

CHAPTER 15 – COMMISSION OF INDIAN AFFAIRS

SECTION .0200 – LEGAL RECOGNITION OF AMERICAN INDIAN GROUPS

01 NCAC 15 .0201 AUTHORIZATION

The rules in this Section, establish procedures to provide for the legal recognition by the State of presently unrecognized American Indian groups.

*History Note: Authority G.S. 143B-406;
Eff. November 1, 1976;
Amended Eff. February 1, 2006.*

01 NCAC 15 .0202 DEFINITIONS

When used in this Section the following definitions apply:

- (1) "AMERICAN INDIAN TRIBE" means a population of Indian people all related to one another by blood or kinship, tracing their heritage to indigenous Indian tribes, and recognized by the State or federal government.
- (2) "COMMISSION" means the North Carolina Commission of Indian Affairs.
- (3) "GROUP" means the members of a community, inter-related by blood, and listed on submitted membership rolls as defined in Item (5) of this Rule, and petitioning the state for official recognition as an American Indian tribe.
- (4) "INDIGENOUS" means native to North Carolina.
- (5) "MEMBERSHIP ROLL" means a list of those individuals who have been determined by a group to meet the group's membership requirements. The membership roll shall list the names, addresses, date of birth, names of both parents (including mothers' maiden names), and telephone numbers of the people and relate each one to their kinship ties. These kinship ties shall be consistent with information documented in genealogy charts submitted in accordance with Rule .0212(2) of this Section.
- (6) "NOTICE OF INTENT TO PETITION" means a letter without supporting petition-related documents from a group requesting official recognition by the State of North Carolina.
- (7) "PETITION" means the presented documents and arguments made by a group to substantiate its claims that it satisfies the criteria identified in Rules .0203 and .0212 of this Section.
- (8) "PETITIONER" means any group that has submitted a Notice of Intent to Petition to the Commission requesting State recognition as an American Indian tribe.
- (9) "SPLINTER GROUP" means a political faction, community, or group of any character that separates or has separated from the main body of a state or federally recognized American Indian tribe, and has not functioned throughout history as an autonomous American Indian tribe.
- (10) "STATE" means the State of North Carolina.

*History Note: Authority G.S. 143B-406;
Eff. November 1, 1976;
Amended Eff. February 1, 2006; April 1, 1999.*

01 NCAC 15 .0203 GROUPS ELIGIBLE FOR PETITIONING PROCESS

(a) Only American Indian groups located in North Carolina who can trace their historic origins to indigenous American Indian tribes prior to 1790 are eligible to petition or to be considered for State recognition as an American Indian tribe.

(b) Each group seeking recognition shall document their organizational status and structure. The formal status and type of organizational structure of the petitioning group shall not be a factor in the recognition process.

*History Note: Authority G.S. 143B-406;
Eff. November 1, 1976;
Amended Eff. February 1, 2006; April 1, 1999.*

01 NCAC 15 .0204 GROUPS INELIGIBLE FOR RECOGNITION

The following groups and entities are ineligible to petition for official State recognition as American Indian tribes:

- (1) Splinter Groups – as defined in Rule .0202 of this Section.
- (2) Previously denied petition groups or entities - Groups, or successors in interest of groups, that have petitioned for and been denied or refused recognition as an American Indian tribe under the State's administrative rules for State recognition as an American Indian tribe, unless the group has new evidence to justify the petition.
- (3) Parties to certain actions – Any group that:
 - (a) in any action in State or federal court of competent jurisdiction to which the group was a party attempted to establish its status as an American Indian tribe or successor in interest to an American Indian tribe; and
 - (b) was determined by that court:
 - (i) not to be an American Indian tribe; or
 - (ii) not to be a successor in interest to an American Indian tribe; or
 - (iii) to be incapable of establishing one or more of the criteria set forth in Rules .0203 or .0212 of this Section.

History Note: *Authority G.S. 143B-406;*
Eff. November 1, 1976;
Amended Eff. February 1, 2006; April 1, 1999.

01 NCAC 15 .0205 COMMISSION ASSISTANCE TO PETITIONER

- (a) When a group has identified itself as an American Indian group, it shall request technical assistance from the Commission. The Commission shall explain the administrative processes for the legal recognition of an American Indian group.
- (b) The Commission of Indian Affairs assistance to the Petitioner shall be limited to an explanation of the procedure and technical advice.

