Document	ADAMS accession No./web link/**Federal Register** citation
Holtec International, HI–STORM FW Amendment 7 Responses to Requests for Additional Information Part 1—Additional Supporting Documents, dated July 13, 2022.	ML22194A954.
HI–STORM FW Amendment 7 Responses to Requests for Additional Information Part 2, dated July 29, 2022	ML22210A145 (package).
Holtec International, HI–STORM FW Amendment 7 RAI Responses Part 1 Clarification Call Action Items, dated September 15, 2022.	ML22258A250 (package).
HI–STORM FW Amendment 7 Responses to Requests for Additional Information Part 3, dated October 3, 2022	ML22276A281 (package).
HI–STORM FW Amendment 7 RAI 5–2 Response Clarification, dated December 1, 2022	ML22336A132 (package).
Holtec International HI–STORM FW Amendment 7 Responses to Requests for Additional Information Part 4, dated January 6, 2023.	ML23006A263 (package).
Holtec International—HI–STORM FW Amendment 7 Responses to Requests for Additional Information Part 5, dated May 8, 2023.	ML23128A302 (package).
Holtec International HI–STORM FW Amendment 7 RAI Responses Part 5 Clarification Call Action Items, dated June 30, 2023.	ML23181A192 (package).
Holtec International, HI–STORM FW Amendment 7 RAI Responses Part 5 Clarification Corrected Attachments 4 and 5, dated July 11, 2023.	ML23192A031 (package).
Holtec International, HI–STORM FW Amendment 7 RAI 3–10 Response Clarification Call Action Items, dated August 15, 2023.	ML23227A248 (package).
HI–STORM FW Amendment 7 RAI Response Clarifications (Part 3), dated November 17, 2023	ML23321A245 (package).
Holtec International, HI–STORM FW Amendment 7 RAI Response Clarifications (Part 4), dated February 16, 2024	ML24047A323 (package).
HI–STORM FW Amendment 7 RAI Response Clarifications (Part 5), dated April 8, 2024	ML24100A027 (package).
Other Documents	
User Need Memo for Rulemaking for the Holtec HI–STORM Flood/Wind Multi-Purpose Canister Storage System, CoC No. 1032, Amendment 7, dated May 17, 2024.	ML23030B792.
''Agreement State Program Policy Statement; Correction,'' dated October 18, 2017	82 FR 48535.
Plain Language in Government Writing, dated June 10, 1998	63 FR 31885.
Storage of Spent Fuel In NRC-Approved Storage Casks at Power Reactor Sites: Final Rule, dated July 18, 1990	55 FR 29181.
List of Approved Spent Fuel Storage Casks: HI–STORM Flood/Wind Addition, dated June 8, 2011	76 FR 33121.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2024–0096. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2024–0096); (2) click the ''Subscribe'' link; and (3) enter an email address and click on the ''Subscribe'' link.

Dated: June 26, 2024.

For the Nuclear Regulatory Commission.

Raymond Furstenau,

Acting Executive Director for Operations.

[FR Doc. 2024–15131 Filed 7–11–24; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 83

[BIA–2022–0001; 245A2100DD/AAKC001030/A0A501010.999900]

RIN 1076–AF67

Federal Acknowledgment of American Indian Tribes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Second notice of proposed rulemaking.

SUMMARY: The United States Department of the Interior (Department) seeks input on a proposal to create a conditional, time-limited opportunity for denied petitioners to re-petition for Federal acknowledgment as an Indian Tribe.

DATES:

- *Proposed Regulations:* Please submit your comments by 11:59 p.m. ET on Friday, September 13, 2024.
- *Virtual Meetings:* Consultation sessions with federally recognized Indian Tribes will be held on August 19, 2024 and September 3, 2024. A listening session for present, former, and prospective petitioners will be held on September 5, 2024.
- *Information Collection Requirements:* If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB (see ''Information Collection Requirements'' section below under **ADDRESSES**) by August 12, 2024.

ADDRESSES: All comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. You may submit comments by any of the following methods:

- *Federal rulemaking portal:* Please visit *https://www.regulations.gov.* Enter ''RIN 1076–AF67'' or ''BIA–2022–0001'' in the web page's search box and follow the instructions for sending comments.
- *Email: consultation@bia.gov.* Include ''RIN 1076–AF67'' or ''25 CFR part 83'' in the subject line of the message.
- *Hand Delivery/Courier:* Department of the Interior, Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, Mail Stop 4071 MIB, 1849 C Street NW, Washington, DC 20240.
- *Consultation with Indian Tribes:* The Department will conduct two virtual consultation sessions and will accept oral and written comments. Federally recognized Indian Tribes may register for the August 19, 2024 consultation session at *https://www.zoomgov.com/meeting/register/vJItc-qqqTsiH8cfOkrLr2UUOwkOq199siI.* Federally recognized Indian Tribes may register for the September 3, 2024 consultation session at *https://www.zoomgov.com/meeting/register/vJItduGorjsoHgUodFTHwBMMQNlw9RwluIA.*

• *Listening session for present, former, and prospective petitioners:* The Department will host a listening session for present, former, and prospective petitioners and will accept oral and written comments. Present, former, and prospective petitioners may register for the September 5, 2024 listening session at *https://www.zoomgov.com/meeting/register/vJIscuysqz8tGcSUvtGt7ETrNdXAQJScrXg*.

• *Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals can obtain this document in an alternate format, usable by people with disabilities, at the Office of Federal Acknowledgment, Room 4071, 1849 C Street NW, Washington, DC 20240.

• *Information Collection Requirements:* Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this document to the Office of Information and Regulatory Affairs (OIRA) through *https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202310-1076-001* or by visiting *https://www.reginfo.gov/public/do/PRAMain* and selecting ''Currently under Review—Open for Public Comments'' and then scrolling down to the ''Department of the Interior'' and selecting OMB control number ''1076–0104.''

FOR FURTHER INFORMATION CONTACT: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, (202) 738–6065, *comments@bia.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Since 1994, the regulations governing the Federal acknowledgment process, located at 25 CFR part 83 (part 83), have included an express prohibition on re-petitioning (ban). When the Department revised the part 83 regulations in 2015 (2015 regulations), the Department decided to retain the ban; however, two Federal district courts held that the Department's stated reasons for doing so, as articulated in the final rule updating the regulations (2015 final rule), were arbitrary and capricious under the Administrative Procedure Act (APA). The courts remanded the ban to the Department for further consideration. After initially proposing to maintain the ban in 2022, the Department is now proposing to create a limited exception to the ban, through implementation of a re-petition authorization process. The Department invites comments on its proposal, as well as the reasoning in support of the proposed re-petition authorization process.

I. Background

A. Federal Acknowledgment Process

Congress granted the Secretary of the Interior, and as delegated to the Assistant Secretary—Indian Affairs (AS–IA), authority to ''have management of all Indian affairs and of all matters arising out of Indian relations.'' [1] This authority includes the authority to implement an administrative process to acknowledge Indian Tribes.[2] As the congressional findings that support the Federally Recognized Indian Tribe List Act of 1994 indicate, Indian Tribes may be recognized ''by the administrative procedures set forth in part 83 of the Code of Federal Regulations.'' [3]

Part 83 codifies the process through which a group may petition the Department for acknowledgment as a federally recognized Indian Tribe. Part 83 requires groups petitioning for Federal acknowledgment to meet seven mandatory criteria, the satisfaction of which has been central to the Federal acknowledgment process since its inception.[4] The Department refers to the seven criteria as the (a) ''Indian Entity Identification'' criterion, (b) ''Community'' criterion, (c) ''Political Authority'' criterion, (d) ''Governing Document'' criterion, (e) ''Descent'' criterion, (f) ''Unique Membership'' criterion, and (g) ''Congressional Termination'' criterion.[5]

B. Ban on Re-Petitioning

First promulgated in 1978 at 25 CFR part 54 (1978 regulations), the Federal acknowledgment regulations were subsequently moved to part 83 [6] and revised in 1994 (1994 regulations).[7] The 1978 regulations were silent on the question of re-petitioning, and since 1994, part 83 has expressly prohibited petitioners that have received a negative final determination from the Department from re-petitioning under part 83.[8] The final rule updating the regulations in 1994 notes that although some commenters had expressed concern that ''undiscovered evidence which might change the outcome of decisions could come to light in the future,'' the Department reasoned that ''there should be an eventual end to the present administrative process.'' [9] Additionally, the Department pointed out that ''petitioners who were denied went through several stages of review with multiple opportunities to develop and submit evidence.'' [10] The Department also explained that ''[t]he changes in the regulations are not so fundamental that they can be expected to result in different outcomes for cases previously decided.'' [11] Finally, the Department observed that ''[d]enied petitioners still have the opportunity to seek legislative recognition if substantial new evidence develops.'' [12]

[1] 25 U.S.C. 2 and 9; 43 U.S.C. 1457.

[2] *See, e.g., Muwekma Ohlone Tribe* v. *Salazar,* 708 F.3d 209, 211 (D.C. Cir. 2013); *James* v. *United States Dep't of Health & Human Servs.,* 824 F.2d 1132, 1137 (D.C. Cir. 1987).

[3] *See* Public Law 103–454, section 103(3) (1994).

[4] 25 CFR 83.11(a) through (g) (2015 version of the criteria); *id.* § 83.7(a) through (g) (1994) (1994 version); *id.* § 54.7(a) through (g) (1978) (1978 version).

[5] 25 CFR 83.5.

[6] 47 FR 13326 (Mar. 30, 1982).

[7] 59 FR 9280 (Feb. 25, 1994).

[8] 25 CFR 83.3(f) (1994); 59 FR 9294.

[9] 59 FR 9291.

[10] 59 FR 9291.

[11] 59 FR 9291.

