

Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 8, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 5

RIN 1076-AD05

Preference in Employment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing to amend the Preference in Employment regulations by clarifying the application of Indian preference not only within BIA but to other organizations within the Department of the Interior and removing the extension of Indian preference to the individuals of the Osage Tribe of Oklahoma who are at least one-quarter degree Indian ancestry. These regulations have also been rewritten in plain English as mandated by E.O. 12866.

DATES: Comments must be received by September 10, 1996.

ADDRESSES: Mail comments to James McDivitt, Acting Director, Office of Management and Administration, Bureau of Indian Affairs, Department of the Interior 1849 C St. NW., Mail Stop 4616-MIB, Washington, DC 20240; OR, hand deliver them to Room 4140 at the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Carol Smalley, Bureau of Indian Affairs, Department of the Interior, telephone number (202) 208-5116.

SUPPLEMENTARY INFORMATION:

Background:

Indian Preference

The Indian preference statute, 25 U.S.C. 472, Section 12 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 986, requires that the Secretary of the Interior establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed to positions for the administration of functions or services affecting any Indian tribe. It further provides that qualified Indians shall have preference to the appointment to vacancies in such positions.

The legal position of the Department of the Interior on the scope of the preference is set forth in a June 10, 1988, opinion by then-solicitor Ralph Tarr, "The Scope of Indian Preference Under the Indian Reorganization Act", M-36960, 96 I.D.1. It concludes, in general, that the preference is limited in application to the Bureau of Indian Affairs (BIA) or units removed intact from the Bureau of Indian Affairs to another Departmental bureau. By memorandum dated April 10, 1996, the Deputy Solicitor concluded that when a Bureau of Indian Affairs unit is transferred intact by virtue of an administrative decision from the BIA to a Departmental office where it will continue to perform the functions it formerly performed as part of the BIA, it effectively remains a BIA organization unit and the preference continues to apply. The functions and personnel structure of the organizational unit remain segregated from the remainder of the office to which it is transferred.

Indian Preference to the Individuals of the Osage Tribe of Oklahoma

The Bureau of Indian Affairs must apply Indian preference in filling every vacant position, however created, within the Bureau of Indian Affairs, *Freeman v. Morton*, 499 F.2d 492 (DC Cir. 1974). The Secretary issued a final rule for the definition of "Indian" on January 17, 1978, which identified five categories of persons of Indian descent eligible for Indian preference. The fifth criterion applied to the Five Civilized Tribes of Oklahoma and to the Osage Tribe whose rolls were closed by the Acts of Congress, and who had not as yet reorganized to establish current membership standards. Many such individuals have received employment preference based on the one-quarter degree standard which was previously established by the Secretary. In 1978, these Tribes were allowed three years, until July 17, 1981, to organize so that

members would not be deprived of the one-quarter eligibility standard rather than the one-half degree standard.

On October 4, 1984, the Bureau of Indian Affairs published a final rule (49 FR 39157) to amend 25 CFR Part 5. Section 5.1(e) specified the date of October 4, 1985, as the final date for making appointments of persons of one-quarter degree Indian ancestry. On September 15, 1986, the BIA published a final rule (51 FR 32632) to revise 25 CFR Part 5, Preference in Employment. Section 5.1(e) specified the date of September 5, 1988, as the final date for making appointments of persons of one-quarter degree Indian ancestry. The last final rule published (54 FR 282, January 5, 1989), extended Section 5.1(e) to January 5, 1990.

On February 10, 1994, the Assistant Secretary—Indian Affairs approved the Osage Tribe constitution as ratified by qualified voters of the Osage Nation February 4, 1994. By memorandum dated July 15, 1994, the Assistant Secretary—Indian Affairs recognized the authority of the Osage National Council to identify those Osage Indians who are eligible for Indian preference and suggested the voting list prepared for the constitutional election and the election of officers serve as a temporary membership roll.

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Notice of our intent to amend Section 5.1(e), Indian Preference to the Individuals of the Osage Tribe of Oklahoma, appeared in the proposed rule which was published at 59 FR 47046 (Sept. 13, 1994). No comments were received by the Bureau following the publication of the proposed rule.

Certain individuals who are of Indian descent may receive preference when appointments are made to vacancies in positions in the Bureau of Indian Affairs and in any Bureau of Indian Affairs unit that has been transferred intact to a bureau of office within the Department of the Interior and continues to perform the functions it formerly performed as part of the Bureau of Indian Affairs.

Individuals seeking Indian preference in employment must subject proof: of his or her membership in a Federally recognized Indian tribe; of descendency from a member and that he or she was residing within the present boundaries of any Indian reservation on June 1, 1934; that he or she is an Eskimo or another aboriginal person of Alaska as defined by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*); or proof of one-half or more Indian

blood of tribes that are indigenous to the United States.

