

## CHAPTER 15 - COMMISSION OF INDIAN AFFAIRS

### SECTION .0100 - GENERAL PROVISIONS

#### 01 NCAC 15 .0101 PURPOSE

*History Note:* Authority G.S. 143A-6(b),(c); 143B-404; 143B-405;  
Eff. November 1, 1976;  
Amended Eff. February 27, 1979;  
Repealed Eff. June 1, 1986.

#### 01 NCAC 15 .0102 EXECUTIVE COMMITTEE

(a) The executive committee consists of one member from each of the tribes or groups represented on the commission. The senior member from each delegation is officially appointed by the chairman. The chairman serves as chairman of the executive committee and represents his area.

(b) The executive committee is called into session by the chairman or three members either by mail or by telephone.

(c) The executive committee makes recommendations to the full board for such items as petitions for recognition, policy recommendations for new programs or commission operational direction. The executive committee can take emergency action and act in the place of the board subject to review by the full board.

*History Note:* Authority G.S. 143B-10; 143B-407; 143B-408;  
Eff. November 1, 1976;  
Amended Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.

#### 01 NCAC 15 .0103 EXECUTIVE DIRECTOR

#### 01 NCAC 15 .0104 STAFF

*History Note:* Authority G.S. 143B-411; Chapter 126;  
Eff. November 1, 1976;  
Amended Eff. February 27, 1979;  
Repealed Eff. June 1, 1986.

#### 01 NCAC 15 .0105 MEETINGS

(a) It is a legislative requirement that notice of regular and special board meetings be given 10 days in advance. The agenda is to be included in the notice of meeting.

(b) Agenda items are to reach the chairman of the board either in writing or orally in sufficient time to be put on agenda to meet the 10-day advance notice requirement.

(c) Agenda items may also be carried over from the previous meeting, and members and others may request agenda items at regular and special board meetings.

(d) The chairman is responsible for placing items on the agenda.

(e) Upon a majority vote of the board, items not on the agenda may be presented and considered at any board meeting.

*History Note:* Authority G.S. 143B-408;  
Eff. November 1, 1976;  
Amended Eff. February 27, 1979;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.

#### 01 NCAC 15 .0106 HOURS OF OPERATION

*History Note:* Authority G.S. 143B-405;  
Eff. November 1, 1976;  
Repealed Eff. June 1, 1986.

#### 01 NCAC 15 .0107 LOCATION

*History Note:* Authority G.S. 143B-404;  
Eff. February 27, 1979;  
Repealed Eff. June 1, 1986.

## **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;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.

### **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;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.

### **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;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.*

**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;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.*

**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;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.*

**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;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.*

## **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;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.*

## **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;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.

**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;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017.

**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.

**SECTION .0300 - PETITIONS FOR RULES**

**01 NCAC 15 .0301 PETITION FOR RULEMAKING HEARINGS**  
**01 NCAC 15 .0302 CONTENTS OF PETITION**  
**01 NCAC 15 .0303 DISPOSITION OF PETITIONS**  
**01 NCAC 15 .0304 TIMING OF NOTICE**

*History Note:* Authority G.S. 143B-406; 150B-12(a)(2); 150B-16;  
 Eff. November 1, 1976;  
 Amended Eff. February 27, 1979;  
 Expired Eff. February 1, 2017 pursuant to G.S. 150B-21.3A.

**01 NCAC 15 .0305 NOTICE MAILING LIST**

*History Note:* Authority G.S. 143B-406; 150B-12(b);  
 Eff. November 1, 1976;  
 Amended Eff. February 27, 1979;  
 Repealed Eff. July 1, 1988.

**01 NCAC 15 .0306 ADDITIONAL INFORMATION**

*History Note:* Authority G.S. 143B-406; 150B-12;  
 Eff. November 1, 1976;  
 Amended Eff. February 27, 1979;  
 Expired Eff. February 1, 2017 pursuant to G.S. 150B-21.3A.

