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## **Title 05**

### **DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

#### **Subtitle 08 HISTORICAL AND CULTURAL PROGRAMS**

##### **Chapter 06 Recognition of Maryland Indian Status**

**Authority: Article 83B, Sec. 5-406(b), Annotated Code of Maryland**

###### **.01 General.**

A. Scope. Article 83B, Sec. 5-406(a), Annotated Code of Maryland, permits the Commission on Indian Affairs to establish a process by which a Native American tribe, band, group, or clan indigenous to Maryland can apply to the Commission for formal recognition of Maryland Indian status. Article 83B, Sec. 5-406(b), Annotated Code of Maryland, requires the Commission to adopt regulations and procedures necessary to carry out the provisions of Article 83B, Sec. 5-406(a), Annotated Code of Maryland. These regulations set forth procedures to carry out those provisions.

B. Objectives. For the benefit of Native American tribes, bands, groups, and clans indigenous to Maryland, the objectives of these regulations are to:

- (1) Clarify their legal status;
- (2) Acknowledge the contributions made by them to Maryland;
- (3) Recognize and assist them in their efforts to maintain their cultural identity and traditions; and
- (4) Provide access for them to federal and State programs available to State-recognized Indian tribes, bands, groups, and clans.

###### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated:

B. Terms Defined.

(1) "Access to Public Records Act" means State Government Article, Sec. 10-611--10-630, Annotated Code of Maryland.

(2) "Ancestor" means an individual from whom a person is descended.

(3) "Ancestry" means having an ancestor.

(4) "Band" means a sociopolitical division of a tribe, separated from the tribe by historical events or geographical, political, or similar causes.

(5) "Clan" means a group of Native Americans related by blood line descent.

(6) "Commission" means the Commission on Indian Affairs, an agency in the Department of Housing and Community Development.

(7) "Community" means a group of persons with common cultural ties and interests which differentiate members from nonmembers.

(8) "County" means the City of Baltimore or any of the 23 counties in the State.

(9) "Derived from a tribe" means a group having members who are descended from a tribe, band, or clan.

(10) "Descendant from a tribe" or "descendants from a tribe" means descended by blood line from a member or members of a tribe, band, or clan who:

(a) Are identified as Native American in historical records;

(b) Have family names identified by anthropologists or ethnohistorians as Native American in historical records; or

(c) Are identified by anthropologists or ethnohistorians in historical records through one or more terms recognized as synonymous with "Indian".

(11) "Historical" or "historically" means before 1790.

(12) "Indigenous to Maryland" means having inhabited one or more specific areas within the State before 1790.

(13) "Inhabit" means to dwell in a location.

(14) "Members" means those individuals who have been determined by a tribe, band, group, or clan to be its members, according to criteria established by the tribe, band, group, or clan.

(15) "Native American", "North American Indian", "American Indian", "Indian", or "aboriginal" means an individual or tribe, band, group, community, or clan that is, or whose members are, descended from a tribe that inhabited North America before European contact.

(16) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(17) "Recognition" or "formal recognition" means the process by which the Maryland Indian status of a Native American tribe, band, group, or clan is acknowledged under the Act and these regulations.

(18) "Secretary of the Interior" means the United States Secretary of the Interior.

(19) "Secretary" means the Secretary of Housing and Community Development.

(20) "State" or "Maryland" means the State of Maryland as described by the present physical boundaries of the State.

(21) "Tribe" means a separate and distinct community of Native Americans generally related by blood, marriage, or adoption.

### **.03 Eligible Petitioning Groups.**

A group may apply to the Commission for formal recognition of its Maryland Indian status if the group is:

- A. A Native American tribe, band, group, or clan; and
- B. Indigenous to Maryland.

### **.04 Recognition Criteria.**

The Commission may recommend that an eligible petitioning group be formally recognized under Regulation .08 of this chapter as a Maryland Indian tribe, band, group, or clan if the petitioning group establishes, taking into account the special circumstances of Native Americans indigenous to Maryland, that:

- A. The group has been:

- (1) Identified as Native American from before 1790 until the present, and
- (2) Part of a continuous Native American community from before 1790 until the present;

B. The members of the group are descendants from a tribe that:

- (1) Existed before 1790,
- (2) Is indigenous to Maryland, and
- (3) Inhabited a specific area in Maryland before 1790; and

C. The membership of the group is composed principally of persons who are not members of any other acknowledged or recognized Native American tribe, band, group, or clan.