[12] 59 FR 9291.

In a 2014 notice of proposed rulemaking (2014 proposed rule), the Department proposed giving previously denied petitioners a conditional opportunity to re-petition.[13] The 2014 proposed rule proposed to allow re-petitioning only if:

(i) Any third parties that participated as a party in an administrative reconsideration or Federal Court appeal concerning the petitioner has consented in writing to the re-petitioning; and

(ii) The petitioner proves, by a preponderance of the evidence, that either:

(a) A change from the previous version of the regulations to the current version of the regulations warrants reconsideration of the final determination; or

(b) The ''reasonable likelihood'' standard was misapplied in the final determination.[14]

In the preamble of the 2014 proposed rule, the Department explained that the requirement of third-party consent would ''recognize [ ] the equitable interests of third parties that expended sometimes significant resources to participate in the adjudication [of a final determination in a reconsideration or appeal] and have since developed reliance interests in the outcome of such adjudication.'' [15] The Department did not discuss the extent to which the third-party consent condition might limit the number of re-petitioners.[16]

Similarly, the Department did not specify the extent to which the other conditions listed above—requiring an unsuccessful petitioner to prove that either a change in the regulations or a misapplication of the reasonable likelihood standard warrants reconsideration—might limit the number of re-petitioners. However, as a general matter, the Department noted that ''the changes to the regulations are generally intended to provide uniformity based on previous decisions,'' so the circumstances in which re-petitioning might be ''appropriate'' would be ''limited.'' [17] The proposed rule did not identify any change to the seven mandatory criteria that ''would likely change [any negative] previous final determination[s].'' [18]

Ultimately, in the 2015 final rule updating part 83, the Department expressly retained the ban.[19] In the preamble of the rule, the Department summarized its reasoning as follows and without any additional discussion, the final rule promotes consistency, expressly providing that evidence or methodology that was sufficient to satisfy any particular criterion in a previous positive decision on that criterion will be sufficient to satisfy the criterion for a present petitioner. The Department has petitions pending that have never been reviewed. Allowing for re-petitioning by denied petitioners would be unfair to petitioners who have not yet had a review, and would hinder the goals of increasing efficiency and timeliness by imposing the additional workload associated with re-petitions on the Department, and the Office of Federal Acknowledgment (OFA) in particular. The part 83 process is not currently an avenue for re-petitioning.[20]

C. Remand of the Ban

In 2020, two Federal district courts—one in a case brought by a former petitioner seeking acknowledgement as the Chinook Indian Nation [21] and one in a case brought by a former petitioner seeking acknowledgement as the Burt Lake Band of Ottawa and Chippewa Indians [22]—held that the Department's reasons for implementing the ban, as articulated in the preamble to the 2015 final rule revising part 83, were arbitrary and capricious under the APA. As an initial matter, both courts agreed with the Department that the Department's authority over Indian affairs generally authorized a re-petition ban.[23] Additionally, both courts noted that their review was highly deferential to the agency's decision under applicable tenets of administrative law.[24] As a result, the narrow question left for the courts to decide was whether the Department, in retaining the ban, ''examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' ''

Both courts concluded that the Department had not satisfied this standard. The *Chinook* court held that the Department's reasons were ''illogical, conclusory, and unsupported by the administrative record,'' as well as not ''rationally connect[ed] . . . to the evidence in the record.'' [25] Similarly, the *Burt Lake* court concluded that the Department's reasons were ''neither well-reasoned nor rationally connected to the facts in the record.'' [26] Both courts concluded that, despite the Department's argument that the 2015 revisions to part 83 did not make any substantive changes to the criteria other than those specifically identified, the Department had failed to explain why the Department could permissibly maintain the ban given those changes and others, after having proposed a limited re-petition process in the 2014 proposed rule.[27] The *Chinook* court focused in particular on a provision introduced in the 2015 final rule that sought to promote consistent implementation of the criteria and stated that ''[t]here is no reason why new petitioners should be entitled to this 'consistency' while past petitioners are not.'' [28] The *Burt Lake* court linked reform of the Federal acknowledgment process generally with an ''opportunity to re-petition and to seek to satisfy the new criterion.'' [29]

Neither the *Chinook* nor *Burt Lake* courts struck down the 2015 final rule in whole or in part. Rather, both courts remanded the ban to the Department for further consideration.[30]

D. 2022 Proposed Rule

Pursuant to the courts' orders, on December 18, 2020, the Department announced an intent to reconsider the ban and invited federally recognized Indian Tribes to consult on whether to

[13] 79 FR 30766, 30767 (May 29, 2014).

[14] 25 CFR 83.4(b)(1) (proposed 2014); *see also* 79 FR 30774 (containing the proposed provision).

[15] 79 FR 30767.

[16] *See Burt Lake Band of Ottawa and Chippewa Indians* v. *Bernhardt,* 613 F. Supp. 3d 371, 385 (D.D.C. 2020) (noting that the record ''does not provide statistics to show . . . how many [petitioners] would be able to re-apply under the limited proposed exception''). The Department has since identified eleven denied petitioners that would have been subject to the third-party consent condition under the 2014 proposed rule: Duwamish Indian Tribe, Tolowa Nation, Nipmuc Nation (Hassanamisco Band), Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians, Eastern Pequot Indians of Connecticut and Paucatuck Eastern Pequot Indians of Connecticut, Schaghticoke Tribal Nation, Golden Hill Paugussett Tribe, Snohomish Tribe of Indians, Chinook Indian Tribe/Chinook Nation, and Ramapough Mountain Indians, Inc.

[17] 79 FR 30767.

[18] 79 FR 30767.

[19] 25 CFR 83.4(d); *see* 80 FR 37861, 37888–89 (July 1, 2015).

[20] 80 FR 37875.

[21] *Chinook Indian Nation* v. *Bernhardt,* No. 3:17–cv–05668–RBL, 2020 WL 128563 (W.D. Wash. Jan. 10, 2020).

[22] *Burt Lake Band of Ottawa and Chippewa Indians* v. *Bernhardt,* 613 F. Supp. 3d 371 (D.D.C. 2020).

[23] *Chinook,* 2020 WL 128563, at * 6 (stating that ''the Court agrees with DOI that its expansive power over Indian affairs encompasses the re-petition ban'' (citation omitted)); *Burt Lake,* 613 F. Supp. 3d at 378 (stating that ''the regulation [banning re-petitioning] comports with the agency's authority'').

[24] *Chinook,* 2020 WL 128563, at * 7 (citation omitted); *Burt Lake,* 613 F. Supp. 3d at 379 (citation omitted).

[25] *Chinook,* 2020 WL 128563, at * 8.

[26] *Burt Lake,* 613 F. Supp. 3d at 386.

[27] *See Chinook,* 2020 WL 128563, at * 4–5 (identifying five ''notable'' changes in the 2015 version of part 83); *Burt Lake,* 613 F. Supp. 3d at 383–84 (highlighting two changes that the court deemed ''not minor'').

[28] *Chinook,* 2020 WL 128563, at * 8.

[29] *Burt Lake,* 613 F. Supp. 3d at 384.

[30] *Chinook,* 2020 WL 128563, at * 10; *Burt Lake,* 613 F. Supp. 3d at 387.

allow or deny re-petitioning. On February 25, 2021, the Department held a Tribal consultation session. The Department also solicited written comments on the ban through March 31, 2021. On April 27, 2022, the Department published a proposed rule (2022 proposed rule) to retain the ban, albeit based on revised justifications in light of the courts' rejection of the reasoning set forth in the 2015 final rule.[31] The 2022 proposed rule highlighted the following in proposing to retain the ban:

(1) the substantive integrity of the Department's previous, negative determinations;

(2) the due process that has already been afforded to unsuccessful petitioners;

(3) the non-substantive nature of the revisions to part 83 in the 2015 final rule;

(4) the interests of the Department and third parties in finality; and

(5) the inappropriateness of allowing re-petitioning based on new evidence.[32]

Following publication of the 2022 proposed rule, the Department held two Tribal consultation sessions with federally recognized Indian Tribes and a listening session with present, former, and prospective petitioners for Federal acknowledgment. The Department also solicited written comments through July 6, 2022, and received approximately 270 comments from federally recognized Indian Tribes and a wide range of stakeholders, including former and prospective part 83 petitioners, various State and local government representatives, individuals, and others.

After reviewing the written comments, as well as the transcripts of the consultation and listening sessions, the Department engaged in further deliberation of three options: (1) keeping the ban in place; (2) creating a limited avenue for re-petitioning; and (3) creating an open-ended avenue for re-petitioning, with few or no limitations. The Department is now proposing to create a limited exception to the ban, in line with the second option, through implementation of a re-petition authorization process. The Department's proposal reflects a reconsidered policy on re-petitioning for Federal acknowledgment, and the reasoning underlying the proposal differs in some respects from that underlying the 2022 proposed rule, which would have retained the re-petition ban. Even if the reasons for upholding the ban in the 2022 proposed rule were valid, the Department is proposing a revised approach here based on the reconsidered policy. What follows is a summary of the Department's proposal and a discussion of the comments that informed it. The Department invites comments on the proposal, as well as the reasoning in support of it.

