

# 1 Supporting Statement for Paperwork Reduction Act Submissions

## OMB Control Number 1076-0104

**Terms of Clearance:** None-

### General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

### Specific Instructions

#### A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The courts have held that the United States has a trust responsibility to American Indian groups that are Indian tribes whether that responsibility is currently acknowledged or not as in Passamaquoddy Tribe et al. V. Morton et al., 528 F.2d 370 1st Cir. 1975. The courts have also held that petitions for Federal acknowledgment as an Indian tribe must be considered in a timely fashion as in Stillaguamish Tribe of Indians. V. Thomas S. Kleppe et al., Civil Action 75-1718, U.S.D.C. D.C. The Department of the Interior (Department) received an increasing number of requests for acknowledgment beginning in the early 1970's. In 1978, the Department established the present administrative process under regulations (25 CFR 54 renumbered as 25 CFR 83). The Department developed these regulations to replace the previous less formal and less systematic process, and to provide a uniform, orderly and accurate approach to determining whether to acknowledge the existence of a petitioning Indian group as a Federally recognized Indian tribe.

There continue to be additional requests for acknowledgment. At the time the Department established the regulations in 1978, there were 40 requests for acknowledgment, although many were only letters of intent. As of February 2006, the Department has received a total of 314 letters of intent. Of this number 232 groups have submitted only letters of intent or partially documented petitions, and are not ready for evaluation. The remaining 82 have submitted completed petitions. Of this number, the Department has resolved 41 and 19 have been resolved

by Congress or through other means. The current workload consists of 10 petitions under active consideration, while 9 petitions are ready and waiting for active consideration.

The Office of Federal Acknowledgment (OFA) within the Office of the Assistant Secretary - Indian Affairs of the Department implements Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83), *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe*. The acknowledgment process is the Department's administrative process by which petitioning groups that meet the criteria are given Federal "acknowledgment" as Indian tribes and by which they become eligible to receive services provided to members of Indian tribes.

Through the Department's Office of the Solicitor, OFA makes recommendations to the Associate Deputy Secretary. The Associate Deputy Secretary has the authority to make the decision whether to acknowledge tribal existence and establish a government-to-government relationship or to deny acknowledging a petitioning group as an Indian tribe.

By applying anthropological, genealogical, and historical research methods, OFA reviews, verifies, and evaluates groups' petitions for Federal acknowledgment as Indian tribes. These petitions contain information and evidence that pertain to the mandatory criteria that the petitioner must provide. The collection of this information is necessary in order for the Department to make these reviews, verifications, and evaluations.

OFA makes recommendations for proposed findings and final determinations to the Associate Deputy Secretary, consults with petitioners and third parties, provides copies of 25 CFR Part 83 and its guidelines, prepares technical assistance review letters, maintains petitions and administrative correspondence files, and conducts special research projects for the Department.

At present, the regulations provide a multi-phased process with a minimum of 25 months' review and due process per petitioner. With extension, appeals, litigation, Freedom of Information Act requests, and other administrative duties, the process takes longer.

There are no laws or regulations which require groups to submit petitions. The authority for acknowledging Indian tribes rests with the Secretary's general authority to deal with Indian tribes. Court decisions dating back to the 1901 Montoya v. United States (180 U.S. 261,268, 1901) and earlier decisions have defined an Indian tribe on essentially the same grounds as those in the acknowledgment regulations. Attached is 25 CFR 83, the regulation that the Department uses.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. [Be specific. If this collection is a form or a questionnaire, every question needs to be justified.]**

The information gathered by petitioners under these regulations is used by the Assistant Secretary - Indian Affairs to establish whether a petitioning group has the characteristics necessary to be acknowledged as an Indian tribe and to establish a government-to-government

relationship with the United States. The OFA professional experts use the information to prepare an evaluation of a petitioner under the regulations and to recommend a decision for the Assistant Secretary. Anthropologists, genealogists, and historians are the Department's professional staff who prepare the recommendations for the Assistant Secretary – Indian Affairs. Petitioners requesting acknowledgment of existence as an Indian tribe must address seven criteria which are stated in section 83.7 of 25 CFR 83.

