COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

The following pages are prepared to summarize the comments we received on our Proposed Indian Child Welfare Act (ICWA) Regulation Integration through-out our Division 31 Policies and Procedures for Child Welfare Services in California. We thank each of the commenters for the thoughtful recommendations for changes and additions to these regulations. While we greatly appreciate the time taken to make the comments and recommendations, our focus was on completing these regulations in a timely manner and to incorporate recommendations which were reasonable and appropriate. We want to remind readers of these documents that the intent and purpose of regulations is to implement, interpret or make specific, the laws enforced or administered by the agency. These regulations therefore seek to provide clarification and guidance, and specify what is required for compliance with ICWA when serving the parents and children that come to the attention of child welfare agencies in our state.

Comments and recommendations were received from key stakeholders and Indian organizations including the California Judicial Council, California Indian Legal Services (CILS), the Pala Band of Mission Indians; and the Indian Child and Family Preservation Program. Comments, questions and recommendations were also received from two county children's services agencies: Aggie Jenkins, Riverside County DPSS – Children's Services; and Diane Childs, San Bernardino County Child and Family Services. Additionally, changes were made to these regulations as issues were identified by the California Department of Social Services (CDSS) staff including public hearing comments from Mary Risling a contract consultant to CDSS on tribal issues. Ms. Risling is known in California as the author of the first California Judges Bench Guide on the ICWA published in 1998 when she was the Directing Attorney of California Indian Legal Services.

Many comments made reference to the *ICWA Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* that were released by the United States Department of the Interior, Bureau of Indian Affairs (BIA) on February 25, 2015. Additionally, the BIA released *Proposed Regulations for State Courts and Agencies in Indian Child Custody Proceedings* on March 20, 2015, which are still pending. The CDSS submitted public comments to the BIA making recommendations for changes to the proposed federal regulations. Because of the unresolved issues with the Guidelines and proposed regulations, including provisions that would likely require California legislation in order to implement, CDSS is not prepared to fully incorporate the Guidelines as suggested by commenters. However, where it was determined that language from the Guidelines was consistent with California laws and policies, and would help social worker practice; we sought to integrate them into these regulations. When the BIA Regulations are finalized CDSS expects that statutory changes will be made in California law, at which time the Division 31 regulations can be modified as appropriate.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
	GENERAL RECOMMENDATION	Delia Parr, California Indian Legal Services	We recommend that everywhere in the Regulations that currently says parent or guardian be revised to include Indian Custodian.	We appreciate this comment, however we cannot accept that everywhere in the regulations that currently says "parent" or "guardian", "Indian custodian" should automatically be included. It would require expansion of the scope of this regulation package to sections not amended, and potentially delay implementation of amendments to Division 31 sections where the substantive requirements of ICWA need to be specified. In addition, each amendment would require analysis to determine whether the section truly applied to an Indian custodian as some provisions would pertain to legal guardians established in probate court, but not Indian custodians. To the extent addition of Indian custodian was appropriate in those sections amended within this package, amendments were made.
	GENERAL RECOMMENDATION	Liz De Rouen Indian Child & Family Preservation Program	We recommend that everywhere in the Regulations that currently says parent or guardian be revised to include Indian Custodian.	We cannot accept this recommendation at this time. It is outside of the scope of the current regulation package. More importantly a proposal for a separate grievance process specific to violations of the ICWA will require more deliberation and evaluation on how such a process would reconcile with the already existing appeal processes available through the courts and arguably also already available through the existing grievance procedures set for in Division 31 commencing at Section 31-020.
	GENERAL RECOMMENDATION	Liz De Rouen Indian Child & Family Preservation Program	Our second recommendation refers to allowing any social worker the ability to provide information to the same/similar internal investigator any information pertaining to non-compliance with the Indian Child Welfare Act or other applicable laws through a "whistleblower" type process with no retaliation.	This recommendation cannot be accepted at this time as it is outside the scope of the current regulation package. A proposal for a whistleblower provisions will require more deliberation and work with tribal representatives and other concerned stakeholders in order to properly evaluate such a proposal.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
	GENERAL RECOMMENDATION	Mary Risling, Tribal Consultant, CWS- New System	California Judicial Council forms provide detailed tools for documenting inquiry, but they have not been uniformly required or implemented at the referral stage. At a minimum, the draft regulations should be modified to address the inquiry requirement at the referral state and articulate requirements for documenting the inquiry.	Ms. Risling is a valued consultant to CDSS on Tribal issues. Her recommendations were addressed internally consistent with recommendations that result from other CDSS staff.
