested parties.

(e) After an Indian group has filed a letter of intent requesting Federal acknowledgment as an Indian tribe and until that group has actually submitted a documented petition, the Assistant Secretary may contact the group periodically and request clarification, in writing, of its intent to continue with the petitioning process.

(f) All petitioners under active consideration shall be notified, by April 16, 1994, of the opportunity under § 83.3(g) to choose whether to complete their petitioning process under the provisions of these revised regulations or the previous regulations as published, on September 5, 1978, at 43 FR 39361.

(g) All other groups that have submitted documented petitions or letters of intent shall be notified and provided with a copy of these regulations by July 25, 1994.

§ 83.6 General provisions for the documented petition.

(a) The documented petition may be in any readable form that contains detailed, specific evidence in support of a request to the Secretary to acknowledge tribal existence.

(b) The documented petition must include a certification, signed and dated by members of the group’s governing
body, stating that it is the group's official documented petition.

(c) A petitioner must satisfy all of the criteria in paragraphs (a) through (g) of §83.7 in order for tribal existence to be acknowledged. Therefore, the documented petition must include thorough explanations and supporting documentation in response to all of the criteria. The definitions in §83.1 are an integral part of the regulations, and the criteria should be read carefully together with these definitions.

(d) A petitioner may be denied acknowledgment if the evidence available demonstrates that it does not meet one or more criteria. A petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria. A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met.

(e) Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. The limitations inherent in demonstrating the historical existence of community and political influence or authority shall also be taken into account. Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time. Fluctuations in tribal activity during various years shall not in themselves be a cause for denial of acknowledgment under these criteria.

(f) The criteria in §83.7 (a) through (g) shall be interpreted as applying to tribes or groups that have historically combined and functioned as a single autonomous political entity.

(g) The specific forms of evidence stated in the criteria in §83.7 (a) through (c) and §83.7(e) are not mandatory requirements. The criteria may be met alternatively by any suitable evidence that demonstrates that the petitioner meets the requirements of the criterion statement and related definitions.

§83.7 Mandatory criteria for Federal acknowledgment.

The mandatory criteria are:

(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members.

(1) Identification as an Indian entity by Federal authorities.

(2) Relationships with State governments based on identification of the group as Indian.

(3) 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 anthropologists, historians, and/or other scholars.

(5) Identification as an Indian entity in newspapers and books.

(6) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.

(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

(1) This criterion may be demonstrated by some combination of the following evidence and/or other evidence that the petitioner meets the definition of community set forth in §83.1:

(i) Significant rates of marriage within the group, and/or, as may be culturally required, patterned out-marriages with other Indian populations.

(ii) Significant social relationships connecting individual members.

(iii) Significant rates of informal social interaction which exist broadly among the members of a group.

(iv) A significant degree of shared or cooperative labor or other economic activity among the membership.
(v) Evidence of strong patterns of discrimination or other social distinctions by non-members.

(vi) Shared sacred or secular ritual activity encompassing most of the group.

(vii) Cultural patterns shared among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization, or religious beliefs and practices.

(viii) The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

(ix) A demonstration of historical political influence under the criterion in § 83.7(c) shall be evidence for demonstrating historical community.

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

(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community;

(ii) At least 50 percent of the marriages in the group are between members of the group;

(iii) At least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices;

(iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or

(v) The group has met the criterion in § 83.7(c) using evidence described in § 83.7(c)(2).

(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

(i) This criterion may be demonstrated by some combination of the evidence listed below and/or by other evidence that the petitioner meets the definition of political influence or authority in §83.1.

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication and involvement in political processes by most of the group’s members.

(iv) The group meets the criterion in §83.7(b) at more than a minimal level.

(v) There are internal conflicts which show controversy over valued group goals, properties, policies, processes and/or decisions.

(2) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist or existed which:

(i) Allocate group resources such as land, residence rights and the like on a consistent basis.

(ii) Settle disputes between members or subgroups by mediation or other means on a regular basis;

(iii) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior;

(iv) Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(3) A group that has met the requirements in paragraph 83.7(b)(2) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time.

(d) A copy of the group’s present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

(e) The petitioner’s membership consists of individuals who descend from a
§ 83.8 Previous Federal acknowledgment.

(a) Unambiguous previous Federal acknowledgment is acceptable evidence of the tribal character of a petitioner to the date of the last such previous acknowledgment. If a petitioner provides substantial evidence of unambiguous Federal acknowledgment, the petitioner will then only be required to demonstrate that it meets the requirements of § 83.7 to the extent required by this section.

(b) A determination of the adequacy of the evidence of previous Federal action acknowledging tribal status shall be made during the technical assistance review of the documented petition conducted pursuant to § 83.10(b). If a petition is awaiting active consideration at the time of adoption of these regulations, this review will be conducted while the petition is under active consideration unless the petitioner requests in writing that this review be made in advance.

(c) Evidence to demonstrate previous Federal acknowledgment includes, but is not limited to:

(1) Evidence that the group has had treaty relations with the United States.

(2) Evidence that the group has been acknowledged as a tribe by act of Congress or Executive Order.
(3) Evidence that the group has been treated by the Federal Government as having collective rights in tribal lands or funds.

(d) To be acknowledged, a petitioner that can demonstrate previous Federal acknowledgment must show that:

(1) The group meets the requirements of the criterion in §83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity.

(2) The group meets the requirements of the criterion in §83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically.

(3) The group meets the requirements of the criterion in §83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in §83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in §83.7(c).

(4) The group meets the requirements of the criteria in paragraphs 83.7 (d) through (g).

(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d) (1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in §83.7 (a) through (c) from last Federal acknowledgment until the present.

§ 83.9 Notice of receipt of a petition.

(a) Within 30 days after receiving a letter of intent, or a documented petition if a letter of intent has not previously been received and noticed, the Assistant Secretary shall acknowledge such receipt in writing and shall have published within 60 days in the Federal Register a notice of such receipt. This notice must include the name, location, and mailing address of the petitioner and such other information as will identify the entity submitting the letter of intent or documented petition and the date it was received. This notice shall also serve to announce the opportunity for interested parties and informed parties to submit factual or legal arguments in support of or in opposition to the petitioner’s request for acknowledgment and/or to request to be kept informed of all general actions affecting the petition. The notice shall also indicate where a copy of the letter of intent and the documented petition may be examined.

(b) The Assistant Secretary shall notify, in writing, the governor and attorney general of the state in which a petitioner is located. The Assistant Secretary shall also notify any recognized tribe and any other petitioner which appears to have a historical or present relationship with the petitioner or which may otherwise be considered to have a potential interest in the acknowledgment determination.

(c) The Assistant Secretary shall also publish the notice of receipt of the letter of intent, or documented petition if a letter of intent has not been previously received, in a major newspaper or newspapers of general circulation in the town or city nearest to the petitioner. The notice will include all of the information in paragraph (a) of this section.

§ 83.10 Processing of the documented petition.

(a) Upon receipt of a documented 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 documented petition and the factual statements contained therein. The Assistant Secretary may also initiate other research for any
§ 83.10

purpose relative to analyzing the documented petition and obtaining additional information about the petitioner’s status. The Assistant Secretary may likewise consider any evidence which may be submitted by interested parties or informed parties.

(b) Prior to active consideration of the documented petition, the Assistant Secretary shall conduct a preliminary review of the petition for purposes of technical assistance.

(1) This technical assistance review does not constitute the Assistant Secretary’s review to determine if the petitioner is entitled to be acknowledged as an Indian tribe. It is a preliminary review for the purpose of providing the petitioner an opportunity to supplement or revise the documented petition prior to active consideration. Insofar as possible, technical assistance reviews under this paragraph will be conducted in the order of receipt of documented petitions. However, technical assistance reviews will not have priority over active consideration of documented petitions.

(2) After the technical assistance review, the Assistant Secretary shall notify the petitioner by letter of any obvious deficiencies or significant omissions apparent in the documented petition and provide the petitioner with an opportunity to withdraw the documented petition for further work or to submit additional information and/or clarification.

(3) If a petitioner’s documented petition claims previous Federal acknowledgment and/or includes evidence of previous Federal acknowledgment, the technical assistance review will also include a review to determine whether that evidence is sufficient to meet the requirements of previous Federal acknowledgment as defined in §83.1.

(c) Petitioners have the option of responding in part or in full to the technical assistance review letter or of requesting, in writing, that the Assistant Secretary proceed with the active consideration of the documented petition using the materials already submitted.

(1) If the petitioner requests that the materials submitted in response to the technical assistance review letter be again reviewed for adequacy, the Assistant Secretary will provide the additional review. However, this additional review will not be automatic and will be conducted only at the request of the petitioner.

(2) If the assertion of previous Federal acknowledgment under §83.8 cannot be substantiated during the technical assistance review, the petitioner must respond by providing additional evidence. A petitioner claiming previous Federal acknowledgment who fails to respond to a technical assistance review letter under this paragraph, or whose response fails to establish the claim, shall have its documented petition considered on the same basis as documented petitions submitted by groups not claiming previous Federal acknowledgment. Petitioners that fail to demonstrate previous Federal acknowledgment after a review of materials submitted in response to the technical assistance review shall be so notified. Such petitioners may submit additional materials concerning previous acknowledgment during the course of active consideration.

(d) The order of consideration of documented petitions shall be determined by the date of the Bureau’s notification to the petitioner that it considers that the documented petition is ready to be placed on active consideration. The Assistant Secretary shall establish and maintain a numbered register of documented petitions which have been determined ready for active consideration. The Assistant Secretary shall also maintain a numbered register of letters of intent or incomplete petitions based on the original date of filing with the Bureau. In the event that two or more documented petitions are determined ready for active consideration on the same date, the register of letters of intent or incomplete petitions shall determine the order of consideration by the Assistant Secretary.