**83.7 (a)** requires the petitioner to provide evidence the continuous Indian identification of the group by non-members; this prevents self-identification. A variety of sources may be used, such as the Federal government, States, scholars, and other Indian tribes.

**83.7 (b)** requires the petitioner to demonstrate that the petitioning group has maintained significant social relationships among its members; has remained socially distinct from non-Indians. This criterion demonstrates tribal existence.

**83.7 (c)** requires the petitioner to demonstrate that it has maintained some significant degree of political influence among the members. This criterion demonstrates tribal existence.

**83.7 (d)** requires the petitioner to provide important technical information concerning how the group defines membership and the basic rules by which the group is governed. This information is essential to the evaluations made under criteria found in **83.7 (c)** and **83.7 (e)**.

**83.7 (e)** requires the petitioner to demonstrate tribal ancestry of the group. It defines a variety of alternative evidence that can be used. Verification of ancestry is essential to the goal of acknowledgment criteria used to establish continuity of the group as a distinct body of people since first contact with Europeans. BIA forms 8304 (Individual History Chart), 8305 (Ancestry Chart) and 8306 (Membership Roll) are optional in providing a complete list of members of the group seeking recognition. Groups may submit the information on their own forms, and routinely do so.

**83.7 (f)** requires the petitioner to demonstrate that its members are not predominately members of an already recognized tribe. This requirement helps support the validity that the petitioner is a distinct group and avoids the potential of dividing already recognized Indian tribes.

**83.7 (g)** requires the petitioner to demonstrate it and its members are not subject of legislation which forbids the acknowledgment of a Federal relationship. This information is used to determine whether there is a legal prohibition which prevents acknowledgment of a petitioning group through the administrative process.

Determination of tribal status has historically been a function of the Executive branch of government, together with or alternatively to the Congress. The courts have held that the Department has the responsibility to acknowledge Indian tribes. If the Department did not respond to requests for acknowledgment, the Department would be subject to a series of lawsuits by groups seeking acknowledgment. This would require that the acknowledgment process be conducted under the constraints and limitations of an adversarial situation. It would incur the added costs of litigation. The Department, in establishing the current process, considered that an

administrative determination rather than a judicial one provided the best forum to resolve the complex technical issues that arise in making an acknowledgment determination. The Federal court has recently affirmed the preferability of the administrative process in Golden Hill Paugussett Tribe of Indians, et al. Vs Lowell P. Weicker, Jr., et al. U.S. Dist. Conn., D. 2:92CB00738 (PCD). While Congress, from time to time, has legislatively recognized Indian tribes, there is no expectation that Congress will grant recognition to all of the numerous groups currently seeking it. The balance, which is currently the majority, would seek Departmental action as the alternative.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements].**

During December, 2001, Indian Affairs (IA) was forced to disconnect from the internet by a court order issued by the judge in the Cobell litigation. Hence, IA cannot implement GPEA until reconnection to the internet is completed.

Petitioners are given technical assistance in the use of computers to organize and prepare membership lists and related genealogical information. Most of the information necessary for a petition, however, is in the group's files or in archives, or must be collected by interview. Thus, it is not collected or organized as part of any technological information system. There are no legal obstacles to reducing the burden through means of information technology.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

Each information collection is unique to the group involved. No similar information collection is made by the Federal government. The OFA, in giving technical assistance, attempts to make petitioners aware of existing sources and scholars who may have done work which can be adapted in part to the preparation of a petition. However, unrecognized groups are inherently poorly known and little-studied; hence there are usually few ready-made sources to build upon. Petitioning groups have not been served by the Federal government as recognized Indian tribes; consequently, data have been infrequently collected on them.

- 5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.**

Where scholarly or other studies or judicial proceedings already exist which can provide part of the required information, petitioners incorporate them into petitions or utilize them in preparing petitions. Groups are aware of research efforts by other groups in the same area and sometimes

may be able to utilize documents that pertain to the history of more than one group. During technical assistance letters and meetings, the professional staff directs the petitioner to sources.

Some of the petitioning groups are small entities because of the unique and perpetual nature of the Federal-tribal relationship, this information collection cannot be reduced and still allow determinations to be made on the best available data. Efforts are made to minimize the burden on all petitioning groups. Smaller petitioners have a somewhat smaller burden than larger ones which are otherwise similar in historical character. This is because the smaller the number of members, the smaller the amount of genealogical information it is necessary to collect.

