(4) You must develop and, upon request, inform passengers of trash disposal procedures and processes for sharps and bio-waste.

(5) You must comply with the provisions of this paragraph (h) by [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

■ 3. In § 382.65, add paragraphs (e), (f), (g), and (h) as follows:

§ 382.65 What are the requirements concerning on-board wheelchairs?

* * * * *

(e) As a carrier, you must ensure that all new single-aisle aircraft that you operate with an FAA-certificated maximum seating capacity of 125 or more that are delivered on or after [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] and on which lavatories are provided include an onboard wheelchair meeting the requirements of this section. The Access Board published nonbinding technical assistance titled, ''Advisory Guidelines for Aircraft Onboard Wheelchairs,'' for compliance with these requirements.

(1) The onboard wheelchair must be maneuverable both forward and backward through the aircraft aisle by an attendant.

(2) The onboard wheelchair must be maneuverable in a forward orientation partially into at least one aircraft lavatory to permit transfer from the onboard wheelchair to the toilet.

(3) The onboard wheelchair must be maneuverable into the aircraft lavatory in a backward orientation to permit positioning over the toilet lid without protruding into the clear space needed to completely close the lavatory door.

(4) The height of the onboard wheelchair seat must align with the height of the aircraft seat so as to facilitate a safe transfer between the onboard wheelchair seat and the aircraft seat.

(5) The onboard wheelchair must have wheels that lock in the direction of travel, and that lock in place so as to permit safe transfers. Any other moving parts of the onboard wheelchair must be capable of being secured such that they do not move while the occupied onboard wheelchair is being maneuvered.

(6) When occupied for use, the onboard wheelchair shall not tip or fall in any direction under normal operating conditions.

(7) The onboard wheelchair must have a padded seat and backrest, and must be free of sharp or abrasive components.

(8) The onboard wheelchair must have arm supports that are sufficiently structurally sound to permit transfers and repositionable so as to allow for unobstructed transfers; adequate back support; torso and leg restraints that are adequate to prevent injury during transport; and a unitary foot support that provides sufficient clearance to traverse the threshold of the lavatory and is repositionable so as to allow for unobstructed transfer. All restraints must be operable by the passenger.

(9) The onboard wheelchair must prominently display instructions for proper use.

(f) You are not required to expand the existing FAA-certificated onboard wheelchair stowage space of the aircraft, or modify the interior arrangement of the lavatory or the aircraft, in order to comply with this section.

(g) You are not responsible for the failure of third parties to develop and deliver an onboard wheelchair that complies with a requirement set forth in paragraph (e) of this section so long as you notify and demonstrate to the Department at the address cited in § 382.159 that an onboard wheelchair meeting that requirement is unavailable despite your reasonable efforts.

(h) If you replace an onboard wheelchair on aircraft with an FAA-certificated maximum seating capacity of 125 or more after [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], then you must replace it with an onboard wheelchair that meets the standards set forth in paragraph (e) of this section.

Issued this 16th day of December, 2019, in Washington, DC, under authority delegated in 49 CFR 1.27(n).

Steven G. Bradbury,

General Counsel.

[FR Doc. 2019–27631 Filed 12–31–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 82

[192A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076–AF51

Procedures for Federal Acknowledgment of Alaska Native Entities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a new part in the Code of Federal Regulations to address how Alaska Native entities may become acknowledged as an Indian Tribe pursuant to the Alaska Amendment to the Indian Reorganization Act. This proposed rule would not affect the status of Tribes that are already federally recognized.

DATES: Comments are due by March 2, 2020. Consultation and public meetings will be held January 28 and 30, and February 6, 2020 (see section IV of this preamble for additional information).

ADDRESSES: You may send comments, identified by RIN number 1076–AF51 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for sending comments.
- *Email: consultation@bia.gov*. Include RIN number 1076–AF51 in the subject line of the message.
- *Mail or Hand-Delivery/Courier:* Office of Regulatory Affairs & Collaborative Action—Indian Affairs (RACA), U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4660, Washington, DC 20240.

All submissions received must include the Regulatory Information Number (RIN) for this rulemaking (RIN 1076–AF51). All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

In 1936, Congress enacted an amendment to the Indian Reorganization Act (Alaska IRA) to allow groups of Indians [1] in Alaska, not previously recognized as bands or Tribes by the United States, to organize under the Indian Reorganization Act (IRA), provided they could demonstrate ''a common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district.'' The Department of the Interior (Department) has not previously promulgated regulations establishing a process through which entities in Alaska that were not previously recognized as bands or Tribes before 1936 can be acknowledged pursuant to the Alaska IRA. Rather, the Department has reviewed Alaska IRA petitions on a case-by-case basis.

This proposed rule would establish a new 25 CFR part 82 that would establish an acknowledgment process for entities in Alaska that were not recognized as bands or Tribes before 1936. This proposed rule relies to a significant extent on the existing process through which entities may petition for Federal acknowledgment under 25 CFR part 83 (Part 83). However, the proposed rule would first require petitioners to establish a connection from an entity that satisfied the Alaska IRA as of the date of the statute's enactment. Upon such a showing, petitioners would then need to satisfy the current Part 83 evidentiary criteria, largely incorporated into the proposed rule, though on a shorter timeframe than that of a Part 83 petitioner.

This proposed rule would provide necessary consistency to the Alaska IRA petition process. This proposed rule would settle expectations among Alaska IRA petitioners, the United States, the State of Alaska and its constituent local governments, and federally recognized Tribes as to how an entity can petition for acknowledgment under the Alaska IRA. This proposed rule would not affect the status of Tribes that are already federally recognized.

The Department requests comments on this proposed rule.

II. Background

A. Alaska IRA

Congress enacted the IRA in 1934, which, among other things, authorized Indian Tribes to organize for their common welfare and adopt an appropriate constitution and bylaws. 25 U.S.C. 5101 *et seq.* Although Congress prohibited the IRA's application to the territories of the United States, Congress created an exception expressly making certain sections of the IRA applicable to the Territory of Alaska. 25 U.S.C. 5118.

As originally enacted, Congress expressly made Section 16 of the IRA applicable to the Territory of Alaska, which gave any Tribe or Tribes residing on a reservation the right to organize and adopt an appropriate constitution and bylaws. 25 U.S.C. 5123. However, there were very few areas in the Territory of Alaska that qualified as ''reservations'' within the meaning of the IRA. Further, Congress did not make Section 7 of the IRA applicable to the Territory of Alaska, which authorized the Secretary to proclaim new reservations. 25 U.S.C. 5110. Nor did Congress make Section 19 of the IRA applicable to the Territory of Alaska, which generally defined the terms Indian and Tribe, and which referenced ''Eskimos'' and other aboriginal peoples of Alaska. 25 U.S.C. 5129. Thus, the incomplete application of the IRA to Alaska in 1934 functionally prevented nearly all Alaska Natives from benefitting from the IRA's provisions.

Congress understood that many Alaska Native entities did not resemble Tribes in the conterminous United States and generally lacked reservations within the meaning of the IRA. Because of this, Alaska Native entities found themselves unable to meet the IRA's definition of ''tribe'' and unable to organize under Section 16 of the IRA, which required residence on a reservation.

In 1936, Congress accordingly established an alternative means for determining whether an Alaska Native entity could become eligible for benefits under the IRA. In enacting the Alaska IRA, the House of Representatives Committee on Indian Affairs explained the need for the amendment by expressly noting ''the peculiar nontribal organizations under which the Alaska Indians operate,'' as well as the fact that ''[m]any groups that would otherwise be termed 'tribes' live in villages which are the bases of their organizations.'' H.R. Rep. No. 74–2244, at 2 (1936).

B. Implementation of Alaska IRA

The Alaska IRA establishes a ''common bond'' basis of organization applicable only to certain entities in Alaska. To date, the Department has approved the organization of over 70 entities under this statutory standard. All such entities are included on the Department's list of federally recognized Indian Tribes (List).

The Department has not previously adopted regulations establishing requirements and procedures for implementing the eligibility criteria under the Alaska IRA. While the Department issued instructions in 1937 providing guidance on how to organize under the IRA and the Alaska IRA, those instructions did not fully address which entities would be eligible for organization under the ''common bond'' standard. Since then, the Department has determined eligibility for organization under the Alaska IRA on a case-by-case basis and in the absence of any comprehensive or binding regulations, has relied on the 1937 guidance, other Alaska IRA-contemporaneous guidance, and previous Alaska IRA determinations.

C. Tribal Input on the Department's Implementation of the Alaska IRA

In recent years, the Department has considered whether and how it should evaluate Alaska IRA petitions in the absence of an established regulatory process. On July 2, 2018, the Department issued a Dear Tribal Leader Letter (DTLL) initiating Tribal consultation in Alaska on a number of questions concerning the implementation of the Alaska IRA. The Department sought comment on the following issues:

- Is the Alaska IRA still relevant?
- How should the Department define or interpret the statutory phrase, ''common bond''?
- How should the Department define or interpret the statutory phrase, ''well-defined neighborhood, community, or rural district''?
- Should a group of Alaska Natives sharing a common bond of occupation

[1] The term ''Indian,'' as used herein, is a defined term in the Indian Reorganization Act and ''include[s] all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians.''

have the ability to exercise sovereign governmental powers, and, if so, should there be any limits on those powers?

- How should the Department implement the Alaska IRA? Through regulations? Through formal guidance? Through some other means?
- Are the federal acknowledgment regulations set out in 25 CFR part 83 (Part 83) an appropriate process for groups in Alaska to seek Federal acknowledgment?
- Are there challenges specific to Alaska Native groups that make the requirements of Part 83 particularly challenging to satisfy?
- Is there a need to create a separate process for Federal acknowledgment of Alaska groups, outside Part 83?

The Department held several listening sessions and consultations on these issues. The Department ultimately received eight written comments in response to the Tribal consultation (though several of the comments were submitted on behalf of multiple Tribes or Tribal organizations). Most commenters agreed that the Alaska IRA remains a viable means for Alaska Native groups to seek Federal acknowledgment outside of Part 83, and questioned the need for an Alaska-specific formal regulatory process. Other commenters expressed concern as to whether an Alaska-specific regulatory process would somehow affect the federal recognition of existing Tribes in Alaska (whether organized under the Alaska IRA or otherwise). Nearly all commenters urged the Department to issue final decisions on any outstanding Alaska IRA petitions prior to implementing a regulatory or guidance-based process for Alaska.