II. Summary of This Proposed Rule

A. Re-Petition Authorization Process

This proposed rule would append a new subpart titled ''Subpart D—Re-Petition Authorization Process'' to the end of the current part 83 regulations. The new subpart would apply to ''unsuccessful petitioner[s],'' which would be a new term defined in § 83.1.[33] Pursuant to the new subpart, an unsuccessful petitioner that seeks to re-petition would first have to plausibly allege that the outcome of the previous, negative final determination would change to positive on reconsideration based on one or both of the following: (1) a change in part 83 (from the 1978 or 1994 regulations to the 2015 regulations); and/or (2) new evidence.[34]

This standard, requiring a petitioner to state a plausible claim for re-petitioning based on one of the conditions above, is akin to the standard for surviving a motion to dismiss.[35] Under the standard, a petitioner's allegations regarding changes in part 83 and/or new evidence would have to address the deficiencies that, according to the Department, prevented the petitioner from satisfying all seven mandatory criteria (located at § 83.11(a) through (g) in the 2015 regulations). Otherwise, even if the allegations were taken as true, they would not change the previous, negative outcome and, therefore, would not justify reconsideration. That is, because Federal acknowledgment requires satisfaction of all seven criteria,[36] the petitioner's re-petition request would have to address all of the criteria that the petitioner did not satisfy. For example, if the Department determined in the previous, negative final determination that the petitioner did not satisfy criteria (a) (Indian Entity Identification), (b) (Community), and (c) (Political Authority), then the petitioner would have to plausibly allege that application of the 2015 regulations, consideration of new evidence, or both would address the deficiencies relating to all three criteria, not only one or two.

A decision granting authorization to re-petition (grant of authorization to re-petition) would not be the same as a final agency decision granting Federal acknowledgment. Rather, a decision granting authorization to re-petition would simply permit the petitioner to proceed with a new documented petition through the Federal acknowledgment process.[37] Upon authorization to re-petition, the petitioner would then have to submit a complete documented petition under § 83.21 to request Federal acknowledgment and receive substantive review of the petitioner's claims and evidence.

In the interest of finality (an interest discussed in depth below), any petitioner denied prior to the effective date of the final rule implementing the re-petition authorization process would have to request to re-petition within five years of the effective date of the rule.[38] Any petitioner denied after the effective date of the final rule would have to request to re-petition within five years of the date of issuance of the petitioner's negative final determination.[39] However, the five-year time limit applicable to a petitioner denied after the effective date of the final rule would be tolled during any period of judicial review of the negative final determination.[40] Additionally, any petitioner denied authorization to re-petition under the proposed re-petition authorization process—or denied Federal acknowledgment upon re-petitioning, after receiving authorization to do so—would be prohibited from submitting a new re-petition request based on new evidence,[41] although they could still request to re-petition based on changes to the part 83 regulations in the future.[42]

[31] 87 FR 24908 (Apr. 27, 2022).

[32] 87 FR 24910–16.

[33] 25 CFR 83.1 (proposed 2023) (defining an ''unsuccessful petitioner'' as ''an entity that was denied Federal acknowledgment after petitioning under any version of the acknowledgment regulations at part 54 or part 83 of title 25''). The term ''unsuccessful petitioner'' applies only to those that have received a final agency decision, not to those that have received only a proposed finding or that have withdrawn from the process prior to receiving a final agency decision. For a complete list of unsuccessful petitioners, see Petitions Denied Through 25 CFR part 83 (34 Petitions), Office of Fed. Acknowledgment, *https://www.bia.gov/as-ia/ofa/petitions-resolved/denied* (last visited Sept. 18, 2023) (listing thirty-four unsuccessful petitioners as of September 18, 2023).

[34] 25 CFR 83.48(a) (proposed 2023).

[35] *See Ashcroft* v. *Iqbal,* 556 U.S. 662, 678 (2009) (explaining that, ''[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face' '' (quoting *Bell Atlantic Corp.* v. *Twombly,* 550 U.S. 544, 570 (2007))).

[36] 25 CFR 83.43(a); *id.* § 83.5.

[37] 25 CFR 83.61(a) (proposed 2023).

[38] 25 CFR 83.49(a) (proposed 2023).

[39] 25 CFR 83.49(b) (proposed 2023).

[40] 25 CFR 83.49(b)(1) (proposed 2023).

[41] 25 CFR 83.47(c) (proposed 2023).

[42] 25 CFR 83.48(b) (proposed 2023). This provision would not prevent a petitioner from resubmitting a re-petition request withdrawn prior

In many respects, the Department's processing of a re-petition request would mirror the processing of a group's documented petition, particularly the procedures relating to notice and comment. To initiate the re-petition authorization process, a previously unsuccessful petitioner would have to submit a complete re-petition request to OFA, explaining how the petitioner meets the conditions of §§ 83.47 through 83.49 (summarized in part above).[43] Upon receipt of a request containing all of the documentation required under § 83.50, OFA would publish notice of the request in the **Federal Register** and on the OFA website.[44] Additionally, OFA would provide notice to certain third parties, including specific government officials of the State in which the petitioner is located, federally recognized Indian Tribes that may have an interest in the petitioner's acknowledgment determination, and any third parties that participated as a party in an administrative reconsideration or Federal Court appeal concerning the petitioner's original documented petition.[45] The Department would then allow for comment on the re-petition request and give the petitioner an opportunity to respond to comments received.[46]

After the close of the comment-and-response period, the Department would consider the re-petition request ready for active consideration, and within thirty days of the close of the comment-and-response period, OFA would place the request on a register listing all requests that are ready for active consideration.[47] The order of consideration of re-petition requests would be determined by the date on which OFA places each request on OFA's register.

Pursuant to § 83.23(a)(2), the Department's highest priority would continue to be completing reviews of documented petitions already under review, and those reviews would take precedence over reviews of re-petition requests.[48] Pursuant to this proposed rule, the Department would also prioritize review of documented petitions awaiting review and new documented petitions over review of re-petition requests, at least initially;[49] re-petition requests pending on OFA's register for more than two years would have priority over any subsequently filed documented petitions.[50]

Once AS–IA is ready to begin review of a specific request, OFA would notify the petitioner and third parties accordingly.[51] In making a decision, AS–IA would consider the claims and evidence in the re-petition request and in any comments and responses received.[52] AS–IA may also consider other information,[53] such as documentation contained in the record associated with the petitioner's denied petition and additional explanations and information requested by AS–IA from commenting parties or the petitioner. Any such additional material considered by AS–IA would be added to the record and shared with the petitioner.[54] The petitioner then would have an opportunity to respond to any additional material considered.[55]

AS–IA would issue a decision on a re-petition request within 180 days of the date on which OFA notifies the petitioner that AS–IA has begun review, subject to any suspension period.[56] AS–IA would grant the petitioner authorization to re-petition if AS–IA finds that the petitioner meets the conditions of §§ 83.47 through 83.49.[57] Conversely, AS–IA would deny authorization to re-petition if AS–IA finds that the petitioner has not met the conditions of §§ 83.47 through 83.49.[58] OFA would then provide notice of AS–IA's decision to the petitioner and certain third parties.[59] Additionally, OFA would publish notice of the decision in the **Federal Register** and on the OFA website.[60]

AS–IA's decision would become effective immediately and would not be subject to administrative appeal.[61] A grant of authorization to re-petition would not be final for the Department. Rather, as noted above, it would simply permit the petitioner to proceed through the Federal acknowledgment process with a new documented petition.[62] By contrast, a decision denying a re-petition request (denial of authorization to re-petition) would represent the consummation of the Department's decision-making about the petitioner's recognition status and would be final for the Department and a final agency decision under the APA.[63]

B. Additional, Related Revisions

Consistent with the introduction of a new re-petition authorization process, this proposed rule would insert new definitions for ''re-petition authorization process'' and ''re-petitioning'' in § 83.1, as well as a new definition for ''unsuccessful petitioner.'' This rule also proposes a change to § 83.4(d), the provision that currently prohibits re-petitioning. The change would note a limited exception to the re-petition ban for previously unsuccessful petitioners that meet the conditions of §§ 83.47 through 83.49, as determined by AS–IA in the re-petition authorization process.

This proposed rule would also give any petitioner currently proceeding under the 1994 regulations the choice to proceed instead under the 2015 regulations.[64] In doing so, the rule presents a choice similar to the one given to pending petitioners in the 2015 regulations.[65] Absent the choice, a petitioner subject to the 1994 regulations that wants to proceed under the 2015 regulations would have to await a final determination and then receive authorization to re-petition if the determination is negative. By allowing a petitioner to switch directly to the current regulations, the relevant provision promotes efficiency.

Finally, this proposed rule would clarify the Department's position on the severability of the provisions in the

to receipt of a decision on the request. 25 CFR 83.56 (proposed 2023).

[43] 25 CFR 83.50(a)(2) (proposed 2023).

[44] 25 CFR 83.51(b)(1) (proposed 2023).

[45] 25 CFR 83.51(b)(2) (proposed 2023).

[46] 25 CFR 83.52 (proposed 2023) (stating that publication of notice of the re-petition request will be followed by a 90-day comment period and that, if OFA receives a timely objection and evidence challenging the request, then the petitioner will have 60 days to submit a written response).

[47] 25 CFR 83.52(d) (proposed 2023); *see also* 25 CFR 83.53(a) (proposed 2023) (describing the register of re-petition requests that OFA would maintain and make available on its website).

[48] 25 CFR 83.53(c) (proposed 2023) (stating that ''the Department will prioritize review of documented petitions over review of re-petition requests'').

[49] *See* 25 CFR 83.53(c) (proposed 2023).

[50] *See* 25 CFR 83.53(c) (proposed 2023).

[51] 25 CFR 83.54 (proposed 2023).

[52] 25 CFR 83.55(a) (proposed 2023).

[53] 25 CFR 83.55(b) (proposed 2023).

[54] 25 CFR 83.55(c) (proposed 2023).

[55] 25 CFR 83.55(c) (proposed 2023) (providing the petitioner with a sixty-day opportunity to respond to the additional material).

[56] *See* 25 CFR 83.57 and 83.58 (proposed 2023) (discussing suspension of review). The way that the clock would run during the review of a re-petition request would be similar to the way that it runs during the review of a documented petition. *See, e.g.,* 25 CFR 83.32 (requiring OFA to complete its review under Phase I ''within six months after notifying the petitioner . . . that OFA has begun review of the petition,'' subject to suspension ''any time the Department is waiting for a response or additional information from the petitioner'').