(e) Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicates that there is little or no evidence that establishes that the group can meet the mandatory criteria in paragraph (e), (f) or (g) of §83.7.
§ 83.10  25 CFR Ch. I (4-1-99 Edition)

(1) If this review finds that the evidence clearly establishes that the group does not meet the mandatory criteria in paragraph (e), (f) or (g) of §83.7, a full consideration of the documented petition under all seven of the mandatory criteria will not be undertaken pursuant to paragraph (a) of this section. Rather, the Assistant Secretary shall instead decline to acknowledge that the petitioner is an Indian tribe and publish a proposed finding to that effect in the Federal Register. The periods for receipt of comments on the proposed finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner’s status shall follow the timetables established in paragraphs (h) through (l) of this section.

(2) If the review cannot clearly demonstrate that the group does not meet one or more of the mandatory criteria in paragraph (e), (f) or (g) of §83.7, a full evaluation of the documented petition under all seven of the mandatory criteria shall be undertaken during active consideration of the documented petition pursuant to paragraph (g) of this section.

(f) The petitioner and interested parties shall be notified when the documented petition comes under active consideration.

(i) They shall also be provided with the name, office address, and telephone number of the staff member with primary administrative responsibility for the petition; the names of the researchers conducting the evaluation of the petition; and the name of their supervisor.

(2) The petitioner shall be notified of any substantive comment on its petition received prior to the beginning of active consideration or during the preparation of the proposed finding, and shall be provided an opportunity to respond to such comments.

(g) Once active consideration of the documented petition has begun, the Assistant Secretary shall continue the review and publish proposed findings and a final determination in the Federal Register pursuant to these regulations notwithstanding any requests by the petitioner or interested parties to cease consideration. The Assistant Secretary has the discretion, however, to suspend active consideration of a documented petition, either conditionally or for a stated period of time, upon a showing to the petitioner that there are technical problems with the documented petition or administrative problems that temporarily preclude continuing active consideration. The Assistant Secretary shall also consider requests by petitioners for suspension of consideration and has the discretion to grant such requests for good cause. Upon resolution of the technical or administrative problems that are the basis for the suspension, the documented petition will have priority on the numbered register of documented petitions insofar as possible. The Assistant Secretary shall notify the petitioner and interested parties when active consideration of the documented petition is resumed. The timetables in succeeding paragraphs shall begin anew upon the resumption of active consideration.

(h) Within one year after notifying the petitioner that active consideration of the documented petition has begun, the Assistant Secretary shall publish proposed findings in the Federal Register. The Assistant Secretary has the discretion to extend that period up to an additional 180 days. The petitioner and interested parties shall be notified of the time extension. In addition to the proposed findings, the Assistant Secretary shall prepare a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision. Copies of the report shall be provided to the petitioner, interested parties, and informed parties and made available to others upon written request.

(i) Upon publication of the proposed findings, the petitioner or any individual or organization wishing to challenge or support the proposed findings shall have 180 days to submit arguments and evidence to the Assistant Secretary to rebut or support the proposed finding. The period for comment on a proposed finding may be extended for up to an additional 180 days at the Assistant Secretary’s discretion upon a finding of good cause. The petitioner and interested parties shall be notified
of the time extension. Interested and informed parties who submit arguments and evidence to the Assistant Secretary must provide copies of their submissions to the petitioner.

(i)(1) During the response period, the Assistant Secretary shall provide technical advice concerning the factual basis for the proposed finding, the reasoning used in preparing it, and suggestions regarding the preparation of materials in response to the proposed finding. The Assistant Secretary shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law.

(2) In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The Proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary in reaching a final determination.

(k) The petitioner shall have a minimum of 60 days to respond to any submissions by interested and informed parties during the response period. This may be extended at the Assistant Secretary’s discretion if warranted by the extent and nature of the comments. The petitioner and interested parties shall be notified by letter of any extension. No further comments from interested or informed parties will be accepted after the end of the regular response period.

(l) At the end of the period for comment on a proposed finding, the Assistant Secretary shall consult with the petitioner and interested parties to determine an equitable timeframe for consideration of written arguments and evidence submitted during the response period. The petitioner and interested parties shall be notified of the date such consideration begins.

(1) Unsolicited comments submitted after the close of the response period established in §83.10(i) and §83.10(k), will not be considered in preparation of a final determination. The Assistant Secretary has the discretion during the preparation of the proposed finding, however, to request additional explanations and information from the petitioner or from commenting parties to support or supplement their comments on a proposed finding. The Assistant Secretary may also conduct such additional research as is necessary to evaluate and supplement the record. In either case, the additional materials will become part of the record.

(2) After consideration of the written arguments and evidence rebutting or supporting the proposed finding and the petitioner’s response to the comments of interested parties and informed parties, the Assistant Secretary shall make a final determination regarding the petitioner’s status. A summary of this determination shall be published in the Federal Register within 60 days from the date on which the consideration of the written arguments and evidence rebutting or supporting the proposed finding begins.

(3) The Assistant Secretary has the discretion to extend the period for the preparation of a final determination if warranted by the extent and nature of evidence and arguments received during the response period. The petitioner and interested parties shall be notified of the time extension.

(4) The determination will become effective 90 days from publication unless a request for reconsideration is filed pursuant to §83.11.

(m) The Assistant Secretary shall acknowledge the existence of the petitioner as an Indian tribe when it is determined that the group satisfies all of the criteria in §83.7. The Assistant Secretary shall decline to acknowledge that a petitioner is an Indian tribe if it fails to satisfy any one of the criteria in §83.7.

(n) If the Assistant Secretary declines to acknowledge that a petitioner is an Indian tribe, the petitioner shall be informed of alternatives, if any, to acknowledgment under these procedures. These alternatives may include other means through which the petitioning group may achieve the status of an acknowledged Indian tribe or through which any of its members may become eligible for services and benefits from the Department as Indians, or
become members of an acknowledged Indian tribe.

(o) The determination to decline to acknowledge that the petitioner is an Indian tribe shall be final for the Department.

(p) A petitioner that has petitioned under this part or under the acknowledgment regulations previously effective and that has been denied Federal acknowledgment may not re-petition under this part. The term “petitioner” here includes previously denied petitioners that have reorganized or been renamed or that are wholly or primarily portions of groups that have previously been denied under these or previous acknowledgment regulations.

§ 83.11 Independent review, reconsideration and final action

(a)(1) Upon publication of the Assistant Secretary's determination in the FEDERAL REGISTER, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals. Petitioners which choose under § 83.3(g) to be considered under previously effective acknowledgment regulations may nonetheless request reconsideration under this section.

(2) A petitioner’s or interested party’s request for reconsideration must be received by the Board no later than 90 days after the date of publication of the Assistant Secretary's determination in the FEDERAL REGISTER. If no request for reconsideration has been received, the Assistant Secretary's decision shall be final for the Department 90 days after publication of the final determination in the FEDERAL REGISTER.

(b) The petitioner's or interested party's request for reconsideration shall contain a detailed statement of the grounds for the request, and shall include any new evidence to be considered.

(c)(1) The Board shall dismiss a request for reconsideration that is not filed by the deadline specified in paragraph (a) of this section.

(2) If a petitioner's or interested party's request for reconsideration is filed on time, the Board shall determine, within 120 days after publication of the Assistant Secretary's final determination in the FEDERAL REGISTER, whether the request alleges any of the grounds in paragraph (d) of this section and shall notify the petitioner and interested parties of this determination.

(d) The Board shall have the authority to review all requests for reconsideration that are timely and that allege any of the following:

(1) That there is new evidence that could affect the determination; or

(2) That a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value; or

(3) That petitioner’s or the Bureau's research appears inadequate or incomplete in some material respect; or

(4) That there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the criteria in § 83.7 (a) through (g).

(e) The Board shall have administrative authority to review determinations of the Assistant Secretary made pursuant to § 83.10(m) to the extent authorized by this section.

(1) The regulations at 43 CFR 4.310—4.318 and 4.331—4.340 shall apply to proceedings before the Board except when they are inconsistent with these regulations.

(2) The Board may establish such procedures as it deems appropriate to provide a full and fair evaluation of a request for reconsideration under this section to the extent they are not inconsistent with these regulations.

(3) The Board, at its discretion, may request experts not associated with the Bureau, the petitioner, or interested parties to provide comments, recommendations, or technical advice concerning the determination, the administrative record, or materials filed by the petitioner or interested parties.
§ 83.11

The Board may also request, at its discretion, comments or technical assistance from the Assistant Secretary concerning the final determination or, pursuant to paragraph (e)(8) of this section, the record used for the determination.

(4) Pursuant to 43 CFR 4.337(a), the Board may require, at its discretion, a hearing conducted by an administrative law judge of the Office of Hearings and Appeals if the Board determines that further inquiry is necessary to resolve a genuine issue of material fact or to otherwise augment the record before it concerning the grounds for reconsideration.

(5) The detailed statement of grounds for reconsideration filed by a petitioner or interested parties pursuant to paragraph (b)(1) of this section shall be considered the appellant’s opening brief provided for in 43 CFR 4.311(a).

(6) An appellant’s reply to an opposing party’s answer brief, provided for in 43 CFR 4.311(b), shall not apply to proceedings under this section, except that a petitioner shall have the opportunity to reply to an answer brief filed by any party that opposes a petitioner's request for reconsideration.

(7) The opportunity for reconsideration of a Board decision provided for in 43 CFR 4.315 shall not apply to proceedings under this section.

(8) For purposes of review by the Board, the administrative record shall consist of all appropriate documents in the Branch of Acknowledgment and Research relevant to the determination involved in the request for reconsideration. The Assistant Secretary shall designate and transmit to the Board copies of critical documents central to the portions of the determination under a request for reconsideration. The Branch of Acknowledgment and Research shall retain custody of the remainder of the administrative record, to which the Board shall have unrestricted access.