### **.05 Petition Requirements.**

A. A petition for formal recognition shall include:

- (1) The name and mailing address of the petitioning group and of the individual authorized to act as the petitioning group's agent for petition purposes;
- (2) A statement that the petitioning group is a Native American tribe, band, group, or clan indigenous to Maryland;
- (3) A statement that the petitioning group has verified with its members that the majority of them are not members of any other tribe, band, group, or clan acknowledged or recognized as American Indian by the Secretary of the Interior or any state;
- (4) A copy of the petitioning group's rules governing the conduct of the petitioning group's affairs; and
- (5) All documentation required under Sec. B of this regulation.

B. To document that the petitioning group meets the criteria set forth in Regulation .04 of this chapter, the petitioning group:

- (1) Shall submit:
  - (a) Documents showing, from before 1790 until the present:

(i) Longstanding relationships of the group with the government of Maryland or the United States, based on identification of the group or the group's members as Native American,

(ii) Repeated dealings of the group with a county or other local government in a relationship, based on identification of the group or the group's members as Native American,

(iii) Repeated dealings of the group with other tribes, bands, groups, or clans, or national Native American organizations, based on identification of the group as Native American,

(iv) Identification of the group as Native American by anthropologists, historians, genealogists, or other scholars, or

(v) Repeated identification of the group or the group's members as Native American in official government records, church or school records, medical records, bibles and other family records, newspapers, books, photographs, or oral histories;

(b) Documents identifying the name of the group, or other term recognizing the group as Native American, with an approximate location in Maryland from before 1790 until the present;

(c) A list of membership criteria established by the group;

(d) A statement of the procedures adopted by the group for applying the group's membership criteria; and

(e) A list of all individuals included on the group's current and previous membership rolls or known by the group to be eligible for membership, and the county in which each resides; and

(2) May submit any other evidence, which may include affidavits from tribal elders, tribal leaders, or tribal officials recognizing individuals as members of the group.

## **.06 Inspection of Documentation.**

A. Documentation submitted in support of or in opposition to a petition may be inspected or copied by a person as provided by the Access to Public Records Act and COMAR 05.01.02.

B. The Commission shall deny inspection or copying of any part of the documentation that contains sociological information relating to an individual, as provided in the Access to Public Records Act. For purposes of these regulations, sociological information includes:

- (1) Social security number;
- (2) Personal address;
- (3) Personal telephone number;
- (4) Medical or psychiatric history;
- (5) Educational history;
- (6) Work history;
- (7) Military service;
- (8) Financial information;
- (9) Religious preference, membership, and attendance;
- (10) Personal relationships, beliefs, and values;
- (11) Genealogical charts; and
- (12) Family history other than evidence necessary to determine Native American descendency.

C. During review of a petition, the Commission shall retain the documentation at the Maryland State Archives or similar secure facility.

D. After final action on a petition, the Commission shall promptly return any original documents and personal memorabilia to the person who submitted the original documents and personal memorabilia. Copies of all documents and an inventory of all personal memorabilia submitted shall be retained by the Commission, except that:

- (1) Copies may not be retained of those portions of the documents containing the information listed under Sec. B of this regulation, and shall be returned to the person who submitted them; and

(2) Documents not subject to disclosure under the Access to Public Records Act shall be retained at the Maryland State Archives until disposition under State Government Article, Sec. 10-637--10-642, Annotated Code of Maryland.

### **.07 Petition Filing; Notices of Receipt; Final Submissions.**

A. Petitions shall be made on standard forms required by the Commission, verified as accurate by the petitioning group's agent, and accompanied by any required petition fee.

B. Within 10 days after receiving a petition, the Commission shall send written acknowledgement of receipt to the petitioning group.

C. Within 45 days after receiving a petition determined to be complete under Regulation .08 of this chapter, the Commission shall publish a notice of receipt in the Maryland Register and in a newspaper of general circulation in each Maryland county in which the petitioning group states in the petitioning group's petition that the petitioning group's members reside, including:

(1) The name and address of the petitioning group;

(2) The date of receipt of the petition;

(3) The time and place that a copy of the petition, and any supporting documentation not prohibited from disclosure under Regulation .06 of this chapter, may be inspected; and

(4) The mailing address and deadline 60 days or more in the future for submitting factual or legal arguments in support of or in opposition to the petition.

D. The Commission shall mail a copy of the notice of receipt required under Sec. C of this regulation to a person requesting a copy in writing.

E. After the deadline for receipt of submissions in support of or in opposition to a petition, the Commission shall provide a copy of all submissions to the petitioning group. The petitioning group shall submit any response within the following 30 days.

### **.08 Processing Petitions.**

A. The Commission shall accept for review all complete petitions. A petition may not be considered complete until the Commission has received all information requested in the petition form or required by these regulations.

