

RULEMAKING HEARINGS

TENNESSEE COMMISSION OF INDIAN AFFAIRS - 0785

There will be a public rulemaking hearing before the Tennessee Department of Environment and Conservation acting on behalf of the Tennessee Commission of Indian Affairs (TCIA), to consider the adoption and promulgation of rules pursuant to Tennessee Code Annotated Section 4-34-103 and the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-101 et seq. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204, and will take place in the first floor auditorium of the Tennessee Department of Transportation Administration Building located at 6601 Centennial Boulevard, Nashville, Tennessee at 10:00 AM CDT on Saturday October 28, 2006.

Individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten days prior to October 28, 2006 (or the date such party intends to review such filings), to allow time to provide such aid or services. Contact the ADA Coordinator at 401 Church Street, 12th Floor, L & C Tower, Nashville, Tennessee 37243 or call (615) 532-0200 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For a copy of this Notice of Rulemaking Hearing, contact: Mr. Ed Harris, 20th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1535; telephone 615-532-0131.

SUBSTANCE OF PROPOSED RULES

Rules 0785-1-.01 through .08 of Rule Chapter 0785-1 Recognition Criteria For Native American Indians expired by sunset action of the Legislature and the following new rules are replacing them to read as follows:

NEW RULES

TABLE OF CONTENTS

0785-1-.01	General
0785-1-.02	Recognition Criteria For Native American Indian Nations, Tribes or Communities
0785-1-.03	Procedures For Petitioning For Recognition
0785-1-.04	Changes In Membership Rolls
0785-1-.05	Administrative Review

0785-1-.01 GENERAL

(1) General

(a) Purpose

To establish criteria and procedures to provide for legal recognition by the state of Tennessee of Native American Indians.

RULEMAKING HEARINGS

(b) Use of Number and Gender

As used in these Rules:

1. Words in the masculine gender also include the feminine and neuter genders; and
2. Words in the singular include the plural; and
3. Words in the plural include the singular.

(c) Rule Structure

These Rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(l) item

I. subitem

A. section

(A) subsection

(2) Definitions

When used in Rules 0785-1-.01 through .05, the following terms have the meanings given below unless otherwise specified:

“Act” means Tennessee Code Annotated Section 4-34-101 et seq., Commission of Indian Affairs.

“Applicant” means Native American Indian groups applying for Nation, Tribe, or Community recognition in Tennessee.

“Commission” means the Tennessee Commission of Indian Affairs.

“List” means the updated membership list to be submitted to the Commission by applicants and recognized Nations, Tribes, and Communities.

“Nation”, “Tribe” and “Community” for the purposes of these rules, mean an assembly of Indian people who are related to each other by blood or kinship and includes “band” and “clan”.

RULEMAKING HEARINGS

“Recognized” means being acknowledged as a Native American Indian Nation, Tribe, or Community by the state of Tennessee.

“Roll” means the official list of recognized Native American Nations, Tribes, and Communities in Tennessee.

“State” means the state of Tennessee.

Authority: T.C.A. §4-34-103.

0785-1-.02 RECOGNITION CRITERIA FOR TENNESSEE NATIVE AMERICAN INDIAN NATIONS, TRIBES, OR COMMUNITIES

- (1) Eligibility for recognition shall be determined using the following criteria:
 - (a) The applicant for recognition is indigenous to Tennessee and has been identified on a substantially continuous basis as Native American Indians throughout the history of their group; and
 - (b) A majority of the applicant inhabits a particular geographic area in Tennessee or lives in a community in Tennessee viewed as Native American Indian and distinct from all other populations in the geographic area, and a majority of its members consist of individuals who have established verifiable documented descendency from an Indian tribe which has historically inhabited the State of Tennessee; and
 - (c) The applicant has maintained tribal political influence or other authority over its members, or is able to demonstrate their existence as a continuous, distinct cultural entity capable of self-regulation, throughout their history until the present; and
 - (d) The membership of the applicant is composed of a majority of persons who are not members of any other North American Indian federal or state recognized tribe.
- (2) The following information shall be provided to the Commission for review:
 - (a) A copy of the applicant’s present governing document and/or a statement describing in full the membership criteria and the procedures through which the group governs its affairs and members; and
 - (b) A list of all known current members of the group and a copy of any available list of former members, based on the tribe’s own defined criteria; and
 - (c) A history of the applicant from 1900 to present (maximum of 2000 words) written by a professional historian or anthropologist; and
 - (d) The applicant shall also submit additional information including one (1) or more of the following:
 1. Documented traditions, customs and legends that demonstrate the group’s Native American Indian cultural heritage; and/or

RULEMAKING HEARINGS

2. Letters, statements, and documents from city, county, state, or federal authorities that document a history of tribal related business and activities that specifically address Native American Indian culture, preservation, and affairs; and/or
 3. Letters, statements, and documents from federal or state recognized tribes in and/or outside of Tennessee which attest to the Indian heritage of the group; and/or
 4. Other compelling documentation acceptable by the Commission that shows the heritage of the applicant; and
- (e) A signed and notarized statement from the officers of the applicant affirming that the information provided is true and accurate.

Authority: T.C.A. §4-34-103.