(9) The Board shall affirm the Assistant Secretary’s determination if the Board finds that the petitioner or an interested party has failed to establish, by a preponderance of the evidence, at least one of the grounds under paragraphs (d)(1)–(d)(4) of this section.

(10) The Board shall vacate the Assistant Secretary’s determination and remand it to the Assistant Secretary for further work and reconsideration if the Board finds that the petitioner or an interested party has established, by a preponderance of the evidence, one or more of the grounds under paragraphs (d)(1)–(d)(4) of this section.

(f)(1) The Board, in addition to making its determination to affirm or remand, shall describe in its decision any grounds for reconsideration other than those in paragraphs (d)(1)–(d)(4) of this section alleged by a petitioner’s or interested party’s request for reconsideration.

(2) If the Board affirms the Assistant Secretary’s decision under §83.11(e)(9) but finds that the petitioner or interested parties have alleged other grounds for reconsideration, the Board shall send the requests for reconsideration to the Secretary. The Secretary shall have the discretion to request that the Assistant Secretary reconsider the final determination on those grounds.

(3) The Secretary, in reviewing the Assistant Secretary’s decision, may review any information available, whether formally part of the record or not. Where the Secretary’s review relies upon information that is not formally part of the record, the Secretary shall insert the information relied upon into the record, together with an identification of its source and nature.

(4) Where the Board has sent the Secretary a request for reconsideration under paragraph (f)(2), the petitioner and interested parties shall have 30 days from receiving notice of the Board’s decision to submit comments to the Secretary. Where materials are submitted to the Secretary opposing a petitioner’s request for reconsideration, the interested party shall provide copies to the petitioner and the petitioner shall have 15 days from their receipt of the information to file a response with the Secretary.

(5) The Secretary shall make a determination whether to request a reconsideration of the Assistant Secretary’s determination within 60 days of receipt of all comments and shall notify all parties of the decision.
§ 83.12 Implementation of decisions.

(a) Upon final determination that the petitioner exists as an Indian tribe, it shall be considered eligible for the services and benefits from the Federal government that are available to other federally recognized tribes. The newly acknowledged tribe shall be considered a historic tribe and shall be entitled to the privileges and immunities available to other federally recognized historic tribes by virtue of their government-to-government relationship with the United States. It shall also have the responsibilities and obligations of such tribes. Newly acknowledged Indian tribes shall likewise be subject to the same authority of Congress and the United States as are other federally acknowledged tribes.

(b) Upon acknowledgment as an Indian tribe, the list of members submitted as part of the petitioner’s documented petition shall be the tribe’s complete base roll for purposes of Federal funding and other administrative purposes. For Bureau purposes, any additions made to the roll, other than individuals who are descendants of those on the roll and who meet the tribe’s membership criteria, shall be limited to those meeting the requirements of §83.7(e) and maintaining significant social and political ties with the tribe (i.e., maintaining the same relationship with the tribe as those on the list submitted with the group’s documented petition).

(c) While the newly acknowledged tribe shall be considered eligible for benefits and services available to federally recognized tribes because of their status as Indian tribes, acknowledgment of tribal existence shall not create immediate access to existing programs. The tribe may participate in existing programs after it meets the specific program requirements, if any, and upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly acknowledged tribe.

(d) Within six months after acknowledgment, the appropriate Area Office shall consult with the newly acknowledged tribe and develop, in cooperation with the tribe, a determination of needs and a recommended budget. These shall be forwarded to the Assistant Secretary. The recommended budget will then be considered along with other recommendations by the Assistant Secretary in the usual budget request process.

§ 83.13 Information collection.

(a) The collections of information contained in §83.7 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076-0104. The information will be used to establish historical existence as a tribe, verify family relationships and the group’s claim that its members are Indian and descend from a historical tribe or
tribes which combined, that members are not substantially enrolled in other Indian tribes, and that they have not individually or as a group been terminated or otherwise forbidden the Federal relationship. Response is required to obtain a benefit in accordance with 25 U.S.C. 2.

(b) Public reporting burden for this information is estimated to average 1,968 hours per petition, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of information, including suggestions for reducing the burden, to both the Information Collection Clearance Officer, Bureau of Indian Affairs, Mail Stop 336-SIB, 1849 C Street, NW., Washington, DC 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 87—USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS

§ 87.1 Definitions.

As used in this part 87, terms shall have the meanings set forth in this section.


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

(c) Commissioner means the Commissioner of Indian Affairs or his authorized representative.

(d) Area Director means the Area Director or his equivalent of any one of the Area Offices of the Bureau of Indian Affairs or his authorized representative.

(e) Superintendent means the Superintendent or Officer in Charge of any one of the Agency Offices or other local offices of the Bureau of Indian Affairs or his authorized representative.

(f) Congressional Committees means the Committees on Interior and Insular Affairs of the Senate and House of Representatives of the United States.

(g) Indian tribe or group means any Indian tribe, nation, band, pueblo, community or identifiable group of Indians, or Alaska Native entity.

(h) Tribal governing body means, as recognized by the Secretary, the governing body of a formally organized or recognized tribe or group; the governing body of any informally organized tribe or group, the governing body of a formally organized Alaska Native entity or recognized tribe in Oklahoma, and for the purposes of the Act the recognized spokesmen or representatives of any descendant group.

(i) Plan means the document submitted by the Secretary, together with all pertinent records, for the use or distribution of judgment funds, to the Congressional Committees.

(j) Enrollment means that aspect of a plan which pertains to making or bringing current a roll of members of an organized, reservation-based tribe with membership criteria approved or accepted by the Secretary, a roll of members of an organized or recognized entity in Oklahoma, or Alaska or elsewhere, or a roll prepared for the purpose of making per capita payments for judgments awarded by the Indian Claims Commission or United States Court of Claims; or which pertains to using an historical roll or records of names, including tribal rolls closed and
made final, for research or other purposes.

(k) Program means that aspect of a plan which pertains to using part or all of the judgment funds for tribal social and economic development projects.

(l) Per capita payment means that aspect of a plan which pertains to the individualization of the judgment funds in the form of shares to tribal members or to individual descendants.

(m) Use or distribution means any utilization or disposition of the judgment funds, including programming, per capita payments, or a combination thereof.

(n) Individual beneficiary means a tribal member or any individual descendant, found by the Secretary to be eligible to participate in a plan, who was born on or prior to, and is living on, the approval date of the plan.

(o) Approval date means the date that a plan is approved by the Congress. Except for a plan disapproved by either House, the approval date of a plan shall be the sixtieth (60) day after formal submittal of a plan by the Secretary to the Congressional Committees, excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three (3) calendar days to a day certain. In the event a proposed plan is disapproved by either House, or in the event the Secretary is unable to submit a plan and therefore proposes legislation, the approval date shall be the date of the enabling legislation for the disposition of the judgment funds.

(p) Minor is an individual beneficiary who is eligible to participate in a per capita payment and who has not reached the age of eighteen (18) years.

(q) Legal incompetent is an individual beneficiary eligible to participate in a per capita payment and who has been declared to be under a legal disability, other than being a minor, by a court of competent jurisdiction, including tribal courts.

(r) Attorney fees and litigation expenses means all fees and expenses incurred in litigating and processing tribal claims before the Indian Claims Commission or the United States Court of Claims.

§ 87.2 Purpose.

The regulations in this part govern the preparation of proposed plans for the use or distribution, pursuant to the Act, of all judgment funds awarded from the date of the Act to Indian tribes and groups by the Indian Claims Commission or the United States Court of Claims, excepting any tribe or group whose trust relationship with the Federal Government has been terminated and for which there exists legislation authorizing the disposition of its judgment funds; and of all funds deriving from judgments entered prior to the date of the Act for which there has been no enabling legislation.

§ 87.3 Time limits.

(a) The Secretary shall cause to begin as early as possible the necessary research to determine the identity of the ultimate or present day beneficiaries of judgments. Such research shall be done under the direction of the Commissioner of Indian Affairs. The affected tribes or groups shall be encouraged to submit pertinent data. All pertinent data, including cultural, political and historical material, and records, including membership, census and other rolls shall be considered. If more than one entity is determined to be eligible to participate in the use or distribution of the funds, the results of the research shall include a proposed formula for the division or apportionment of the judgment funds among or between the involved entities.

(b) The results of all research shall be provided to the governing bodies of all affected tribes and groups. The Area Director shall assist the affected tribe or group in arranging for preliminary sessions or meetings of the tribal governing body, or public meetings. The Area Director shall make a presentation of the results of the research and shall arrange for expertise of the Bureau of Indian Affairs to be available at these meetings to assist the tribe or group in developing a use or distribution proposal, bearing in mind that under the Act not less than twenty (20) per centum of the judgment funds, including investment income thereon, is to be used for tribal programs unless the Secretary determines that the particular circumstances of the affected Indian tribe clearly warrant otherwise.
§ 87.4 Conduct of hearings of record.

(a) As soon as appropriate after the tribal meetings have been held and the Commissioner has reviewed the tribal proposal(s), the Area Director, or such other official of the Department of the Interior as he shall designate to act for him, shall hold a hearing of record to receive testimony on the tribal proposal(s).

(b) The hearing shall be held after appropriate public notice beginning at least twenty (20) days prior to the date of such hearing, and after consultation with the governing body of the tribe or group regarding the date and location of the hearing, to obtain the testimony of members of the governing body and other representatives, spokesmen or members of the tribe or group on the proposal(s).

(c) All testimony at the hearing shall be transcribed and a transcript thereof shall be furnished to the Commissioner and the tribal governing body immediately subsequent to the hearing. Particular care shall be taken to insure that minority views are given full opportunity for expression either during the hearing or in the form of written communications by the date of the hearing.