The Department reviewed and considered each comment in developing this proposed rule and addresses them here.

1. Need for an Alaska-Specific Regulatory Process

The Department has determined that regulations determining eligibility to organize under the Alaska IRA are necessary to effectively carry out its provisions. After consideration of the various regulatory options, the Department has concluded that a formal acknowledgment process based on the criteria and the procedures set forth in Part 83, but tailored to accommodate the unique provisions of the Alaska IRA, is the best path forward for acknowledging Alaska Native entities under the Alaska IRA.

Specifically, and as discussed further below, the proposed rule would require that an Alaska Native entity seeking Federal acknowledgment under the Alaska IRA submit a ''documented petition,'' as currently required for Part 83 purposes at 25 CFR 83.21. As part of such ''documented petition,'' an Alaska Native entity would additionally need to submit evidence establishing a connection to an entity or group that satisfied the Alaska IRA's ''common bond'' standard as of the statute's enactment on May 1, 1936. Upon fulfilling these requirements, the petitioner would then need to satisfy the evidentiary criteria of Part 83 currently enacted in 25 CFR 83.11. For those criteria that require satisfaction from 1900 to present, however, under this proposed rule the petitioner would need only to satisfy the criteria from May 1, 1936 to present.

The Department has examined its authority to interpret and implement the Alaska IRA in this manner. We conclude that Congress has delegated the necessary authority to the Department to implement the statute through rulemaking. Further, we conclude that such rulemaking may incorporate Part 83 standards.

The Department is the Federal agency charged with the management of all Indian affairs and of all matters arising out of Indian relations. 25 U.S.C. 2. Similarly, the Secretary may prescribe such regulations as he or she sees fit for carrying into effect the various provisions of any act relating to Indian affairs, 25 U.S.C. 9, which includes the IRA and the Alaska IRA. Thus Federal acknowledgment determinations are squarely within the Department's authority and expertise.

Courts have accordingly recognized that the acknowledgement of Tribal status and the commensurate government-to-government relationship between the Indian Tribe and the United States is a political question on which deference is provided to the political branches of the government. *See Miami Nation of Indians of Ind.* v. *Dep't of the Interior,* 255 F.3d 342 (7th Cir. 2001). As a general matter, the Department's authority to decide matters of Federal acknowledgment is derived from the Secretary's broad discretionary authority to handle all public business relating to Indians and the authority to manage all Indian affairs and matters arising out of Indian relations. *See* 43 U.S.C. 1457, and 25 U.S.C. 2, 9. Under this broad delegation of powers, the Department's authority to adopt Federal acknowledgment regulations and the appropriateness of those regulations has been litigated and uniformly upheld. *See, e.g., James* v. *U.S. Dep't of Health and Human Servs.,* 824 F.2d 1132, 1138 (D.C. Cir. 1987); *Miami Nation of Indians of Ind.* v. *Babbitt,* 887 F. Supp. 1158 (N.D. Ind. 1995).

The Department has historically determined eligibility for organization under the Alaska IRA on a case-by-case basis and in the absence of any comprehensive or binding regulations, relying on the 1937 guidance, other Alaska IRA-contemporaneous guidance, and previous Alaska IRA determinations. Applying its expertise in the field of Indian affairs, the Department believes the most appropriate option is to require that eligible Alaska Native entities seeking to organize under the Alaska IRA first satisfy a process similar to Part 83, with certain Alaska-specific distinctions. The Department reached this conclusion based on several considerations.

First, Part 83 is premised on the fundamental tenet that a petitioner's membership consist of individuals who descend from a historical Indian Tribe (or from historical Indian Tribes that combined and functioned as a single autonomous political entity). 25 CFR 83.11(e). By requiring that petitioners demonstrate a historical connection to an entity that could have satisfied the Alaska IRA in 1936, the proposed rule balances the specific provisions of the Alaska IRA with the historical demonstration undertaken in Part 83. This ensures that when acknowledging a petitioner under the Alaska IRA criteria, the Department has determined that said petitioner is an Alaska Native political entity exercising governmental authority over a discrete Alaska Native membership, and has a direct connection to such an entity that was in existence at the time that Congress enacted the Alaska IRA.

Second, the proposed rule envisions that the Office of Federal Acknowledgment (OFA) will review Alaska IRA petitions on the merits. OFA is composed of anthropologists, historians, and genealogists, all of whom are civil servants who work together to review, analyze, and evaluate evidence submitted by Part 83 petitioners consistent with the methods and standards of their profession. OFA's professional expertise is important not only to safeguard the uniform application of the Alaska IRA according to best practices within these academic fields, but also to help ensure the Department's administrative decisions will be accorded due deference by a reviewing court.

The Department has previously suggested that Part 83 may not be appropriate in Alaska. In 1988, the Department wrote that:

> [A]pplying the criteria presently contained in Part 83 to Alaska may be unduly burdensome for the many small Alaska organizations. Alaska, with small pockets of Natives living in isolated locations scattered throughout the state, may not have extensive documentation on its history during the 1800's and early 1900's much less the even earlier periods commonly researched for groups in the lower-48. While it is fair to require groups in the lower-48 states to produce such documentation because they are located in areas where no group could exist without being the subject of detailed written records, insistence on the same formality for those Alaska groups might penalize them simply for being located in an area that was, until recently, extremely isolated.

53 FR 52829, 52833 (Dec. 28, 1988). We subsequently reasoned in the proposed rule to the 1994 amendments of Part 83 that treating Alaska differently than the conterminous United States reflected the fact that Alaska Native entities ''are not tribes in the historical or political senses.'' 56 FR 47320, 47321 (Sept. 18, 1991). Finally, in a 2015 guidance document limiting Departmental Federal acknowledgment to the Part 83 process, the Assistant Secretary—Indian Affairs (AS–IA) noted this limitation applied only in the conterminous United States, and that the Alaska IRA criteria presented an alternative process through which Alaska Native entities could organize. 80 FR 37538, 37539 n.1 (July 15, 2015). One could argue that these statements suggest that the process for implementing the Alaska IRA criteria inherently cannot incorporate Part 83 standards.

We have determined that the Department may and should incorporate relevant Part 83 requirements into the proposed rule. Federal courts have affirmed the authority and broad discretion of the Secretary to regulate issues concerning the acknowledgment of Tribal entities, even if it results in a significant departure from past administrative practices. *See, e.g., Miami Nation,* 887 F. Supp. at 1169 (''That the Secretary elected to promulgate [Federal acknowledgment] regulations that allegedly differ from past practices is not enough to render that decision impermissible.''); *accord James,* 824 F.2d at 1137–38. And as the Supreme Court has observed, '' '[regulatory] agencies do not establish rules of conduct to last forever,' . . . and . . . an agency must be given ample latitude to 'adapt their rules and policies to the demands of changing circumstances.' '' *Motor Vehicle Mfrs. Ass'n of the United States, Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983) (quoting *Am. Trucking Ass'ns, Inc.* v. *Atchison, Topeka & Santa Fe R.R. Co.,* 387 U.S. 397, 416 (1967) *and Permian Basin Area Rate Cases,* 390 U.S., 747, 784 (1968)) (alteration in original). So, while an agency must show that there are good reasons for the new policy, it need not demonstrate that the reasons for the new policy *are better* than the reasons for the old one; rather, it suffices that the new policy is permissible under the statute and that the agency believes it to be better than the previous policy. *FCC* v. *Fox TV Stations, Inc.,* 556 U.S. 502, 515–16 (2009). In such cases, the agency need only explain why it is disregarding the facts and circumstances that underlay or were engendered by the prior policy. *Id.*

In this instance, the aforementioned reasoning suggesting that the Department should not apply Part 83 to Alaska does not rise to the level of ''prior policy.'' In the 1994 Final Rule amending Part 83, for example, the Department declined to implement an Alaska-specific alternative to the Part 83 process because:

> Alaska villages have the same governmental status as other federally acknowledged tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; are entitled to the same protection, immunities, and privileges as other acknowledged tribes; have the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes; and are subject to the same limitations imposed by law on other tribes. . . . [A] modification now of the acknowledgment process to address the special circumstances in Alaska is unwarranted.

59 FR 9280, 9284 (Feb. 25, 1994). In that Final Rule, the Department recognized that it was nevertheless appropriate to include Alaska Native entities within the parameters of those regulations. The incorporation of Part 83 standards under the current proposed rule therefore does not qualify as a deviation from previous Department precedent.

Additionally, as stated in the Department's 1988 notice of its list of federally recognized Indian Tribes, the Department's main concern about requiring an Alaska Native entity to undergo Part 83 was that it ''may not have extensive documentation on its history during the 1800's and early 1900's much less the even earlier periods commonly researched for groups in the lower-48.'' 53 FR at 52833. As further discussed below, this concern is largely ameliorated by the proposed requirement that petitioners under the Alaska IRA criteria satisfy Part 83's evidentiary criteria only from May 1, 1936—not ''during the 1800's and early 1900's, much less the even earlier periods.''

Finally, in the 2015 AS–IA guidance, the Department wrote that while Part 83 ''should be the only method utilized by the Department to acknowledge an Indian tribe in the contiguous 48 states,'' the Alaska IRA criteria nevertheless also applied ''[w]ith regard to Alaska.'' 80 FR at 37539, *id.* at n.1. The 2015 guidance stated neither that Part 83 was inapplicable in Alaska nor that the Alaska IRA criteria required the Department to apply any particular standard, whether based on Part 83 or otherwise. The 2015 guidance's acknowledgment of the Alaska IRA's existence as an alternative to Part 83 does not prohibit the Department from designing such an alternative that incorporates by reference aspects of Part 83.