Section 5.3 is intended to clarify how eligibility for Indian preference is determined. Specifically, the application of the definition of Indian in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, 988, 25 U.S.C. 479) to descendants of members born after June 1, 1934. By memorandum dated March 24, 1976, then-Associate Solicitor for Indian Affairs, Reid P. Chambers, concluded:

[O]nly persons residing within any Indian reservation on June 1, 1934, who are descendants of members may be considered preference eligibles. "Members" in this context means persons identified on approved census rolls or through other means prior to June 1, 1934. Persons born after June 1, 1934, must meet any of the other criteria in order to qualify for preference eligibility.

The form to be used by the Bureau of Indian Affairs to verify eligibility for Indian preference follows the proposed rule.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location

identified in the **ADDRESSES** section of this document.

Evaluation and Certification

The Department has certified to the Office of Management and Budget (OMB) that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule is not a significant regulatory action under Executive Order 12866 and does not require review by the Office of Management and Budget.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Department has determined that this rule does not have "significant" takings implications. This rule does not pertain to "taking" of private property interests, nor does it impact private property.

The Department has determined that this rule does not have significant federalism effects because it will not interfere with the roles, rights and responsibilities of states and it impacts only the application of the Indian preference by the Bureau of Indian Affairs and the Department of the Interior.

The Department has determined that this rule does not constitute a major

Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

This rule has been found to contain no information collection requirements under the Paperwork Reduction Act of 1995. By memorandum dated January 11, 1984, then-Deputy Administrator for the Office of Information and Regulatory Affairs, Robert P. Bedell, Office of Management and Budget (OMB), determined that information collections related to certificates of Indian blood did not require OMB clearance.

Drafting Information. The primary authors of this document are Carol Smalley, Bureau of Indian Affairs, Department of the Interior and Mercedes C. Lewis, formerly of the Division of Personnel Management.

List of Subjects in 25 CFR Part 5

Employment, Government employees, Indians.

For the reasons set out in the preamble, Part 5 of Title 25, Chapter I of the Code of Federal Regulations is proposed to be revised as set forth below.

PART 5—INDIAN PREFERENCE IN EMPLOYMENT

Sec.

5.1 Definitions.

5.2 Do certain individuals receive preference in employment?

5.3 How is eligibility for Indian preference determined?

5.4 When does Indian preference apply?

5.5 Is placement assistance provided to non-Indians affected by the application of Indian preference?

5.6 Information collection.

Authority: 4 Stat. 737, 25 U.S.C. 43; 22 Stat. 88, 25 U.S.C. 46; 28 Stat. 313, 25 U.S.C. 44; 24 Stat. 389, 25 U.S.C. 348; and 48 Stat. 986, 25 U.S.C. 472 and 479, 93 Stat. 1056, 25 U.S.C. 472a and 5 U.S.C. 8336, 43 U.S.C. 1601.

§ 5.1 Definitions.

Alaska Native means a member of an Alaska Native Tribe; or, an individual whose name appears on the roll of Alaska Natives prior to July 31, 1981, and not subsequently disenrolled; or, an individual who was issued stock in a Native corporation pursuant to 43 U.S.C. 1606(g)(1)(B)(i).

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law 103-454, 108 Stat. 4791. Annually, the Bureau of Indian Affairs publishes a list of Federally recognized tribes in the Federal Register.

Roll of Alaska Natives means the roll of Alaska Natives prepared pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*

§ 5.2 Do certain individuals receive preference in employment?

Yes. Certain persons who are of Indian descent, as described in § 5.3, receive preference when appointments are made to vacancies in positions:

(a) In the Bureau of Indian Affairs; and

(b) In any unit that has been transferred intact from the Bureau of Indian Affairs to a Bureau or Office within the Department of the Interior and that continues to perform the functions formerly performed as part of the Bureau of Indian Affairs.

§ 5.3 How is eligibility for Indian preference determined?

You are eligible for preference if:

(a) You are a member of any Federally recognized Indian tribe;

(b) You are a descendant of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934;

(c) You are an Alaska Native; or

(d) You possess one-half or more Indian blood of tribes that are indigenous to the United States.

§ 5.4 When does Indian preference apply?

(a) If you meet a standard in § 5.3, you are eligible for preference in an initial

hire; reinstatement; transfer; reassignment; reduction-in-force; promotion, including a temporary promotion; and details exceeding 120 days.

(b) If you are eligible for preference, we may appoint you under a Schedule A excepted appointment, Exception Number 213.3112(a)(7), and after three consecutive years you may be converted to a career appointment in competitive service. The conversion will not alter your eligibility for preference in personnel actions.

