



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



**JAN - 9 2009**

Memorandum

To: Potential and Existing Self-Governance Tribes

From: Sharee M. Freeman, Director  
Office of Self Governance

Subject: Tribal Self-Governance Application Deadline

I am providing to you for your information and/or use a copy of a Federal Register Notice which was published on January 9, 2008. In this Notice, the Office of Self-Governance (OSG) establishes a March 2, 2009, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2010 or calendar year 2010.

As indicated in the Federal Register Notice, 25 CFR Parts 1000.10 to 1000.30 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2010 and calendar year 2010. A copy of these parts of the tribal self-governance regulations is also being provided for your information and use.

Please do not hesitate to contact Dr. Ken Reinfeld of my staff if you have any questions or need further information. He can be reached by telephone at (202) 208-5734 or telefax at (202) 219-1404.

Attachment

except for legal holidays. Please note that all comments received will be available for public review for 2 weeks after comment period closes. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

*OMB Control Number:* 1076-0143.

*Type of review:* Renewal.

*Title:* Tribal Self-Governance Program, 25 CFR Part 1000.

*Brief Description of Collection:* The collection involves a voluntary submission by respondents and is intended to inform Congress of activities undertaken under Tribal Self-Governance. It also involves a mandatory submission by respondents who request to be selected to begin participation in Tribal Self-Governance.

*Respondents:* Tribes and tribal consortia wishing to enter into a self-governance compact and funding agreement.

*Number of Respondents:* 106.

*Estimated Time per Response:* 42 Hours.

*Frequency of Response:* Annually.

*Total Annual Burden to Respondents:* 11,202.

Dated: December 17, 2008.

**Sanjeev "Sonny" Bhagowalia,**

*Chief Information Officer—Indian Affairs.*

[FR Doc. E9-169 Filed 1-8-09; 8:45 am]

**BILLING CODE 4310-XN-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2010 or Calendar Year 2010

**AGENCY:** Office of Self-Governance, Interior.

**ACTION:** Notice of application deadline.

**SUMMARY:** In this notice, the Office of Self-Governance (OSG) establishes a March 2, 2009, deadline for Indian tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2010 or calendar year 2010.

**DATES:** Completed application packages must be received by the Director, Office of Self-Governance, by March 2, 2009.

**ADDRESSES:** Application packages for inclusion in the applicant pool should be sent to Sharee M. Freeman, Director, Office of Self-Governance, Department of the Interior, Mail Stop 355-G-SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kenneth D. Reinfeld, Office of Self-Governance, Telephone 202-208-5734.

**SUPPLEMENTARY INFORMATION:** Under the Tribal Self-Governance Act of 1994 (Pub. L. 103-413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104-208), the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately 2 months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

#### Purpose of Notice

25 CFR parts 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2010 and calendar year 2010. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2010 or calendar year 2010 must respond to this notice, except for those tribes/consortia which are: (1) Currently involved in negotiations with the Department; (2) one of the 96 tribal entities with signed agreements; or (3) one of the tribal entities already

included in the applicant pool as of the date of this notice.

Dated: December 24, 2008.

**George T. Skibine,**

*Acting Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs.*

[FR Doc. E9-194 Filed 1-8-09; 8:45 am]

**BILLING CODE 4310-W8-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Land Acquisitions; Muckleshoot Indian Tribe, Washington

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Final Agency Determination to take land into trust under 25 CFR Part 151.

**SUMMARY:** The Acting Deputy Assistant Secretary for Policy and Economic Development made a final agency determination to acquire approximately 22.00 acres of land into trust for the Muckleshoot Indian Tribe, Washington on December 12, 2008. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1. The duties of the Assistant Secretary—Indian Affairs were delegated to the Acting Deputy Assistant Secretary for Policy and Economic Development on May 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Paula L. Hart, Acting Director, Office of Indian Gaming, Bureau of Indian Affairs, MS-3657 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** This notice is published to comply with the requirements of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On December 12, 2008, the Acting Deputy Assistant Secretary for Policy and Economic Development decided to accept approximately 22.00 acres of land into trust for the Muckleshoot Indian Tribe, Washington under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 22.00 acres are located within the exterior boundaries of the Muckleshoot Indian