For these reasons, the Department concludes that the proposed rule's inclusion of aspects of Part 83 does not depart from previous Department precedent. Assuming, *arguendo,* that it did, however, the necessity of establishing a consistent, predictable procedure that is subject to public notice and comment in determining eligibility under the Alaska IRA would wholly justify the Department's ''change in position'' within the meaning of Federal law. Federal acknowledgment of Indian groups establishes a government-to-government relationship with the United States and is a prerequisite to eligibility for nearly all of the Federal protections, services, and benefits available to Indian Tribes. 25 CFR 83.2 (2015). As affirmed by case law, Part 83 is a rigorous, legally viable implementation of the Department's statutory mandate concerning the management of Indian affairs. *See, e.g., Miami Nation,* 887 F. Supp. at 1176–77. By drawing upon the examination of continuous Tribal existence set forth in Part 83, the Department will ensure that a positive determination under the proposed Federal acknowledgment procedures for petitioners under the Alaska IRA accurately reflects such petitioner's status as a distinct governmental entity.

2. No Effect on the Status of Tribes Who Are Currently Federally Recognized

As noted above, several comments expressed concern as to whether an Alaska-specific regulatory process would affect the federal recognition status of existing Tribes in Alaska (whether organized under the Alaska IRA or otherwise). This proposed rule applies only to groups not currently present on the List. It does not impair or otherwise affect the existing rights and authorities of any Alaska Native

tribe already recognized and included on the List.

3. Consideration of Pending Petitions

The Department will not consider any acknowledgment petitions submitted by Alaska Native entities under the Alaska IRA during the pendency of this proposed rulemaking. Should the Department ultimately enact a final rule implementing the Alaska IRA criteria in a formal acknowledgment process, then that process will become the sole mechanism through which entities may petition for acknowledgment under the Alaska IRA. Alaska Native groups that have previously submitted petitions would be invited to revise or resubmit such petitions to conform to the final rule.

III. Summary of the Proposed Rule

This proposed rule sets forth a new regulatory process through which Alaska Native entities can become federally acknowledged under the common bond standard set forth in the Alaska IRA. This proposed rule applies only to groups not currently present on the List. It does not impair or otherwise affect the existing rights and authorities of any Alaska Native Tribe already recognized and included on the List. Pursuant to the List Act of 1994 and the IRA Technical Amendments of 1994, Act of May 31, 1994, Public Law 103–263, 108 Stat. 709, any Alaska Native entity acknowledged under this proposed rule would be eligible to receive all services available to federally recognized Tribes.

In large part, this proposed rule incorporates the requirements and procedures for federal acknowledgment found in Part 83, with a limited number of important distinctions. First, rather than establishing descent from a ''historical Indian Tribe,'' a petitioner under the proposed rule must descend, genealogically and politically, from an Alaska IRA-eligible entity (as defined). Second, and relatedly, since descent from a historical Indian Tribe is not required, the proposed rule shifts the start date for satisfying the Part 83 evidentiary standards from 1900 (as presently used under Part 83) to May 1, 1936 (the date of enactment of the Alaska IRA). Third, a petitioner under the proposed rule must submit as part of their documented petition ''a clear, concise claim of an Alaska IRA-eligible entity that existed on May 1, 1936 . . . from which the petitioner will claim descent.'' Once a petitioner has satisfied the requirements of a documented petition, including a showing of the existence of an Alaska IRA-eligible entity in 1936, the petitioning entity would then be required to satisfy all Part 83 evidentiary criteria from May 1, 1936 to present.

Next, this proposed rule establishes a requirement that Alaska Native entities seeking to hold secretarial elections pursuant to 25 CFR part 81 (Part 81) first gain Federal recognition through the proposed process. This requirement is consistent with past Department practices, which have focused on organizing entities capable of establishing government-to-government relations with the United States. The requirement to first obtain Federal acknowledgement before conducting an IRA election (where desired) is consistent with the intent of the IRA, the Alaska IRA, and the administrative process set forth in Part 81.

Like the current regulations at Part 83, this proposed rule is broken down into three subparts. First, ''General Provisions'' sets forth definitions, the overall purpose of the regulations, deadlines, and various administrative legalities. Second, ''Criteria for Federal Acknowledgment'' establishes the substantive evidentiary and factual requirements for petitioner to achieve Federal recognition. Third, ''Process for Federal Acknowledgment'' sets out the actual processes through which OFA will receive a Part 82 petition, engage with the petitioner, and make and publish decisions; this section further discusses the process for obtaining and appealing a final decision by AS–IA.

At the outset, the Department notes that this proposed rule largely incorporates the Part 83 regulations, with certain distinctions. As justification for, and clarification of, this proposed rule, the Department accordingly adopts the preambles to the proposed and final rules associated with Part 83, as relevant. 80 FR 37862 (July 1, 2015); 79 FR 30766 (May 29, 2014); 59 FR 9280 (Feb. 25, 1994); 56 FR 47320 (Sept. 18, 1991); 43 FR 23743 (June 1, 1978).

The Department similarly notes that this proposed rule incorporates the provision currently codified at 25 CFR 83.10(a)(4), which provides that when the Department finds that evidence or methodology was sufficient to satisfy any particular criterion in a previous Part 83 petition, the Department will find that evidence or methodology sufficient to satisfy the criterion for a present petitioner. As the Department noted in the 2015 Final Rule, previous decisions provide examples of how a criterion may be met, and a petitioner satisfies the standards or evidence or baseline requirements of a criterion if that type or amount of evidence was sufficient in a previous decision. (80 FR 37865). The Department notes here that the same premise will apply under this proposed rule. To the extent that the Department found a particular type of evidence or line of argument either probative or non-probative with regard to a previous petition, the Department will similarly evaluate such evidence or reasoning under this proposed rule. As the Department processes petitions for acknowledgment under this proposed rule, it will similarly treat such petitions as ''precedential'' with regard to one another to the extent that they demonstrate how a particular criterion may be met.

With that said, the Department generally requests comments on the issues set out above concerning the role of Part 83 and OFA in the proposed Alaska IRA acknowledgment process. These include, but are not limited to:

- Whether it is appropriate to require petitioners under the Alaska IRA criteria to satisfy any Part 83 requirements.
- Even if it is appropriate for the Department to require Alaska Native petitioners to satisfy the Part 83 requirements (in whole or in part), whether alternative mechanisms or processes exist through which the Department can or should evaluate Alaska IRA petitions outside of Part 83.
- Whether any recordkeeping or other historical or practical concerns specific to Alaska counsel against applying Part 83's evidentiary criteria to Alaska Native petitioners.
- Whether there exists any other way that the Department should incorporate the Part 83 requirements with the Alaska IRA criteria, in whole or in part, other than as proposed in this NPRM.
- Whether the Department is constrained in any way from directing Alaska Native groups with outstanding petitions to re-submit their petitions under the ultimate final rule.
- Whether there exist any textual or procedural inconsistencies, ambiguities, or other discrepancies in Part 83 that the Department should clarify or amend for the purposes of this proposed rule.

A. Subpart A—General Provisions

1. Definitions

This proposed rule defines the term ''Alaska IRA-eligible entity'' as an entity that as of May 1, 1936, (1) was *not* recognized by the Federal government as a band or Tribe; (2) was organized on the basis of a common bond of occupation, association, or residence; and (3) was comprised of members descending from Indians in Alaska. As part of its documented petition, the petitioner must submit a claim of an Alaska IRA-eligible entity from which it

will demonstrate descent. This proposed rule further defines each of these constituent requirements.

First, since the Alaska IRA excludes ''groups of Indians in Alaska not heretofore *recognized* as bands or tribes,'' the proposed rule includes the term ''recognized by the Federal government,'' to mean that the Federal government took an action clearly premised on identification of a Tribal political entity as such and indicating clearly the recognition of a relationship between that entity and the United States. The Alaska IRA criteria were intended to permit Alaska Native entities that were *not* previously recognized to become eligible to organize under the IRA and the Alaska IRA. As this suggests, Alaska Native tribes or bands recognized before May 1, 1936 do not qualify for acknowledgment under this proposed rule. The proposed definition for ''recognition'' reasons that for Alaska Native entities that were already ''recognized'' as of May 1, 1936, there would exist evidence of formalized relationship between that entity and the United States. Presumably, this would involve evidence along the lines ordinarily considered under 25 CFR 83.11(a), ''Indian entity identification.'' In reviewing the documented petition, OFA will evaluate contemporary evidence to determine whether a petitioner's Alaska IRA-eligible entity was recognized as of May 1, 1936. The Department invites comment as to whether this definition requires additional clarification. The Department also invites comment as to the specific type of evidence that OFA should view as proof of ''recognition'' in Alaska as of May 1, 1936, such as to disqualify an entity from being considered Alaska IRA-eligible.

Second, this proposed rule defines ''Common Bond'' in a manner that draws from contemporaneous interpretations of the Alaska IRA, as well as past administrative actions by the Department: A clearly defined common interest shared and acted upon by a group of Alaska Natives, distinguishable from other groups or associations. The definition is broadly drafted on the assumption that a more flexible, open-ended common bond standard will allow petitioners to more easily satisfy that standard before proceeding to the more rigorous and substantive post-May 1, 1936 showing under the Part 83 evidentiary criteria. However, additional guidance on the common bond standard is provided in proposed § 82.21(a)(5), which states that having a common bond:

> [M]eans that the petitioner must be bound together by their common interest and actions taken in common. The claimed common bond must be clear and capable of statement and definition, and the petitioner must be distinguishable from other groups or associations. Groups of Alaska Natives having a common bond must be substantial enough and democratic enough to permit participation by a substantial share of the persons within the entity. There is no legal requirement that the members of a petitioning group must all live in one community or village to meet this criterion. The claimed common bond is best understood flexibly in the context of the history, geography, culture, and social organization of the entity.

With an eye toward maintaining flexibility as to the manner in which petitioners can demonstrate that an Alaska IRA-eligible entity satisfied the common bond standard as of May 1, 1936, the Department invites comment on whether the proposed definition of ''common bond,'' paired with the clarifying language in § 82.21(a)(5), is sufficient. The Department also invites comment on whether and how the Department should define the terms ''occupation,'' ''association,'' and ''residence within a well-defined neighborhood, community, or rural district'' as they appear in the Alaska IRA criteria, or whether such terms are already well-understood and need not be further defined.

Third, the proposed rule defines the terms ''Indians in Alaska'' or ''Alaska Native'' to mean Eskimos and other aboriginal peoples in Alaska. While recognizing that these terms are anachronistic in modern parlance, this definition was adopted from the definition of ''Indian'' provided in the IRA, which states that for the purposes of that Act, ''Eskimos and other aboriginal peoples of Alaska'' are considered Indians. 25 U.S.C. 5129. The Department invites comment as to whether this definition should be expanded, narrowed, or clarified. The Department also invites comment as to the manner of evidence that petitioners can submit to demonstrate descent from, and current composition of, ''Indians in Alaska.''