(c) If you are within reach on a Civil Service Register, we may give you a competitive appointment.

§ 5.5 Is placement assistance provided to non-Indians affected by the application of Indian preference?

Yes. The Office of Personnel Management provides assistance to the Bureau of Indian Affairs in placing non-Indian employees in other Federal positions.

§ 5.6 Information collection.

In accordance with Office of Management and Budget regulations in 5 CFR 1320.4, approval of information collections contained in this part is not required.

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Appendix to Part 5

FORM BIA - 4432
Revised 5/96

**VERIFICATION OF INDIAN PREFERENCE FOR EMPLOYMENT
IN BUREAU OF INDIAN AFFAIRS AND THE INDIAN HEALTH SERVICE**

Complete one of the categories as stated in the Instructions and submit this form with your application for Federal employment.

CATEGORY A - MEMBERS OF FEDERALLY-RECOGNIZED INDIAN TRIBES, BANDS OR COMMUNITIES

This is to certify that the person named below is a member of the tribe shown:

Full Name	Date of Birth	Tribal Affiliation
I certify that the above information was taken from the official membership records of the _____ Tribe (or records maintained for the Tribe by the BIA) and acknowledge that falsification and misrepresentation of this information is punishable under Federal Law, 18 U.S.C. 1001.		

OR	
Tribal Representative _____ Date _____ Title _____	BIA Official _____ Date _____ Title _____ Agency _____

CATEGORY B - DESCENDANTS OF MEMBERS OF FEDERALLY-RECOGNIZED INDIAN TRIBES, BANDS OR COMMUNITIES WHO WERE RESIDING ON ANY INDIAN RESERVATION ON JUNE 1, 1934

I certify that the person named below has established to my satisfaction that he/she is a descendant of an enrolled member of the tribe named below and that he/she was living on an Indian reservation on June 1, 1934. The applicant's family history is outlined on the attached family history chart.

Full Name	Date of Birth	Reservation of Residence on June 1, 1934
Full Name of Ancestor & Tribal Affiliation	Tribal Record of Affiliation	
	BIA Official	Date
	Title	Agency

CATEGORY C - PERSONS WHO POSSESS AT LEAST ONE-HALF DEGREE INDIAN BLOOD DERIVED FROM TRIBES INDIGENOUS TO THE UNITED STATES.

I certify that I have reviewed the documentation to support the below listed individual's claim to the possession of at least one-half degree Indian blood. The applicant's family history is outlined on the attached family history chart.

Full Name	Date of Birth	Degree of Blood and Tribal Derivation
Based on:		
	BIA Official	Date
Title & Source of Records	Title	Agency

CATEGORY D - ALASKA NATIVE

I certify that the person named below is a member of an Alaska Native Tribe; or, an individual whose name appears on the roll of Alaska Natives prior to July 31, 1981, and not subsequently disenrolled; or, an individual who was issued stock in a Native corporation pursuant to 43 U.S.C. 1606(g)(1)(B)(i).

_____	_____	_____
Full Name	Date of Birth	Alaska Native Village/Corporation/Roll
Title and source of records upon which this is based:		
_____	_____	_____
	BIA Official	Date
	Title	Agency

INSTRUCTIONS FOR COMPLETING FORM BIA-4432

1. It is the responsibility of the individual to establish evidence of entitlement to Indian preference. Applicants must submit as much background information as possible to verify eligibility for Indian preference. Falsification or misrepresentation of information is punishable under Federal Law, 18 U.S.C. 1001.

CATEGORY A

MEMBERS OF FEDERALLY-RECOGNIZED INDIAN TRIBES, BANDS OR COMMUNITIES. If you are a member of a Federally-recognized tribe, you may contact either your tribe or the Bureau of Indian Affairs (BIA) agency servicing your tribe for completion of this category. One of the following procedures will apply and you will be advised by the BIA or your tribal representative:

If the BIA maintains the tribal enrollment records or has a copy of a current tribal roll in its custody, the BIA verification and signature is sufficient;

If your tribe has contracted or compacted the maintenance of tribal enrollment records under the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended, 25 U.S.C. 450, a verification signed by an *authorized* Tribal Representative(s) is sufficient; or

If the tribe does *not* contract or compact of the tribal enrollment records, the tribe may certify the information and it is verified by an authorized BIA official.