(d) Whenever two or more tribes or groups are involved in the use or distribution of the judgment funds, including situations in which two or more Area Offices are concerned, every effort shall be made by the Area Director or Directors to arrange for a single hearing to be conducted at a time and location as convenient to the involved tribes and groups as possible. Should the tribes and groups not reach agreement on such time or place, or on the number of entities to be represented at the hearing, the Commissioner, after considering the views of the affected tribes and groups, shall within twenty (20) days of receipt of such advice by the Area Director, designate a location and date for such hearing and invite the participation of all entities he considers to be involved and the Commissioner's decision shall be final.

§ 87.5 Submittal of proposed plan by Secretary.

Subsequent to the hearing of record, the Commissioner shall prepare all pertinent materials for the review of the Secretary. Pertinent materials shall include:

(a) The tribal use or distribution proposal or any alternate proposals;

(b) A copy of the transcript of the hearing of record;

(c) A statement on the hearing of record and other evidence reflecting the extent to which such proposal(s) meets the desires of the affected tribe or group, including minorities views;

(d) Copies of all pertinent resolutions and other communications or documents received from the affected tribe or group, including minorities;

(e) A copy of the tribal constitution and bylaws, or other organizational document, if any; a copy of the tribal enrollment ordinance, if any; and a statement as to the availability or status of the membership roll of the affected tribe or group;

(f) A statement reflecting the nature and results of the investment of the judgment funds as of thirty (30) days of the submittal of the proposed plan, including a statement concerning attorney fees and litigation expenses;

(g) A statement justifying any compromise proposal developed by the Commissioner in the event of the absence of agreement among any and all entities on the division or apportionment of the funds, should two or more entities be involved;

(h) A statement regarding the feasibility of the proposed plan, including a timetable prepared in cooperation with the tribal governing body, for the implementation of programing and roll preparation.

Within one hundred and eighty (180) days of the appropriation of the judgment funds the Secretary shall submit a proposed plan, together with the pertinent materials described above, simultaneously to each of the Chairmen of the Congressional Committees, at the same time sending copies of the proposed plan and materials to the governing body of the affected tribe or group. The one hundred and eighty (180) day period shall begin on the date of the Act with respect to all judgments for which funds have been appropriated and for which enabling legislation has not been enacted.
§ 87.6 Extension of period for submitting plans.
An extension of the one hundred and eighty (180) day period, not to exceed ninety (90) days, may be requested by the Secretary or by the governing body of any affected tribe or group submitting such request to both Congressional Committees through the Secretary, and any such request shall be subject to the approval of both Congressional Committees.

§ 87.7 Submittal of proposed legislation by Secretary.
(a) Within thirty (30) calendar days after the date of a resolution by either House disapproving a plan, the Secretary shall simultaneously submit proposed legislation authorizing the use or distribution of the funds, together with a report thereon, to the Chairmen of both Congressional Committees, at the same time sending copies of the proposed legislation to the governing body of the affected tribe or group. Such proposed legislation shall be developed on the basis of further consultation with the affected tribe or group.
(b) In any instance in which the Secretary determines that circumstances are not conducive to the preparation and submission of a plan, he shall, after appropriate consultation with the affected tribe or group, submit proposed legislation within the 180-day period to both Congressional Committee simultaneously.

§ 87.8 Enrollment aspects of plans.
An approved plan that includes provisions for enrollment requiring formal adoption of enrollment rules and regulations shall be implemented through the publication of such rules and regulations in the Federal Register. Persons not members of organized or recognized tribes and who are not citizens of the United States shall not, unless otherwise provided by Congress, be eligible to participate in the use or distribution of judgment funds, excepting heirs or legatees of deceased individual beneficiaries.

§ 87.9 Programing aspects of plans.
In assessing any tribal programing proposal the Secretary shall consider all pertinent factors, including the following: the percentage of tribal members residing on or near the subject reservation, including former reservation areas in Oklahoma, or Alaska Native villages; the formal educational level and the general level of social and economic adjustment of such reservation residents; the nature of recent programing affecting the subject tribe or group and particularly the reservation residents; the needs and aspirations of any local Indian communities or districts within the reservation and the nature of organization of such local entities; the feasibility of the participation of tribal members not in residence on the reservation; the availability of funds for programing purposes derived from sources other than the subject judgment; and all other pertinent social and economic data developed to support any proposed program.

§ 87.10 Per capita payment aspects of plans and protection of funds accruing to minors, legal incompetents and deceased beneficiaries.
(a) The per capita shares of living competent adults shall be paid directly to them. The shares of minors, legal incompetents and deceased individual beneficiaries, enhanced by investment earnings, shall be held in individual Indian money (IIM) accounts unless otherwise provided as set out in this section. While held in IIM accounts, said shares shall be invested pursuant to 25 U.S.C. 162a and shall be the property of the minors or legal incompetents or the estates of the deceased individual beneficiaries to whom the per capita payments were made.
(b)(1) Unless otherwise provided in paragraph (b)(2) of this section, minors' per capita shares, until the minors attain the age of 18 years, shall be retained in individually segregated IIM accounts and handled as provided in §115.4 of this chapter. Should it be determined that the funds are to be invested pursuant to a trust, minors who will have reached the age of 18 years within six months after the establishment of the trust shall have their funds retained at interest in IIM accounts and paid to them upon attaining their majority.
§ 87.12

(2) A private trust for the minors’ per capita shares may be established subject to the approval of the tribal governing body and the Secretary on the following conditions:

(i) The tribal governing body specifically requests the establishment of such trust, and the trust provides for segregated amounts to each individual minor, based on his per capita share, and

(ii) The trust agreement specifically provides that the investment policy to be followed is that of preserving the trust corpus and of obtaining the highest interest rates current money markets can safely provide. The trust agreement must further provide that maturity dates of investments cannot exceed the period of the trust and that only the following types of investment shall be made: United States Treasury obligations; Federal agency obligations; repurchase/resell agreements; United States Treasury bills; Bankers’ acceptance, provided the assets of the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Certificates of deposit, provided the assets of the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Commercial paper, provided it is rated prime-2 by Moody or A-2 by Standard and Poor or is obligation of a company with outstanding unsecured debt rated Aa by Standard and Poor.

(c) The per capita shares of legal incompetents shall be held in IIM accounts and administered pursuant to the provisions of § 115.5 of this chapter.

(d) The shares of deceased individual beneficiaries, plus all interest and investment income accruing thereto, shall be paid to their heirs and legatees upon their determination as provided in 43 CFR part 4, subpart D.

(e) All per capita shares, including all interest and investment income accruing thereto, while they are held in trust under the provisions of this section, shall be exempt from Federal and State income taxes and shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act, as amended.

(f) All per capita shares or portions thereof, including all interest and investment income accruing thereto, which are not paid out but which remain unclaimed with the Federal Government shall be maintained separately and be enhanced by investment, and shall, unless otherwise provided in an effective plan or in enabling legislation, be subject to the provisions of the Act of September 22, 1961, 75 Stat. 584. No per capita share or portion thereof shall be transferred to the U.S. Treasury as “Monies Belonging to Individuals Whose Whereabouts are Unknown.”

[41 FR 48735, Nov. 5, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]
shall include in his first and all subsequent annual reports a statement regarding the maintenance of the timetable, a full accounting of any per capita distribution, and the expenditure of all programing funds. The Commissioner shall report the deficient performance of any aspect of a plan to the Secretary, together with the corrective measures he has taken or intends to take.

PART 88—RECOGNITION OF ATTORNEYS AND AGENTS TO REPRESENT CLAIMANTS

Sec.
§88.1 Employment of attorneys.
88.1 Employment by tribes or individual claimants.

Authority: 5 U.S.C. 301.

Cross References: For law and order regulations on Indian reservations, see part 11 of this chapter. For probate procedure, see part 15 of this chapter. For regulations governing the admission of attorneys to practice before the Department of the Interior and the offices and bureaus thereof, see 43 CFR part 1. For regulations governing the execution of attorney contracts with Indians, see part 89 of this subchapter.

§88.1 Employment of attorneys.

(a) Indian tribes organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended, may employ legal counsel. The choice of counsel and the fixing of fees are subject under 25 U.S.C. 476 to the approval of the Secretary of the Interior or his authorized representative.

(b) Attorneys may be employed by Indian tribes not organized under the Act of June 18, 1934, under contracts subject to approval under 25 U.S.C. 81 and the Reorganization Plan No. 3 of 1950, 5 U.S.C. 481, note, by the Secretary of the Interior or his authorized representative.

(c) Any action of the authorized representative of the Secretary of the Interior which approves, disapproves or conditionally approves a contract pursuant to paragraph (a) or (b) of this section shall be final.

(d) Practice of such attorneys before the Bureau of Indian Affairs and the Department of the Interior is subject to the requirements of 43 CFR 1.1 through 1.7.

§88.2 Employment by tribes or individual claimants.

All such attorneys or agents seeking approval of their employment by Indian tribes or desiring to represent individual claimants before the Indian Bureau shall be required to comply fully with the regulations of the Department promulgated September 27, 1917, governing admission to practice, and to take the oath of allegiance and to support the Constitution of the United States, as required by section 3478 of the United States Revised Statutes (31 U.S.C. 204).

317 Statutes governing.

§89.1 Contracts with organized tribes.
89.2 Admission to practice.
89.3 Tentative form of contract.
89.4 Report of Superintendent.
89.5 Fees and expenses.
89.6 Funds in Federal Treasury.

§89.7 Statutes governing.
89.8 Selection of counsel.
89.9 Record of council proceedings.
89.10 Resolution required.
89.11 Authentication of resolution.
89.12 Negotiation by tribal business committee.
89.13 Limitation of authority.
89.14 Employment by tribal business committees.
89.15 Vote by secret ballot.
89.16 Notice from the tribe.
89.17 Notice from attorneys.
89.18 Tentative form of contract.
89.19 Execution in quintuplicate.
89.20 Report of superintendent.
89.21 Copies of approved contracts.
89.22 Qualifications of attorneys.
89.23 Fees and expenses.
89.24 Invalid contracts.
89.25 Governing bodies without express authority to contract.
§ 89.3 Tentative form of contract.