	GENERAL RECOMMENDATION	Diane Childs, San Bernardino County	CFS wishes to comment: San Bernardino County Children and Family Services is committed to protecting the best interests of the Indian child and Indian families and supports best practices. These proposed regulations represent a significant change in child welfare practice. We are concerned with the tremendous workload and added cost to the counties added by the 2015 federal regulations and the enhancements the State has added to the federal regulations. We would request the State look carefully at the reality of child welfare social work and social workers' practical ability to fulfill the enhanced requirements in the proposed Div 31 regulations.	The CDSS did consider the potential cost and workload implications of these proposed regulations. It was determined that the requirements specified in these regulations were duties already required by the ICWA, and California statutory provisions and were already a part of social work practice. For example the duty to inquire on ICWA status, the duty to notice tribes, when confirmed, application of higher placement and evidence standards. These regulations seek to support counties and social workers by clarifying requirements that have been in law for many years.
	GENERAL RECOMMENDATION	Ron Andrade Los Angeles City/ County Native American Indian Commission	Feels the proposed regs are lacking of protection for Indian children and any reference to the **improper prescription of psychotropic drugs to Indian children without notice to the child's tribe** undermines the sovereignty of the tribe and we believe violates the ICWA. Request that the proposed regulations be revised to reflect the proposed rule of the JCC/AOC.	The CDSS is not amending the regulations at this time as the subject matter is not in the scope of this regulation package. More evaluation is warranted to give proper consideration to the recommendation. We are aware that Judicial Council rules require notice to a child's tribe when permission from a court is sought to use such drugs for the child and at this time are not certain about what further amendments should be made to Division 31 regulations.
31-001.33	GENERAL: ICWA Requirements	Judicial Council	…we recommend ….the provisions in [this section] dealing with the "best interest [of] the child" as it relates to an Indian child [should] be revised to be consistent with the [BIA] Guidelines, specifically sections C.3(c) and F.4(c)(3);	We are not prepared to fully implement the BIA Guideline as suggested. We note that the best interest provisions cited pertain to transfer of children and contain multiple provisions. However, we added Section 31-001.331 to set forth language from the Guideline which we agree accurately states that the ICWA seeks to protect not only the rights of the Indian child but the rights of Indian communities and tribes in retaining their Indian children. We will look to the final BIA regulations for further guidance on good cause considerations.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-002(a)(1)	DEFINITIONS	Delia Parr, California Indian Legal Services	We strongly support the incorporation of an "active efforts" definition in these regulations. In order to make it consistent with the Bureau of Indian Affairs Guidelines for State Courts and Agencies in Indian Child Custody Proceedings ("BIA Guidelines") (80 Fed. Reg. 10146 (February 25, 2015)) at A.2, we recommend amending the definition to specifically include that active efforts constitute more than reasonable efforts as required by Title IV-E of the Social Security Act (42 U.S.C. § 671(a)(15)) and are separate and distinct from requirements of the Adoption and Safe Families Act ("ASFA") 42 U.S.C. § 1302. We also strongly recommend adding the list of 15 examples of active efforts provided at A.2. of the BIA Guidelines. These recommendations will provide much needed clarity in this area.	The CDSS received similar comments from CILS, the California Judicial Council, the Pala Band of Mission Indians and the Indian Child & Family Preservation Program. The CDSS agrees that the 2015 BIA Guidelines provide clarification on the purpose of active efforts and examples of what can constitute active efforts. The definition has now been modified to add that active efforts are intended to primarily maintain and reunite an Indian child with his or her or her family or tribal community and added a cross reference to the BIA Guidelines on active efforts. The BIA Guideline examples have been added in handbook to facilitate ready reference to examples.
31-002	DEFINITIONS	Judicial Council	…we recommend …. the definition of "active efforts" should be revised to be consistent with section A.2 of the Guidelines.	The CDSS agrees with this comment and has revised the definition. See response to CILS.