[57] 25 CFR 83.59(b) (proposed 2023).

[58] 25 CFR 83.59(c) (proposed 2023).

[59] 25 CFR 83.60 (proposed 2023).

[60] 25 CFR 83.60 (proposed 2023).

[61] 25 CFR 83.61 (proposed 2023).

[62] 25 CFR 83.61(a) (proposed 2023).

[63] 25 CFR 83.61(b) (proposed 2023).

[64] 25 CFR 83.47(b) (proposed 2023).

[65] *See* 25 CFR 83.7(b) (giving ''each petitioner that . . . has not yet received a final agency decision'' the choice ''to proceed under these revised regulations'' or ''to complete the petitioning process under the previous version of the acknowledgment regulations as published in 25 CFR part 83, revised as of April 1, 1994'').

proposed regulations.[66] Notwithstanding the Department's position that the provisions, taken together, properly balance competing interests (as discussed further below), the Department has considered whether the provisions could stand alone and proposes that they could. Specifically, the Department has considered whether, if one of the conditions on re-petitioning set forth at §§ 83.47 through 83.49 is held to be invalid, the other conditions should remain valid. The Department proposes that they should because each provision could ''function sensibly'' without the others.[67] For example, a change in part 83 could remain a valid basis for a re-petition request under § 83.48(a)(1) even if a court held § 83.48(a)(2), allowing new evidence to be basis for a re-petition request, to be invalid, and vice versa. The Department has also considered whether the provisions describing the processing of a re-petition request, set forth at §§ 83.50 through 83.61, could stand alone and proposes that they could. For example, provisions relating to notice and comment and the order of priority for review could each function independently if other requirements were determined to be invalid.

C. Technical Revisions

Finally, this proposed rule would make technical revisions to the legal authority citation for part 83 because 25 U.S.C. 479a–1 has been renumbered to 25 U.S.C. 5131 and Public Law 103–454 Sec. 103 (Nov. 2, 1994) has been reprinted in the United States Code at 25 U.S.C. 5130 note (Congressional Findings). This proposed rule would also make a technical revision to the mailing address listed in § 83.9.

III. Discussion of the Comments on the 2022 Proposed Rule

As noted above, the Department's proposal to implement a re-petition authorization process is based in part on a review of the comments received on the 2022 proposed rule. The Department received approximately 270 comments, with approximately 235 of those being identical form letters against the ban, submitted on behalf of unique individuals.

Commenters opposing the ban and those supporting it both provided several reasons for their respective positions. Generally, commenters opposing the ban cited fairness to unsuccessful petitioners as a basis for allowing re-petitioning for Federal acknowledgment. Those commentors argued that allowing unsuccessful petitioners to re-petition is warranted given: (1) the 2015 final rule's changes to certain substantive provisions of part 83; (2) any claimed availability of new evidence that is helpful to petitioners; and (3) alleged inconsistencies in the Department's application of the substantive criteria or evidentiary standards in part 83. By contrast, commenters supporting the ban argued that interests in the finality of the Department's previous, negative final determinations supersede any interests in re-petitioning. The Department discusses each of these points, as well as the Department's interest in finality, in turn below.

A. Comments on the 2015 Final Rule's Changes to Part 83

Commenters that opposed the ban and those that supported it largely disagreed about the significance of the 2015 final rule's changes to part 83. Commenters opposing the ban listed several changes that they think could affect the outcomes of the Department's previous, negative final determinations. Two unsuccessful petitioners, for example, highlighted the provision at § 83.10(a)(4), which states that ''[e]vidence or methodology that the Department found sufficient to satisfy any particular criterion in a previous decision will be sufficient to satisfy the criterion for a present petitioner.'' According to those commenters, by expressly requiring consistency with Departmental precedent, that provision could inform the evaluation of a petition on reconsideration.

Commenters opposing the ban also highlighted two other changes: (1) the new evaluation start date of 1900 for criteria (b) (Community) and (c) (Political Authority);[68] and (2) the change in how the Department counts the number of marriages within a petitioner for the purpose of evaluating criterion (b) (Community).[69] One of the commenters stated that although the change in how the Department counts marriages for criterion (b) (Community) ''might well be immaterial,'' unsuccessful petitioners nevertheless should have ''the opportunity to evaluate how a new framework would affect their application.'' Another commenter similarly asserted that the Department's arguments regarding the substantive insignificance of the 2015 revisions as applied to any previously denied petition were ''untestable.''

In contrast with commenters opposing the ban, commenters supporting the ban generally agreed with the Department's position in the 2022 proposed rule that none of the changes in the 2015 regulations would affect the outcome of the Department's previous, negative final determinations. For example, one commenter explained that the fundamental requirement underlying the seven mandatory criteria—demonstration of continuous Tribal existence—remains the same in the 2015 regulations. Another commenter likewise stated that the changes in the 2015 regulations concern process more than substance.

However, some of the commenters that supported the ban nevertheless identified specific changes that, in their view, might affect the outcome of the Department's previous determinations. Those commenters focused in particular on the inclusion of a new provision under criteria (b) (Community) and (c) (Political Authority) stating that evidence of ''[l]and set aside by a State for [a] petitioner, or collective ancestors of the petitioner,'' may be relied on to satisfy those criteria.[70] According to the commenters, the Department would not have adopted that provision and other potentially outcome-determinative provisions unless the Department also kept in place the re-petition ban, to prevent previously unsuccessful petitioners from taking advantage of the changes. The commenters, representing State and local governments in Connecticut and other Connecticut-based communities, argued that the provision banning re-petitioning is not severable from the remainder of the 2015 regulations and that removal of the ban requires annulment, or ''vacatur,'' of the 2015 final rule's changes to part 83.

Response: The 2015 final rule does not indicate that the Department retained the ban because of potentially outcome-determinative changes in the 2015 regulations, and the Department does not agree that a limited exception to the re-petition ban requires vacatur of the 2015 final rule. Instead, in the 2015 final rule, the Department retained the ban based on other considerations. Moreover, in the 2014 proposed rule, as here, the Department had proposed allowing re-petitioning precisely because of the changes in the rule, not despite them.[71]

As explained in the 2022 proposed rule,[72] the Department does not

[66] 25 CFR 83.62 (proposed 2023).

[67] *Belmont Mun. Light Dep't* v. *FERC,* 38 F. 4th 173, 188 (D.C. Cir. 2022) (citation omitted).

[68] 25 CFR 83.11(b) and (c).

[69] 25 CFR 83.11(b)(2)(ii).

[70] 25 CFR 83.11(b)(1)(ix); 25 CFR 83.11(c)(1)(vii).

[71] 79 FR 30767 (stating that ''re-petitioning would be appropriate only in those limited circumstances where changes to the regulations would likely change the previous final determination'').

[72] *See* 87 FR 24911–14.

anticipate that any of the 2015 final rule's changes to part 83 would affect the outcome of the Department's previous, negative final determinations. However, in the interest of fairness to unsuccessful petitioners, the Department is proposing to give those petitioners a narrow path for arguing, on a case-by-case basis, why specific changes warrant reconsideration of their specific final determinations.[73] The Department has not yet determined that any denied petitioner meets that condition and, therefore, would be permitted to re-petition. Nevertheless, this proposed rule is responsive to the *Chinook* court's observation that some of the changes in the 2015 final rule constitute ''significant revisions that could prove dispositive for some re-petitioners.'' [74] Additionally, it is responsive to the *Burt Lake* court's opinion that ''the agency's breezy assurance . . . that nothing has changed'' in the 2015 regulations is an insufficient basis to keep the ban in place.[75] Pursuant to this proposed rule, if an unsuccessful petitioner can plausibly allege that a change in part 83 would, if applied on reconsideration, change the outcome of the previous, negative determination to positive, then it would be proper to permit the petitioner to re-petition.

B. Comments on the Availability of New Evidence

Commenters opposing the ban and those supporting it disagreed about whether new evidence should serve as a basis for allowing re-petitioning. Several commenters opposing the ban argued that unsuccessful petitioners should have the opportunity to re-petition based on new evidence. In furtherance of that argument, some asserted that the new evaluation start date of 1900 in the 2015 regulations might lead indirectly to the discovery of evidence helpful to previously denied petitioners. Under the previous versions of part 83, petitioners had to demonstrate community and political authority ''from historical times until the present,'' with evidence covering a relatively broad range of time.[76] According to the commenters, the shorter evaluation period under the 2015 regulations (beginning in 1900) would allow the petitioners to narrow the scope of their research accordingly, and the allocation of limited resources to a shorter evaluation period might lead to the discovery of new, helpful evidence.

Commenters supporting the ban did not agree that the availability of new evidence should serve as a basis for allowing re-petitioning. The commenters emphasized the extensive due process that previously unsuccessful petitioners already received under the previous versions of part 83, including multiple opportunities to submit new evidence as part of the petitioning process and to challenge the Department's characterization of that evidence both administratively and in Federal court. The commenters also emphasized the ample amount of time that the petitioners had to develop the evidentiary record.

Response: The Department agrees with the commenters supporting the ban that previously unsuccessful petitioners received ample due process, as discussed in the 2022 proposed rule.[77] Furthermore, the Department acknowledges that, in the 2022 proposed rule, the Department posited that the ''claimed availability of new evidence is not a compelling basis to allow re-petitioning.'' [78] Nevertheless, upon further deliberation, the Department proposes that there are good reasons to permit unsuccessful petitioners to request to re-petition based on new evidence.