A tribal council or representative body having authority to employ legal counsel in behalf of an organized tribe, may, if it desires, obtain a tentative form of contract by written request directed to the office of any area director or agency superintendent, or to the Commissioner of Indian Affairs. Requests for forms should include a statement of the scope of the intended employment; that is, whether an attorney is desired for investigation and prosecution of tribal claims against the United States, or as a general legal counsel in connection with the ordinary business of the tribe, or specific problems on which legal advice is desired, or specific matters requiring representation in court or before committees of Congress and the departments of the Government. The period for which an attorney is desired should be stated.


§ 89.5 Fees and expenses.

Funds held in the treasury of an organized tribe may be used by the tribe for payment of fees and expenses of an attorney. A contract providing for payment of fees and/or expenses should be accompanied by an appropriation act passed by the governing body of the tribe in accordance with the requirements of the tribal constitution or charter, appropriating sufficient tribal funds for payment of fees and/or expenses as provided by the contract. The amount of tribal funds held in the tribal treasury, not otherwise appropriated...
§ 89.6 Funds in Federal Treasury.

Under rulings of the Comptroller General and section 27 of the act of May 18, 1916 (39 Stat. 158; 25 U.S.C. 123), tribal funds held in the United States Treasury may not be used for payment of attorney fees and expenses in the absence of express authorization by Congress.

§ 89.7 Statutes governing.

The negotiation and execution of tribal attorney contracts with tribes not organized under the Indian Reorganization Act must be in strict accordance with the requirements of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81).

§ 89.8 Selection of counsel.

Except as stated in §§ 89.12 through 89.26, a tribal attorney or technical specialist and tribal delegates to execute a contract shall be selected by a general council or meeting of the tribe, to be called by the superintendent of the particular reservation.

§ 89.9 Record of council proceedings.

A report should be made of the proceedings of the council, certified to by the Superintendent or his representative as correct, and a copy thereof should be sent to the Area Director with the contract.

§ 89.10 Resolution required.

The selection of counsel and of tribal delegates to execute a contract in behalf of the tribe shall be set forth in a resolution or resolutions which shall be attached to and made a part of the contract.
and enter into a contract subject to approval of the Secretary of the Interior or his authorized representative as provided by law.

§ 89.15 Vote by secret ballot.
Those tribes accustomed to act on important tribal matters by secret ballot or by vote in district meetings, or in some other manner, may apply through their proper officers to the Area Director for permission to consider and act upon employment of tribal counsel in the manner preferred by the tribe rather than by a general council or meeting.

§ 89.16 Notice from the tribe.
Notice of intention to negotiate with attorneys should be sent to the superintendent by the proper tribal officers, accompanied by a full statement concerning the need for retaining counsel, showing in detail the purposes for which an attorney is needed, the scope of his intended employment, and a reference to the tribal funds, if any, which the tribe believes should be made available for payment of counsel fees and expenses. The notice and statement should be transmitted to the Area Director by the Superintendent with the latter's report and recommendations.

§ 89.17 Notice from attorneys.
Attorneys desiring to execute contracts with Indian tribes shall be required to give written notice directed through the superintendent to the Area Director in advance of all negotiations.

§ 89.18 Tentative form of contract.
A tentative form of contract may be obtained from any agency office, area office, or the Commissioner of Indian Affairs. When the attorney or tribe proposing to execute a contract desires to make substantial changes in the tentative form, the proposed changes should be submitted through the superintendent to the Area Director for approval as to form prior to execution of a contract.

§ 89.19 Execution in quintuplicate.
The contract should be executed in quintuplicate, and all copies should be transmitted by the superintendent to the Area Director.

§ 89.20 Report of superintendent.
The superintendent should submit a report when transmitting the contract, setting forth the qualifications and general reputation of the attorney selected, based upon references and independent inquiry by the superintendent, and the superintendent's recommendation concerning approval of the contract.

§ 89.21 Copies of approved contracts.
The original of all approved contracts will be retained by the Area Director with a copy to the tribal governing body, attorney, Superintendent and Commissioner. The Commissioner's copy should be completely supported by copies of the recommendation of the Superintendent or Officer in Charge, Regional Solicitor's or Field Solicitor's opinions, and any other pertinent data which will permit the records of the Commissioner's office to reflect the full current status of approved attorney contracts in each instance.

§ 89.22 Qualifications of attorneys.
The person selected as attorney should be a reputable member of the bar, and fully competent to carry the case through the Court of Claims, and to the Supreme Court of the United States, if necessary.
§ 89.24 Fees and expenses.

Under rulings of the Comptroller General and section 27 of the act of May 18, 1916 (39 Stat. 158; 25 U.S.C. 123), tribal funds held in the United States Treasury may not be used for payment of attorney fees and expenses, in the absence of express authorization by Congress. Unless congressional authority has been obtained for the use of tribal funds, the payment of attorney fees and expenses shall be contingent upon a recovery by the Indians in the matters or claims covered in the contract. In case congressional authority has been obtained for the use of tribal funds, the provisions of the contract concerning the payment of such fees and expenses should strictly conform to the provisions of the act authorizing the use of the funds.


§ 89.25 Invalid contracts.

The following is especially pointed out. 25 U.S.C. 81 provides further that all contracts made in violation of that section shall be null and void. Under 25 U.S.C. 84 and Reorganization plan No. 3 of 1950, 5 U.S.C. 481 note, no assignment of any such contract shall be valid without the consent of the Secretary of the Interior or his authorized representative. 25 U.S.C. 85 declares that no contract with any individual Indian relating to tribal property shall have any validity unless the consent of the United States has previously been given thereto.


§ 89.26 Governing bodies without express authority to contract.

In the following cases, the entity or spokesman officially recognized as having authority to act for a tribe may both negotiate and conclude contracts for the services of legal counsel pursuant to applicable provisions of this part:

(a) In the absence of tribal governing documents, or
(b) When such documents do not expressly authorize the governing body of a tribe to conclude such contracts and do not provide for calling a tribal meeting to authorize concluding such contracts pursuant to § 89.8, and convening a tribal general council is not deemed feasible.


§ 89.30 Contents and approval of contracts.

All contracts for the services of legal counsel or technical specialists negotiated and executed with the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes or Nations, also known as the Five Civilized Tribes, shall be in strict compliance with the requirements of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81).


§ 89.31 Negotiation of contract.

That person or governing entity recognized as having authority to act for and in behalf of any one of the Five Civilized Tribes in matters of importance may, when it is found there is a substantial need and demand therefor, negotiate and contract for services of a tribal counsel or counsels and technical specialist or specialists, subject to the approval of the Secretary of the Interior or his authorized representative.


§ 89.32 Notice from the principal officer.

Notice of intention to negotiate with attorneys or with technical specialists shall be sent by the principal tribal officer to the Superintendent. Such notice shall be accompanied by a full statement concerning the need for retaining counsel or specialists, as the case may be, the purpose for which such assistance is needed and the scope of the intended employment. The notice and statement shall be transmitted to the Area Director by the Superintendent together with the latter’s
Bureau of Indian Affairs, Interior

§ 89.40 General policy.

In ordinary circumstances, legal services with respect to trust resources are provided for Indian tribe(s):

(a) By private counsel employed by tribes when such tribe is financially able and elects to do so, or

(b) By the United States as trustee through the Office of the Solicitor and/or the Department of Justice.

It is the policy of the Department of the Interior not to use federally appropriated funds to pay for private counsel to represent Indian tribes. Exceptions to that policy are listed in § 89.41 of this part.

§ 89.41 Exceptions to policy.

The Assistant Secretary—Indian Affairs upon concurrence of the Solicitor and receipt of a recommendation as provided by § 89.43 may, in his/her discretion, authorize the direct or indirect expenditure of appropriated funds to pay reasonable attorney’s fees in order to permit an Indian tribe to secure private legal representation in the following circumstances:

(a) When a tribe determines it necessary to bring a court action or to defend itself to protect its trust resources, rights claimed under a treaty, agreement, executive order, or statute, or to protect its governmental powers and the Attorney General refuses assistance or advises that assistance is not otherwise available (Comptroller General’s Opinion B—114868, December 6, 1976).

(b) When a tribe determines it necessary to institute or to defend itself in an administrative proceeding to protect its trust resources, rights claimed under a treaty, agreement, executive order, or statute, or to protect its governmental powers and the Solicitor is unable to provide representation due to a conflict of interest or other reasons.

(c) When a tribe determines legal assistance necessary, other than for litigation, pursuant to a contract executed under Pub. L. 93–638 and the Solicitor has determined that the services of his office are not available.

(d) When a tribe determines it critical, and the Assistant Secretary—Indian Affairs finds the concerns of the tribe to have merit after consultation with and the advice of the Solicitor, to
§ 89.42 Factors to be considered.

The following factors are to be considered in determining whether funds should be paid to provide private legal representation for a tribe.

(a) The merits of the legal position which the tribe asserts. Greater weight will be given to those cases where the tribe's legal argument is deemed particularly meritorious than to those cases where the tribe's position, although not entirely without merit, may be relatively weak;

(b) The ability of the tribe to pay all or a part of its legal expenses out of its own funds. A review of the tribe's financial resources under this subsection will include an examination of the tribe's total expenditures to determine whether its expenditures for other purposes comport with the asserted importance of the case for which it seeks funds;

(c) Whether the question the tribe seeks to litigate is being litigated in another case by another tribe;

(d) Whether, as a matter of strategy, the issues the tribe seeks to litigate could be more satisfactorily resolved in another forum, in a different factual context, or at a different time; and

(e) Whether the issue should be litigated at all in preference to a legislative or other solution.

§ 89.43 Procedures.

