

Rulemaking Hearing Rules
of
Tennessee Commission of Indian Affairs
Chapter 0785-1
Recognition Criteria For Native American Indians

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

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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.

(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:

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

“Applicant” means Native American Indian Nations, Tribes, Communities, Groups/Organizations or individuals applying for recognition in Tennessee.

"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.

"List" means the updated membership list and updated organizational purposes and leadership names to be submitted to the Commission by recognized Nations, Tribes, Communities, and Groups/Organizations.

"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.

"Group/Organization" means a number of individuals assembled together for the purpose of promoting Native American interests.

"Recognized" means being acknowledged as Native American Indian Nation, Tribe, Community, Group/Organization or individual by the state of Tennessee.

"Roll" means the official list of recognized Native American Nations, Tribes, Communities, Group/Organizations and individuals in Tennessee.

"State" means the state of Tennessee.

- (3) All Native American Indian Nations, Tribes, Communities, Group/Organizations and individuals previously recognized by the State of Tennessee through the previous Commission of Indian Affairs shall continue to be recognized and included on the roll. They will not have to reapply for recognition.

Authority: T.C.A. §4-34-103.

Rule 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 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
 - (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
 - 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.

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

- (1) The applicant 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, including, but not limited to, cultural resources and sacred sites. The charter and by-laws of the Group/Organization must clearly document such purposes; and
- (2) The applicant 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 applicant shall provide a statement describing membership criteria and a list of all known current members, including identification of Native American Indian members; and
- (4) The applicant shall submit a history of the applicant from the time of its creation to the present (1,000 words maximum); and
- (5) The applicant shall demonstrate that it is controlled by a governing board and officers, including identification of Native American Indian board members and officers; and
- (6) The applicant shall submit 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.

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

- (1) All applicants must have maintained residence in Tennessee for at least thirty (30) days prior to their date of application. In order to prove residency, the applicant shall provide to the Commission proof of mailing address in Tennessee (i. e.-utility bill, paycheck stub, current driver's license or voter registration card over 30 days old).
- (2) Individuals may be recognized and enrolled with the State by satisfying and submitting any of the following means of documentation:
 - (a) The applicant or applicant's biological parents, unless the applicant is adopted and is not of Indian Blood, have a roll number or certificate of Indian blood from a state or federally-recognized tribe; or
 - (b) The applicant's certified birth certificate shows the applicant or applicant's parent(s) to be Native American Indian; or
 - (c) The applicant is a direct lineal descendant of an individual officially recognized as a Native American Indian by the State of Tennessee; or
 - (d) 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
 - (e) 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 historical document such as a Bible or hymnal showing that the applicant and/or the applicant's direct ancestors were Native American Indian; or
 2. Certified death records of the applicant's direct ancestor(s) showing the ancestor(s) to be Native American Indian; or
 3. Certified records of direct ancestor(s) from the Indian Court of Claims; or
 4. Certified school, church or health records; or
 5. Other compelling documentation acceptable by the Commission which shows the applicant to be Native American Indian.
- (3) The applicant shall submit a signed and notarized statement that the information provided is true and accurate.

Authority: T.C.A. §4-34-103.

Rule 0785-1-.05 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 in paragraph (3) below.
- (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 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

- (4) 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.
- (5) 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.
- (6) 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.
- (7) The Commission will notify each applicant in writing of the Commission's decision.
- (8) 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.
- (9) 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 (3) above and may request the return of all submitted documents.
- (10) 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.
- (11) 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.

Rule 0785-1-.06 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-.05(3).

- (2) Every two (2) years from their date of recognition, Groups/Organizations recognized pursuant to the rules herein contained shall submit updated organizational purposes, leadership names and a membership list to the Commission at the address in Rule 0785-1-.05(3).
- (3) Upon receipt of a death certificate or other evidence of death acceptable to the Commission, the name of the deceased person shall be so noted on the roll at the Commission’s next meeting.
- (4) Any recognized Nation, Tribe, Community, Group/Organization or individual may terminate their enrollment by submitting written notice to the Chairperson of the Commission. The Commission, at its next meeting, shall vote to remove their name from the roll.

Authority: T.C.A. §4-34-103.

Rule 0785-1-.07 Administrative Review

Applicants (Nations, Tribes, Communities, Group/Organizations or individuals) 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.

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

Signature of the agency or officers directly responsible for proposing and/or drafting these rules:

Doris Tate Trevino, Chairperson
Tennessee Commission For Indian Affairs

The roll-call vote by the Tennessee Commission For Indian Affairs on these rulemaking hearing rules was as follows:

<u>Name of Commission Member</u>	Aye	No	Abstain	Absent
Jeanie King	___	___	_____	_____
Doris R. Tate Trevino	___	___	_____	_____
Ruth Knight Allen	___	___	_____	_____
Niles Aseret	___	___	_____	_____
Evangeline W. Lynch	___	___	_____	_____
James (Jimmy) Clayton Reedy	___	___	_____	_____
Kippy L. Vaughn	___	___	_____	_____

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Commission For Indian Affairs on the 10th day of June, 2006.

Further, I certify that the provisions of T.C.A. §4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing having been filed in the Department of State on the 28th day of March, 2006 and such notice of rulemaking hearing having been published in the April 13, 2006 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 20th day of May, 2006.

Doris Tate Trevino, Chairperson
Tennessee Commission of Indian Affairs

Subscribed and sworn to before me this the _____ day of _____, _____.

Notary Public

My commission expires on the _____ day of _____, _____.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Paul G. Summers
Attorney General and Reporter

Date

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 19th day of June, 2006, and will become effective on the 2nd day of September, 2006.