- (1) To enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian Tribes;
  - (2) To permit each Tribe to choose the extent of its participation in self-governance;
  - (3) To coexist with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Indian services by designated Federal agencies;
  - (4) To ensure the continuation of the trust responsibility of the United States to Indian Tribes and Indian individuals;
  - (5) To permit an orderly transition from Federal domination of programs and services to provide Indian Tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual Tribal communities; and
  - (6) To provide for an orderly transition through a planned and measurable parallel reduction in the Federal bureaucracy.
- (c) *Secretarial self-governance policies.* (1) It is the policy of the Secretary to fully support and implement the foregoing policies to the full extent of the Secretary's authority.
- (2) It is the policy of the Secretary to recognize and respect the unique government-to-government relationship between Tribes, as sovereign governments, and the United States.
- (3) It is the policy of the Secretary to have all bureaus of the Department work cooperatively and pro-actively with Tribes and Tribal Consortia on a government-to-government basis within the framework of the Act and any other applicable provision of law, so as to make the ideals of self-determination and self-governance a reality.
- (4) It is the policy of the Secretary to have all bureaus of the Department actively share information with Tribes and Tribal Consortia to encourage Tribes and Tribal Consortia to become knowledgeable about the Department's programs and the opportunities to include them in an annual funding agreement.
- (5) It is the policy of the Secretary that all bureaus of the Department will negotiate in good faith, interpret each applicable Federal law and regulation in a manner that will facilitate the inclusion of programs in each annual funding agreement authorized, and enter into such annual funding agreements under Title IV, whenever possible.
- (6) It is the policy of the Secretary to afford Tribes and Tribal Consortia the maximum flexibility and discretion necessary to meet the needs of their

communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious, and institutional needs. These policies are designed to facilitate and encourage Tribes and Tribal Consortia to participate in the planning, conduct, and administration of those Federal programs, included, or eligible for inclusion in an annual funding agreement.

(7) It is the policy of the Secretary, to the extent of the Secretary's authority, to maintain active communication with Tribal governments regarding budgetary matters applicable to programs subject to the Act, and that are included in an individual self-governance annual funding agreement.

(8) It is the policy of the Secretary to implement policies, procedures, and practices at the Department to ensure that the letter, spirit, and goals of the Tribal Self-Governance Act are fully and successfully implemented.

(9) Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments and any subsequent Executive Orders regarding consultation will apply to the implementation of these regulations.

**Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance**

**Purpose and Definitions**

- § 1000.10** What is the purpose of this subpart?
- This subpart describes the selection process and eligibility criteria that the Secretary uses to decide that Indian Tribes may participate in Tribal self-governance as authorized by section 402 of the Tribal Self-Governance Act of 1994.
- § 1000.11** What is the "applicant pool"?
- The applicant pool is the pool of Tribes/Consortia that the Director of the Office of Self-Governance has determined are eligible to participate in self-governance.
- § 1000.12** What is a "signatory"?
- A signatory is a Tribe or Consortium that meets the eligibility criteria in § 1000.16 and directly signs the agreements. A signatory may exercise all of the rights and responsibilities outlined in the compact and annual funding agreement and is legally responsible for all financial and administrative decisions made by the signatory.
- § 1000.13** What is a "nonsignatory Tribe"?
- (a) A nonsignatory Tribe is a Tribe that either:

- (1) Does not meet the eligibility criteria in § 1000.16 and, by resolution of its governing body, authorizes a Consortium to participate in self-governance on its behalf.
  - (2) Meets the eligibility criteria in § 1000.16 but chooses to be a member of a Consortium and have a representative of the Consortium sign the compact and AFA on its behalf.
- (b) A non-signatory tribe under paragraph (a)(1) of this section:
- (1) May not sign the compact and AFA. A representative of the Consortium must sign both documents on behalf of the Tribe.
  - (2) May only become a "signatory Tribe" if it independently meets the eligibility criteria in § 1000.16.

**Eligibility**

**§ 1000.14** Who is eligible to participate in Tribal self-governance?

Two types of entities are eligible to participate in Tribal self-governance:

- (a) Indian Tribes; and
- (b) Consortia of Indian Tribes.