31-002(a)(1)	DEFINITIONS	Pala Band of Mission Indians	Reference must be made to BIA Guidelines A.2 and A.3. The Statement of Reasons to the Draft Regulations provides that "Additionally, feedback from social workers and stakeholders, including tribal representatives, has been that it is not always clear what comes within the umbrella of "active efforts." The BIA Guidelines provide detailed guidance on the application of active efforts and examples which will provide clarity and context for counties.	The CDSS agrees with this comment and has revised the definition. See response to CILS.
31-002(a)(1)	DEFINITIONS	Liz DeRouen Indian Child & Family Preservation Program	We strongly support the incorporation of an "active efforts" definition in these regulations. In order to make it consistent with the Bureau of Indian Affairs Guidelines for State Courts and Agencies in Indian Child Custody Proceedings ("Guidelines") (80 Fed. Reg. 10146 (February 25, 2015)) at A.2, we recommend amending the definition to specifically include that active efforts constitute more than reasonable efforts as required by Title IV-E of the Social Security Act (42 U.S.C. § 671(a)(15)) and are separate and distinct from requirements of the Adoption and Safe Families Act ("ASFA") 42 U.S.C. § 1302. We also strongly recommend adding the list of 15 examples of active efforts provided at A.2. of the Guidelines. These recommendations will provide much needed clarity in this area.	The CDSS agrees with this comment and has revised the definition. See response to CILS.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-002(c)(25)	DEFINITIONS	Pala Band of Mission Indians	This definition [contact] is not in the Draft Regulations but should be amended to include tribes, Indian custodians, tribal service providers and Indian organizations.	The CDSS agrees with this recommendation. The definition of contact has been amended to clarify that contact can include Indian custodian, the child's tribe, tribal service providers and Indian organizations.
31-002	DEFINITIONS	Judicial Council and	…we recommend …. the definition of "Non Federally Recognized Tribe" in section 31-002 be revised to be consistent with the term, unrecognized tribal groups, in use by the Bureau of Indian Affairs. See link: http://www.bia.gov/WhoWeAre/RegionalOffices/Pacific/TribalOperations/index.htm.	The regulation will not be modified as we believe it will lead to confusion due to a change in child welfare practice terminology. WIC section 306.6 was enacted by SB 678 to authorize a dependency court to permit a tribe to participate in a child custody proceeding, where a child would be considered an Indian child under ICWA *"but is not an Indian child based on status of the child's tribe, as defined in paragraph (8) of Section 1903 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.),…"* The CDSS interpreted and implemented the provision using the term "non-federally recognized" tribe. (See All County Letter (ACL) 08-02 on SB 678 dated January 30, 2008 pg. 21) Counties similarly use this term to describe tribes intended to be covered by WIC section 306.6. (e.g. Los Angeles County "Adopting and Serving children Under the Indian Child Welfare Act 7-1-14). The BIA does not use a consistent term when referring to a tribe or tribal organization that is not federally recognized and in various places on its web site uses "non-federally recognized." We note that our federal oversight agency, the Federal Administration on Children and Families uses "non-federally recognized." (Child Welfare Manual 3.2B, see also ACF Administration for Native Americans" http://www.acf.hhs.gov/programs/ana/resource/american-indians-and-alaska-natives-federal-recognition). We also found that the Federal Government Accountability Office (GAO) in 2012 published an extensive report on "Federal funding for Non-Federally Recognized Tribes." There is no compelling change in law or policy to justify a change to this proposed regulation.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-002(I)(3)	DEFINITIONS	Mary Risling-	In testimony Mary Risling stated: In section 31002 and 31003, there is a proposed new term, which is "non-federally recognized tribe" and it's offered in connection with California statutory provisions that authorize permissive participation by a tribe that does not meet the ICWA definition of tribe, essentially federally recognized. It doesn't use a particular term, but my concern with picking up in the child welfare context the term "non-federally recognized tribe" is that that is a term defined in California Resource statutes, and authority for identifying and maintaining a list of those tribes is vested in the Native American Heritage Commission. And that is potentially a different constituency of tribal groups than might be involved in child welfare practices, and that I believe are contemplated by the child and -- or the WIC statute that authorizes permissive participation. So the use of that term, when it has another definition, I think adds to the potential for confusion that is rampant in California, and for that reason, I would strongly encourage the Department to reconsider that term. And I don't know that one is necessary. If one is necessary, Bureau of Indian Affairs website and regulations for the federal acknowledge process speak in terms of "unrecognized tribes."	