The term ''historical'' is defined in Part 83 as the period before 1900 and is included in the context of the requirement that Part 83 petitioners demonstrate descent from a ''historical Indian Tribe.'' This definition has been removed from this proposed rule. Federal acknowledgment under the Alaska IRA criteria does not require descent or any connection to a historical Indian Tribe. The petitioner must instead make a comparable showing of connection to an entity that satisfied the Alaska IRA's common bond requirement in 1936. The term ''historical'' was therefore removed as it has little relevance or applicability to this proposed rule.

This proposed rule includes a definition of ''membership list,'' which must include all known current members of the petitioning entity. An official and current membership list must be included in the documented petition submitted by the petitioner. The Department invites comments as to whether entities in Alaska differ from those in the conterminous United States such that it will complicate the provision of a membership list, or otherwise require further consideration of this specific definition or of the overall requirement.

The term ''roll'' is defined in Part 83, but has been removed from this proposed rule since the proposed descent criteria does not necessarily require evidence that the petitioner's membership descends from a Tribal roll. The descent criteria does, however, require evidence identifying individuals associated with the petitioning entity.

2. Scope and Applicability

As with Part 83, there are a number of entities that the Department will not acknowledge under the proposed rule, including any entity that has already petitioned for, and been denied, Federal acknowledgment under Part 83. The Department may, however, acknowledge under the eventual final rule implementing this proposed rule any entity that has petitioned under Part 83 but withdrawn its documented petition pursuant to 25 CFR 83.30 and has not received a final determination pursuant to 25 CFR 83.43.

In addition to those entities listed in Part 83, the Department will not acknowledge the following entities in light of the eligibility standards specific to this proposed rule: (1) Entities that petition and are denied acknowledgment under the eventual final rule implementing this proposed rule; (2) entities located outside of Alaska; (3) any Alaska Native group that was recognized as a band or Tribe by the Federal government on or before May 1, 1936, and (4) any Alaska Native tribes or bands that was recognized by the Federal government through some other means and included on the List after May 1, 1936. An entity that has petitioned and been denied acknowledgment under the eventual final rule implementing this proposed rule will not be eligible for Federal acknowledgement under Part 83.

The Department invites comment on any of these standards, particularly as to

whether it must clarify the manner in which it will determine where a petitioner is ''located'' or, as discussed, how an entity may or may not be determined to be ''recognized'' within the meaning of the Alaska IRA.

B. Subpart B—Criteria for Federal Acknowledgment

1. Evaluation of the Mandatory Criteria

Under this proposed rule, the Department will evaluate the mandatory criteria set forth in proposed § 82.11 under the same ''reasonable likelihood of the validity of the facts relating to that criterion'' standard of proof used in the Part 83 process. Under this standard, facts are considered established if the available evidence demonstrates a reasonable likelihood of their validity. This standard of evidence has governed the acknowledgment process since 1994, and is particularly appropriate in the acknowledgment context where the primary question is usually whether the level of evidence is high enough to demonstrate meeting a particular criterion.

As in Part 83, under this proposed rule, the Department will require that existence of community and political influence and authority be demonstrated on a substantially continuous basis. In the Part 83 context, the Department has interpreted ''substantially continuous'' to mean that overall continuity has been maintained, even though there may be interruptions or periods where evidence is absent or limited.

Finally, and as discussed above, in order to ensure predictability and consistency with precedent, this proposed rule provides that if there was a prior decision finding that evidence or methodology was sufficient to satisfy any particular criterion in a particular petition, the Department will find that evidence or methodology sufficient to satisfy the criterion for a present petitioner.

2. Criteria for Acknowledgment

This proposed rule includes seven mandatory criteria designed to demonstrate an Alaska IRA-eligible entity's continued Tribal existence. To become acknowledged, the petitioner must satisfy all seven of the mandatory criteria set forth in § 82.11, which are the same criteria used to evaluate petitioners under the Part 83 process.

One of the principle differences between this proposed rule and Part 83 is that petitioners under this proposed rule must satisfy the evidentiary standards between 1936 and the present, not 1900 to the present as under Part 83. The later start date comports with Congressional intent to establish an alternative means for Alaska Native entities to be eligible to organize under the Alaska IRA that would not require descent from a Tribe that existed during historical times. H.R. Rep. No. 74–2244, at 2, 4–5 (1936); 53 FR 52835, 52832–33 (Dec. 28, 1988). Moreover, it follows the Department's longstanding practical interpretation of the Alaska IRA criteria that petitioners must be a continuation of a pre-existing group that existed before May 1, 1936, the date the Alaska IRA was enacted. For example, in a July 10, 1978, memorandum on the eligibility of Eskimo Village to organize under the IRA, the Associate Solicitor, Indian Affairs, concluded in part that the Department's interpretation of the Alaska IRA as limiting the eligibility of Alaska Native groups to organize pursuant to the common bond standard only if the basis of association existed prior to May 1, 1936 was ''consistent with the intent of the Congress and the application of the Indian Reorganization Act to tribes in the other states.'' The Department solicits comment on whether there are legal or practical justifications for requiring a different ''start date.''

Criterion (a) requires the petitioner to show that it has been identified as an Alaska Native entity on a substantially continuous basis since May 1, 1936. Evidence of both self-identification and external identification as an Alaska Native entity will be accepted under this proposed rule. This proposed rule lists specific evidence that may be used to demonstrate that this criterion has been met, including contemporaneous identification as an Alaska Native entity by the petitioner itself.

Criterion (b) requires the petitioner to show that its members have comprised a distinct community from May 1, 1936 to the present. The petitioner's evidence must show consistent interactions and significant social relationships within its membership, and demonstrate how its members are differentiated from and distinct from nonmembers. The community criterion provides a list of evidence that is sufficient in itself to demonstrate the criterion at a particular point in time, as well as specific evidence that may be used to demonstrate that this criterion has been met, including shared or cooperative labor or other economic activity among members and shared cultural patterns distinct from those of the non-Alaska Native populations with whom it interacts. Community may also be shown by evidence of distinct social institutions encompassing at least 50 percent of the members.

Criterion (c) examines the political influence/authority of the petitioner over its members. Exercising political influence or authority means the entity uses some mechanism to influence or control the behavior of its members in significant respects. This proposed rule lists specific evidence that may be used to demonstrate that this criterion has been met, including mobilization of significant numbers of members and resources for entity purposes and a continuous line of entity leaders and a means of selection or acquiescence by a majority of the membership. The political influence/authority criterion also provides a list of evidence that is sufficient in itself to demonstrate the criterion at a particular point in time.

Criterion (d) requires the submission of the entity's present governing document or, in the absence of such a document, a written statement describing its membership criteria and current governing procedures.

Criterion (e) requires petitioners to demonstrate descent from members of the Alaska IRA-eligible entity that existed on May 1, 1936. This proposed rule does not quantify the number of members who must satisfy this descent criterion; in practice, however, OFA applies an 80% threshold in the Part 83 context. The Department invites comment on whether an 80% threshold is appropriate for this proposed rule, or whether a different threshold is needed to accommodate the fluidity and geographically transient nature of some historical Alaska Native communities. A member who is unable to establish descent from an Alaska IRA-eligible entity can still satisfy this criterion with documentation detailing his or her integration or adoption into the petitioning group and by demonstrating descent from an Alaska Native.

Criterion (f) requires that a petitioner's membership not be ''composed principally'' of persons who have dual membership in two federally recognized Indian Tribes. In the Part 83 context, this criterion is intended to prohibit a faction of a federally recognized Tribe from seeking acknowledgment as a separate Tribe, unless it can demonstrate its status as a politically autonomous community. This proposed rule does not define a percentage for ''composed principally'' because the appropriate percentage may vary depending upon the role the individuals play within the petitioner and recognized Indian Tribe. Even if a petitioner is composed principally of members of a federally recognized Indian Tribe, the petitioner may meet

this criterion as long as it satisfies the community and political influence/authority criteria, and its members have provided written confirmation of their membership in the petitioner. There is no requirement to withdraw from membership in the federally recognized Tribe.

The Department seeks comment on the manner in which criterion (f) would apply in the context of the Alaska IRA. First, the Department seeks comment on the relevance of Alaska Native Claims Settlement Act (ANCSA) shareholder status under this requirement, as opposed to Tribal membership. The Department also seeks comment on whether it should reevaluate or reframe this requirement if, as a practical matter, many potential Alaska IRA petitioners would have high levels of dual membership.

Under criterion (g), neither the petitioner nor its members must be subject to any legislation that has expressly terminated or forbidden a government-to-government relationship. For this criterion, the evidentiary burden shifts to the Department to show that the petitioner has not been congressionally terminated. However, the Department notes that it is unaware of any entity in Alaska that would be disqualified under proposed criterion (g). The Department solicits comment as to whether this criterion is applicable in Alaska or whether it should be deleted from the final rule.

3. Previous Federal Acknowledgment

Unlike Part 83, this proposed rule does not include criteria and procedures for evaluating claims of previous Federal acknowledgment. Any group claiming to have been Federally acknowledged prior to May 1, 1936, would necessarily be excluded from this proposed rule since the Alaska IRA only applies to groups that were ''not heretofore recognized as bands or tribes'' on or before May 1, 1936. Any claims of previous Federal acknowledgment after May 1, 1936, may be evaluated through the Part 83 process.

C. Subpart C—Process for Federal Acknowledgment

Under the proposed rule, the administrative process begins when an Alaska Native entity petitions for acknowledgment and submits its documented petition to OFA. The documented petition must include a concise written narrative explaining how the petitioner meets criteria (a) through (f) and, if the petitioner wishes, it can address criterion (g). The documented petition must also include the petitioner's claim that an Alaska IRA-eligible entity existed on May 1, 1936, which will be evaluated using the ''reasonable likelihood of the validity of the facts'' standard. If the claim fails to show the existence of an Alaska IRA-eligible entity, the petitioner will not be considered to have submitted a documented petition and will not be able to move forward under the proposed rule. Since, unlike Part 83 petitions, a documented petition under Part 82 must include an additional claim of an Alaska IRA-eligible entity, the proposed rule includes a longer timeframe of 120 days for processing documented petitions.