CATEGORY B AND C

- **DESCENDANTS OF MEMBERS OF FEDERALLY-RECOGNIZED INDIAN TRIBES, BANDS OR COMMUNITIES WHO WERE RESIDING ON ANY INDIAN RESERVATION ON JUNE 1, 1934**
- **PERSONS WHO POSSESS AT LEAST ONE-HALF DEGREE INDIAN BLOOD DERIVED FROM TRIBES INDIGENOUS TO THE UNITED STATES**

If you are claiming preference based on any of these categories, you should provide as much information as possible regarding your family history. This will be the only information which the BIA will have to certify your descent. You are asked to complete the attached FAMILY HISTORY.

Category D

ALASKA NATIVE OR DESCENDANT OF AN ALASKA NATIVE. You may contact the Bureau of Indian Affairs office servicing your village or corporation for completion of this category.

2. **INSTRUCTIONS TO RESPONSIBLE BIA OFFICIALS:**

This form has been designed for the verification that an applicant is entitled to Indian preference in employment. If category A membership is verified through records maintained for the Tribe by the BIA, a tribal representative must also sign the verification. If the applicant does not meet the tribal enrollment criteria, the form should not be completed. If the applicant cannot document at least one-half degree Indian blood derived from tribes indigenous to the United States, the form should not be completed. Upon verification by a BIA Area Director, Superintendent or other designed responsible BIA official, the applicant will be entitled to preference in employment.

3. **INSTRUCTIONS TO PERSONNEL OFFICERS:**

Receipt of a properly verified FORM BIA 4432, together with an acceptable application, "Personal Qualifications Statement", entitles an applicant to preference in employment.

4. **PAPERWORK REDUCTION ACT NOTICE:**

This rule has been found to contain no information collection requirements under the Paperwork Reduction Act of 1995. By memorandum January 11, 1984, then-Deputy Administrator for the Office of Information and Regulatory Affairs, Robert P. Bedell, Office of Management and Budget (OMB), determined that information collections related to certificates of Indian blood did not require OMB clearance.

5. **PRIVACY ACT STATEMENT:**

This information is collected as provided pursuant to the Privacy Act, 5 U.S.C. 552a, for individuals completing Federal Employment Application Forms. We are authorized to collect information to verify Indian preference by 4 Stat. 737, 25 U.S.C. 43; 22 Stat. 88, 25 U.S.C. 46; 28 Stat. 313, 25 U.S.C. 44; 24 Stat. 389, 25 U.S.C. 348; and 48 Stat. 986, 25 U.S.C. 472 and 479, 93 Stat. 1056, 25 U.S.C. 472a and 5 U.S.C. 8336. The information collected will be used to determine eligibility for Indian preference and may be disclosed to the Department of the Interior Office of Personnel, the United States Office of Personnel Management, and the Indian Health Services Office of Personnel.

6. **EFFECTS OF NON-DISCLOSURE:**

Disclosure of the information requested on this form (Form BIA 4432) is voluntary. However, consideration for Indian preference in employment under 25 CFR Part 5 requires proof that (a) you are a member of any recognized Indian tribe currently under Federal jurisdiction; (b) you are a descendant of a member residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Eskimo or another aboriginal person of Alaska as defined by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*); or (d) you possess one-half or more Indian blood of tribes that are indigenous to the United States. Indian Reorganization Act of June 18, 1934, 25 U.S.C. 472.

FAMILY HISTORY FOR CATEGORY B and C

Applicant	Father/Tribe(s)	Paternal Grandfather/Tribe(s)
		Paternal Grandmother/Tribe(s)
	Mother/Tribe(s)	Maternal Grandfather/Tribe(s)
		Maternal Grandmother/Tribe(s)
Paternal Grandfather	Great Grandfather/Tribe(s)	Great, Great Grandfather/Tribe(s)
		Great, Great Grandmother/Tribe(s)
	Great Grandmother/Tribe(s)	Great, Great Grandfather/Tribe(s)
		Great, Great Grandmother/Tribe(s)
Paternal Grandmother	Great Grandfather/Tribe(s)	Great, Great Grandfather/Tribe(s)
		Great, Great Grandmother/Tribe(s)
	Great Grandmother/Tribe(s)	Great, Great Grandfather/Tribe(s)
		Great, Great Grandmother/Tribe(s)
Maternal Grandfather	Great Grandfather/Tribe(s)	Great, Great Grandfather/Tribe(s)
		Great, Great Grandmother/Tribe(s)
	Great Grandmother/Tribe(s)	Great, Great Grandfather/Tribe(s)
		Great, Great Grandmother/Tribe(s)
Maternal Grandmother	Great Grandfather/Tribe(s)	Great, Great Grandfather/Tribe(s)
		Great, Great Grandmother/Tribe(s)
	Great Grandmother/Tribe(s)	Great, Great Grandfather/Tribe(s)
		Great, Great Grandmother/Tribe(s)

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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