Many of the denied petitions are decades old, and since the time of their submission and evaluation there have been numerous advancements in technology that might aid petitioners in their research, including user-friendly, electronic databases containing genealogical information. The application of improved technology, particularly in the context of a shorter evaluation period, might lead to the discovery of new evidence, and there is at least some possibility that the new evidence could affect the outcome of a previous, negative final determination.

The Department's proposal would give unsuccessful petitioners a narrow path for arguing, on a case-by-case basis, why specific new evidence warrants reconsideration of their specific final determinations.[79] The Department's proposal, made pursuant to the Department's broad discretion in administering the Federal acknowledgment process, is responsive to commenters' concerns regarding the high-stakes nature of the Federal acknowledgment process, which one commenter described as ''a life-or-death process.'' Given the significant consequences of being granted or denied Federal acknowledgment, the Department proposes that a limited exception to the re-petition ban for unsuccessful petitioners that have new, potentially dispositive evidence is appropriate.

Although it is true that, in the absence of a re-petition authorization process, unsuccessful petitioners could still ''seek legislative recognition if substantial new evidence develops'' (as the Department explained in the 2022 proposed rule),[80] upon further deliberation, the Department proposes that the part 83 process, as conditioned by this rule, should continue to be an option given the Department's familiarity with the petitioner, expertise in evaluating evidence, and management of all Indian affairs, including decisions regarding Federal acknowledgment.[81] Finally, while it is true that ''it [is] difficult to establish defensible limiting principles'' applicable to claims of new evidence given that ''such evidence is not static but could be discovered at any point,'' [82] the Department proposes that the five-year time limit to submit a request for authorization to re-petition under § 83.49 properly balances the petitioners' interest in using improved technology to conduct additional research with legitimate interests in finality, discussed further below.

C. Comments on Alleged Inconsistencies in the Department's Previous, Negative Final Determinations

Numerous commenters that opposed the ban called into question the integrity of the Federal acknowledgment process and the Department's past determinations. Echoing comments that had been submitted in the prior rulemaking, which culminated in the publication of the 2015 final rule, several commenters asserted that the Department had applied the part 83 substantive criteria or evidentiary standards in an inconsistent manner on a petition-by-petition basis. Others stated that the instances in which the Department initially issued a positive determination, only to reverse it and finalize a negative determination at a later stage in the process (such as after an administrative appeal), were indicative of structural flaws or as-applied impropriety in the part 83 process generally.

Commenters supporting the ban generally defended the integrity of the

[73] *See* 25 CFR 83.48(a)(1) (proposed 2023).

[74] *Chinook,* 2020 WL 128563, at *8.

[75] *Burt Lake,* 613 F. Supp. 3d at 384.

[76] 25 CFR 83.7(b) and (c) (1994); *see also* 25 CFR 54.7(b) and (c) (1978).

[77] 87 FR 24911.

[78] 87 FR 24910; *see also* 87 FR 24916.

[79] *See* 25 CFR 83.48(a)(2) (proposed 2023).

[80] 87 FR 24916 (citing 59 FR 9291).

[81] *See* 25 U.S.C. 2.

[82] 87 FR 24916.

Department's previous determinations, with some expressly supporting the Department's position in the 2022 proposed rule that those determinations are ''substantively sound.'' [83] Commenters supporting the ban also focused on the ample due process that previously denied petitioners received, including opportunities to ''make their case'' and challenge their negative final determinations through an administrative or judicial appeal.

Response: The Department maintains the view that its previous determinations are substantively sound. As the Department explained in the 2022 proposed rule, ''each of the Department's 34 negative determinations was based on an exhaustive review of the facts and claims specific to each petitioner and a deliberate application of the criteria, resulting in a well-reasoned, legally defensible outcome.'' [84] Furthermore, notwithstanding various reforms to the Federal acknowledgment process, ''the Department has consistently defended, and courts have consistently upheld, the Department's final determinations on the merits.'' [85]

In light of those considerations, and the due process already provided to unsuccessful petitioners (including the opportunity to seek judicial review and remand of a negative final determination), the Department has determined that mere criticism of a past final determination is not a sufficient or appropriate basis, standing alone, to justify re-petitioning. Instead, as discussed above, an unsuccessful petitioner would have to argue that reconsideration is warranted based on a change in part 83 and/or new evidence,[86] plausibly alleging that application of the change(s) and/or consideration of new evidence on reconsideration would result in the reversal of the previous, negative outcome.

Under this standard, the proposed re-petition authorization process generally would not be an avenue for relitigating the reasoning and analyses underlying the Department's previous, negative final determinations. For example, an unsuccessful petitioner would not be permitted to argue that the Department, in its previous, negative final determination, had misapplied the reasonable likelihood standard in concluding that the evidence before the Department at the time was insufficient to satisfy a given criterion. The petitioner already had the opportunity to raise such a claim in a timely manner during administrative reconsideration or judicial review of its negative determination. However, the petitioner would be permitted to invoke the provision in the 2015 regulations located at § 83.10(a)(4)—requiring consistency with Departmental precedent in the application of the seven mandatory criteria—as a basis for its re-petition request. In doing so, the petitioner could argue that evidence previously deemed insufficient in the negative final determination should now be deemed sufficient in light of more recent precedent finding allegedly analogous evidence to be sufficient.

D. Comments on Interests in the Finality of the Department's Final Determinations

Commenters that opposed the ban and those that supported it both addressed whether third-party and Departmental interests in finality justify the ban on re-petitioning for Federal acknowledgment. The Department discusses each set of interests in turn below.

1. Third-Party Interests in Finality

Commenters opposing the ban did not think that third-party reliance interests were compelling, particularly when balanced against the interests of unsuccessful petitioners in re-petitioning. For example, one commenter, an inter-Tribal organization representing both federally recognized and State recognized Tribes, asserted that the denied petitioners' interests in safeguarding ''[t]he durable identity of generations of a Tribal Petitioner must outweigh any third party interests in triumphing over a tribe's future.'' Other commenters questioned the influence that third parties exert on the Federal acknowledgment process, with one commenter likening their role to that of a ''second regulatory agency.'' Another commenter questioned how third-party interests could serve as a basis for applying the ban to petitioners unopposed by any third party.

In contrast with commenters opposing the ban, commenters supporting the ban argued that their interests in the finality of the Department's previous, negative final determinations supersede any interests in re-petitioning. Several Connecticut-based commenters stated that re-petitioning would disrupt ''settled expectations,'' for example, by reviving uncertainty about previously denied petitioners' land claims in the State. The commenters also expressed concern about actions that might stem from Federal acknowledgment, particularly gaming development, and potentially detrimental impacts on local communities.

One commenter supporting the ban, the Connecticut Office of the Attorney General, emphasized the ''millions of dollars and thousands of hours of staff resources'' that third parties in Connecticut collectively invested in the Federal acknowledgment process, based on the expectation that the Department's final determinations would remain final and that denied petitioners would not have a ''second bite at the apple.'' Other Connecticut-based commenters submitted similar comments, emphasizing the millions of dollars and many years that they spent participating in the Federal acknowledgment process, specifically as interested parties opposing certain part 83 petitioners located in Connecticut.[87] Federally recognized Indian Tribes that supported the ban also highlighted their interests in finality. Like some of the Connecticut-based commenters mentioned above, these Tribal commenters objected to re-petitioning in part because they fear that renewing their opposition to previously unsuccessful petitioners would overburden their resources.

Response: The Department recognizes that third parties often expended considerable time and resources participating in the Federal acknowledgment process and concurs that third parties have significant, legitimate interests in the finality of the Department's final determinations, as discussed in the 2022 proposed rule.[88] That is why the Department is not proposing to give unsuccessful petitioners an open-ended opportunity to re-petition, for whatever reason and in perpetuity, that might ''make[ ] worthless'' third parties' substantial past investment in the Federal acknowledgment process.[89] Indeed, as stated above, a petitioner's disagreement with the Department's evaluation of the petitioner's claims and evidence in a previous, negative final determination would not be a basis for requesting to re-petition. By maintaining the integrity of the Department's past determinations, the Department by extension recognizes the value of third-party investment in the Federal acknowledgment process, specifically the value of third-party

[83] 87 FR 24910–11.

[84] 87 FR 24910.

[85] 87 FR 24910–11 (citations omitted).

[86] 25 CFR 83.48(a) (proposed 2023).

[87] *See, e.g., In re Fed. Acknowledgment of the Hist. E. Pequot Tribe,* 41 IBIA 1 (May 12, 2005); *In re Fed. Acknowledgment of the Schaghticoke Tribal Nation,* 41 IBIA 30 (May 12, 2005).

[88] *See* 87 FR 24914.

[89] *Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 220 (1988).

comments and evidence that informed the Department's past determinations.[90]

Although the Department's proposal in 2022 to retain the longstanding, blanket ban on re-petitioning aligns more closely with third-party interests in finality, the approach proposed here seeks to balance those interests with competing, compelling interests in re-petitioning. For example, the re-petition authorization process that the Department proposes to implement would subject prospective re-petitioners to a threshold review. By proposing to limit the types of arguments that unsuccessful petitioners could raise in the threshold review (regulatory changes and new evidence), the Department seeks to minimize the burden on third parties participating in the process and responding to those arguments. Additionally, by proposing to impose a limit on the amount of time that unsuccessful petitioners would have to request to re-petition, the Department seeks to account for third-party interests in finality.

The proposed rule therefore would balance third-party reliance interests with denied petitioners' interests in Federal acknowledgment. The proposed rule also seeks to be more responsive to the *Chinook* court's ''skeptic[ism] that res judicata is applicable in a situation such as this where legal standards changed between the 1994 and 2015 regulations.'' [91] While the Department maintains that the legal standards in the 2015 regulations are not significantly different from those in the previous regulations and do not compel the Department to allow re-petitioning,[92] in the interest of fairness to unsuccessful petitioners, the Department proposes to give those petitioners a narrow path for arguing that specific changes warrant reconsideration of their specific final determinations.