Regulations section 31-002(I)(3) will not be modified. The California Resources Board states the following in "CALEPA Policy on Consultation with California Native American Tribes" dated August 20, 2015: *"There are also indigenous communities which, although they existed prior to the formation of the United States, are not currently recognized as sovereigns by the federal government. At this time, there are 81 non-federally recognized California Native American Tribes that are engaged in seeking federal recognition."* The description given in this CALEPA memorandum is consistent with information that CDSS has gathered regarding California tribes that are not federally recognized. The use of a new term would add to confusion as implementation of WIC section 306.5 by the Department, and county child welfare practice has used the term "non-federally recognized." There is no need to change the term particularly since we do not see a conflict with the California Resources Board's description or use of the term. See also response on Section 31-002(I)(3) to the California Judicial Council.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-002(i)(3)(A)	DEFINITIONS	Delia Parr, California Indian Legal Services	The Welfare and Institutions Code (W&IC) § 224.1 provides that "Indian" and "Indian child" shall be defined as provided in Section 1903 of the Indian Child Welfare Act. We suggest modifying the above definitions to mirror ICWA's definitions. The definition of "Indian" would be modified to change the citation at the end of the sentence, and would read, "…as defined in Section 1606 of Title 43." The definition of "Indian child" would be delete the second and third uses of the word "who," so it would read, "'Indian child' means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe."	The CILS, Pala and the Indian Child & Family Preservation Program commented that we should mirror the ICWA definitions including addition of reference to Title 43. We agree to modify the language to mirror the definitions in the federal ICWA with the exception of adding the citation to Title 43. The purpose of a regulation is for a state agency to implement, interpret or make specific, the law enforced or administered by the agency. It is not for the purpose of duplicating what is already in a statute. To the extent that these regulations contain substantial duplications of statutory language, it is where it was deemed necessary to provide clear program direction for the carrying out of the requirements in practice. The addition of the citation will not add clarity to the carrying out of program duties.
31-002(i)(3)(A)	DEFINITIONS	Pala Band of Mission Indians	Welfare and Institutions Code Sec. 224.1 specifically states that this definition "shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et. seq.)" The word "who" is not in the federal definition and should be deleted.	The CDSS agrees with this comment and has revised the definition. See response to CILS for Section31-002(i)(3)(A).
31-002(i)(3)(A)	DEFINITIONS	Liz DeRouen Indian Child & Family Preservation Program	The Welfare and Institutions Code (W&IC) § 224.1 provides that "Indian" and "Indian child" shall be defined as provided in Section 1903 of the Indian Child Welfare Act. We suggest modifying the above definitions to mirror ICWA's definitions. The definition of "Indian" would be modified to change the citation at the end of the sentence, and would read, "…as defined in section 1606 of Title 43." The definition of "Indian child" would be delete the second and third uses of the word "who," so it would read, "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe."	The CDSS agrees with this comment and has revised the definition. See response to CILS for Section31-002(i)(3)(A).

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-002(i)(3)(C)	DEFINITIONS	Delia Parr, California Indian Legal Services	Please consider adding to this definition the additional language included in the definition of Parent in the 2015 BIA Guidelines, which reads, "To qualify as a parent, an unwed father need only take reasonable steps to establish, or acknowledge paternity. Such steps may include acknowledging paternity in the action at issue or establishing paternity through DNA testing."	The CDSS agrees with this recommendation and has modified this section to include the 2015 BIA Guidelines regarding how an unwed father can quality under the ICWA Indian child's parent definition.
31-002(i)(3)(C)	DEFINITIONS	Judicial Council	…we recommend …. the definition of "Indian child's parent" in section 31-002 be revised to be consistent with the definition of "parent" in section A. 3 of the Bureau of Indian Affairs Guidelines.	See response to CILS for Section 31-002(i)(3)(C).
31-002(i)(3)(C)	DEFINITIONS	Liz DeRouen Indian Child & Family Preservation Program	Please consider adding to this definition the additional language included in the definition of Parent in the 2015 BIA Guidelines, which reads, "To qualify as a parent, an unwed father need only take reasonable steps to establish or acknowledge paternity. Such steps may include acknowledging paternity in the action at issue or establishing paternity through DNA testing."	See response to CILS for Section 31-002(i)(3)(C).