**§ 1000.15** How many additional Tribes/Consortia may participate in self-governance per year?

(a) Sections 402(b) and (c) of the Act authorize the Director to select up to 50 additional Indian Tribes per year from an "applicant pool". A Consortium of Indian Tribes counts as one Tribe for purposes of calculating the 50 additional Tribes per year.

(b) Any signatory Tribe that signed a compact and AFA under the Tribal Self-Governance Demonstration project may negotiate its own compact and AFA in accordance with this subpart without being counted against the 50-Tribe limitation in any given year.

**§ 1000.16** What criteria must a Tribe/Consortium satisfy to be eligible for admission to the "applicant pool"?

To be admitted into the applicant pool, a Tribe/Consortium must either be an Indian Tribe or a Consortium of Indian Tribes and comply with § 1000.17.

**§ 1000.17** What documents must a Tribe/Consortium submit to OSG to apply for admission to the applicant pool?

In addition to the application required by § 1000.23, the Tribe/Consortium must submit to OSG documentation that shows all of the following:

- (a) *Successful completion of a planning phase and a planning report.* The requirements for both of these are described in § 1000.19 and § 1000.20. A Consortium's planning activities satisfy this requirement for all its member Tribes for the purpose of the Consortium meeting this requirement:

(b) A request for participation in self-governance by a Tribal resolution and/or a final official action by the Tribal governing body. For a Consortium, the governing body of each Tribe must authorize its participation by a Tribal resolution and/or a final official action by the Tribal governing body that specifies the scope of the Consortium's authority to act on behalf of the Tribe.

(c) A demonstration of financial stability and financial management capability for the previous 3 fiscal years. This will be done by providing, as part of the application, an audit report prepared in accordance with procedures promulgated under the Single Audit Act Amendments of 1996, 31 U.S.C. 7501, *et seq.*, for the previous 3 years of the self-determination contracts. These audits must not contain material audit exceptions as defined in § 1000.21.

**§ 1000.18 May a Consortium member Tribe withdraw from the Consortium and become a member of the applicant pool?**

In accordance with the expressed terms of the compact or written agreement of the Consortium, a Consortium member Tribe (either a signatory or nonsignatory Tribe) may withdraw from the Consortium to directly negotiate a compact and AFA. The withdrawing Tribe must do the following.

(a) Independently meet all of the eligibility criteria in §§ 1000.14 through 1000.20. If a Consortium's planning activities and report specifically consider self-governance activities for a member Tribe, that planning activity and report may be used to satisfy the planning requirements for the member Tribe if it applies for self-governance status on its own.

(b) Submit a notice of withdrawal to OSG and the Consortium as evidenced by a resolution of the Tribal governing body.

**§ 1000.19 What is done during the "planning phase"?**

The Act requires that all Tribes/Consortia seeking to participate in Tribal self-governance complete a planning phase. During the planning phase, the Tribe/Consortium must conduct legal and budgetary research and internal Tribal government and organizational planning. The availability of BIA grant funds for planning activities will be in accordance with subpart C. The planning phase may be completed without a planning grant.

**§ 1000.20 What is required in a planning report?**

As evidence that the Tribe/Consortium has completed the planning phase, the Tribe/Consortium must

prepare and submit to the Secretary a final planning report.

(a) The planning report must:

(1) Identify BIA and non-BIA programs that the Tribe/Consortium may wish to subsequently negotiate for inclusion in a compact and AFA;

(2) Describe the Tribe's/Consortium's planning activities for both BIA and non-BIA programs that may be negotiated;

(3) Identify the major benefits derived from the planning activities;

(4) Identify the process that the Tribe/Consortium will use to resolve any complaints by service recipients;

(5) Identify any organizational planning that the Tribe/Consortium has completed in anticipation of implementing Tribal self-governance; and

(6) Indicate if the Tribe's/Consortium's planning efforts have revealed that its current organization is adequate to assume programs under Tribal self-governance.

(b) In supplying the information required by paragraph (a)(5) of this section:

(1) For BIA programs, a Tribe/Consortium should describe the process that it will use to debate and decide the setting of priorities for the funds it will receive from its AFA.

(2) For non-BIA programs that the Tribe/Consortium may wish to negotiate, the report should describe how the Tribe/Consortium proposes to perform the programs.

