

Supporting Statement A for Paperwork Reduction Act Submissions

OMB Control Number 1076-0104

Documented Petitions for Federal Acknowledgment as an Indian Tribe, 25 CFR 83

Terms of Clearance: None-

This is a request for a renewal of a currently authorized information collection.

1. Explain the circumstances that make the collection of information necessary.

The U.S. Government has a government-to-government relationship with Federally acknowledged Indian tribes. Currently, there are 564 Federally acknowledged Indian tribes. These tribes have been acknowledged by treaty, by Congress, or administratively by Executive Branch, specifically the U.S. Department of the Interior (Department). Beginning in the early 1970's, the Department received an increasing number of requests for acknowledgment. In 1978, the Department established the present administrative process for an Indian group to be acknowledged as an Indian tribe (formerly, 25 CFR 54, since redesignated as 25 CFR 83, *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe*). The acknowledgment process established by these regulations 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. 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.

The Office of Federal Acknowledgment (OFA) within the Office of the Assistant Secretary - Indian Affairs of the Department implements 25 CFR 83. Through the Department's Office of the Solicitor, OFA makes recommendations to the Assistant Secretary – Indian Affairs (AS-IA). The AS-IA 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. The petitions contain information and evidence that pertain to the mandatory criteria that the petitioner must meet. 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 AS-IA, consults with petitioners and third parties, provides copies of 25 CFR 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 extensions, appeals, litigation, Freedom of Information Act requests, and other administrative duties, the process takes longer.

The authority for acknowledging Indian tribes rests with the Secretary's general authority to deal with Indian affairs. 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.

2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, explain how the collection complies with all applicable Information Quality Guidelines.

The information gathered by petitioners under these regulations is used by the AS-IA 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 AS-IA. OFA's professional staff, including anthropologists, genealogists, and historians, prepare the recommendations for the AS-IA. Petitioners requesting acknowledgment as an Indian tribe must address seven criteria which are stated in 25 CFR § 83.7.

- **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 and 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 the U.S. Government, together with or alternatively to the Congress. 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 affirmed the preference for an administrative process in Golden Hill Paugussett Tribe of Indians, et al. v. 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].

Petitioners are given technical assistance in the use of computers to organize and prepare membership lists and related genealogical information; therefore, petitioners may submit this portion of their petition electronically via email or on a compact disc or thumb drive. 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.

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.

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.

5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.

Some of the petitioning groups are small entities, but 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 that 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.

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.

Petitioning groups are able to obtain most of the information more easily than OFA staff, 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.

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. **Provide 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 (or in response to a PRA statement) and describe actions taken by the agency in response to these comments.**

A Federal Register notice advising of our intent to renew this collection was published February 3, 2010 (75 FR 5626). No comments were received.

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. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

Communication between petitioners preparing information and the OFA is an ongoing 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 which 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.

In addition, OFA contacted the following current petitioner who recently submitted materials, for input on the information collection:

Ms. Denice Sheppard
Montaukett Tribe of Long Island
(516) 922-4767

Ms. Sheppard stated that the hour burden estimates were “on point,” “workable” and “seemed to be reasonable.” The group chose not to use the Individual History Chart form or the Membership List form, but did use the Ancestry Chart form. Ms. Sheppard stated that the directions were clear and that the form was “easy to use.” She stated that obtaining the information was not difficult because the family data was readily available. Ms. Sheppard stated that she did not think any of the requested information was unnecessary.

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 BIA – 7, Tribal Rolls. 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.

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 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 2,075 hours. For 10 groups, this would be **20,750 hours** per year. These annual burden hours are broken down as follows:

	Respondents	Burden hours per response	Annual burden hours	Salary cost*
Conduct the anthropological and historical research relating to the criteria listed in 83.7 (a) - (d) and 83.7 (f) - (g)	10	1,720	17,200	\$ 528,728
Conduct the genealogical work to demonstrate tribal descent (83.7 (e))				
Complete a membership roll of about 1000 members (BIA Form 8306)	10	38	380	\$ 11,681
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). On average, it takes 2 minutes per chart X 333** charts.	10	11	110	\$ 3,381
Complete the Ancestry Chart (by head of the household) (BIA Form 8305). On average, it takes about 30 minutes per chart X 333** charts.	10	166	1,660	\$ 51,028
Respond to the technical assistance letter which may require revising or adding to the above existing forms and overall petition.	10	140	1,400	\$ 43,036
Total	10		20,750	\$ 637,854

*To obtain the hourly rate for tribal government employees, we used \$20.49, the wages and salaries figure for all workers from BLS Release USDL 10-0283, *Employer Costs for Employee Compensation—December 2009*, Table 1, *Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group*. To account for benefits, we then multiplied this rate by 1.5 in accordance with BLS Release USDL 10-0283, to obtain a total rate of **\$30.74**. See <http://www.bls.gov/news.release/ecec.nr0.htm>.

** Each tribe that submits a petition has an average of 333 members.

13. Provide an estimate of the total annual [nonhour] cost burden to respondents or recordkeepers resulting from the collection of information.

No significant non-hour cost burden was identified.

14. Provide estimates of annualized cost to the Federal government.

The annual cost of the program in the OFA is approximately \$2.2 million (FY 2010). 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.

There are no program changes or adjustments in this request for renewal.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

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. Certification.

The agency is not requesting exceptions to the certification statement.