Similarly, while the availability of new evidence does not compel the Department to allow re-petitioning,[93] the Department has the authority to reconsider a prior position if there are good reasons for doing so.[94] Given the possibility that a petitioner can demonstrate through new evidence that it is a continuously existing Indian tribe entitled to a government-to-government relationship with the United States, as well as the significant consequences of being granted or denied Federal acknowledgment (discussed above and in the 2022 proposed rule [95]), the Department proposes that there are good reasons to create a limited exception to the re-petition ban for unsuccessful petitioners that have new, potentially dispositive evidence, notwithstanding valid third-party interests to the contrary. Finally, in response to third-party concerns about actions that might stem from eventual Federal acknowledgment (for example, concerns about environmental and land use impacts on local communities), third parties could avail themselves of any additional due process specific to those actions.[96]

2. Departmental Interests in Finality

Commenters opposing the ban did not think that the Department's interest in finality is a compelling justification for the re-petition ban, especially when weighed against the competing interests of unsuccessful petitioners. For example, in response to the Department's concerns about the significant burdens associated with re-petitioning (as articulated in the 2022 proposed rule [97]), one commenter stated that although ''an agency's workload can, in an ordinary case, help to justify a decision about process[,] . . . this is not an ordinary case.'' Another commenter suggested that the Department could address the increase in workload that would result from permitting re-petitioning by requesting additional resources. Finally, several commenters opposing the ban suggested that re-petitioners could be ''sent to the back of the line,'' behind first-time petitioners in the order of review. That suggestion echoes the *Chinook* and *Burt Lake* courts' observation that if the Department ''was concerned about pending petitions, it would have been simple to give them priority'' over any re-petitions.[98]

Commenters supporting the ban generally agreed with the Department's position in the 2022 proposed rule that the Department has a legitimate interest in finality.[99] The commenters focused in particular on the Department's interest in allocating resources efficiently, arguing that the Department should devote its limited resources to evaluating new and pending petitioners.

Response: The Department maintains its legitimate interests in the finality of final agency determinations, as discussed in the 2022 proposed rule. However, upon further deliberation, the Department proposes an approach that gives greater weight to the compelling interests of unsuccessful petitioners in re-petitioning while still taking steps to conserve and allocate limited agency resources.

Like the 2014 proposed rule, this proposed rule would subject a previously unsuccessful petitioner to a threshold review limiting the types of arguments that the petitioner could raise in its re-petition request. By keeping the focus on (1) the changes in the 2015 regulations and (2) the availability of new evidence—both developments likely to postdate the date of the petitioner's previous, negative final determination—the Department seeks to avoid the overwhelming administrative burdens that would be associated with an open-ended re-petitioning process, including the potential reopening of decades-old administrative records that ''rang[e] in excess of 30,000 pages to over 100,000 pages.'' [100]

Unlike the 2014 proposed rule, this proposed rule would give AS–IA, not the Office of Hearings and Appeals, responsibility over the re-petition authorization process.[101] Although AS–IA's oversight over the process might increase the workload within the Office of the AS–IA, the Department proposes that AS–IA is in the best position to

[90] *See* 59 FR 9283 (stating that ''participation of . . . interested parties is both appropriate and useful'').

[91] *Chinook,* 2020 WL 128563, at *9 (citing *Golden Hill Paugussett Tribe of Indians* v. *Rell,* 463 F. Supp. 2d 192, 199 (D. Conn. 2006)).

[92] *See Chinook,* 2020 WL 128563, at *9 (explaining that ''res judicata does not apply when legal standards governing the issues are 'significantly different' '' (citing *Golden Hill,* 463 F. Supp. 2d at 199)).

[93] *See Vt. Yankee Nuclear Power Corp.* v. *Nat. Res. Def. Council, Inc.,* 435 U.S. 519, 554–55 (1978) (''If . . . litigants might demand rehearings as a matter of law because [of] . . . some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.'').

[94] *Env't Def. Fund, Inc.* v. *Costle,* 657 F.2d 275, 289 (D.C. Cir. 1981) (''It is well settled that an agency may alter or reverse its position if the change is supported by a reasoned explanation.'').

[95] 87 FR 24914.

[96] *See, e.g., City of Sherrill* v. *Oneida Indian Nation,* 544 U.S. 197, 220 (2005) (explaining that ''Congress has provided a mechanism for the acquisition of lands for Tribal communities that takes account of the interests of others with stakes in the area's governance and well-being''); 80 FR 37881 (explaining that ''if the newly acknowledged tribe seeks to have land taken into trust and that application is approved, state or local governments may challenge that action under the land-into-trust process (25 CFR part 151), an entirely separate and distinct decision from the Part 83 process'').

[97] 87 FR 24914–16.

[98] *Chinook,* 2020 WL 128563, at *9; *Burt Lake,* 613 F. Supp. 3d at 385 (quoting *Chinook,* 2020 WL 128563, at *9).

[99] *See* 87 FR 24914–16.

[100] Barbara N. Coen, *Tribal Status Decision Making: A Federal Perspective on Acknowledgment,* 37 New Eng. L. Rev. 491, 495 (2003) (citing *Work of the Department of the Interior's Branch of Acknowledgment and Research within the Bureau of Indian Affairs: Hearing Before the S. Comm. on Indian Affs.,* 107th Cong. 2, 19–20 (2002) (statement of Michael R. Smith, Dir., Office of Tribal Servs., U.S. Dep't of the Interior)).

[101] *Compare* 25 CFR 83.50 through 83.62 (proposed 2023), *with* 25 CFR 83.4(b)(2) and (3) (proposed 2014).

review re-petition requests efficiently, given AS–IA's expertise and experience in evaluating part 83 petitioners' claims and evidence. AS–IA's authority over the process would also ensure that the Department ''prioritize[s] review of documented petitions over review of re-petition requests,'' [102] in line with multiple commenters' recommendation to prioritize review of new and pending petitions.

The Department proposes that the re-petition authorization process, limited in scope and implemented in an efficient and fair manner, would be responsive to the concerns underlying the Department's interest in finality (as articulated in the 2022 proposed rule [103]) while still recognizing the compelling interest in re-petitioning, as articulated both in comments and by the *Chinook* and *Burt Lake* courts. The Department invites comments on additional steps that it could take to mitigate the workload associated with the proposed process.

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866, as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. On October 20, 2023, OIRA determined this proposed rule is significant. This rule would not have an annual effect on the economy of $200 million.

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.

This rulemaking is necessary to comply with the orders of the *Chinook* and *Burt Lake* courts, both of which remanded the re-petition ban in part 83 to the Department for further consideration. It would affect federally recognized Indian Tribes and a variety of stakeholders in the Federal acknowledgment process, including previously denied part 83 petitioners, State and local governments, current and prospective petitioners, and others. By implementing a limited exception to the re-petition ban, the proposed regulations would benefit unsuccessful petitioners that previously had no avenue to re-petition for Federal acknowledgment. However, it is unclear how many of the petitioners might submit a request to re-petition or how many could meet the conditions set forth at proposed §§ 83.47 through 83.49.

The costs of the proposed re-petition authorization process include the additional workload on the Department that would stem from reviewing requests to re-petition for Federal acknowledgment and preparing decisions granting or denying authorization to re-petition. Implementation of the proposed process also could result in an increase in the number of requests that the Department receives pursuant to the Freedom of Information Act, from federally recognized Indian Tribes and various stakeholders seeking copies of documents associated with part 83 petitions.[104] Furthermore, the process could result in an increase in litigation, particularly given that a denial of authorization to re-petition would be a final agency action under the APA. Additional costs include the time and resources that unsuccessful petitioners would have to spend reviewing this rule and preparing re-petition requests, as well as the time and resources that others invested in the Federal acknowledgment process (including federally recognized Indian Tribes and State and local governments that oppose certain petitions) would have to spend reviewing this rule and commenting on re-petition requests.

In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at *https://www.regulations.gov* at Docket ID BIA–2022–0001 or by searching for ''RIN 1076–AF67.''

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) requires Federal agencies to prepare a regulatory flexibility analysis for rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500, *et seq.*) to determine whether a regulation would have a significant economic impact on a substantial number of small entities.

The Department does not believe the proposed rule would have a significant economic impact on a substantial number of small entities (including small businesses, not-for-profit organizations, and ''small governmental jurisdictions,'' defined in 5 U.S.C. 601 to include ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand''). The proposed rule would minimize the burden on unsuccessful petitioners (one type of small entity) by narrowing the scope of arguments at issue in the re-petition authorization process. Although petitioners preparing re-petition requests might incur non-hour cost burdens for contracted services, such as anthropologists, attorneys, genealogists, historians, and law clerks, the narrow scope of arguments at issue—focused on changes in part 83 and/or new evidence—would reduce the risk of petitioners incurring excessive costs for contracted services.

Additionally, by limiting the types of arguments that unsuccessful petitioners could raise in the re-petition authorization process, the proposed rule would minimize the economic impacts on small entities that oppose Federal acknowledgment of the petitioners and that would be preparing arguments in rebuttal. Finally, the limit on the amount of time that unsuccessful petitioners would have to request to re-petition would help small entities participating in the Federal acknowledgment process (including small government jurisdictions) plan for the allocation and expenditure of limited resources accordingly. By contrast, an open-ended avenue for re-petitioning, with few or no limitations, would increase uncertainty about those burdens. Additional discussion of the conditional, time-limited opportunity to re-petition proposed here, and the alternatives that the Department considered, is contained in sections I through III of the preamble, above.

The Department certifies that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required by the RFA.