The information collection requirements contained in this section do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq., because it is anticipated there will be fewer than 10 respondents annually.

(a) A tribe or other organization seeking funds under § 89.41 shall submit a written request through the Agency Superintendent and the Area Director, including

(1) A detailed statement describing the nature and scope of the problems for which legal services are sought;

(2) A statement of the terms, including total anticipated costs, of the requested legal services contract;

(3) A current financial statement and a statement that the tribe does not possess sufficient tribal funds or assets to pay for all or a part of the legal services sought; and

(4) A statement of why the matter must be handled by a private attorney as opposed to Department of Justice or Department of Interior attorneys.

All requests shall be considered by a committee consisting of the Deputy Assistant Secretary—Indian Affairs (Policy), or his delegate, the Director of the Office of Trust Responsibilities in BIA or his delegate, and the Associate Solicitor—Indian Affairs or his delegate.

(b) If two of the three committee members recommend approval of a tribe's request, the request, along with the committee's recommendation, shall be submitted to the Assistant Secretary for final determination after consultation with and the advice of the Solicitor. The committee's recommendation shall indicate the amount of funds recommended to assist the tribe, the hourly rate allowed, the maximum amount permitted to be expended in the recommended action and the tribal contributions, if any. The Assistant Secretary shall approve the
request only with the concurrence of the Solicitor.

(c) The requirements imposed by this policy are supplementary to those contained in all existing regulations dealing with attorney contracts with Indian tribes and, in particular, those contained in parts 88 and 89 of this title.

PART 90—ELECTION OF OFFICERS OF THE OSAGE TRIBE

GENERAL

Sec. 90.1 Definitions.

90.2 Statutory provisions.

ELIGIBILITY

90.21 General.

ELECTIONS

90.30 Nominating conventions and petitions.

90.31 Applicability.

90.33 Watchers and challengers.

90.35 List of voters.

90.36 Disputes on eligibility of voters.

90.37 Election notices.

90.38 Opening and closing of poll.

90.39 Voters to announce name and residence.

90.40 Ballots.

90.41 Absentee voting.

90.43 Canvass of election returns.

90.44 Statement of supervisor.

90.46 Notification of election of tribal officers.

90.47 Contesting elections.

90.48 Notice of contest.

90.49 Expenses of elections.

AUTHORITY: Sec. 9, 34 Stat. 539; sec. 7, 45 Stat. 1478; 71 Stat. 471, unless otherwise noted.


GENERAL

§ 90.1 Definitions.

As used in this part:

(a) The term supervisor means the tribal election official chosen and appointed by the Principal Chief or Assistant Principal Chief to act as chairman of the election board and shall in the absence of the supervisor denote the Assistant Supervisor.

§ 90.2 Statutory provisions.

Section 7 of the Act of March 2, 1929 (45 Stat. 1481) provides in part as follows:

That there shall be a quadrennial election of officers of the Osage Tribe as follows: A principal chief, an assistant principal chief, and eight members of the Osage tribal council, to succeed the officers elected in the year 1928, said officers to be elected at a general election to be held in the town of Pawhuska, Oklahoma, on the first Monday in June 1930 and on the first Monday in June each four years thereafter, in the manner to be prescribed by the Commissioner of Indian Affairs, and said officers shall be elected for a period of four years commencing on the 1st day of July following said elections. * * *

ELIGIBILITY

§ 90.21 General.

Only members of the Osage Tribe who will be eighteen years of age or over on election day and whose names appear on the quarterly annuity roll at the Osage Agency as of the last quarterly payment immediately preceding the date of election will be entitled to hold office or vote for any tribal officers. Each such voter shall be entitled to cast one ballot and each ballot shall have exactly the same value as the voter's headright interest shown on the last quarterly annuity roll. Any fraction of a headright, however, shall be valued as to the first two decimals only unless such interest is less than one-hundredth of a share, then it shall have its full value.

(45 Stat. 1481)


ELECTIONS

§ 90.30 Nominating conventions and petitions.

Conventions shall be held on or before the first Monday in April of the year in which a quadrennial election is held, and there shall be written reports of such conventions, duly certified by the secretary or presiding officer showing total number of qualified voters in attendance, together with the names of candidates nominated for the various
§ 90.31 Applicability.

The manner of carrying out elections to be held under the act of June 28, 1906 (34 Stat. 539), as amended by the act of March 2, 1929 (45 Stat. 1478), as amended by the act of August 28, 1957 (71 Stat. 471), is covered in the regulations set forth in this part. The next election will be held on the first Monday in June 1958 and subsequent elections will be held on the first Monday in June each four years thereafter.

§ 90.32 Election Board.

The Principal Chief, or in his absence, the Assistant Principal Chief shall, not more than seventy-five days nor less than sixty-five days preceding the day appointed by law for the holding of an election of officers of the Osage Tribe, issue in the form and manner prescribed in § 90.37, an election notice and appoint an election board consisting of a Supervisor who shall be chairman, Assistant Supervisor, five judges, one of whom in addition to his regular duties shall act as interpreter, and five clerks, whose duties shall be to conduct the election as provided in the regulations in this part:

Provided further, that the Superintendent on the recommendation of the election board may designate extra clerical assistants. Prior to the date of the election, the election board shall assemble and make necessary arrangements for the election in a building to be designated by the Superintendent of the Osage Agency as the polling site and make the necessary preparation for receiving prospective voters, for receiving absentee ballots, and see to it that voting booths are arranged to afford privacy. Members of the election board and any extra clerical assistants designated by the Superintendent under authority contained in this section, other than employees of the Osage Agency when duly appointed or designated as provided for in this part may be compensated for conducting each quadrennial election at rates to be fixed by the Osage Tribal Council. If a member of the election board desires to be relieved from duty for any cause, he shall notify the Principal Chief or in his absence the Assistant Principal Chief, in writing to that effect and the Principal Chief, or in his absence the Assistant Principal Chief shall designate someone else to serve as a member of the election board. The Supervisor, or in his absence the Assistant Supervisor, shall see that the rules prescribed for conducting the election are faithfully carried out. The ballots shall be handed out by a judge to the voters as they present themselves to vote, after being identified by a clerk who shall be supplied with a copy of the list of voters prepared pursuant to § 90.35. The judge before handing out a ballot shall remove the detachable portion. A judge shall receive the ballot after the voter has indicated his choice thereon by placing an "X" mark opposite the name of each candidate for whom he desires his vote counted and shall deposit same in the ballot box. The duties of the remaining judges in conjunction with the Supervisor will be to read the names on the ballot when requested so as to identify the candidates or furnish such other information as may be desired in that connection and also to assist prospective voters unable because of language difficulties or physical incapacity to cast votes for candidates of their choice, and to undertake such other duties as may be assigned by the Supervisor.

§ 90.33 Watchers and challengers.

Any candidate or political party may name a person to act as watcher and challenger at any election provided for by the regulations in this part. Each
watcher and challenger shall be appointed in writing by the candidate or political party he or she represents. The watchers and challengers shall have the right to be present in the polling place but outside the voting booths and to watch the election officials, the balloting, the call, the tally, and the recording of the result of the vote. It shall be the duty of the watcher to watch, listen, and observe the count for all candidates voted for to insist upon an honest and fair count but shall have no further authority than to have the election judges and clerks note or record any objections to the count and to challenge the result thereof. The challenger shall have the right to question any voter and his right to vote. Watchers shall not divulge or give out any intimation or information as to the count prior to announcement by the election board and shall be subject to the same rules governing the election board with regard to leaving and returning to the polling place. A watcher or challenger shall receive no compensation for his services.


§ 90.35 List of voters.

The Superintendent of the Osage Agency shall compile a list of the voters of the Tribe who are qualified under §90.21. Such list shall set forth only the name and last known address of each voter. The Superintendent shall furnish copies of the list to the Supervisor of the election board and shall post copies at the headquarters of the Osage Agency at Pawhuska, Okla., and such other places as the election board may determine to be appropriate. The compilation, posting and distribution of copies to the Supervisor of the election board shall be done as soon as possible after preparation of the last quarterly annuity roll preceding the election. Copies of the list shall also be made available to all qualified candidates for office and for the purpose of checking off the name of each voter as his ballot is cast and for determining, in the event of question, the right of any individual to vote.

which each candidate has been nominated and also space for showing the value of the respective ballots. The Superintendent shall have recorded on a detachable portion of each ballot the name of the voter. The value of each voter’s ballot shall be recorded on the principal portion of the respective ballots. Any faction or group has the right to nominate any candidate it chooses, in accordance with the regulations prescribed in this part. The names of such candidates shall be printed on the ballot in the manner set forth as follows:

(a) Under the heading, Principal Chief, with notation to vote for one, shall appear names of all candidates for that office. Under the heading, Assistant Chief, with notation to vote for one, shall appear the names of all candidates for that office. Under the heading, Members of Council, with notation to vote for eight, shall appear names of all candidates for council. Names of candidates for office shall appear only once on ballot, regardless of the fact that they may have been nominated on more than one ticket. The order in which names of qualified candidates for office will be placed on the ballot shall be by lot method of drawing in a manner to be determined by the tribal council, and to be free from or regardless of party or factional affiliations. A candidate may use one nickname. Titles and professional designations will not be shown on the ballot. A record shall be kept of any ballots that may be mutilated, canceled, or used as samples.

(b) A space will be provided on each ballot in which the clerk prior to issuing the ballot shall note the value of the ballot which shall be exactly the same value as the voter’s headright interest as shown on the last quarterly annuity roll, except any fraction of a headright shall be valued as to the first two decimals only unless such interest is less than one one-hundredth then it shall have its full value. As verification the clerk shall initial the ballot so numbered in the margin. In addition each ballot shall be stamped “Official Ballot” (facsimile signature Supervisor Osage Election Board). Should any voter spoil or mutilate his ballot in his effort to vote he may surrender the ballot to the supervisor who shall give the voter in lieu thereof another ballot which shall show its appropriate value. The spoiled or mutilated ballot or any portion of a spoiled or mutilated ballot shall be retained with other records pertaining to the election.