If the Department attempted to collect all of the necessary information itself, it would require a vastly larger staff and the consideration of each group would be extended by years in order to obtain the equivalent information about the group. However, most of the information is more easily obtained by the petitioning group itself at less expense and time. Important portions of the information could not be reasonably obtained at all by government researchers. While many documentary sources are public ones, key documentary sources for petitions are held by the petitioning group, or by individual members who are unlikely to give full access to government researchers. Petitions also require careful field investigation to gather oral history and testimony and to determine the social and political character of the present membership. Because many sensitive issues are involved in conducting such field research, it is best carried out by researchers working for the group, together with the group members. Finally, the compilation of the membership list and the genealogical information used by the group to determine eligibility for membership is a central function of the government of the group. It is information which is by and large already compiled by groups and involves sources which are only available to the petitioning group itself.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

This is a one-time only collection of data and as such cannot be collected less frequently. The courts have determined that the Federal government has a responsibility to all historical Indian tribes, whether presently recognized or not. Consequently, the Secretary has the responsibility and the authority to determine which unrecognized groups are Indian tribes. If the information was not collected, the Department could not carry out its responsibility to acknowledge historic Indian tribes.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- \* **requiring respondents to report information to the agency more often than quarterly;**
- \* **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- \* **requiring respondents to submit more than an original and two copies of any document;**

- \* **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- \* **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- \* **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- \* **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- \* **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no circumstances which require collection of data in a manner inconsistent with the guidelines in 5 CFR 1320.5 (d) (2).

8. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past three years] and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

Communication between petitioners preparing information and the OFA is an on-going process. Petitioners are encouraged to have their researchers meet with the OFA staff before beginning work and to communicate on a regular basis throughout the process. A major purpose of this is to discuss with the petitioner exactly what kinds of information are needed, so that petitioners do not expend scarce resources gathering unnecessary information. Contacts allow a petitioner to determine which documents and other information are actually needed, which can be ignored, and that the OFA staff can obtain without assistance from the petitioner. In particular, the regulations call for a technical assistance review after an initial documented petition is submitted, so that the petitioner is formally advised concerning what additional information is required.

A conference of experts in anthropology, history, and genealogy was held in January 1992 to review the acknowledgment process and advise the Department concerning needed improvements. This, in part, concerned the amount of information that was necessary to adequately demonstrate historical tribal existence. The proposed revised regulations issued in 1991 benefited from a similar conference held in 1984, which provided a series of recommendations.

Proposed revised regulations were published in September 1991 to respond to extensive criticism and comment that had been received over the years and to incorporate the experience of 13 years of working with petitioners and interested parties. Nine public meetings were held around the country, and notice of the proposed revised regulations were sent to all petitioning groups, recognized tribes, Indian legal organizations, states, colleges and all other known parties with an interest in the acknowledgment process. A copy of the revised regulations describing the Federal Register notice of public meetings and comments is attached.

Numerous comments were received that the requirements of the regulations were too burdensome. Some of these comments concerned the difficulty of gathering that information. Some commentors felt that clearer standards of evidence were required and that information requirements could be clearer. Other commentors cautioned against lowering the standards for demonstration of tribal existence because of the permanence and significance of the status of a recognized tribe. Only one commentor specifically addressed the number of burden hours stated in the proposed revised regulations. This commentor felt that the actual burden was higher than the stated burden.

The revised regulations contain a number of new provisions which reduce the amount of information to be collected. No specific format for response is required; the regulations specify that a petitioner may use any format desired. The forms included in this submission are not mandatory. A Federal Register notice advising of our intent to renew this collection was published October 30, 2006 (71 FR 63345). No comments were received.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

No gifts or payment will be provided to the respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

All records provided to the OFA are available for review by the public and interested parties to acknowledgment decisions on the same basis as other records of the Department, except for genealogical materials. These are, in part, protected in the Privacy Act (5 USC 522a) System of Records 7 of the BIA. Other genealogical materials whose release would constitute an unwarranted invasion of privacy are withheld under Exemption 6 of the Freedom of Information Act unless a requestor can clearly establish a public interest in access to these records which outweighs the degree of invasion of privacy involved. This is consistent with well-established Departmental policies that tribal rolls and related privacy materials should not be released unless there are legal or other compelling grounds to do so.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency**

**considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

The only materials of a sensitive nature are the genealogical portions membership lists of the petition. This material is necessary to establish that the members of the group are of Indian ancestry and that this ancestry is derived from the historic tribe from which the petitioning group is claiming to have evolved. Verification of this ancestry is essential to the basic goal of the acknowledgment criteria to establish that the petitioners have existed as an Indian tribe since first contact with Europeans. The criteria also require that the list of members be complete in order to give the Department a clear definition of who is being acknowledged. The ancestry of the tribe cannot be adequately verified without a complete membership list. The list of members submitted with the petition normally becomes the group's base tribal roll if it is acknowledged. Petitioners are given detailed explanations of the acknowledgment criteria and the rationale for their use. Members of the group provide the information to the group on a voluntary basis, in the process of applying for membership that would provide them benefits.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- \* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- \* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- \* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

The burden on petitioning groups is only a one-time occurrence, but it has a perpetual effect on the Federal government and on the respondent. Acknowledgment establishes a permanent government-to-government relationship. The burden hours differ significantly from group to group. The differences result from differences in the size of the group's membership, the amount of information that may already have been collected by the group or by scholars for other purposes, the length of the group's history since first sustained contact and the difficulty in locating documentation.

The average burden hours to prepare a petition are 2075 hours. For 10 groups, this would be 20750 hours per year. These annual burden hours are broken down as follows:



1. Time to conduct the anthropological and historical research relating to the criteria listed in 83.7 (a) - (d) and 83.7 (f) - (g) and the genealogical work to demonstrate tribal descent (83.7 (e)) averages 43 weeks or 1720 hours per petitioner (1720 X 10 groups) equals 17200 hours per year.
2. Time to complete a membership roll of about 1000 members (BIA Form 8306) averages about 38 hours per roll (38 X 10 groups) or 380 hours per year.
3. Time to complete Individual History Chart (by the head of the household)(BIA Form 8304 - This is information about one person, the parents, siblings, and children which respondent should know without having to do research) equates to 2 minutes per chart X 333 charts, or approximately 11 hours X 10 groups for a total of 110 hours per year.
- 1.
4. Time to complete the Ancestry Chart (by head of the household) (BIA Form 8305) takes about 30 minutes per chart X 333 charts, or approximately 166 hours X 10 groups for a yearly total of 1660 hours per year.
5. Time to respond to the technical assistance letter which may require revising or adding to the above existing forms and overall petition, averages 3.5 weeks or 140 hours (140 X 10 groups) equals a yearly total of 1400 hours.

Because the petitioners use a wide range of salary positions and volunteer work, we are using an average total of \$40.00 per hour. Therefore, the estimated annual cost to petitioners is \$830,000.00 (2,075 hours X 40.00 per hour X 10 petitioners).

**13. Provide an estimate of the total annual [non-hour] cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).**

- \* **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information [including filing fees paid]. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- \* **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public**

comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

- \* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

No significant non-hour cost burden was identified.

**14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The annual cost of the program in the OFA is approximately \$1.9 million (FY 2007). This is primarily salary, contract, and office expenses. The anthropologists, genealogists, historians, and management of the OFA review, analyze, and evaluate the evidence and data provided by the petitioners.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.**

Due to researching capabilities and digitized documents now available on the Internet, the amount of hours estimated for anthropological, historical, and genealogical research has been reduced, as well as the time to research in order to respond to technical assistance reviews. In addition, BIA Forms 8304 and 8305 only need to be filled out by the head of the household, and not each and every member of a group. If a group averages about 1000 members, then approximately 333 forms need to be completed by the heads of household.

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

Acknowledgment decisions (proposed, final, and reconsidered final), consist of detailed evaluations under the criteria established in the regulations. A summary of the evaluation is published in the Federal Register. No other publication is made. Copies of the evaluations are available to the public upon request and are distributed widely within the government and to scholars and interested state, local and tribal governments. These decision documents are also placed on the Internet.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

No. The agency is not seeking approval not to display the expiration date.

**18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.**

No. The agency is not requesting exceptions to the certification statement in item 19 of Form OMB 83-I.