As is the case under Part 83, OFA will review a documented petition in two phases. During Phase I, OFA will determine whether the petitioner meets criteria (d) (governing document), (e) (descent), (f) (unique membership), and (g) (termination). Once OFA has completed its review under this phase, it will issue a proposed finding within six months of giving notice that review of the petition has begun. During Phase II, OFA will review criteria (a) (identification), (b) (community), and (c) (political influence/authority). The proposed finding following completion of the Phase II review is due within six months of the deadline for the Phase I proposed finding.

By beginning with the more straightforward, easily demonstrated requirements in Phase I prior to turning to the more substantive requirements in Phase II, the proposed rule allows OFA to identify more glaring shortcomings in a petition prior to a petitioner having to undertake the more arduous information-gathering required under Phase II. This allows OFA to issue negative decisions more quickly, thereby resolving petitions sooner, reducing time delays, increasing efficiency, and preserving resources. During each phase, OFA will provide technical assistance review, which will be limited to the criteria under review at that time.

The proposed rule offers petitioners who receive a negative proposed finding the opportunity for a hearing, in which third parties may intervene, to address their objections to the proposed finding before an administrative law judge, who will then provide a recommended decision to the AS–IA. The AS–IA will review the proposed finding and the record, including the administrative law judge's recommended decision, and issue a determination that is a final agency action for the Department. Any challenges to the final determination would be pursued in Federal court rather than in an administrative forum.

Acknowledgment occurs when a petitioner has received a positive final determination. Upon acknowledgement, the petitioner will be a federally recognized Indian Tribe and included on the next list of federally recognized Indian Tribes. The fact that a petitioner has achieved acknowledgment, but there is a time gap between the publication of the positive final determination and the publication of the next List, does not in the interim deny the petitioner the benefits of Federal recognition.

IV. Tribal Consultation and Public Meeting Sessions

This rule does not address or impact Tribes in Alaska that are presently recognized; however, to further the existing government-to-government relationship with Tribes by seeking their input on this proposed rule, the Department will be holding the following Tribal consultation and public meeting sessions:

- Tuesday, January 28, 2020, at the Centennial Hall Convention Center, 101 Egan Drive, Juneau, AK 99801: Tribal consultation from 10 a.m. to 12 p.m. (Local Time); public meeting from 1 p.m. to 3 p.m. (Local Time)
- Thursday, January 30, 2020, at the Raven Landing Center, 1222 Cowles Street (Mailing: 949 McGown St.) Fairbanks, AK 99701: Tribal consultation from 10 a.m. to 12 p.m. (Local Time); public meeting from 1 p.m. to 3 p.m. (Local Time)
- Thursday, February 6, 2020, by teleconference
  - Tribal consultation 1 p.m. to 3 p.m. (Eastern Time): (888) 456–0351, Passcode 5309360
  - Public meeting 3:30 p.m. to 5:50 p.m. (Eastern Time): (888) 857–9837, Passcode 6239571

Please check the following website for any updates: *https://www.bia.gov/as-ia/raca/regulations-development-andor-under-review/alaska-ira.*

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best,

most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This action is not an E.O. 13771 regulatory action because this rule is not significant under Executive Order 12866.

C. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements and would not impose any economic effects on small governmental entities; rather, it addresses how Alaska Native entities may become acknowledged as an Indian Tribe pursuant to the Alaska IRA.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act because this rule affects only those Alaska Native entities that may seek to become acknowledged as an Indian Tribe pursuant to the Alaska IRA. This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector because this rule affects only those Alaska Native entities that may seek to become acknowledged as an Indian Tribe pursuant to the Alaska IRA. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined there are no substantial direct effects on federally recognized Indian Tribes that will result from this rulemaking because the rule is limited to entities in Alaska and the Department has conducted consultation with the federally recognized Indian Tribes in Alaska prior to promulgating this proposed rule. The Department will also be hosting consultation on this proposed rule.

J. Paperwork Reduction Act

OMB Control No. 1076–0104 currently authorizes the collections of information related to petitions for Federal acknowledgment under the Indian Reorganization Act (IRA) contained in 25 CFR part 83, with an expiration of October 31, 2021. With this rulemaking, we are seeking to revise this information collection to include collections of information related to petitions for Federal acknowledgment under the Alaska IRA and 25 CFR part 82. The current authorization totals an estimated 14,360 annual burden hours. This rule change would require a revision to an approved information collection under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* for which the Department is requesting OMB approval.

OMB Control Number: 1076–0104.

Title: Federal Acknowledgment as an Indian Tribe, 25 CFR 82 & 83.

Brief Description of Collection: This information collection requires entities seeking Federal recognition as an Indian Tribe to collect and provide information in a documented petition evidencing that the entities meet the criteria set out in the rule.

Type of Review: Revision of currently approved collection.

Respondents: Entities petitioning for Federal acknowledgment.

Number of Respondents: 2 on average (each year).

Number of Responses: 2 on average (each year).

Frequency of Response: On occasion.

Estimated Time per Response: (See table below).

Estimated Total Annual Hour Burden: 2,872 hours.

Estimated Total Annual Non-Hour Cost: $2,100,000.

OMB Control No. 1076–0104 currently authorizes the collections of information contained in 25 CFR part 83. If this proposed rule is finalized, DOI estimates that the annual burden hours for respondents (entities petitioning for Federal acknowledgment) will increase by approximately 1,436 hours, for a total of 2,872 hours.

K. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

M. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

N. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 82

Administrative practice and procedure, Indians-tribal government.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend 25 CFR chapter I, subchapter F, to add a new part 82 to read as follows:

PART 82—FEDERAL RECOGNITION OF ALASKA TRIBES UNDER THE ALASKA INDIAN REORGANIZATION ACT

Subpart A—General Provisions

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 5119, 5131; Public Law 103–454 Sec. 103 (Nov. 2, 1994); and 43 U.S.C. 1457.

Subpart A—General Provisions

§ 82.1 What terms are used in this part?

As used in this part:

Alaska IRA-eligible entity means a group of Indians in Alaska that was not, as of May 1, 1936, recognized by the Federal government as a band or Tribe, but that had a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district. All members of the entity must descend from Indians in Alaska.

ALJ means an administrative law judge in the Departmental Cases Hearings Division, Office of Hearings and Appeals (OHA), Department of the Interior, appointed under 5 U.S.C. 3105.

Assistant Secretary or *AS–IA* means the Assistant Secretary—Indian Affairs within the Department of the Interior, or that officer's authorized representative, but does not include representatives of the Office of Federal Acknowledgment.

Autonomous means independent of the control of any other Indian governing entity.

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

Common bond means a clearly defined common interest shared and acted upon by a group of Alaska Natives, distinguishable from other groups or associations.

Department means the Department of the Interior, including the Assistant Secretary and OFA.

Documented petition means the detailed arguments and supporting documentary evidence enumerated in § 82.21 and submitted by a petitioner claiming that it meets the mandatory criteria in § 82.11.

Federally recognized Indian Tribe or *Indian Tribe* means an entity appearing on the list published by the Department

of the Interior under the Federally Recognized Indian Tribe List Act of 1994, which the Secretary currently acknowledges as an Indian Tribe and with which the United States maintains a government-to-government relationship.

Indians in Alaska or *Alaska Native* means ''Eskimos and other aboriginal peoples of Alaska'' as stated in Section 19 of the Indian Reorganization Act.

Member means an individual who is recognized by the petitioner as meeting its membership criteria and who consents to being listed as a member of the petitioner.

Membership list means a list of all known current members of the petitioner, including each member's full name (including maiden name, if any), date of birth, and current residential address.

Office of Federal Acknowledgment or *OFA* means the Office of Federal Acknowledgment within the Office of the Assistant Secretary—Indian Affairs, Department of the Interior.

Petitioner means any Alaska Native entity that has submitted a documented petition to OFA requesting Federal acknowledgment as a federally recognized Indian Tribe.

Recognized by the Federal government means that the Federal government took an action clearly premised on identification of a Tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.

Secretary means the Secretary of the Interior within the Department of the Interior or that officer's authorized representative.

§ 82.2 What is the purpose of the regulations in this part?

The regulations in this part implement Federal statutes for the benefit of Indian Tribes by establishing procedures and criteria for the Department to use to determine whether an Alaska Native entity may be considered an Indian Tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians. A positive determination will result in acknowledgment of the petitioner's Tribal status and the petitioner's addition to the Department's list of federally recognized Indian Tribes. Federal recognition:

(a) Is a prerequisite to the protection, services, and benefits of the Federal Government available to those that qualify as Indian Tribes and possess a government-to-government relationship with the United States;

(b) Means the Tribe is entitled to the immunities and privileges available to other federally recognized Indian Tribes;

(c) Means the Tribe has the responsibilities, powers, limitations, and obligations of other federally recognized Indian Tribes; and

(d) Subjects the Indian Tribe to the same authority of Congress and the United States as other federally recognized Indian Tribes.

§ 82.3 To whom does this part apply?

This part applies only to Alaska Native entities in Alaska that are not federally recognized Indian Tribes.

§ 82.4 Who cannot be acknowledged under this part?

(a) The Department will not acknowledge:

(1) An association, organization, corporation, or entity of any character formed in recent times unless the entity has only changed form by recently incorporating or otherwise formalizing its existing politically autonomous community;

(2) A splinter group, political faction, community, or entity of any character that separates from the main body of a currently federally recognized Indian Tribe, petitioner, or previous petitioner unless the entity can clearly demonstrate it has functioned from May 1, 1936, until the present as a politically autonomous community and meets § 82.11(f), even though some have regarded them as part of or associated in some manner with a federally recognized Indian Tribe;

(3) An entity that is, or an entity whose members are, subject to congressional legislation terminating or forbidding the government-to-government relationship;

(4) An entity that previously petitioned and was denied Federal acknowledgment under these regulations (including reconstituted, splinter, spin-off, or component groups who were once part of previously denied petitioners);

(5) An entity that petitioned for Federal acknowledgment and was denied under Part 83 of this title;

(6) Any entity outside of Alaska;

(7) Any Alaska Native entity that was recognized by the Federal government on or before May 1, 1936; or

(8) Any Alaska Native entity that was recognized by the Federal government and included on the List after May 1, 1936.