31-002(i)(3)(H)	DEFINITIONS	Pala Band of Mission Indians	The semi-colon after "Offenses" should be removed and replaced with a comma and the semi-colon after "tribe" should be removed and replaced with a comma. **These changes should be made to mirror the federal definition of "tribal court."** Because federal law, state law, the California Rules of Court and the Bureau of Indian Affairs Guidelines for State Courts and Agencies in Indian Child Custody Proceedings **all** refer to "tribal court" this definition should as well, "Indian tribal court" should be changed to "tribal court" throughout the Regulations.	The definition of a tribal court was originally with the term "Indian" in order to facilitate social workers' ability to locate definitions relevant to the ICWA by locating them together. Nonetheless "tribal court" was modified and moved to Section 31-002(t)(8) of the definitions. Grammatical edits have made.
31-002(p)(3)	DEFINITIONS	Pala Band of Mission Indians	Add language re: California Rule of Court, Rule 5.725(d) provides that at the 366.26 hearing the Court must state on the record that it has read and considered the reports, the case plan and any other evidence, and "must proceed as follows: (1) In the case of an Indian child, after the agency has consulted with the tribe, when the court has determined with the concurrence of the tribe that tribal customary adoption is the appropriate permanent plan for the child, order a tribal customary adoption in accordance with section 366.24."	This regulation will not be amended. The proposed regulations have the limited purpose of defining "Permanency Alternative" and the amendment is intended only to add Tribal Customary Adoption as an option for an Indian child. It is not intended to, nor does The CDSS have authority to include judicial procedures or judicial findings that arise in a WIC section 366.26 Selection and Implementation Hearing.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-002(p)(8)	DEFINITIONS	Delia Parr, California Indian Legal Services	We support the inclusion of the active efforts standard in this definition, and we recommend that it be modified to make clear that it is mandatory for pre-placement services be provided at the higher standard of Active Efforts. To this end, we recommend it be modified to read, "In the case of an Indian child, pre-placement services shall be provided based on the higher standard of Active Efforts consistent with…" Also, since Active Efforts is capitalized in the draft Division 31 regulations, we recommend capitalizing it.	This regulation will not be modified as suggested. The regulation has the limited purpose of defining "Pre-placement preventive services" and the amendment was intended to highlight the higher "Active Efforts" standard applicable to a child covered by ICWA. However, it is not necessary to include the specific Active efforts standards within this definition particularly since the Active Efforts standards are now more fully set forth in the modified definition of Active Efforts and as implemented further in Section 31-135.23.
31-002(p)(8)	DEFINITIONS	Liz DeRouen Indian Child & Family Preservation Program	We support the inclusion of the active efforts standard in this definition, and we recommend that it be modified to make clear that it is mandatory for pre-placement services be provided at the higher standard of Active Efforts. To this end, we recommend it be modified to read, "In the case of an Indian child, pre-placement services shall be provided based on the higher standard of Active Efforts consistent with…" Also, since Active Efforts is capitalized in the draft Division 31 regulations, we recommend capitalizing it.	See response to CILS for Section 31-002(p)(8).
31-002(q)(1)	DEFINITIONS	Judicial Council	…we recommend …. the definition of "Qualified expert witness" in section 31-002 be revised to be consistent with Guideline D.4.	We are limited on the extent to which we can reconcile the BIA Guidelines on qualified expert witnesses which sets forth a list, in descending order, of those presumed to meet the characteristics of a qualified expert witness. WIC section 224.6 sets forth a list of those individuals that are most likely to meet the requirements of a Qualified Expert Witness (QEW). The lists do not completely reconcile. To fully integrate the BIA provisions into the definition we believe that statutory changes will be needed. Nonetheless in response to comments we did add Section 31-135.421 which adds clarifying language that allows social workers to consider whether a child's tribe recognizes an individual as a QEW and includes the individuals listed in the BIA list.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-002(q)(1)	DEFINITIONS	Delia Parr, California Indian Legal Services	We strongly recommend making this definition consistent with W&IC 224.6 by adding subsections (b)-(d). In order to create consistency with the BIA Guidelines at D.4. We also strongly recommend clarifying that W&IC section 224.6(c) is a hierarchy.	See response to Judicial Council for Section 31-002(q)(1).