C. Congressional Review Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. This proposed rule does

[102] 25 CFR 83.53(c) (proposed 2023).

[103] 87 FR 24914–16.

[104] *See* 87 FR 24915–16 (discussing the potential for a ''marked increase'' in the number of FOIA requests received as a result of the creation of a re-petitioning process).

not affect commercial or business activities of any kind. This rule:

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

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

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

D. Unfunded Mandates Reform Act

This rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule would not have a monetarily significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. 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.

F. 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.

G. 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.

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

The Department 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 hosted consultation with federally recognized Indian Tribes before publication of this proposed rule.

- Following publication of the 2022 proposed rule, the Department held two Tribal consultation sessions with federally recognized Indian tribes.
- The Department is hosting an additional consultation session with Tribes as described in the **DATES** and **ADDRESSES** sections of this document.

I. Paperwork Reduction Act

All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB has reviewed and approved the information collection requirements associated with petitions for Federal acknowledgment under 25 CFR part 83 and assigned the OMB control number 1076–0104 to the collection. This proposed rule would revise and supplement 1076–0104 with a new collection associated with changes proposed in this rulemaking. The new reporting and/or recordkeeping requirements identified below require approval by OMB:

- *Title of Collection:* Federal Acknowledgment as an Indian Tribe, 25 CFR part 83.
- *OMB Control Number:* 1076–0104.
- *Form Number:* BIA–8304, BIA–8305, and BIA–8306.
- *Type of Review:* Revision of a currently approved collection.
- *Summary of Revision/Supplement:* Under the Department's proposal to create a conditional, time-limited opportunity for denied petitioners to re-petition for Federal acknowledgment as an Indian Tribe, the Department would require prospective re-petitioners to plausibly allege that the outcome of the previous, negative final determination would change to positive on reconsideration based on one or both of the following: (1) a change in part 83 (from the 1978 or 1994 regulations to the 2015 regulations); and/or (2) new evidence. The information would be collected in the previously unsuccessful petitioners' respective requests to re-petition for Federal acknowledgment. The collection of information would be unique for each petitioner.
- *Respondents/Affected Public:* Groups petitioning for Federal acknowledgment as Indian Tribes and groups seeking to re-petition for Federal acknowledgment.
- *Total Estimated Number of Annual Respondents:* 2 per year, on average.
  - 1 petitioning group.
  - 1 group seeking to re-petition.
- *Total Estimated Number of Annual Responses:* 2 per year, on average.
  - 1,436 hours for 1 petitioning group.
  - 700 hours for 1 group seeking to re-petition.
- *Estimated Completion: Time per Response:* 2,136 hours.
  - 1,436 hours for 1 petitioning group.
  - 700 hours for 1 group seeking to re-petition.
- *Total Estimated Number of Annual Burden Hours:* 2,136 hours.
- *Respondent's Obligation:* Required to Obtain a Benefit.
- *Frequency of Collection:* Once.
- *Total Estimated Annual Nonhour Burden Cost:* $3,150,000.
  - $2,100,000 for contracted services obtained by 1 petitioning group.
  - $1,050,000 for contracted services obtained by 1 group seeking to re-petition.
- *Annual Cost to Federal Government:* $778,801.
  - $628,938 to review 1 petitioning group: (6,000 hours × $90.08 wage for GS–13) plus (666 hours × $132.82 for GS–15 wage).
  - $149,863 to review 1 group seeking to re-petition: (1,500 hours times $90.08 wage for GS–13) plus (111 hours × 132.82 wage for GS–15).

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

1. Whether or not the collection of information is necessary for the proper performance of the functions of the Department, including whether or not the information will have practical utility.

2. The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

3. Ways to enhance the quality, utility, and clarity of the information to be collected.

4. Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

5. Estimated hour burden (excluding all hours for contracted services and hours for customary and usual business practices).

- Estimated burden hours for petitioning group.
- Estimated burden hours for group seeking to re-petition.

6. Estimated non-hour cost burden, for any contracted services, including anthropologists, attorneys, genealogists, historians, law clerks.

○ Estimated cost of contracted services for petitioning group.
○ Estimated cost of contracted services for group seeking to re-petition.
7. Annualized cost to the Federal Government.
8. Percentage of information relating to a petition or re-petition request that would be reported electronically.
9. System of Records Notice (SORN) INTERIOR/BIA–7, Tribal Enrollment Reporting and Payment System.

Send your written comments and suggestions on this information collection to OIRA listed in **ADDRESSES** by the date indicated in **DATES**. Please also send a copy to *consultation@bia.gov* and reference ''OMB Control Number 1076–0104'' in the subject line of your comments. You may also view the ICR at *https://www.reginfo.gov/public/Forward?SearchTarget=PRA&textfield=1076-0104.*

J. National Environmental Policy Act

Under NEPA, categories of Federal actions that normally do not significantly impact the human environment may be categorically excluded from the requirement to prepare an environmental assessment or impact statement. *See,* 40 CFR 1501.4. Under the Department, regulations that are administrative or procedural are categorially excluded from NEPA analysis because they normally do not significantly impact the human environment. *See,* 43 CFR 46.210(i). This rule is administrative and procedural in nature. Consequently, it is categorically excluded from the NEPA requirement to prepare a detailed environmental analysis. Further, the Department also determined that the rule would not involve any of the extraordinary circumstances under a categorical exclusion that would necessitate environmental analysis. *See,* 43 CFR 46.215.

K. 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.

L. Clarity of This Regulation

We are required by E.O. 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.

M. 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.

N. Privacy Act of 1974, Existing System of Records

INTERIOR/BIA–7, Tribal Enrollment Reporting and Payment System, published September 27, 2011 (76 FR 59733), contains documents supporting individual Indian claims to interests in Indian Tribal groups and includes name, maiden name, alias, address, date of birth, social security number, blood degree, enrollment/BIA number, date of enrollment, enrollment status, certification by the Tribal governing body, telephone number, email address, account number, marriages, death notices, records of actions taken (approvals, rejections, appeals), rolls of approved individuals; records of actions taken (judgment distributions, per capita payments, shares of stock); ownership and census data taken using the rolls as a base, records concerning individuals which have arisen as a result of that individual's receipt of funds or income to which that individual was not entitled or the entitlement was exceeded in the distribution of such funds.

List of Subjects in 25 CFR Part 83

Administrative practice and procedure, Indians—tribal government.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 25 CFR part 83 as follows:

PART 83—PROCEDURES FOR FEDERAL ACKNOWLEDGMENT OF INDIAN TRIBES

■ 1. The authority citation for part 83 is revised to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 5131; 25 U.S.C. 5130 note (Congressional Findings); and 43 U.S.C. 1457.

■ 2. In § 83.1, add in alphabetical order definitions for ''Re-petition authorization process'', ''Re-petitioning'', and ''Unsuccessful petitioner'' to read as follows:

§ 83.1 What terms are used in this part?

* * * * *

Re-petition authorization process means the process by which the Department handles a request for re-petitioning filed with OFA by an unsuccessful petitioner under §§ 83.47 through 83.62, from receipt to issuance of a decision as to whether the unsuccessful petitioner is authorized to re-petition for acknowledgment as a federally recognized Indian tribe. A grant of authorization to re-petition allows a petitioner to proceed through the Federal acknowledgment process by submitting a new documented petition for consideration under subpart C of this part.

Re-petitioning means, after receiving a negative final determination that is final and effective for the Department and receiving subsequent authorization to re-petition, the submission of a new documented petition for consideration under subpart C of this part.

* * * * *

Unsuccessful petitioner means an entity that was denied Federal acknowledgment after petitioning under the acknowledgment regulations at part 54 of this chapter (as they existed before March 30, 1982) or part 83.

■ 3. In § 83.4, revise paragraph (d) to read as follows:

§ 83.4 Who cannot be acknowledged under this part?

* * * * *

(d) An entity that previously petitioned and was denied Federal acknowledgment under part 54 of this chapter (as it existed before March 30, 1982) or part 83 (including reconstituted, splinter, spin-off, or component groups who were once part of previously denied petitioners) unless the entity meets the conditions of §§ 83.47 through 83.49.

■ 4. Revise § 83.9 to read as follows:

§ 83.9 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, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104.

■ 5. Add subpart D, consisting of §§ 83.47 through 83.62 to read as follows:

Subpart D—Re-Petition Authorization Process

Sec.

§ 83.47 Who can seek authorization to re-petition under this subpart?

(a) The re-petition authorization process is available to unsuccessful petitioners denied Federal acknowledgment, subject to the exceptions in paragraph (c) of this section.

(b) Any petitioner that, as of [EFFECTIVE DATE OF FINAL RULE], has not yet received a final agency decision and is proceeding under the acknowledgment regulations as published in this part, effective March 28, 1994, may remain under those regulations and, if denied under those regulations, may seek authorization to re-petition under this subpart. These petitioners may also choose by [60 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], to proceed instead under the acknowledgment regulations, as published in this part 83, effective July 31, 2015, and to supplement their petitions, and, if the petition is denied, may seek authorization to re-petition under this subpart. Petitioners choosing to proceed under the regulations as published in this part 83, effective July 31, 2015 must notify OFA of their choice in writing by [60 DAYS AFTER EFFECTIVE DATE OF FINAL RULE], in any legible electronic or hardcopy form.

(c) The re-petition authorization process is not available to the following:

(1) Unsuccessful petitioners that submit a re-petition request pursuant to this process, are granted authorization to re-petition, and are denied Federal acknowledgment a second time;

(2) Unsuccessful petitioners that submit a re-petition request pursuant to this process and are denied authorization to re-petition.

§ 83.48 When will the Department allow a re-petition?