B. Within 30 days after a petition is received, the Commission shall notify the petitioning group in writing that the petition is:

- (1) Complete; or
- (2) Incomplete and specific additional information is required to complete the petition.

C. If the petitioning group fails to complete the petition within 1 year after notice is mailed to the petitioning group that the petition is not complete, the petition shall be deemed withdrawn, and the Commission shall notify the petitioning group. If the petitioning group during the 1-year period requests additional time to complete the petition and provides reasonable justification, the Commission may grant one additional period of up to 1 year for the petitioning group to complete the petition.

D. Within 15 days after the Commission determines the petition is complete under Sec. B of this regulation, the Commission shall refer the petition to the Recognition Advisory Committee established under Regulation .11 of this chapter.

E. Subject to availability of funds necessary to compensate Recognition Advisory Committee members, within 25 days after referral under Sec. D of this regulation, the Recognition Advisory Committee shall review the documentation submitted for the petition and may, through the Commission, request the petitioning group to submit any specific additional documentation necessary to determine whether a petitioning group meets the criteria set forth in Regulation .04 of this chapter.

F. Within 30 days after a request for additional documentation under Sec. E of this regulation is mailed or delivered to the petitioning group, the petitioning group shall submit to the Commission all additional documentation requested.

G. If the documentation requested under Sec. F of this regulation is not submitted, the Commission shall promptly return the petition to the petitioning group with notice that the petition has been considered withdrawn. If the Commission determines that all documentation requested has been submitted, the Commission staff shall promptly notify the petitioning group.

H. Within 180 days after the Commission notifies the petitioning group that all documentation requested has been received, the Recognition Advisory Committee shall complete review of the petition and advise the Commission whether the petitioning group meets the recognition criteria set forth in Regulation .04 of this chapter.

I. In advising the Commission whether a petition meets the recognition criteria set forth in Regulation .04 of this chapter, the Recognition Advisory Committee shall:

- (1) Consider the petition, all submissions in support of or in opposition to the petition, and the petitioning group's written response, if any; and

(2) Use to the maximum extent practicable the information and sources available to it, including individuals not on the Recognition Advisory Committee who have knowledge or experience with federal or other State Indian tribe recognition procedures or an understanding of the history of Native Americans in Maryland.

J. A Recognition Advisory Committee member or a Commissioner may not participate in any way in deliberations with respect to a petition made by a petitioning group of which a Recognition Advisory Committee member or Commissioner is a member.

K. Within 30 days after receiving the Recognition Advisory Committee's advice, the Commission shall:

(1) Review the Recognition Advisory Committee's advice and, subject to Sec. L of this regulation, determine whether the petition meets the criteria set forth in Regulation .04 of this chapter; and

(2) Notify the petitioning group and all other persons requesting notice of the Commission's determination by first class mail.

L. If the Commission determines that the information or documentation submitted in support of the petition is not adequate to establish that the petitioning group meets the criteria set forth in Regulation .04 of this chapter, then:

(1) Within 30 days of the determination, the Commission may request the petitioning group to submit specific additional information or documentation within 60 days;

(2) Within 30 days after receipt of the additional information or documentation, the Commission shall follow the procedures under Sec. K of this regulation.

M. If the Commission determines that the petitioning group meets the criteria set forth in Regulation .04 of this chapter, the Commission shall submit to the Secretary, for transmittal to the Governor, a recommendation together with its determinations that the petitioning group be formally recognized as a Maryland Indian tribe, band, group, or clan.

N. Subject to Regulation .09 of this chapter, the Secretary shall transmit to the Governor any Commission recommendation for formal recognition, together with the Commission's determinations.

## **.09 Reconsideration of Recognition Recommendations.**

A. Within 30 days after the notice of Commission determinations is mailed under Regulation .08K(2) of this chapter, the petitioning group or any person or group that previously submitted arguments in support of or in opposition to the petition in writing may request the Secretary to review the determinations.

B. Within 30 days after receiving a request for review, the Secretary shall appoint a three-member panel to review the Commission's determinations and all evidence submitted in support of or in opposition to the petition. The panel shall include at least one member of the Commission and one member of the Recognition Advisory Committee, who together shall nominate the third member for the Secretary's appointment.

C. The panel shall report its findings and recommendations to the Secretary within 60 days after appointment. If the Secretary concludes that the Commission adequately considered the evidence submitted, the Secretary shall transmit any Commission recommendation for formal recognition to the Governor together with the Commission's determinations, and the Commission promptly shall notify the petitioning group and all persons requesting notice.