0785-1-.03 PROCEDURES FOR PETITIONING FOR RECOGNITION

- (1) An Application For Recognition form with appropriate instructions for completion and submission on the back shall be developed and approved by the Commission. It shall be available on request by writing to the Tennessee Commission of Indian Affairs at the address below. Complete applications and supporting documentation are to be sent to:

Tennessee Commission of Indian Affairs
Tennessee Department of Environment and Conservation
Office of General Counsel
401 Church Street
L & C Tower, 20th Floor
Nashville, Tennessee 37243

- (2) The Commission shall appoint a Review Committee, consisting of three (3) members of the Commission, to review applications and supporting documentation for completeness and to work with applicants to achieve completeness. A record shall be maintained of all applications and appropriate information, including, but not limited to, the date received, date determined complete, date presented to the Commission and the Commission's decision. The Review Committee shall review an application within six (6) months of the submittal date.
- (3) If the application and required documentation are complete, the Committee will present the information to the Commission for review. Applicant(s) shall be notified in writing of the date, time and location of the Commission meeting at which the application is to be considered.
- (4) The Commission will either approve or deny the application within twelve (12) months of the application being determined complete by the Review Committee. The Commission may request additional information from the applicant.
- (5) The Commission will notify each applicant in writing of the Commission's decision.
- (6) Applications pending under the former Tennessee Commission of Indian Affairs may be processed using the new criteria following the effective date of these rules. Applicants shall be contacted in writing and advised accordingly. The Commission and/or the Review Committee may request the applicant to provide updated or additional information.

RULEMAKING HEARINGS

- (7) An applicant may, at any time prior to approval, withdraw their application and supporting documentation by writing to the Commission at the address in paragraph (1) of this Rule and may request the return of all submitted documents.
- (8) An applicant applying for recognition shall specify all submitted documentation that is to be returned to the applicant following the decision of the Commission or withdrawal by the applicant of the submitted application. All documents returned to the applicant shall be at the applicant's expense.
- (9) The roll of all approved for recognition shall be maintained current by the Commission and posted on the Commission's web site.

Authority: T.C.A. §4-34-103.

0785-1-.04 CHANGES IN MEMBERSHIP LISTS AND THE ROLL

- (1) Every two (2) years from their date of recognition, Nations, Tribes, or Communities recognized pursuant to the rules herein contained shall notify the Tennessee Commission of Indian Affairs of any changes in membership criteria and subsequent additions or deletions of members at the address in rule 0785-1-.03(1).
- (2) Any recognized Nation, Tribe, or Community may terminate its recognition by submitting written notice to the Chairperson of the Commission. The Commission, at its next meeting, shall vote to remove the name from the roll.

Authority: T.C.A. §4-34-103.

0785-1-.05 ADMINISTRATIVE REVIEW

Applicants (Nations, Tribes, or Communities) who disagree with the denial of their application for recognition may use the following procedure to seek a contested case hearing before the Commission pursuant to Sections 4-5-223 through 225 of the Uniform Administrative Procedures Act.

- (1) When an affected applicant disagrees with the denial of an application for recognition based upon the contention that such action is an illegal application of rules and/or statutes or such action is based upon invalid rules or statutes, the applicant may petition the Commission for a declaratory order.
- (2) Upon receipt of such a petition, the Commission may convene a contested case hearing pursuant to the provisions of T. C. A. Section 4-5-101, et seq.
- (3) The Commission may refuse to issue a declaratory order or fail to set a petition for a contested case hearing within 60 days of receipt of the petition. In either case, the affected applicant may apply for a declaratory judgment pursuant to T. C. A. 4-5-225.

Authority: T.C.A. §4-34-103.

RULEMAKING HEARINGS

The Commission prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

Memphis Environmental Field Office
Suite E-645, Perimeter Park
2510 Mount. Moriah Road
Memphis, TN 38115-1520
(901) 368-7939/ 1-888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38506
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Field Office
1625 Hollywood Drive
Jackson, TN 38305
(731) 512-1300/ 1-888-891-8332

Chattanooga Environmental Field Office
Suite 550- State Office Building
540 McCallie Avenue
Chattanooga, TN 37402-2013
(423) 634-5745/ 1-888-891-8332

Columbia Environmental Field Office
2484 Park Plus Drive
Columbia, TN 38401
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921-5602
(865)594-6035/ 1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
(615) 687-7000/1-888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
(423) 854-5400/1-888-891-8332

Additional review copies are available at the following library locations:

McIver's Grant Public Library
204 North Mill Street
Dyersburg, TN 38024-4631
(731) 285-5032

W. G. Rhea Public Library
400 West Washington Street
Paris, TN 38242-0456
(731) 642-1702

Hardin County Library
1013 Main Street
Savannah, TN 38372-1903
(731) 925-4314

Clarksville-Montgomery County Public Library
350 Pageant Lane, Suite 501
Clarksville, TN 37040-0005
(931) 648-8826

Coffee County-Manchester Public Library
1005 Hillsboro Highway
Manchester, TN 37355-2099
(931) 723-5143

Art Circle Public Library
154 East First Street
Crossville, TN 38555-4696
(931) 484-6790

E. G. Fisher Public Library
1289 Ingleside Ave.
Athens, TN 37371-1812
(423) 745-7782

Kingsport Public Library & Archives
400 Broad Street
Kingsport, TN 37660-4292
(423) 229-9489

RULEMAKING HEARINGS

The "DRAFT" rules may also be accessed for review using:

www.tdec.net/tcia

Office hours for the TDEC offices are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to the Office of General Counsel; Tennessee Department of Environment and Conservation; Attention: Mr. Ed Harris; 20th Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1535; telephone 615-532-0131 or FAX 615-532-0145. However, such written comments must be received by 4:30 PM CST, November 7, 2006 in order to assure consideration. For further information, contact Mr. Ed Harris at the above address or telephone number.

The notice of rulemaking set out herein was properly filed in the Department of State on the 22nd day of August, 2006. (08-29-06)