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August 12, 2013

Ms. Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action – Indian Affairs
1849 C Street, NW
MS 4141-MIB
Washington, DC 20240

Dear Ms. Appel:

The Virginia Indian Tribal Alliance for Life (VITAL) is a coalition of six Virginia Tribes: Chickahominy, Chickahominy Indians – Eastern Division, Monacan, Nansemond, Rappahannock and Upper Mattaponi. We are all officially recognized by the Commonwealth of Virginia and are currently working towards federal recognition through the 25 CFR Part 83 process as well as through federal legislation.

The member tribes of VITAL welcome this opportunity to comment on proposed changes to 25 CFR Part 83 "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe". We support any revisions which make the process more equitable for petitioning tribes and we endorse the following proposed changes:

1. The elimination of a **letter of intent**;
2. The **elimination of criteria (a)**, which required evidence from outside observers of the petitioning community's continuing existence;
3. **The establishment of 1934** as the year from which a community must prove continued distinct existence and maintenance of political influence over members of the community;
4. **Evaluation of criteria in context** of the history, geography, culture and social organization of the petitioning group;
5. The inclusion of **expedited determinations**, both positive and negative;
6. The opportunity for tribes that have previously received negative findings to **reapply under the new rules**.

In addition, we would like to suggest the following revisions:

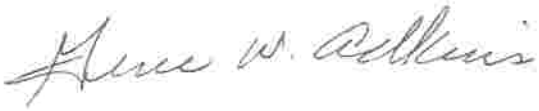
1. Statement that the goal is to make the regulations more consistent with the way in which **tribes received favorable determinations** when the administrative recognition process was first instituted.
2. A statement that the **Department of Interior's aim is to make the process less cumbersome** for petitioners by making it policy-based and more predictable, instead of an overly rigorous scientific evaluation.
3. Statement of the **importance of using 1934, the year of the Indian Reorganization Act,** as the starting point, instead of the date of "first contact" with non-Indians.
4. A statement clearly indicating that **the burden of proof shall be on the Department** instead of the petitioner, and evidence provided by the petitioner should always be viewed in a manner most favorable to the petitioner.
5. **The Assistant Secretary should have greater control** over the Office of Federal Acknowledgment (OFA), with OFA playing more of an advisory and supportive role, leaving **final determination decisions** to the Assistant Secretary.

6. Ensure that **OFA staff is trained, certified, and adheres to Genealogical Proof Standards** to mitigate unfair and unreasonable negative findings related to an application.
7. OFA should operate under **a "more likely than not" standard,** with the understanding that the "benefit of the doubt" should always be in favor of the petitioner.
8. OFA should be held to an **objective standard of accountability** with the regulations clarifying timelines in which OFA must complete its tasks and provide for consequences when those timelines are not met.
9. The new regulations should directly **overrule past OFA precedents** in negative findings because they will be inconsistent with the new regulations.
10. Petitions for acknowledgement should **not need to exceed 50 pages**, excluding supportive documentation. Petitions should be able to be submitted in electronic format.
11. **An evidentiary list should be added** to the regulations so Tribes which can produce this evidence are presumed to have met the evidentiary standard to be a tribe, including but not limited to: a community of Indians with individual members having attended federal, or closely related mission, Indian boarding schools; attorney contracts approved by DOI; claims, court filings and decisions.
12. It should be **presumed that if a tribe existed in 1934**, then that tribe descended from an historic tribe at the time of first contact, shifting the meaning of "historic" to refer to distinct communities identified as such by 1934.
13. In proving Indian identity and continuous community, greater evidentiary weight should be given to communities that have **maintained their indigenous language** in a continuous fashion.
14. **The continuance of distinct cultural patterns and practices**, as defined by the petitioner, should be considered evidence of community and potentially as a form of governance. Such evidence of governance should also include religious, educational, political, or cultural practices, as well as tribal control over schools, churches, clubs, or similar entities. Internal divisions and political struggles between clans or families can also demonstrate the existence of a tribal entity, however informal.
15. **A high rate of endogamy** within the petitioning group, or with other American Indian Tribes, should be viewed as a form of political control by the community upon individual members.
16. **Criterion (e) shall be satisfied if at least 50% of the petitioner's membership** descends from a distinct community identified by 1934 and specifically identified as an American Indian community by 1954. Identifying evidence may include citation by historians, anthropologists and ethnologists, citations in government reports and correspondence, studies by agencies such as the Smithsonian and others serving as "arms of the government," those receiving or determined eligible for government services while also being identified as a community, and actions of a colonial, state, or federal agency segregating the community from Blacks and Whites (i.e.: by designated reservations, identified geographic areas, or segregated schools).
17. **Greater weight should be given to the supportive testimony of federally recognized tribes** which have viewed the petitioner as a historic tribe. However, the lack of supportive testimony or the submission of negative testimony from any entity should not be weighed against the petitioner in the application process, as it could be politically motivated and not reflective of the history of a petitioner or worthiness of a petition.
18. **Expedited positive decisions should also allow for the continued presence of an identified community** in an established "Indian Town," former reservation, or similar historically-designated geographic area, even in the absence of an official state reservation. This allows for colonial practices that resulted in continuing tribal communities on land previously designated for their use. Demonstrating the continued presence of any portion of the petitioner's population in its historic area or areas should be included as a qualifying characteristic.
19. **Previous acknowledgement should not require a "government-to-government" relationship**, but mere acknowledgment of the existence of an Indian community by 1978, when the federal acknowledgment process was established. This acknowledgement may be through listing as a distinct Indian community in a report or study conducted by an "arm of the government"; or receiving services as an Indian community, or having individual members receiving services because of their connection with the Indian community. An Indian community should only have to establish continuance from the point of that identification to meet the standard for previous acknowledgment. Such proof should be sufficient to have the Assistant Secretary restore recognition or correct the error of the tribe not being listed by the BIA as a federally recognized tribe. A petitioner should not be penalized for the lack of action, error, or irresponsible conduct of the government.
20. **Gaps of less than 20 years should not be negatively interpreted** when the strength of the evidence prior to and after such gaps demonstrate continuity. Gaps of up to 25 years should be taken into consideration if the weight of the evidence can demonstrate community continuity.

21. **Regional history** should be considered so that the petitioner is not penalized by historical situations which may affect the availability of evidence.
22. Historic or modern third party **nomenclature racially misidentifying or mislabeling a tribe** shall not be weighed against a tribe, but may be considered as evidence supporting the petitioner's claim of being a "distinct" community.
23. **Third parties should not be able to derail a positive final decision** unless fraud is being alleged against the petitioner's claims and there is evidence to substantiate the need for further investigation.
24. **Tribes should not have to supply additional evidence** after submission if OFA does not review the application in a timely manner.
25. A petitioner should have the right to **appeal a negative decision to OHA and/or the IBIA**, with the petitioner also having the ability to provide additional evidence to further strengthen their petition.

I thank you for this opportunity to comment and we look forward to reviewing the next round of proposed changes.

Sincerely,



Gene W. Adkins, Chief
Eastern Division Chickahominy Indians