D. If the panel concludes that the Commission failed to adequately consider any evidence submitted and that the evidence if adequately considered is likely to reverse the Commission's determinations, the Secretary shall advise the Commission and the Commission shall adequately consider the evidence and reconsider the Commission's determinations.

E. After reconsidering its determinations, the Commission shall submit its reconsidered determinations and any recommendation for formal recognition to the Secretary.

F. After Commission reconsideration, the Secretary shall transmit any Commission recommendation for formal recognition to the Governor. The transmittal shall include the Commission's final determinations. The Commission shall promptly notify the petitioning group, and all persons requesting notice, of the Commission's recommendation and final determinations.

### **.10 Governor's Action on Recognition Recommendations.**

A. If the Governor concurs with a recommendation for formal recognition by the Commission, the Governor shall propose an executive order to recognize formally the Maryland Indian status of the petitioning group.

B. If the Governor does not concur with a recommendation of the Commission, the Governor shall notify the Commission of the reasons and the Commission shall promptly notify the petitioning group and all persons requesting notice.

C. The Governor shall present the proposed executive order to the Joint Committee on Administrative, Executive, and Legislative Review for the proposed executive order's review.

The proposed executive order shall take effect 30 days after submission to the Committee, unless the Governor earlier withdraws the proposed order.

D. The Commission shall promptly notify appropriate governmental agencies and national and state Native American organizations of the executive order.

### **.11 Recognition Advisory Committees.**

A. A Recognition Advisory Committee shall be appointed by the Secretary to review each petition for formal recognition of Maryland Indian status under these regulations.

B. Each Recognition Advisory Committee shall consist of five members who shall:

(1) To the maximum extent possible, be Native Americans; and

(2) Include:

(a) Two Native Americans nominated by the Commission from different tribes, bands, groups, or clans, other than the petitioning group, at least one of whom shall be descended from a tribe, band, group, or clan indigenous to Maryland, if available;

(b) One person with demonstrated expertise in genealogy, and in American Indian genealogy if available; and

(c) Two persons qualified in anthropology, ethnohistory, or related fields.

C. Each Recognition Advisory Committee shall review the petition for recognition and make recommendations to the Commission as required under Regulation .08 of this chapter.

### **.12 Effect of Recognition.**

An executive order issued under these regulations may not:

A. Create any rights of ownership or other rights to land;

B. Create any benefits or entitlements of any kind;

C. Impair valid existing rights, benefits, or entitlements of Native Americans residing in the State; or

D. Impair existing judicial rulings of the State regarding Native Americans indigenous to the State.

### **.13 General Provisions.**

#### **A. Administration.**

(1) Except for waivers under Sec. C of this regulation, any action or decision required or permitted to be taken or made by the Secretary under these regulations may be taken or made by the Secretary or the Secretary's designee.

(2) Upon request of the petitioning group, the Secretary may extend any time period established by these regulations for processing of the petitioning group's petition.

(3) The Commission from time to time may establish operational handbooks or manuals governing matters relating to the administration of these regulations, including descriptive statements of procedures which do not directly affect the rights of the public or procedures available to the public.

B. Written Requirements. All requests, notices, notifications, consents, and approvals required under these regulations shall be made in writing.

C. Waiver. The Secretary may waive or vary any provisions of these regulations if:

(1) The waiver or variance is not inconsistent with the authorizing provisions of Article 83B, Sec. 5-406, Annotated Code of Maryland;

(2) In the written determination of the Secretary, the application of the regulations in a specific case or in an emergency situation is inequitable or contrary to the purposes of Article 83B, Sec. 5-406, Annotated Code of Maryland; and

(3) The Office of the Attorney General approves any waiver or variance for form and legal sufficiency.

D. No Private Cause of Action. Action or failure to take action by the Commission or the Secretary under Article 83B, Sec. 5-406, Annotated Code of Maryland, or these regulations may not create a private cause of action under the laws of the State.

E. False Statements.

(1) In any matter relating to a petition under Article 83B, Sec. 5-406, Annotated Code of Maryland, or these regulations, a person is guilty of a misdemeanor if that person:

(a) Knowingly and willfully falsifies or conceals a material fact, by any trick, scheme, or device;

(b) Makes any false, fictitious, or fraudulent statement or representation; or

(c) Makes or uses any false writing or document knowing the writing or document contains a false, fictitious, or fraudulent statement or entry.

(2) Except as otherwise provided by law, a person who violates Sec. E(1) of this regulation is subject to a fine of not more than \$1,000 or imprisonment for not more than 6 months, or both.

#### **Administrative History**

**Effective date: May 11, 1992 (19:9 Md. R. 878)**

**Regulation .13A amended effective July 1, 1996 (23:13 Md. R. 940)**