**§ 1000.21 When does a Tribe/Consortium have a "material audit exception"?**

A Tribe/Consortium has a material audit exception if any of the audits that it submitted under § 1000.17(c) identifies:

(a) A material weakness, that is a condition in which the design or operation of one or more of the internal control components does reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions;

(b) a single finding of known questioned costs subsequently disallowed by a contracting officer or awarding official that exceeds \$10,000. If the audits submitted under § 1000.17(c) identify any of the conditions described in this section, the Tribe/Consortium must also submit copies of the contracting officer's findings and determinations.

**§ 1000.22 What are the consequences of having a material audit exception?**

If a Tribe/Consortium has a material audit exception, the Tribe/Consortium is ineligible to participate in self-governance until the Tribe/Consortium meets the eligibility criteria in § 1000.16.

**Admission Into the Applicant Pool**

**§ 1000.23 How is a Tribe/Consortium admitted to the applicant pool?**

To be considered for admission in the applicant pool, a Tribe/Consortium must submit an application to the Director, Office of Self-Governance, 1849 C Street NW; MS 2542-MIB; Department of the Interior; Washington, DC 20240. The application must contain the documentation required in § 1000.17.

**§ 1000.24 When does OSG accept applications to become a member of the applicant pool?**

OSG accepts applications to become a member of the applicant pool at any time.

**§ 1000.25 What are the deadlines for a Tribe/Consortium in the applicant pool to negotiate a compact and annual funding agreement (AFA)?**

(a) To be considered for negotiations in any year, a Tribe/Consortium must be a member of the applicant pool on March 1 of the year in which the negotiations are to take place.

(b) An applicant may be admitted into the applicant pool during one year and selected to negotiate a compact and AFA in a subsequent year. In this case, the applicant must, before March 1 of the negotiation year, submit to OSG updated documentation that permits OSG to evaluate whether the Tribe/Consortium still satisfies the application criteria in 1000.17.

**§ 1000.26 Under what circumstances will a Tribe/Consortium be removed from the applicant pool?**

Once admitted into the applicant pool, a Tribe/Consortium will only be removed if it:

(a) Fails to satisfy the audit criteria in § 1000.17(c); or

(b) Submits to OSG a Tribal resolution and/or official action by the Tribal governing body requesting removal.

**§ 1000.27 How does the Director select which Tribes in the applicant pool become self-governance Tribes?**

The Director selects up to the first 50 Tribes from the applicant pool in any given year ranked according to the earliest postmark date of complete applications. If multiple complete applications have the same postmark

date and there are insufficient slots available for that year, the Director will determine priority through random selection. A representative of each Tribe/Consortium that has submitted an application subject to random selection may, at the option of the Tribe/Consortium, be present when the selection is made.

**§ 1000.28 What happens if an application is not complete?**

(a) If OSG determines that a Tribe's/Consortium's application is deficient, OSG will immediately notify the Tribe/Consortium of the deficiency by letter, certified mail, return receipt requested. The letter will explain what the Tribe/Consortium must do to correct the deficiency.

(b) The Tribe/Consortium will have 20 working days from the date of receiving the letter to mail or telefax the corrected material and retain the applicant's original postmark.

(c) If the corrected material is deficient, the date of entry into the applicant pool will be the date the complete application is postmarked.

(d) If the postmark or date on the applicant's response letter or telefax is more than 20 working days after the date the applicant received the notice-of-deficiency letter, the date of entry into the applicant pool will be the date of full receipt of a completed application.

**§ 1000.29 What happens if a Tribe/Consortium is selected from the applicant pool but does not execute a compact and an AFA during the calendar year?**

(a) The Tribe/Consortium remains eligible to negotiate a compact and annual funding agreement at any time unless:

(1) It notifies the Director in writing that it no longer wishes to be eligible to participate in the Tribal Self-Governance Program;

(2) Fails to satisfy the audit requirements of § 1000.17(c); or

(3) Submits documentation evidencing a Tribal resolution requesting removal from the application pool.

(b) The failure of the Tribe/Consortium to execute an agreement has no effect on the selection of up to 50 additional Tribes/Consortia in a subsequent year.

