

Notice of Rulemaking Hearing

Tennessee Commission of Indian Affairs

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 May 20, 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 May 20, 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

Rule 0785-1-.01	General
Rule 0785-1-.02	Recognition Criteria For Native American Indian Nations, Tribes or Bands
Rule 0785-1-.03	Recognition Criteria For Native American Indian Organizations
Rule 0785-1-.04	Recognition Criteria For Native American Indian Individuals In Tennessee
Rule 0785-1-.05	Procedures For Petitioning For Recognition
Rule 0785-1-.06	Changes In Membership Rolls
Rule 0785-1-.07	Appeals

Rule 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 residing in Tennessee.

(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

(I) item

I. subitem

A. section

(A) subsection

(2) Definitions

When used in Rules 0785-1-.01 through .08, the following terms have the meanings given below unless otherwise specified:

"Commission" means the Tennessee Commission of Indian Affairs.

"Disabled person" means any person determined to be in need of partial or full supervision, protection, and assistance by reason of mental illness, physical illness or injury, advanced age, developmental disability or other mental or physical incapacity.

"Enrollment" means being recognized as a Native American Indian by the state of Tennessee.

"Roll" means the official list of recognized Native American individuals in Tennessee.

"State" means the state of Tennessee.

Authority: T.C.A. §4-34-103.

Rule 0785-1-.02 Recognition Criteria For Native American Indian Nations, Tribes Or Bands

- (1) The petitioning group has been identified on a substantially continuous basis as Native American Indians throughout the history of their race; and
- (2) A substantial portion of the petitioning group inhabits a particular geographic area or lives in a community viewed as Native American Indian and distinct from all other populations in the geographic area, and that its members are descendants of an Indian tribe which has historically inhabited the same geographic area; and
- (3) The petitioning group 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
- (4) A copy of the group's present governing document is provided and/or a statement describing in full the membership criteria and the procedures through which the group governs its affairs and members; and
- (5) 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, shall be submitted. The membership must consist of individuals who have established descendency from a tribe that existed historically; and
- (6) The membership of the group is composed principally of persons who are not members of any other North American Indian tribe.

Authority: T.C.A. §4-34-103.

Rule 0785-1-.03 Recognition Criteria For Native American Indian Organizations

- (1) The petitioning group shall have as its primary purpose the promotion of education, economic, or social advancement or self-sufficiency of Native American Indians, and as a secondary purpose the promotion and preservation of Native American Indian culture. The charter and by-laws of the organization must clearly document such purposes; and
- (2) The petitioning group shall be legally established, with appropriate charter, articles of incorporation, by-laws, and/or constitution, in accordance with state laws, and copies of the above-mentioned documents shall be provided; and
- (3) The petitioning group shall provide a statement describing membership criteria and a list of all known current members, including identification of Native American Indian members, based on the group's own defined criteria of ancestry recognition. A membership ratio must be maintained consisting of a majority of Native American Indians to non-Indian members; and
- (4) The petitioning group shall be controlled by a governing board and officers, the majority of which are Native American Indians.

Authority: T.C.A. §4-34-103.

Rule 0785-1-.04 Recognition Criteria For Native American Indian Individuals In Tennessee

- (1) All applicants must have maintained a permanent residence in Tennessee for at least six (6) months prior to their date of application.
- (2) Individuals may be enrolled with the state by satisfying any of the following means of documentation:
 - (a) The applicant has a roll number or certificate of Indian blood from a federally-recognized tribe; or
 - (b) The applicant's birth certificate shows the applicant or applicant's parent(s) to be Native American Indian; or
 - (c) The applicant has a family tree, which shows a direct ancestor of the applicant to appear on a roll of a federally recognized Native American Indian tribe. All family trees will be subject to verification by professional genealogists at the applicant's expense; or
 - (d) The applicant signs an affidavit stating he/she is a Native American Indian. If the applicant has a living relative at least ten years older than the applicant, the relative must also sign the affidavit. In addition to the affidavit, the applicant shall provide at least one of the following:
 1. A family Bible or hymnal showing that the applicant and/or the applicant's direct ancestors were Native American Indian.
 2. Death records of the applicant's direct ancestor(s) showing the ancestor(s) to be Native American Indian.
 3. Records of direct ancestor(s) from the Indian Court of Claims.
 4. School, church or health records, or other compelling documentation which shows the applicant to be Native American Indian.

Authority: T.C.A. §4-34-103.

Rule 0785-1-.05 Procedures For Petitioning For Recognition

- (1) Applications for recognition are available on request from the Tennessee Commission of Indian Affairs.
- (2) Applications for minors and disabled persons may be filed by the parent, next of kin, recognized guardian, or other person responsible for the care of the minor or disabled person.
- (3) Complete applications and supporting documentation with a \$20.00 processing fee per group or individual are to be sent to:

Secretary/Treasurer
Tennessee Commission of Indian Affairs
1541 Welsh Road
Memphis, Tennessee 38117-6731
- (4) The Review Committee of the Tennessee Commission of Indian Affairs shall review all applications and supporting documentation.
- (5) If the application and required documentation are complete, the Committee will present the information to the Commission for the Commission to review. The applicant(s) will be notified in writing of the Commission meeting when the application will be reviewed.

- (6) The Commission will either approve or deny the application. The Commission may request additional information from the applicant if necessary.
- (7) The Commission will notify each applicant in writing of the Commission's decision.

Authority: T.C.A. §4-34-103.

Rule 0785-1-.06 Changes In Membership Rolls

- (1) Nations, tribes, or bands recognized pursuant to the rules herein contained shall notify the Tennessee Commission of Indian Affairs of any changes in enrollment criteria and subsequent additions or deletions of members.
- (2) Organizations recognized pursuant to the rules herein contained shall submit updated membership rolls on a biennial basis for renewal of recognition certification.
- (3) Upon receipt of a death certificate or other evidence of death acceptable to the Commission, the name of the deceased person shall be removed from the roll.
- (4) Any recognized individual may terminate his or her enrollment by submitting written notice to the Chairperson of the Commission.

Authority: T.C.A. §4-34-103.

Rule 0785-1-.07 Appeals

- (1) Any group or individual whose application for recognition has been denied may file an appeal to the Commission.
- (2) The appeal shall be made in writing and shall be received by the Commission with thirty (30) days of the date of the Commission meeting when the application was denied.

Authority: T.C.A. §4-34-103.

Legal contact and/or party who will approve final copy for publication and is the contact for disk acquisition:

Mr. Ed Harris
Office of General Counsel.
20th Floor, L & C Tower
401 Church Street
Nashville, TN 37243-1535
(615) 532-0135

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
362 Carriage House Drive
Jackson, TN 38305-2222
(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
Suite 220- State Plaza
2700 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

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 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 CDT, May 31, 2006 in order to assure consideration. For further information, contact Mr. Ed Harris at the above address or telephone number.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Commission of Indian Affairs.

Doris Tate Trevino
Doris Tate Trevino
Chairperson

Subscribed to and sworn to before me this 24 day of March, 2006

Hannah Richards
Notary Public

My commission expires on the 03 day of 02, 09.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28 day of March, 2006.

Riley C. Darnell
Riley C. Darnell
Secretary of State

By: [Signature]

RECEIVED
2006 MAR 28 AM 9:07
SECRETARY OF STATE
PUBLICATIONS