(b) A petitioner that has been denied Federal acknowledgment under these regulations will be ineligible to seek Federal acknowledgment under Part 83 of this title.

§ 82.5 How does a petitioner obtain Federal acknowledgment under this part?

To be acknowledged as a federally recognized Indian Tribe under this part, a petitioner must meet the Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)), Political Authority (§ 82.11(c)), Governing Document (§ 82.11(d)), Descent (§ 82.11(e)), Unique Membership (§ 82.11(f)), and Congressional Termination (§ 82.11(g)) Criteria.

§ 82.6 What are the Department's duties?

(a) The Department will publish in the **Federal Register**, by January 30 each year, a list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians, in accordance with the Federally Recognized Indian Tribe List Act of 1994. The list may be published more frequently, if the Assistant Secretary deems it necessary.

(b) OFA will maintain guidelines limited to general suggestions on how and where to conduct research. The guidelines may be supplemented or updated as necessary. OFA will also make available examples of portions of documented petitions in the preferred format, though OFA will accept other formats.

(c) OFA will, upon request, give prospective petitioners suggestions and advice on how to prepare the documented petition. OFA will not be responsible for the actual research on behalf of the petitioner.

§ 82.7 [Reserved]

§ 82.8 May the deadlines in this part be extended?

(a) The AS–IA may extend any of the deadlines in this part upon a finding of good cause.

(b) For deadlines applicable to the Department, AS–IA may extend the deadlines upon the consent of the petitioner.

(c) If AS–IA grants a time extension, it will notify the petitioner and those listed in § 82.22(d).

§ 82.9 How does the Paperwork Reduction Act affect the information collections in this part?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0104. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or

regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW, Washington, DC 20240.

Subpart B—Criteria for Federal Acknowledgment

§ 82.10 How will the Department evaluate each of the criteria?

(a) The Department will consider a criterion in § 82.11 to be met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.

(1) The Department will not require conclusive proof of the facts relating to a criterion in order to consider the criterion met.

(2) The Department will require existence of community and political influence or authority 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 will not in themselves be a cause for denial of acknowledgment under these criteria.

(3) The petitioner may use the same evidence to establish more than one criterion.

(4) Evidence or methodology that the Department found sufficient to satisfy any particular criterion in a previous Part 82 decision will be sufficient to satisfy the criterion for a present petitioner.

(b) When evaluating a petition, the Department will:

(1) Allow criteria to be met by any suitable evidence, rather than requiring the specific forms of evidence stated in the criteria;

(2) Take into account historical situations and time periods for which evidence is demonstrably limited or not available;

(3) Take into account the limitations inherent in demonstrating historical existence of community and political influence or authority;

(4) Require a demonstration that the criteria are met on a substantially continuous basis, meaning without substantial interruption; and

(5) Apply these criteria in context with the history, regional differences, culture, and social organization of the petitioner.

§ 82.11 What are the criteria for acknowledgment as a federally recognized Indian Tribe?

The criteria for acknowledgment as a federally recognized Indian Tribe are delineated in paragraphs (a) through (g) of this section.

(a) *Alaska Native entity identification.* The petitioner has been identified as an Alaska Native entity on a substantially continuous basis since May 1, 1936. Evidence that the entity's character as an Alaska Native entity has from time to time been denied will not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining an entity's Alaska Native identity may include one or a combination of the following, as well as other evidence of identification.

(1) Identification as an Alaska Native entity by Federal authorities.

(2) Relationships with the Alaska State or territorial governments based on identification of the entity as Alaska Native.

(3) Dealings with a borough or other local government in a relationship based on the entity's Alaska Native identity.

(4) Identification as an Alaska Native entity by anthropologists, historians, and/or other scholars.

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

(6) Identification as an Alaska Native entity in relationships with Indian Tribes or with national, regional, or State Indian or Alaska Native organizations.

(7) Contemporaneous identification as an Alaska Native entity by the petitioner itself.

(b) *Community.* The petitioner comprises a distinct community and demonstrates that it evolved as such from the Alaska IRA-eligible entity in existence on May 1, 1936, until the present. Distinct community means an entity with consistent interactions and significant social relationships within its membership and whose members are differentiated from and distinct from nonmembers. Distinct community must be understood flexibly in the context of the history, geography, culture, and social organization of the entity. The petitioner may demonstrate that it meets this criterion by providing evidence for known adult members or by providing evidence of relationships of a reliable, statistically significant sample of known adult members.

(1) The petitioner may demonstrate that it meets this criterion at a given point in time by some combination of two or more of the following forms of evidence or by other evidence to show that a significant and meaningful portion of the petitioner's members constituted a distinct community at a given point in time:

(i) Rates or patterns of known marriages within the entity, or, as may be culturally required, known patterned out-marriages;

(ii) Social relationships connecting individual members;

(iii) Rates or patterns of informal social interaction that exist broadly among the members of the entity;

(iv) Shared or cooperative labor or other economic activity among members;

(v) Strong patterns of discrimination or other social distinctions by non-members;

(vi) Shared sacred or secular ritual activity;

(vii) Cultural patterns shared among a portion of the entity 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 entity as Alaska Native. They may include, but are not limited to, language, kinship organization or system, religious beliefs or practices, and ceremonies;

(viii) The persistence of a collective identity continuously over a period of more than 50 years, notwithstanding any absence of or changes in name;

(ix) Land set aside by the Federal Government, the Territorial government, or the State of Alaska for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period;

(x) Children of members from a geographic area attended Indian boarding schools or other Indian educational institutions, to the extent that supporting evidence documents the community claimed; or

(xi) A demonstration of political influence under the criterion in § 82.11(c)(1) will be evidence for demonstrating distinct community for that same time period.

(2) The petitioner will be considered to have provided more than sufficient evidence to demonstrate distinct community and political authority under § 82.11(c) at a given point in time if the evidence demonstrates 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 entity, and the balance of the entity maintains consistent interaction with some members residing in that area;

(ii) At least 50 percent of the members of the entity were married to other members of the entity;

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

(iv) There are distinct community social institutions encompassing at least 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or

(v) The petitioner has met the criterion in § 82.11(c) using evidence described in § 82.11(c)(2).

(c) *Political influence or authority.* The petitioner has maintained political influence or authority over its members as an autonomous entity from when it existed as the Alaska IRA-eligible entity on May 1, 1936, until the present. Political influence or authority means the entity uses a council, leadership, internal process, or other mechanism as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members, and/or representing the entity in dealing with outsiders in matters of consequence. This process is to be understood flexibly in the context of the history, culture, and social organization of the entity.

(1) The petitioner may demonstrate that it meets this criterion by some combination of two or more of the following forms of evidence or by other evidence that the petitioner had political influence or authority over its members as an autonomous entity:

(i) The entity is able to mobilize significant numbers of members and significant resources from its members for entity purposes.

(ii) Many of the membership consider issues acted upon or actions taken by entity leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication, or involvement in political processes by many of the entity's members.

(iv) The entity meets the criterion in § 82.11(b) at greater than or equal to the percentages set forth under § 82.11(b)(2).

(v) There are internal conflicts that show controversy over valued entity goals, properties, policies, processes, or decisions.

(vi) The government of a federally recognized Indian Tribe has a significant relationship with the leaders or the governing body of the petitioner.

(vii) Land set aside by the Federal Government, the territorial government, or the State of Alaska for petitioner, or collective ancestors of the petitioner, that is actively used for that time period.

(viii) There is a continuous line of entity leaders and a means of selection or acquiescence by a significant number of the entity's members.

(2) The petitioner will be considered to have provided sufficient evidence of political influence or authority at a given point in time if the evidence demonstrates any one of the following:

(i) Entity leaders or other internal mechanisms exist or existed that:

(A) Allocate entity resources such as land, residence rights, and the like on a consistent basis;

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

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

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

(ii) The petitioner has met the requirements in § 82.11(b)(2) at a given time.

(d) *Governing document.* The petitioner must provide:

(1) A copy of the entity's present governing document, including its membership criteria; or

(2) In the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures.

(e) *Descent.* The petitioner's membership consists of individuals who descend from the Alaska IRA-eligible entity that existed on May 1, 1936, or demonstrate Alaska Native descent. Those members who do not descend genealogically from members of the Alaska IRA-eligible entity that existed on May 1, 1936, must be able to document their integration into the petitioning group.

(1) All present members must be able to demonstrate Alaska Native descent.

(2) The petitioner satisfies this criterion by demonstrating descent either from the Alaska IRA-eligible entity that existed on May 1, 1936, or from an Alaska Native with sufficient evidence including, but not limited to, one or a combination of the following identifying present members or ancestors of present members as being descendants of the Alaska IRA-eligible entity that existed on May 1, 1936:

(i) Federal, State of Alaska, Territory of Alaska, or other official records or evidence;

(ii) Church, school, or other similar enrollment records;

(iii) Records created by historians and anthropologists in historical times;

(iv) Affidavits of personal knowledge by Alaska Native elders, leaders, or the petitioner's governing body;

(v) Records created by the group itself detailing the adoption or integration of other Alaska Natives into the entity; and

(vi) Other records or evidence acceptable to the Secretary.

(f) *Unique membership.* The petitioner's membership is composed principally of persons who are not members of any federally recognized Indian Tribe. However, a petitioner may be acknowledged even if its membership is composed principally of persons whose names have appeared on the membership list of, or who have been otherwise associated with, a federally recognized Indian Tribe, if the petitioner demonstrates that:

(1) It has functioned as a separate politically autonomous community by satisfying criteria in paragraphs (b) and (c) of this section; and

(2) Its members have provided written confirmation of their membership in the petitioner.

(g) *Congressional termination.* Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Department must determine whether the petitioner meets this criterion, and the petitioner is not required to submit evidence to meet it.

Subpart C—Process for Federal Acknowledgment

Documented Petition Submission and Review

§ 82.20 How does an entity request Federal acknowledgment?

Any entity that believes it can satisfy the criteria in this part may submit a documented petition under this part to: Department of the Interior, Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgement, 1849 C Street NW, Washington, DC 20240.