(a) An unsuccessful petitioner may re-petition only if AS–IA determines that the petitioner has plausibly alleged one or both of the following:

(1) A change from part 54 of this chapter (as it existed before March 30, 1982) or part 83 (as it existed before July 31, 2015) to this part 83 would, if applied on reconsideration, change the outcome of the previous, negative final determination to positive; and/or

(2) New evidence (*i.e.,* evidence not previously submitted by the petitioner or otherwise considered by the Department) would, if considered on reconsideration, change the outcome of the previous, negative final determination to positive.

(b) If the Department revises the regulations in this part after [EFFECTIVE DATE OF FINAL RULE], petitioners prohibited from submitting a new re-petition request under § 83.47(c) will be allowed to submit a new re-petition request, but only based on the condition in paragraph (a)(1) of this section.

§ 83.49 How long does an unsuccessful petitioner have to submit a request for authorization to re-petition?

(a) An unsuccessful petitioner denied Federal acknowledgment prior to [EFFECTIVE DATE OF FINAL RULE], may request authorization to re-petition by submitting a complete request under § 83.50 no later than [5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

(b) An unsuccessful petitioner denied Federal acknowledgment after [EFFECTIVE DATE OF FINAL RULE], may request authorization to re-petition by submitting a complete request under § 83.50 no later than five years after issuance of the negative final determination. However, if the petitioner pursues judicial review of the negative final determination:

(1) The five-year period will be tolled during any period of judicial review, from the date of filed litigation to the date of entry of judgment and expiration of appeal rights for said litigation; and

(2) Upon expiration of the appeal rights, OFA will notify the petitioner and those listed in § 83.51(b)(2) of the resumption of the five-year time limit and the date by which the petitioner must submit a request for re-petitioning.

§ 83.50 How does an unsuccessful petitioner request authorization to re-petition?

(a) To initiate the re-petition authorization process, the petitioner must submit to OFA, in any legible electronic or hardcopy form, a re-petition request that includes the following:

(1) A certification, signed and dated by the petitioner's governing body, stating that the submission is the petitioner's official request for authorization to re-petition;

(2) A concise written narrative, with citations to supporting documentation, thoroughly explaining how the petitioner meets the conditions of §§ 83.47 through 83.49; and

(3) Supporting documentation cited in the written narrative and containing specific, detailed evidence that the petitioner meets the conditions of §§ 83.47 through 83.49.

(b) If the re-petition request 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.

§ 83.51 What notice will OFA provide upon receipt of a request for authorization to re-petition?

When OFA receives a re-petition request that satisfies § 83.50, it will do all of the following:

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

(b) Within 60 days of receipt:

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

(i) The narrative portion of the re-petition request, as submitted by the petitioner (with any redactions appropriate under § 83.50(b));

(ii) Other portions of the re-petition request, 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 § 83.50(b) or by the Department;

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

(iv) The date of receipt;

(v) The opportunity for individuals and entities to submit comments and evidence supporting or opposing the petitioner's request for re-petitioning within 90 days of publication of notice of the request; and

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

(2) Notify, in writing, the parties entitled to notification of a documented petition under § 83.22(d) and any third parties that participated as a party in an administrative reconsideration or Federal Court appeal concerning the petitioner.

§ 83.52 What opportunity to comment will there be before the Assistant Secretary reviews the re-petition request?

(a) Publication of notice of the request will be followed by a 90-day comment period. During this comment period, any individual or entity may submit the following to OFA to rebut or support the request:

(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 to OFA must provide the petitioner with a copy of their submission.

(c) If OFA has received a timely objection and evidence challenging the request, 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 request submitted by individuals or entities during this response period.

(d) After the close of the comment-and-response period, the Department will consider the re-petition request ready for active consideration, and within thirty days of the close of the comment-and-response period, OFA will place the request on the register that OFA maintains under § 83.53(a).

§ 83.53 How will the Assistant Secretary determine which re-petition request to consider first?

(a) OFA shall maintain and make available on its website a register of re-petition requests that are ready for active consideration.

(b) The order of consideration of re-petition requests shall be determined by the date on which OFA places each request on OFA's register of requests ready for active consideration.

(c) The Department will prioritize review of documented petitions over review of re-petition requests, except that re-petition requests pending on OFA's register for more than two years shall have priority over any subsequently filed documented petitions.

§ 83.54 Who will OFA notify when the Assistant Secretary begins review of a re-petition request?

OFA will notify the petitioner and those listed in § 83.51(b)(2) when AS–IA begins review of a re-petition request and will provide the petitioner and those listed in § 83.51(b)(2) with the name, office address, and telephone number of the staff member with primary administrative responsibility for the request.

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

(a) In any review, AS–IA will consider the re-petition request and evidence submitted by the petitioner, any comments and evidence on the request received during the comment period, and petitioners' responses to comments and evidence received during the response period.

(b) AS–IA may also:

(1) Initiate and consider other research for any purpose relative to analyzing the re-petition request; and

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

(c) OFA will provide the petitioner with the additional material obtained in paragraph (b) of this section, and provide the petitioner with a 60-day opportunity to respond to the additional material. The additional material and any response by the petitioner will become part of the record.

§ 83.56 Can a petitioner withdraw its re-petition request?

A petitioner can withdraw its re-petition request at any point in the process and re-submit the request at a later date within the five-year time limit applicable to the petitioner under § 83.49. Upon re-submission, the re-petition request will lose its original place in line and be considered after other re-petition requests awaiting review.

§ 83.57 When will the Assistant Secretary issue a decision on a re-petition request?

(a) AS–IA will issue a decision within 180 days after OFA notifies the petitioner under § 83.54 that AS–IA has begun review of the request.

(b) The time 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.

§ 83.58 Can AS–IA suspend review of a re-petition request?

(a) AS–IA can suspend review of a re-petition request, either conditionally or for a stated period, if there are technical or administrative problems that temporarily preclude continuing review.

(b) Upon resolution of the technical or administrative problems that led to the suspension, the re-petition request will have the same priority for review to the extent possible.

(1) OFA will notify the petitioner and those listed in § 83.51(b)(2) when AS–IA suspends and when AS–IA resumes review of the re-petition request.

(2) Upon the resumption of review, AS–IA will have the full 180 days to issue a decision on the request.

§ 83.59 How will the Assistant Secretary make the decision on a re-petition request?

(a) AS–IA's decision will summarize the evidence, reasoning, and analyses that are the basis for the decision regarding whether the petitioner meets the conditions of §§ 83.47 through 83.49.

(b) If AS–IA finds that the petitioner meets the conditions of §§ 83.47 through 83.49, AS–IA will issue a grant of authorization to re-petition.

(c) If AS–IA finds that the petitioner has not met the conditions of §§ 83.47 through 83.49, AS–IA will issue a denial of authorization to re-petition.

§ 83.60 What notice of the Assistant Secretary's decision will OFA provide?

In addition to publishing notice of AS–IA's decision in the **Federal Register**, OFA will:

(a) Provide copies of the decision to the petitioner and those listed in § 83.51(b)(2); and

(b) Publish the decision on the OFA website.

§ 83.61 When will the Assistant Secretary's decision become effective, and can it be appealed?

AS–IA's decision under § 83.59 will become effective immediately and is not subject to administrative appeal.

(a) A grant of authorization to re-petition is not a final determination granting or denying acknowledgment as a federally recognized Indian tribe. Instead, it allows the petitioner to proceed through the Federal acknowledgment process by submitting a new documented petition for consideration under subpart C of this part, notwithstanding the Department's previous, negative final determination. A grant of authorization to re-petition is not subject to appeal.

(b) A denial of authorization to re-petition is final for the Department and is a final agency action under the Administrative Procedure Act (5 U.S.C. 704).

§ 83.62 What happens if some portion of this subpart is held to be invalid by a court of competent jurisdiction?

If any portion of this subpart is determined to be invalid by a court of competent jurisdiction, the other portions of the subpart remain in effect. For example, if one of the conditions on re-petitioning set forth at §§ 83.47 through 83.49 is held to be invalid, it is the Department's intent that the other conditions remain valid.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–15070 Filed 7–11–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102161–23]

RIN 1545–BQ89

Identification of Basket Contract Transactions as Listed Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would identify transactions that are the same as, or substantially similar to, certain basket contract transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions would be required to file disclosures with the IRS and would be subject to penalties for failure to disclose. The proposed regulations would affect participants in these transactions as well as material advisors. This document also provides notice of a public hearing on the proposed regulations.

DATES:

Comments: Written or electronic comments must be received by September 10, 2024.

Public Hearing: A public hearing has been scheduled for September 26, 2024, at 10:00 a.m. ET. Pursuant to Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), the public hearing is scheduled to be conducted in person, but the IRS will provide a telephonic option for individuals who wish to attend or testify at the hearing by telephone. Requests to speak and outlines of topics to be discussed at the public hearing must be received by September 10, 2024. If no outlines are received by September 10, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. ET on September 24, 2024. The hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by 5:00 p.m. on September 23, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–102161–23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG–102161–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Danielle M. Heavey of the Office of Associate Chief Counsel (Financial Institutions & Products), (202) 317–5931 (not a toll-free number); concerning the submission of comments or the hearing, Publications and Regulations Section at (202) 317–6901 (not a toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed additions to 26 CFR part 1 (Income Tax Regulations) under section 6011 of the Internal Revenue Code (Code). The proposed additions identify certain transactions as ''listed transactions'' for purposes of section 6011.

I. Disclosure of Reportable Transactions by Participants and Penalties for Failure To Disclose

Section 6011(a) generally provides that, when required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

Section 1.6011–4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of § 1.6011–4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in § 1.6011–4(e). Reportable transactions are identified in § 1.6011–4 and include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* § 1.6011–4(b)(2) through (6). Section 1.6011–4(b)(2) defines a listed transaction as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by