**§ 1000.30 May a Tribe/Consortium be selected to negotiate an AFA under section 403(b)(2) without having or negotiating an AFA under section 403(b)(1)?**

Yes, a Tribe/Consortium may be selected to negotiate an AFA under section 403(b)(2) without having or

negotiating an AFA under section 403(b)(1).

**§ 1000.31 May a Tribe/Consortium be selected to negotiate an AFA under section 403(c) without negotiating an AFA under section 403(b)(1) and/or section 403(b)(2)?**

No, section 403(c) of the Act states that any programs of special geographic, cultural, or historical significance to the Tribe/Consortium must be included in AFAs negotiated under section 403(a) and/or section 403(b). A Tribe may be selected to negotiate an AFA under section 403(c) at the same time that it negotiates an AFA under section 403(b)(1) and/or section 403(b)(2).

**Withdrawal From a Consortium Annual Funding Agreement**

**§ 1000.32 What happens when a Tribe wishes to withdraw from a Consortium annual funding agreement?**

(a) A Tribe wishing to withdraw from a Consortium's AFA must notify the Consortium, bureau, and OSG of the intent to withdraw. The notice must be:

(1) In the form of a Tribal resolution or other official action by the Tribal governing body; and

(2) Received no later than 180 days before the effective date of the next AFA.

(b) The resolution referred to in paragraph (a)(1) of this section must indicate whether the Tribe wishes the withdrawn programs to be administered under a Title IV AFA, Title I contract, or directly by the bureau.

(c) The effective date of the withdrawal will be the date on which the current agreement expires, unless the Consortium, the Tribe, OSG, and the appropriate bureau agree otherwise.

**§ 1000.33 What amount of funding is to be removed from the Consortium's AFA for the withdrawing Tribe?**

When a Tribe withdraws from a Consortium, the Consortium's AFA must be reduced by the portion of funds attributable to the withdrawing Tribe. The Consortium must reduce the AFA on the same basis or methodology upon which the funds were included in the Consortium's AFA.

(a) If there is not a clear identifiable methodology upon which to base the reduction for a particular program, the Consortium, Tribe, OSG, and the bureau must negotiate an appropriate amount on a case-by-case basis.

(b) If a Tribe withdraws in the middle of a funding year, the Consortium agreement must be amended to reflect:

(1) A reduction based on the amount of funds passed directly to the Tribe, or already spent or obligated by the Consortium on behalf of the Tribe; and

(2) That the Consortium is no longer providing those programs associated with the withdrawn funds.

(c) Carryover funds from a previous fiscal year may be factored into the amount by which the Consortium agreement is reduced if:

(1) The Consortium, Tribe, OSG, and bureau agree it is appropriate; and

(2) The funds are clearly identifiable.

**§ 1000.34 What happens if there is a dispute between the Consortium and the withdrawing Tribe?**

(a) At least 15 days before the 90-day Congressional review period of the next AFA, the Consortium, OSG, bureau, and the withdrawing Tribe must reach an agreement on the amount of funding and other issues associated with the program or programs involved.

(b) If agreement is not reached:

(1) For BIA and OIEP programs, at least 5 days before the 90-day Congressional review, the Director must make a decision on the funding or other issues involved.

(2) For non-BIA programs, the bureau head will make a decision on the funding or other issues involved.

(c) A copy of the decision made under paragraph (b) of this section must be distributed in accordance with the following table.

If the program is . . . . .	then a copy of the decision must be sent to . . . . .
(1) A BIA program.	BIA regional director, the Deputy Commissioner of Indian Affairs, the withdrawing Tribe, and the Consortium.
(2) An OIEP program.	the OIEP line officer, the Director of OIEP, the withdrawing Tribe, and the Consortium.

(d) Any decision made under paragraph (b) of this section is appealable under subpart R of this part.

**§ 1000.35 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?**

Under § 1000.32 of this part, a Tribe may withdraw from a Consortium and request that the Secretary award the Tribe its portion of a construction project's funds. The Secretary may decide not to award these funds if the Secretary determines that the award of the withdrawing Tribe's portion of funds would affect the ability of the remaining members of the Consortium to complete a severable or non-severable phase of the project within available funding.