## SECTION .0400 - RULEMAKING HEARINGS

<b>01 NCAC 15 .0401</b>	<b>REQUEST TO PARTICIPATE</b>
<b>01 NCAC 15 .0402</b>	<b>CONTENTS OF REQUEST: GENERAL TIME LIMITATIONS</b>
<b>01 NCAC 15 .0403</b>	<b>RECEIPT OF REQUEST: SPECIFIC TIME LIMITS</b>
<b>01 NCAC 15 .0404</b>	<b>WRITTEN SUBMISSIONS</b>
<b>01 NCAC 15 .0405</b>	<b>PRESIDING OFFICER: POWERS AND DUTIES</b>
<b>01 NCAC 15 .0406</b>	<b>STATEMENT OF REASONS FOR DECISION</b>
<b>01 NCAC 15 .0407</b>	<b>RECORD OF PROCEEDINGS</b>

*History Note:* Authority G.S. 143B-10; 143B-406; 150B-12; 150B-12(a); 150B-12(e);  
Eff. November 1, 1976;  
Amended Eff. February 27, 1979;  
Expired Eff. February 1, 2017 pursuant to G.S. 150B-21.3A.

### **01 NCAC 15 .0408      TEMPORARY RULES**

*History Note:* Authority G.S. 143B-406; 150B-13;  
Eff. November 1, 1976;  
Repealed Eff. August 1, 1988.

## SECTION .0500 - DECLARATORY RULINGS

<b>01 NCAC 15 .0501</b>	<b>SUBJECTS OF DECLARATORY RULINGS</b>
<b>01 NCAC 15 .0502</b>	<b>SUBMISSION OF REQUEST FOR RULING</b>
<b>01 NCAC 15 .0503</b>	<b>DISPOSITION OF REQUESTS</b>
<b>01 NCAC 15 .0504</b>	<b>RECORD OF DECISION</b>
<b>01 NCAC 15 .0505</b>	<b>DEFINITION</b>

*History Note:* Authority G.S. 143B-406; 150B-12(e); 150B-17;  
Eff. November 1, 1976;  
Amended Eff. February 27, 1979;  
Expired Eff. February 1, 2017 pursuant to G.S. 150B-21.3A.

## SECTION .0600 - ADMINISTRATIVE HEARING PROCEDURES

<b>01 NCAC 15 .0601</b>	<b>RIGHT TO HEARING</b>
<b>01 NCAC 15 .0602</b>	<b>REQUEST FOR HEARING</b>
<b>01 NCAC 15 .0603</b>	<b>GRANTING OR DENYING HEARING REQUESTS</b>
<b>01 NCAC 15 .0604</b>	<b>NOTICE OF HEARING</b>
<b>01 NCAC 15 .0605</b>	<b>WHO SHALL HEAR CONTESTED CASES</b>
<b>01 NCAC 15 .0606</b>	<b>PETITION FOR INTERVENTION</b>
<b>01 NCAC 15 .0607</b>	<b>TYPES OF INTERVENTION</b>

*History Note:* Authority G.S. 1A-1, Rule 24; 143B-406; 150B-2(2); 150B-23; 150B-23(a); 150B-32;  
Eff. November 1, 1976;  
Amended Eff. February 27, 1979;  
Repealed Eff. August 1, 1988.

## SECTION .0700 - ADMINISTRATIVE HEARINGS: DECISIONS: RELATED RIGHTS AND PROCEDURES

**01 NCAC 15 .0701      FAILURE TO APPEAR**  
**01 NCAC 15 .0702      SIMPLIFICATION OF ISSUES**  
**01 NCAC 15 .0703      SUBPOENAS**  
**01 NCAC 15 .0704      FINAL DECISIONS IN ADMINISTRATIVE HEARINGS**

*History Note:*      *Authority G.S. 143B-406; 146B-406; 150B-25(a); 150B-27; 150B-33(5); 150B-43;*  
*Eff. November 1, 1976;*  
*Amended Eff. February 27, 1979;*  
*Repealed Eff. August 1, 1988.*