§ 82.21 What must a documented petition include?

(a) The documented petition may be in any readable form and must include the following:

(1) A certification, signed and dated by the petitioner's governing body, stating that it is the petitioner's official documented petition;

(2) A concise written narrative, with citations to supporting documentation, thoroughly explaining how the petitioner meets each of the criteria in § 82.11, except the Congressional Termination Criterion (§ 82.11(g)); it must also include the claim of an Alaska IRA-eligible entity that existed on May 1, 1936, required in § 82.21(5)—

(i) If the petitioner chooses to provide explanations of and supporting documentation for the Congressional

Termination Criterion (§ 82.11(g)), the Department will review them; but

(ii) The Department will conduct the research necessary to determine whether the petitioner meets the Congressional Termination Criterion (§ 82.11(g)).

(3) Supporting documentation cited in the written narrative and containing specific, detailed evidence that the petitioner meets each of the criteria in § 82.11;

(4) Membership lists and explanations, including:

(i) An official current membership list, separately certified by the petitioner's governing body, of all known current members of the petitioner, including each member's full name (including maiden name, if any), date of birth, and current residential address;

(ii) A statement describing the circumstances surrounding the preparation of the current membership list;

(iii) A copy of each available former list of members based on the petitioner's own defined criteria; and

(iv) A statement describing the circumstances surrounding the preparation of the former membership lists, insofar as possible.

(5) A clear, concise claim of an Alaska IRA-eligible entity that existed on May 1, 1936, as described in § 82.1, from which the petitioner will claim descent and continuous existence. The existence of this claimed entity, including satisfaction of the common bond standard as described in § 82.1, must be supported by contemporaneous documentation and evaluated using the reasonable likelihood of the validity of the facts standard.

(i) For the purposes of this requirement, having a common bond means that the petitioner must be bound together by their common interest and actions taken in common. The claimed common bond must be clear and capable of statement and definition, and the petitioner must be distinguishable from other groups or associations. Groups of Alaska Natives having a common bond must be substantial enough to permit participation by a substantial share of the persons within the entity.

(ii) There is no legal requirement that the members of a petitioning group must all live in one community or village to meet this criterion.

(iii) The claimed common bond must be understood flexibly in the context of the history, geography, culture, and social organization of the entity.

(b) If the documented petition contains any information that is protectable under Federal law such as the Privacy Act and Freedom of Information Act, the petitioner must provide a redacted version, an unredacted version of the relevant pages, and an explanation of the legal basis for withholding such information from public release. The Department will not publicly release information that is protectable under Federal law, but may release redacted information if not protectable under Federal law.

§ 82.22 What notice will the Office of Federal Acknowledgment (OFA) provide upon receipt of a documented petition?

When OFA receives a documented petition, it will do all of the following:

(a) Within 30 days of receipt, acknowledge receipt in writing to the petitioner.

(b) Within 120 days of receipt:

(1) Publish notice of receipt of the documented petition in the **Federal Register** and publish the following on the OFA website:

(i) The narrative portion of the documented petition, as submitted by the petitioner (with any redactions appropriate under § 82.21(b));

(ii) The name, location, and mailing address of the petitioner and other information to identify the entity;

(iii) The date of receipt;

(iv) The opportunity for individuals and entities to submit comments and evidence supporting or opposing the petitioner's request for acknowledgment within 120 days of the date of the website posting; and

(v) The opportunity for individuals and entities to request to be kept informed of general actions regarding a specific petitioner.

(2) Notify, in writing, the following:

(i) The governor of Alaska;

(ii) The attorney general of Alaska;

(iii) The government of the borough-level (or equivalent) jurisdiction in which the petitioner is located; and

(iv) Notify any recognized Tribe and any petitioner that appears to have a historical or present relationship with the petitioner or that may otherwise be considered to have a potential interest in the acknowledgment determination.

(c) Publish the following additional information to the OFA website:

(1) Other portions of the documented petition, to the extent feasible and allowable under Federal law, except documentation and information protectable from disclosure under Federal law, as identified by the petitioner under § 82.21(b) or otherwise;

(2) Any comments or materials submitted by third parties to OFA relating to the documented petition;

(3) Any substantive letter, proposed finding, recommended decision, and final determination issued by the Department;

(4) OFA's contact list for each petitioner, including the point of contact for the petitioner; attorneys, and representatives; and

(5) Contact information for any other individuals and entities that request to be kept informed of general actions regarding the petitioner.

(d) All subsequent notices that the Department provides under this part will be provided via the most efficient means for OFA to:

(1) The governor of Alaska;

(2) The attorney general of Alaska;

(3) The government of the borough-level (or equivalent) jurisdiction in which the petitioner is located;

(4) Any federally recognized Indian Tribe and any petitioner that appears to have a historical or present relationship with the petitioner or that may otherwise be considered to have a potential interest in the acknowledgment determination; and

(5) Any individuals and entities that request to be kept informed of general actions regarding a specific petitioner.

Review of Documented Petition

§ 82.23 How will OFA determine which documented petition to consider first?

(a) OFA will begin reviews of documented petitions in the order of their receipt.

(1) At each successive review stage, there may be points at which OFA is waiting on additional information or clarification from the petitioner. Upon receipt of the additional information or clarification, OFA will return to its review of the documented petition as soon as possible.

(2) To the extent possible, OFA will give highest priority to completing reviews of documented petitions it has already begun to review.

(b) OFA will maintain a numbered register of documented petitions that have been received.

§ 82.24 What opportunity will the petitioner have to respond to comments before OFA reviews the petition?

Before beginning review of a documented petition, OFA will provide the petitioner with any comments on the petition received from individuals or entities under § 82.22(b) and provide the petitioner with 90 days to respond to such comments. OFA will not begin review until it receives the petitioner's response to the comments, the petitioner requests that OFA proceed without its response, or the 90-day response period has expired and OFA has not received a response from the petitioner, whichever occurs earlier.

§ 82.25 Who will OFA notify when it begins review of a documented petition?

OFA will notify the petitioner and those listed in § 82.22(d) when it begins review of a documented petition and will provide the petitioner and those listed in § 82.22(d) with:

(a) The name, office address, and telephone number of the staff member with primary administrative responsibility for the petition;

(b) The names of the researchers conducting the evaluation of the petition; and

(c) The name of their supervisor.

§ 82.26 How will OFA review a documented petition?

(a) *Phase I.* When reviewing a documented petition, OFA will first determine if the petitioner meets the Governing Document Criterion (§ 82.11(d)), Descent Criterion (§ 82.11(e)), Unique Membership Criterion (§ 82.11(f)), and Termination Criterion (§ 82.11(g)), in accordance with the following steps.

(1) OFA will conduct a Phase I technical assistance review and notify the petitioner by letter of any deficiencies that would prevent the petitioner from meeting the Governing Document, Descent, Unique Membership, or Termination Criteria. Upon receipt of the letter, the petitioner must submit a written response that:

(i) Withdraws the documented petition to further prepare the petition;

(ii) Submits additional information and/or clarification; or

(iii) Asks OFA to proceed with the review.

(2) Following the receipt of the petitioner's written response to the Phase I technical assistance review, OFA will provide the petitioner with:

(i) Any comments and evidence OFA may consider that the petitioner does not already have, to the extent allowable by Federal law; and

(ii) The opportunity to respond in writing to the comments and evidence provided.

(3) OFA will publish a negative proposed finding if it issues a deficiency letter under paragraph (a)(1)(i) of this section, and the petitioner:

(i) Does not withdraw the documented petition or does not respond with information or clarification sufficient to address the deficiencies; or

(ii) Asks OFA in writing to proceed with the review.

(4) OFA will publish a positive proposed finding without a comment period and proceed to Phase II if it determines that the petitioner meets the Governing Document, Descent, Unique Membership, and Termination criteria.

(5) If a criterion cannot be properly evaluated during Phase I, the Phase I proposed finding will describe OFA's evaluation and findings under that criterion but reserve its conclusion for the Phase II proposed finding.

(b) *Phase II.* If the petitioner meets the Governing Document, Descent, Unique Membership, and Termination criteria, OFA will next review whether the petitioner meets the Alaska Native Entity Identification Criterion (§ 82.11(a)), the Community Criterion (§ 82.11(b)), and the Political Influence/Authority Criterion (§ 82.11(c)).

(1) OFA will conduct a Phase II technical assistance review and notify the petitioner by letter of any deficiencies that would prevent the petitioner from meeting these criteria. Upon receipt of the letter, the petitioner must submit a written response that:

(i) Withdraws the documented petition to further prepare the petition;

(ii) Provides additional information and/or clarification; or

(iii) Asks OFA to proceed with the review.

(2) Following receipt of the petitioner's written response to the Phase II technical assistance review, OFA will provide the petitioner with:

(i) Any comments and evidence OFA may consider in preparing the proposed finding that the petitioner does not already have, to the extent allowable by Federal law; and

(ii) The opportunity to respond in writing to the comments and evidence provided.

(3) OFA will then review the record to determine whether the Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)) and Political Authority (§ 82.11(c)) Criteria are met.

(4) OFA will publish a negative proposed finding if it issues a deficiency letter under paragraph (a)(1) of this section, and the petitioner:

(i) Does not withdraw the documented petition or does not respond with information or clarification sufficient to address the deficiencies; or

(ii) Asks OFA in writing to proceed with the review.

(5) OFA will publish a positive proposed finding if it determines that the petitioner meets the Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)) and Political Authority (§ 82.11(c)) Criteria.

§ 82.27 What are technical assistance reviews?

Technical assistance reviews are preliminary reviews for OFA to tell the petitioner where there appear to be evidentiary gaps for the criteria that will be under review in that phase and to provide the petitioner with an opportunity to supplement or revise the documented petition.

§ 82.28 [Reserved]

§ 82.29 What will OFA consider in its reviews?

(a) In any review, OFA will consider the documented petition and evidence submitted by the petitioner, any comments and evidence on the petition received during the comment period, and petitioners' responses to comments and evidence received during the response period.

(b) OFA may also:

(1) Initiate and consider other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status; and

(2) Request and consider timely submitted additional explanations and information from commenting parties to support or supplement their comments on the proposed finding and from the petitioner to support or supplement their responses to comments.

