

## § 83.8

## 25 CFR Ch. I (4–1–01 Edition)

that its members have provided written confirmation of their membership in the petitioning group.

(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

### § 83.8 Previous Federal acknowledgment.

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

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

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

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

(2) Evidence that the group has been denominated a tribe by act of Congress or Executive Order.

(3) Evidence that the group has been treated by the Federal Government as having collective rights in tribal lands or funds.

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

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

portion that has evolved from that entity.

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

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

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

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

### § 83.9 Notice of receipt of a petition.

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

affecting the petition. The notice shall also indicate where a copy of the letter of intent and the documented petition may be examined.

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

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

**§ 83.10 Processing of the documented petition.**

(a) Upon receipt of a documented petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe. The review shall include consideration of the documented petition and the factual statements contained therein. The Assistant Secretary may also initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status. The Assistant Secretary may likewise consider any evidence which may be submitted by interested parties or informed parties.

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

(1) This technical assistance review does not constitute the Assistant Secretary's review to determine if the petitioner is entitled to be acknowledged as an Indian tribe. It is a preliminary review for the purpose of providing the petitioner an opportunity to supplement or revise the documented petition prior to active consideration. Insofar

as possible, technical assistance reviews under this paragraph will be conducted in the order of receipt of documented petitions. However, technical assistance reviews will not have priority over active consideration of documented petitions.

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

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

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

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

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