[32 FR 10253, July 12, 1967. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 90.41 Absentee voting.

(a) An eligible voter who will be unable to appear at the poll in Pawhuska on election day shall be entitled to vote by absentee ballot. Absentee ballots shall be identical to the ballots described in §90.40 with the exception that each such ballot shall be stamped “Absentee Ballot,” and reflect the date of issuance. All applications for absentee ballots shall be made in writing by the voter. Each ballot shall indicate the value of the vote to which the voter is entitled. The supervisor shall maintain a file of all applications, together with a record of the names and addresses of all persons to whom absentee ballots are mailed or delivered, including the date of mailing or delivery. All absentee ballots must be postmarked and be in the Pawhuska Post Office prior to 8 a.m. on election day.

(b) It shall be the duty of the supervisor, upon receipt of an application, to mail or deliver to the applicant an envelope containing a ballot (after removing the detachable portion), and an inner and outer envelope as described herein. This shall be done not more than 30 days before the election, except that the envelopes and ballots may be mailed to absentee voters residing outside the continental limits of the United States at any time after mailing of the election notice.

(c) If the absentee ballot and accompanying envelopes are to be mailed to the prospective voter, the written request must be submitted to the supervisor on or before 5 p.m. of the Wednesday preceding the election. The absentee ballot and accompanying envelopes may be delivered personally to the prospective voter any time prior to the opening of the poll.
Bureau of Indian Affairs, Interior

§ 90.43

(d) The absentee voter shall mark the ballot and seal it only in the inner envelope. The following shall be printed on the inner envelope:

**ABSENTEE BALLOT**

**ELECTION OF OFFICERS OF THE OSAGE TRIBE**

JUNE ___, 19__

(e) The absentee voter shall enclose the inner envelope in the outer envelope and after sealing same shall execute the certificate imprinted thereon which certificate shall be in the following form:

I will be unable to appear at the poll in Pawhuska, Oklahoma, on the ___ day of June 19__, and have enclosed my ballot for the election of officers of the Osage Tribe. [Voter’s signature].

The outer envelope shall be preaddressed as follows: Supervisor, Osage Election Board, Post Office Box ____, Pawhuska, Okla. 74056.

§ 90.42 Absentee ballots.

The absentee ballots shall remain in the locked box in the post office, Pawhuska, Okla., until 8 a.m. on the day of election at which time the supervisor or assistant supervisor of the election board, accompanied by the Superintendent of the Osage Agency or his designated representatives, shall receive the locked box from the post office and shall personally transport the locked box to the polling site where it shall be delivered immediately to the supervisor or assistant supervisor of the election board. The supervisor or the assistant supervisor in the presence of at least two judges shall unlock the locked box containing the absentee ballots and shall then determine whether the person whose name is signed to the statement is a qualified voter of the Osage Tribe and check said voter off the poll list before opening the outer envelope. After it has been determined which of the absentee ballots have been cast by duly qualified electors, the supervisor in the presence of the election board shall cause the valid ballots in the sealed inner envelopes to be placed in the ballot box.

§ 90.43 Canvass of election returns.

(a) Immediately after the polls are closed at 8 p.m., the counting of the ballots shall commence. The supervisor and not less than two judges shall remain continuously in the room until the ballots are finally counted. One or more judges shall act as official counters and two or more clerks shall record the value of each vote and shall comprise a vote tallying team. The vote shall be recorded on two tally sheets by each team of judges and clerks under the name of each candidate for whom the voter designated his choice. The count shall continue until all votes have been recorded. The duties of the remaining officials of the election board will be to assist in conducting the election. After the vote of each ballot is recorded, the ballot shall be pierced by needle and string and after the ballots have been so counted, the ends of the string shall be tied together. After all other ballots have been counted, the sealed inner envelopes containing the absentee ballots shall be opened and all ballots found to be valid shall be counted and treated in the same manner as other valid ballots. All ballots and mutilated ballots; registration lists of voters, both absentee and those appearing at the poll; all tally sheets; and all other election materials shall be placed in the ballot box which shall be locked. The supervisor shall then deliver the locked ballot box and keys to same to the Superintendent, Osage Agency, and the box shall be retained in a safe place until opened by order of the supervisor or election board in the event a contest is filed. If no contest is filed, the ballots shall be destroyed 180 days after the election. No information concerning voting shall be posted or made public information until after 8 p.m.

(b) Should any ballot be marked for more than one principal chief or assistant chief or for more than eight councilmen, only that section of the ballot wherein the error was made shall be declared void and the remaining section

1 Criminal penalties are provided by statute for knowingly filing false information in such statements (18 U.S.C. 1001).
or sections shall be counted in the same manner as other ballots. Absentee ballots shall be declared void when items other than the ballot are enclosed in the inner envelope, the voter fails to sign the statement appearing on the outer envelope, and for failure to seal the inner envelope or enclose the inner envelope in the outer envelope. Votes cast for individuals whose names are not printed on the official ballot shall not be counted.


§ 90.44 Statement of supervisor.

Following the election a statement is to be prepared by the supervisor pertaining to the conduct of the election and certifying to the correct tabulation of the votes for each candidate. The statement shall also set forth the names of the elected candidates and the office to which each was elected. The statement shall be duly acknowledged before an officer qualified to administer oaths and delivered to the Superintendent of the Osage Agency.

[32 FR 10254, July 12, 1967. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 90.45 Electioneering.

No person shall be allowed to electioneer within the building where and when the election is in progress and it will be the duty of the supervisor to request the detail of a police officer to assist him in maintaining order about the building during the progress of the election.

§ 90.46 Notification of election of tribal officers.

The Superintendent of the Osage Indian Agency shall in due time give written notice to candidates of their election to the various tribal offices and as soon thereafter as practicable such tribal officers shall appear and subscribe to oath of office before an officer qualified to administer oaths and such oaths shall be delivered to the Superintendent and by him transmitted to the Commissioner of Indian Affairs.

§ 90.47 Contesting elections.

Any unsuccessful candidate may before noon on Monday next following the tribal election file with the supervisor a challenge to the correctness of the vote cast for the office for which he was a candidate, which challenge must be accompanied by a deposit of $500. The election board or the supervisor shall order a recount and proceed with same as provided in this part. If the recount results in the contestant being elected, the deposit shall be refunded; otherwise, the deposit shall be used to defray all expenses of said recount and any balance not so used shall be returned to the contestant.

[32 FR 10254, July 12, 1967. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 90.48 Notice of contest.

It shall be the duty of the supervisor, to serve upon the contestee, or contestees, directly affected by such challenge or contest, a true copy of said written application, the original of which is required to be filed with the supervisor. Said service shall be made in person, where possible, within twenty-four hours after the filing of said original challenge or contest, and where personal service is impossible within such time, on account of the absence of contestee, or contestees, from Osage County, or for any other reason, it is hereby made the duty of the supervisor to serve a true copy upon the Superintendent of the Osage Indian Agency: Provided, That for the purpose of such constructive service, the Superintendent is hereby made and constituted the service agent of each and every candidate in all tribal elections, and by filing petition as a candidate, such candidate shall thereby be presumed conclusively to have accepted the terms and provisions hereof and specifically the constructive service as aforesaid.

§ 90.49 Expenses of elections.

All expenses of elections including compensation to the members of the election board and any clerical assistants designated by the Superintendent under §90.32, stationery supplies, meals, printing and postage shall be borne by the Osage Tribe as set forth in
an appropriate Osage Tribal Council resolution establishing current pay scale.


PART 91—GOVERNMENT OF INDIAN VILLAGES, OSAGE RESERVATION, OKLAHOMA

Sec.
91.1 Purpose.
91.2 Definitions.
91.3 Description of village reserves.
91.4 Plats of village reserves.
91.5 Tracts reserved from selection by individuals.
91.6 Custody of public buildings and tracts reserved from selection by individuals; village committees.
91.7 Permits to occupy land for dwelling purposes.
91.8 Sale or mortgage of improvements.
91.9 Inheritance of improvements.
91.10 Renting of improvements.
91.11 Domestic animals in village reserves.
91.12 Business enterprises and public buildings.
91.13 Health, sanitation, and sewerage disposal.
91.14 Confirmation of permits.
91.15 Suspension or amendment of regulations.

AUTHORITY: Subdivision 9 of sec. 2, sec. 12, Act of June 28, 1906 (34 Stat. 539), as amended by the act of June 24, 1938 (52 Stat. 1034), set aside certain tribal lands exclusively as dwelling sites for the use and benefit of the Osage Indians until January 1, 1984, unless otherwise provided by Act of Congress. These lands are described as follows:

(a) Grayhorse Indian Village. The southeast quarter (SE ¼) of the southeast quarter (SE ¼), and the west half (W ½) of the southwest quarter (SW ¼) of the southeast quarter (SE ¼), and the south half (S ½) of the northeast quarter (NE ¼) of the southeast quarter (SE ¼), and the south half (S ½) of the north half (N ½) of the northeast quarter (NE ¼) of the southwest quarter (SW ¼), and the south half (S ½) of the north half (N ½) of the northeast quarter (NE ¼) of the southwest quarter (SW ¼), and the southeast quarter (SE ¼) of the southwest quarter (SW ¼) of the southeast quarter (SE ¼), and the north half (N ½) of the northeast quarter (NE ¼), and the northeast quarter (NE ¼) of the north west quarter (NW ¼) of sec. twenty-two (22), all in township twenty-four (24) north, range six (6) east of the Indian meridian, and containing 197.5 acres, more or less.

(b) Hominy Indian Village. Lots Six (6) and Seven (7), and the East Half (E ½) of the Southwest Quarter (SW ¼) of Section Six (6) in Township Twenty-two (22) North, Range Nine (9) East of the Indian Meridian, and containing 160 acres, more or less.