(c) OFA must provide the petitioner with the additional material obtained in paragraph (b) of this section, and provide the petitioner with the opportunity to respond to the additional material. The additional material and any response by the petitioner will become part of the record.

§ 82.30 Can a petitioner withdraw its documented petition?

A petitioner can withdraw its documented petition at any point in the process but the petition will be placed at the end of the numbered register of documented petitions upon re-submission and may not regain its initial priority number.

§ 82.31 Can OFA suspend review of a documented petition?

(a) OFA can suspend review of a documented petition, either conditionally or for a stated period, upon:

(1) A showing to the petitioner that there are technical or administrative problems that temporarily preclude continuing review; and

(2) Approval by the Assistant Secretary.

(b) Upon resolution of the technical or administrative problems that led to the suspension, the documented petition will have the same priority on the numbered register of documented petitions to the extent possible.

(1) OFA will notify the petitioner and those listed in § 82.22(d) when it

suspends and when it resumes review of the documented petition.

(2) Upon the resumption of review, OFA will have the full six months to issue a proposed finding.

Proposed Finding

§ 82.32 When will OFA issue a proposed finding?

(a) OFA will issue a proposed finding as shown in table 1:

TABLE 1 TO PARAGRAPH (a)

OFA must	within . . .
(1) Complete its review under Phase I and either issue a negative proposed finding and publish a notice of availability in the **Federal Register**, or proceed to review under Phase II.	six months after notifying the petitioner under § 82.25 that OFA has begun review of the petition.
(2) Complete its review under Phase II and issue a proposed finding and publish a notice of availability in the **Federal Register**.	six months after the deadline in paragraph (a)(1) of this section.

(b) The times set out in paragraph (a) of this section will be suspended any time the Department is waiting for a response or additional information from the petitioner.

(c) OFA will strive to limit the proposed finding and any reports to no more than 100 pages, cumulatively, excluding source documents.

§ 82.33 What will the proposed finding include?

The proposed finding will summarize the evidence, reasoning, and analyses that are the basis for OFA's proposed finding regarding whether the petitioner meets the applicable criteria.

(a) A Phase I negative proposed finding will address that the petitioner fails to meet any one or more of the following criteria: Governing Document (§ 82.11(d)), Descent (§ 82.11(e)), Unique Membership (§ 82.11(f)), or Congressional Termination (§ 82.11(g)).

(b) A Phase II proposed finding will address whether the petitioner meets the following criteria: Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)), and Political Influence/Authority (§ 82.11(c)).

§ 82.34 What notice of the proposed finding will OFA provide?

In addition to publishing notice of the proposed finding in the **Federal Register**, OFA will:

(a) Provide copies of the proposed finding and any supporting reports to the petitioner and those listed in § 82.22(d); and

(b) Publish the proposed finding and reports on the OFA website.

Proposed Finding—Comment and Response Periods, Hearing

§ 82.35 What opportunity to comment will there be after OFA issues the proposed finding?

(a) Publication of notice of the proposed finding will be followed by a 120-day comment period. During this comment period, the petitioner or any individual or entity may submit the following to OFA to rebut or support the proposed finding:

(1) Comments, with citations to and explanations of supporting evidence; and

(2) Evidence cited and explained in the comments.

(b) Any individual or entity that submits comments and evidence must provide the petitioner with a copy of their submission.

§ 82.36 What procedure follows the end of the comment period on a positive proposed finding?

(a) At the end of the comment period for a positive Phase II proposed finding, AS–IA will automatically issue a final determination acknowledging the petitioner as a federally recognized Indian Tribe if OFA does not receive a timely objection with evidence challenging the proposed finding that the petitioner meets the acknowledgment criteria.

(b) If OFA has received a timely objection and evidence challenging the positive Phase II proposed finding, then the petitioner will have 60 days to submit a written response, with citations to and explanations of supporting evidence, and the supporting evidence cited and explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

§ 82.37 What procedure follows the end of the comment period on a negative proposed finding?

If OFA has received comments on the negative proposed finding, then the petitioner will have 60 days to submit a written response, with citations to and explanations of supporting evidence, and the supporting evidence cited and explained in the response. The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this response period.

§ 82.38 What options does the petitioner have at the end of the response period on a negative proposed finding?

(a) At the end of the response period for a negative proposed finding, the petitioner will have 60 days to elect to challenge the proposed finding before an ALJ by sending to the Departmental Cases Hearings Division, Office of Hearings and Appeals, with a copy to OFA a written election of hearing that lists:

(1) Grounds for challenging the proposed finding, including issues of law and issues of material fact; and

(2) The witnesses and exhibits the petitioner intends to present at the hearing, other than solely for impeachment purposes, including:

(i) For each witness listed, his or her name, address, telephone number, and qualifications and a brief narrative summary of his or her expected testimony; and

(ii) For each exhibit listed, a statement confirming that the exhibit is in the administrative record reviewed by OFA or is a previous final determination of a petitioner issued by the Department.

(b) The Department will not consider additional comments or evidence on the proposed finding submitted by individuals or entities during this period.

§ 82.39 What is the procedure if the petitioner elects to have a hearing before an administrative law judge (ALJ)?

(a) *OFA action if petitioner elects a hearing.* If the petitioner elects a hearing to challenge the proposed finding before an ALJ, OFA will provide to the Departmental Cases Hearings Division, Office of Hearings and Appeals, copies of the negative proposed finding, critical documents from the administrative record that are central to the portions of the negative proposed finding at issue, and any comments and evidence and

responses sent in response to the proposed finding.

(1) Within 5 business days after receipt of the petitioner's hearing election, OFA will send notice of the election to each of those listed in § 82.22(d) and the Departmental Cases Hearings Division by express mail or courier service for delivery on the next business day.

(2) OFA will retain custody of the entire, original administrative record.

(b) *Hearing process.* The assigned ALJ will conduct the hearing process in accordance with 43 CFR part 4, subpart K.

(c) *Hearing record.* The hearing will be on the record before an ALJ. The hearing record will become part of the record considered by AS–IA in reaching a final determination.

(d) *Recommended decision.* The ALJ will issue a recommended decision and forward it along with the hearing record to the AS–IA in accordance with the timeline and procedures in 43 CFR part 4, subpart K.

AS–IA Evaluation and Preparation of Final Determination

§ 82.40 When will the Assistant Secretary begin review?

(a) AS–IA will begin his/her review in accordance with table 1:

TABLE 1 TO PARAGRAPH (a)

If the PF was:	And:	AS–IA will begin review upon:
(1) Negative	The petitioner did not elect a hearing,	Expiration of the period for the petitioner to elect a hearing.
(2) Negative	The petitioner elected a hearing,	Receipt of the ALJ's recommended decision.
(3) Positive	No objections with evidence were received,	Expiration of the comment period for the positive PF.
(4) Positive	Objections with evidence were received,	Expiration of the period for the petitioner to respond to comments on the positive PF.

(b) AS–IA will notify the petitioner and those listed in § 82.22(d) of the date he/she begins consideration.

§ 82.41 What will the Assistant Secretary consider in his/her review?

(a) AS–IA will consider all the evidence in the administrative record, including any comments and responses on the proposed finding and the hearing transcript and recommended decision.

(b) AS–IA will not consider comments submitted after the close of the comment period in § 82.35, the response period in § 82.36 or § 82.37, or the hearing election period in § 82.38.

§ 82.42 When will the Assistant Secretary issue a final determination?

(a) AS–IA will issue a final determination and publish a notice of availability in the **Federal Register** within 90 days from the date on which he/she begins its review. AS–IA will also:

(1) Provide copies of the final determination to the petitioner and those listed in § 82.22(d); and

(2) Make copies of the final determination available to others upon written request.

(b) AS–IA will strive to limit the final determination and any reports to no more than 100 pages, cumulatively, excluding source documents.

§ 82.43 How will the Assistant Secretary make the determination decision?

(a) AS–IA will issue a final determination granting acknowledgment as a federally recognized Indian Tribe when AS–IA finds that the petitioner meets the Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)) and Political Authority (§ 82.11(c)), Governing Document (§ 82.11(d)), Descent (§ 82.11(e)), Unique Membership (§ 82.11(f)), and Congressional Termination (§ 82.11(g)).

(b) AS–IA will issue a final determination declining acknowledgment as a federally recognized Indian Tribe when he/she finds that the petitioner:

(1) In Phase I, does not meet the Governing Document (§ 82.11(d)), Descent (§ 82.11(e)), Unique Membership (§ 82.11(f)), or Congressional Termination (§ 82.11(g)) Criteria: or;

(2) In Phase II, does not meet the Alaska Native Entity Identification (§ 82.11(a)), Community (§ 82.11(b)) and Political Authority (§ 82.11(c)) Criteria.

§ 82.44 Is the Assistant Secretary's final determination final for the Department?

Yes. The AS–IA's final determination is final for the Department and is a final agency action under the Administrative Procedure Act (5 U.S.C. 704).

§ 82.45 When will the final determination be effective?

The final determination will become immediately effective. Within 10 business days of the decision, the Assistant Secretary will submit to the **Federal Register** a notice of the final determination to be published in the **Federal Register**.

§ 82.46 How is a petitioner with a positive final determination integrated into Federal programs as a federally recognized Indian Tribe?

(a) Upon acknowledgment, the petitioner will be a federally recognized Indian Tribe entitled to the privileges and immunities available to federally recognized Indian Tribes. It will be included on the list of federally recognized Indian Tribes in the next scheduled publication.

(b) Within six months after acknowledgment, the appropriate Bureau of Indian Affairs Regional Office will consult with the newly federally recognized Indian Tribe and develop, in cooperation with the federally recognized Indian Tribe, a determination of needs and a recommended budget. These will be forwarded to the Assistant Secretary. The recommended budget will then be considered with other recommendations by the Assistant Secretary in the usual budget request process.

(c) While the newly federally acknowledged Indian Tribe is eligible for benefits and services available to federally recognized Indian Tribes, acknowledgment as a federally recognized Indian Tribe does not create immediate access to existing programs. The newly federally acknowledged Indian 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 will follow a determination of the needs of the newly federally acknowledged Indian Tribe.

Dated: November 15, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–27998 Filed 12–31–19; 8:45 am]

BILLING CODE 4337–15–P