History Note: *Authority G.S. 143B-406;*
Eff. November 1, 1976;
Amended Eff. February 1, 2006.

01 NCAC 15 .0206 SEATS ON THE COMMISSION

History Note: *Authority G.S. 71-16;*
Eff. November 1, 1976;
Repealed Eff. February 27, 1979.

01 NCAC 15 .0207 NOTICE OF INTENT TO PETITION FOR RECOGNITION

- (a) A petitioning American Indian group shall file a Notice of Intent to Petition (hereinafter referred to as the "Notice of Intent") with the Commission's Recognition Committee. The Commission shall acknowledge receipt of the Petitioner's Notice of Intent.
- (b) The Notice of Intent shall be produced, dated and shall be signed by each member of the governing body of the petitioning American Indian group, and shall include the group's name, address, number of members, geographic location of the petitioning group's members, historic origin and existing recognition.

History Note: *Authority G.S. 143B-406;*
Eff. February 11, 1980;
Amended Eff. February 1, 2006; April 1, 1999; August 1, 1988.

01 NCAC 15 .0208 RECOGNITION COMMITTEE

(a) The Recognition Committee shall be appointed by the chairperson of the Commission of Indian Affairs from the Commission members who are representing the recognized American Indian tribes and organizations in North Carolina.

(b) Once a Petitioner has completed the recognition process, the Recognition Committee shall make a recommendation to the Commission regarding the group's State recognition as an American Indian tribe. Thereafter, the Commission shall render its decision as under Rule .0209 of this Section.

*History Note: Authority G.S. 143B-406;
Eff. February 11, 1980;
Amended Eff. February 1, 2006; April 1, 1999; February 1, 1982.*

01 NCAC 15 .0209 PROCEDURE FOR RECOGNITION

The procedure to be followed for recognition shall be:

- (1) Petitioner shall submit a Notice of Intent to Petition, as set out in Rule .0207 of this Section, to the Commission of Indian Affairs.
- (2) The Commission shall acknowledge receipt of the Petitioner's Notice of Intent to Petition and shall explain procedure to Petitioner;
- (3) Upon receipt of the Notice of Intent, the Commission shall notify, in writing, the following interested parties:
 - (a) State recognized Indian tribes and organizations; and
 - (b) local and county governments within a 25 mile radius of the Petitioner's geographic area;
- (4) All petitions and responses to petitions must be received at least 10 days prior to the meeting at which they are to be considered.
- (5) The Petitioner shall provide an original and at least five copies when submitting petitions, responses to petitions, or other supplementary information to the Commission during the petition process.
- (6) The Petitioner shall complete and submit a fully documented petition to the Recognition Committee, including current membership rolls as defined in Rule .0202 of this Section and all past membership lists of the group. The failure to submit these membership rolls is sufficient grounds to deny the petition.
- (7) The Petitioner may submit additional petition documentation and materials throughout the petition process until such time as a recognition decision is made by the full Commission, as described in this Rule.
- (8) The Recognition Committee shall conduct initial review of petition and shall notify Petitioner of preliminary findings and deficiencies.
- (9) Upon receipt of the Recognition Committee's preliminary findings, Petitioner shall have 180 days in which to respond, in writing, to any deficiencies in the petition noted by the Recognition Committee. Not less than 30 days prior to the expiration of the initial response period, Petitioner may request and be granted an additional 180 days to respond. If requested, the additional response period shall commence on the 181st day after the receipt of the Recognition Committee's preliminary findings. No further requests for additional time shall be granted.
- (10) The Recognition Committee shall conduct a hearing to consider the petition, including Petitioner's responses to all deficiencies initially noted.
- (11) The Recognition Committee shall introduce its recommendation at the next Commission meeting. Further Commission action shall not take place until the second Commission meeting after the Recognition Committee's decision.
- (12) If the Recognition Committee's recommendation is against recognizing the Petitioner, within 30 days following the receipt of that recommendation the Petitioner may request and be granted a hearing before the full Commission. If a request for a hearing is made, the hearing shall not take place prior to the next regularly scheduled quarterly Commission of Indian Affairs meeting. In the event that a Petitioner does not request a hearing within 30 days, the petition is deemed withdrawn.
- (13) At a subsequent meeting after the Recognition Committee's recommendation is introduced, the Commission may, as permitted by these rules, request additional

information, conduct additional hearings, approve or deny the petition, or return the petition to the Recognition Committee if it has received additional information.