(c) Pawhuska Indian Village. Lots One (1) and Two (2), and the South Half (S ½) of the Northeast Quarter (NE ¼) of Section Three (3) in Township Twenty-five (25) North, Range Nine (9) East of the Indian Meridian, and containing 160 acres, more or less.

§ 91.4 Plats of village reserves.
Plats of the Grayhorse Indian Village, the Pawhuska Indian Village, and the Hominy Indian Village, certified by Ralph M. Tolson, Registered Engineer, on July 5, 1966, are the official plats of dedication of said villages and shall be filed of record with the county clerk of Osage County, State of Oklahoma.

[33 FR 8270, June 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 91.5 Tracts reserved from selection by individuals.
The following described tracts, as shown on the plats of the three villages, are reserved from selection by individuals and are set aside for sepulchral use or for public use by tribal members:

(a) Grayhorse Indian Village:
   (1) Public Squares.
   (2) Parks, and
   (3) Cemetery.

(b) Hominy Indian Village:
   (1) Public squares.
   (2) Cemetery, and
   (3) Lot 1 in block 1 set aside for religious and educational purposes to the Society of Friends, its Associate Executive Committee of Friends on Indian Affairs and its or their representative at Hominy, Okla., by Resolution of the Osage Tribal Council dated June 6, 1956, and approved by the Assistant Secretary of the Interior, September 7, 1956.

(c) Pawhuska Indian Village:
   (1) Wakon Iron Square.

(d) Those individuals who have summer homes or dance arbors located on the Public Square of the Hominy Indian Village shall be permitted to retain said summer homes or dance arbors during their lifetimes if they are maintained in a condition satisfactory to the Hominy Indian Village Committee. Following the owner’s death, the improvements shall be removed within ninety (90) days or become the property of the Hominy Indian Village.

[33 FR 8270, June 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 91.6 Custody of public buildings and tracts reserved from selection by individuals; village committees.
Each of the three (3) villages described herein shall organize a village committee to provide for the health, safety and welfare of its inhabitants, for the maintenance of tribal property, and to serve as custodian and manager of tribal property and improvements located within said village except that tract described in §91.5(b)(3). Each village committee shall be composed of five (5) members, domiciled in the village, one of whom shall be designated by the committee as chairman. The committees shall be elected biennially by the residents of the villages, except in the Grayhorse Indian Village where the committee shall be appointed by the Council from among those tribal members residing in or historically associated with the village. The procedure for initial committee elections shall be established by the Council. Each village committee shall prepare a constitution and by-laws to be approved by the Council and the Superintendent before said committee will have any authority to govern, and any changes or amendments thereto must likewise be approved by the Council and the Superintendent. All actions of the committee are subject to appeal to the Council whose decision shall be final: Provided, That such committee shall have no control or authority to grant permission for the use of tribal property described in §91.5 for the holding of dances. Such authority shall remain in the Council and any group or individual using the property for dance purposes without the written permission of the Council shall be in violation of these regulations: Provided, further, That the village committee shall not permit the use of any of the tracts described in §91.5 in any manner that would conflict with Council authorization for dance purposes.

§ 91.7 Permits to occupy land for dwelling purposes.
The issuance of permits for the use of land for dwelling purposes within any village reserve described in §91.3 except tracts reserved for specific purposes by
§ 91.5 will be under the jurisdiction of the Superintendent. Permits may be issued only to tribal members upon application to the Superintendent: Provided, That only one permit shall be issued to any one individual and that erection of a dwelling house shall be started on such land within six (6) months from date of approval of the permit or such permit shall be automatically terminated except that upon written application the Superintendent may extend such permit for an additional six (6) months: Provided, further. That only one dwelling shall be constructed under any one permit. Permits shall be issued for the use of one to three contiguous lots, depending upon the quality and permanency of the improvements to be placed thereon. Permits issued under this section shall be made in duplicate in a manner to be prescribed by the Superintendent. The original copy shall be filed in the Branch of Realty, Osage Agency, and the duplicate copy shall be mailed to the permittee.  

§ 91.8 Sale or mortgage of improvements.  

No improvements located within the village reserves described in § 91.3 shall be sold, mortgaged, transferred or assigned without the approval of the Superintendent.  

(a) Improvements may be mortgaged for home improvements or the erection of new improvements. Such mortgages shall be made with acceptable lending agencies and shall be approved by the Superintendent. The lending agency shall have the right:  

(1) To foreclose the mortgage and to sell the improvements within six (6) months of the date of foreclosure judgment to any eligible tribal member with the understanding that the use of the land on which the improvements are situated shall be transferable to the new owner; or  

(2) To foreclose the mortgage and to sell the improvements to a non-tribal member, who shall remove the improvements from the village reserve within six (6) months of the date of sale. In the event of removal of the mortgaged property, it shall be the responsibility of the lending agency to level the land on which such improvements were located and to remove all debris, sidewalks, etc., leaving the premises in an orderly condition. Failure to make such disposition within the time stated in this paragraph shall result in forfeiture of the improvements to the village committee.  

(b) Improvements may be sold by the owner thereof with the approval of the Superintendent. Sale of such improvements shall be accomplished by bill of sale executed by the owner in triplicate who shall file all copies with the Superintendent. If the purchaser of such improvements is a member of the Osage Tribe, the bill of sale shall be accompanied by a relinquishment of the permit in favor of the vendee for the occupancy of the land on which such improvements are located. If the purchaser is not a member of the Osage Tribe, such purchaser shall be required to endorse an agreement on the reverse of all copies of the bill of sale that he will:  

(1) Remove the improvements from the village reserve within six (6) months of date of approval of the bill of sale;  

(2) Transfer the title thereof as provided in this section to a tribal member who is eligible; or  

(3) Failing to make such disposition within the time stated forfeit title to the village committee.  

(c) Upon approval of the bill of sale, the original or certified copy shall be filed in the Branch of Realty, Osage Agency, the duplicate copy mailed to the purchaser, and the triplicate copy mailed to the seller.  

§ 91.9 Inheritance of improvements.  

(a) Upon the death of the owner of improvements in a village reserve, such improvements shall, in probate matters, be subject to the jurisdiction of the county courts, State of Oklahoma, and shall be subject to inheritance or bequest in accordance with applicable State and Federal laws. The land within a village reserve is held in trust for the benefit of tribal members and is not subject to inheritance or purchase.
§ 91.10 Renting of improvements.

The Superintendent may issue a certificate of permission to rent for a period of one (1) year improvements located on land held under valid permit, subject to renewal in the discretion of the Superintendent, upon written application by the owner of such improvements and the prospective tenant. Provided, That such prospective tenant is a tribal member and the property to be rented is that heretofore occupied or inherited by the owner. Certificates of permission issued under this section may be withdrawn upon 30-day notice to the tenant by the Superintendent and such tenant expelled from the village reserve. The application and certificate of permission on a form to be prescribed by the Superintendent shall be made in triplicate and all copies forwarded to the Superintendent for action. Upon approval by the Superintendent, the original copy of the application and certificate shall be filed in the Branch of Realty, Osage Agency, the duplicate copy of each forwarded to the owner, and the triplicate copy of each forwarded to the tenant.

§ 91.11 Domestic animals in village reserves.

(a) No livestock shall be permitted to trespass in any village reserve except that unassigned lots or unplatted areas enclosed by adequate fences may be leased by the village committee with the approval of the Superintendent and the proceeds therefrom credited to the account of the village committee. Trespassing livestock may be impounded by the village committee. The village committee shall give notice of impoundment to the owner of the animal, if known, by certified mail or by posting in the village square. The notice shall advise the owner that a $10 charge shall be assessed per day for each animal impounded and a reasonable charge for forage consumed and that the animal or animals shall be sold at the expiration of twenty (20) days from the date of mailing or posting the notice. In the event an animal is sold, the balance after deducting $10 per day for impoundment and a reasonable forage charge, shall be deposited at the Osage Agency and the owner may claim said funds if satisfactory proof of ownership is presented to the Superintendent of the Osage Agency within six (6) months of the date of sale. After six (6) months, any funds remaining on deposit will become the property of the village in which the animal was trespassing.

(b) No horses, mules, bovine, hogs, sheep, or goats shall be penned on assigned lots.

[32 FR 8270, June 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]
§ 91.12 Business enterprises and public buildings.

No permanent business enterprises shall be carried on within the boundaries of a village reserve and no public buildings shall be erected on lands within the boundaries of a village reserve except on tracts described in § 91.5 maintained for the use and benefit of tribal members. The construction or acquisition of dwellings for rental purposes is prohibited. The village committee may grant permission and charge fees for temporary concessions within the village reserve during Indian celebrations, dances, community gatherings, etc., such temporary permits to last only for the term of activities for which granted.

§ 91.13 Health, sanitation, and sewerage disposal.

Health, sanitation, and sewerage disposal problems within the village reserves shall be subject to and controlled by applicable County and State laws.

§ 91.14 Confirmation of permits.

The Superintendent shall prepare a certified list of all current permittees with a description of lots held, which descriptions shall conform to the plats certified July 5, 1966. Said list shall be served by certified mail on the individual permittees and the village committee chairman and shall be posted at the Osage Agency and each of the three village squares. Unless a protest is filed with the Superintendent within ninety (90) days of the mailing and posting, said certified list of assigned lots and the individual permittees shall be final and conclusive. Protests may be filed by tribal members claiming an interest in an assigned lot and such protest shall be determined by the Superintendent after notice and hearing.

[33 FR 8271, June 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 91.15 Suspension or amendment of regulations.

The regulations in this part may be suspended or amended at any time by the Secretary of the Interior: Provided, That such amendments or suspension shall not serve to change the terms or conditions of any mortgage approved in accordance with § 91.8(a).