- (14) A decision by the full Commission regarding State recognition shall be rendered by a majority of members present and voting (abstentions not counted) at a duly constituted meeting.
- (15) If the Commission's decision is for recognition, the group is recognized as an American Indian tribe by the State. Thereafter, the Commission shall explain all services available to the tribe through the Commission.
- (16) If the decision is against recognition, the Petitioner may appeal to the Office of Administrative Hearings for a hearing pursuant to G.S. 150B-23.
- (17) A Petitioner may withdraw from the petition process at any time prior to the decision of the full Commission. After a petition is withdrawn, the Petitioner may not initiate a new petition until one year from the date of the withdrawal.
- (18) During the petition process, any such other material or documents the Recognition Committee or Commission may request are relevant to the Commission's decision. Any additional materials or documents shall be:
 - (a) relevant to the recognition decision; or
 - (b) shall be directly related to recognition requirement deficiencies as outlined by the Recognition Committee or the full Commission.
- (19) The Commission shall issue a public notification to the news media in the Petitioner's area, giving notification of the group's status as a State recognized American Indian tribe.

History Note: Authority G.S. 143B-406; 150B-23
Eff. February 11, 1980;
Amended Eff. February 1, 2006; April 1, 1999.

01 NCAC 15 .0210 CRITERIA FOR RECOGNITION AS A GROUP OR ORGANIZATION

History Note: Authority G.S. 143B-406;
Eff. February 11, 1980;
Repealed Eff. April 1, 1999.

01 NCAC 15 .0211 RECOGNITION REQUIREMENT

History Note: Authority G.S. 143B-407
Eff. February 11, 1980;
Amended Eff. April 1, 1999;
Repealed Eff. February 1, 2006.

01 NCAC 15 .0212 CRITERIA FOR RECOGNITION AS AN AMERICAN INDIAN TRIBE

In deciding whether to grant recognition to petitioner, the Commission shall proceed as follows:

- (1) The Petitioner shall demonstrate continuous American Indian identity on a historic basis in satisfying each of these criteria. Documents that shall be used to demonstrate the group's American Indian identity shall include, family bible accounts, baptismal records, and any other material that can substantiate the petitioning group's historic and continuous identification as an American Indian entity. For periods of time where this identification cannot be documented, the Petitioner shall submit a narrative to explain the lack of continuous American Indian identification.
- (2) The criteria to be used in the decision whether to extend State recognition as an American Indian tribe are listed below in Subitems (a) through (h).
 - (a) Traditional North Carolina American Indian names, as they relate to the petitioning group. Surnames among the petitioning group that have been commonly identified as being American Indian since 1790 in the Petitioner's local geographic area shall be considered to be traditional North Carolina American Indian names;

- (b) Kinship relationships with other recognized American Indian tribes. Relationships with other recognized American Indian tribes shall be based on the petitioner's identification as an American Indian group or community, and shall be evidenced by historic blood and marriage kinship ties and communal interaction of spiritual, educational, and social institutions; or other cultural relationships between known (recognized) tribal communities and the petitioner's community;
 - (c) Official records, which may include, birth, church, school, military, medical, local or county government records, or other official records identifying the group as American Indian. Vital records shall also be used in assisting the group's documentation of American Indian identity.
 - (d) State or federal documents identifying the group as American Indian. Any instance of historic government-to-government relationships between the Petitioner and federal or state governments shall be evidenced;
 - (e) Anthropological, historical, or genealogical documents identifying the group as American Indian and demonstrating the group's American Indian ancestry;
 - (f) Identification from State or federally recognized American Indian tribes attesting to the petitioning group's identification as American Indian, based on both the historic and current relationships existing between the tribe and the petitioning group.
 - (g) Any other documented traditions, customs, legends, etc., that are uniquely American Indian and signify the petitioning group's American Indian heritage;
 - (h) Participation in grants from sources or programs designated as for American Indian only.
- (3) Five of the recognition criteria listed in Item (2) of this Rule must be satisfactorily met to achieve state recognition.

History Note: Authority G.S. 143B-406
Eff. February 11, 1980;
Amended Eff. February 1, 2006.

01 NCAC 15 .0213 SPECIAL COMMITTEE ON RECOGNITION
01 NCAC 15 .0214 TRIBAL ROLL

History Note: Authority G.S. 143B-406;
Eff. February 11, 1980;
Amended Eff. April 1, 1999; August 1, 1988;
Repealed Eff. February 1, 2006.