31-002(q)(1)	DEFINITIONS	Pala Band of Mission Indians	This definition should reference the pertinent sections of the Regulations, 31-135.42.-45 which discuss Qualified Expert Witness. Welf. & Inst. Code Section 224.6 should also be referenced.	See response to Judicial Council for Section 31-002(q)(1).
31-002(q)(1)	DEFINITIONS	Liz DeRouen Indian Child & Family Preservation Program	We strongly recommend making this definition consistent with WIC 224.6 by adding subsections (b)-(d). In order to create consistency with the 2015 BIA Guidelines at D.4., we also strongly recommend clarifying that WIC 224.6(c) is a hierarchy.	See response to Judicial Council for Section 31-002(q)(1).
31-002(t)(7)	DEFINITIONS	Delia Parr, California Indian Legal Services	Pending CDSS legislation, AB 403, amends "Tribal Child Welfare Agency" to "Tribal Agency." Therefore, we recommend this section be modified to read "Tribal Child Welfare Agency" or "Tribal Agency."	We agree that this definition should be modified in light of AB 403, Chapter 773, Statutes of 2015, which modified the definition of the tribal entities authorized to receive from the Department of Justice, criminal and child abuse information for the approval of foster or adoptive homes for Indian children. This section has been modified accordingly.
31-002(t)(7)	DEFINITIONS	Pala Band of Mission Indians	This defined term should be **"Tribal Child Welfare Agency" or "Tribal Agency"** for consistency with pending state legislation. See, Section 31.075(w)(10) which uses "tribe's Director of Social Service", "Tribal Child Welfare Agency" and "tribal agency" in this one Section. This lack of consistency will only lead to confusion at the county level.	See response to CILS for Section 31-002(t)(7).
31-002(t)(7)	DEFINITIONS	Liz DeRouen Indian Child & Family Preservation Program	Pending CDSS legislation, AB 403, amends "Tribal Child Welfare Agency" to "Tribal Agency." Therefore, we recommend this section be modified to read "Tribal Child Welfare Agency" or "Tribal Agency."	See response to CILS for Section 31-002(t)(7).

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-002(t)(8)	DEFINITIONS	Pala Band of Mission Indians	W&I Code section 366.24(a)(1) defines **Tribal Customary Adoption** to mean "an adoption by and through the tribal custom, traditions, or law of an Indian child's tribe. Termination of parental rights is not required to effect the tribal customary adoption." This is a clearer definition and should be used.	Restating a statute verbatim does not necessarily assist to clarify for social workers the meaning and intent of statutory provisions. Regulations seek to implement, interpret or make specific statutory provisions. We brought the definition more in line with the statutory language; however, we also thought it important to specify that Tribal Customary Adoptions apply to a child that is a dependent.
31-005.11	CHILD WELFARE PROGRAM SUPPORT ACTIVITIES	Delia Parr, California Indian Legal Services	Please consider revising section .11 above to include tribes after law enforcement and before other public and private agencies.	Section 31-005.11 will not be modified because inclusion of tribal entities is already listed in Section 31-005.111.
31-005.11	CHILD WELFARE PROGRAM SUPPORT ACTIVITIES	Liz DeRouen Indian Child & Family Preservation	Please consider revising section .11 above to include tribes after law enforcement and before other public and private agencies	Section 31-005.11 will not be modified because inclusion of tribal entities is already listed in Section 31-005.111.
31-005.111	CHILD WELFARE PROGRAM SUPPORT ACTIVITIES	Delia Parr, California Indian Legal Services	Please consider revising .111 to replace the word "can" with the word "should" in the last sentence.	Commenters recommended different modifications of Section 31-005.111, to state that cooperative arrangements involving an Indian child, "shall or should" include tribes, tribal social services agencies and Indian organization. After consideration of the context of Section 31-005.111, which speaks to a "system "for cooperative arrangements, we believe that the language needs to be made plural, "Indian child (ren)" consistent with the rest of the section. We agree that the intention of the amendment is better clarified by specifying that such arrangements involving Indian children "should" include the tribal entities as listed, rather than "shall." In this instance "shall" can lead to confusion because cooperative arrangements could be interpreted as not valid unless all of the listed tribal entities are included. Local conditions differ and we would not want to unintentionally preclude the various potential configurations for cooperative arrangements.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-005.111	CHILD WELFARE PROGRAM SUPPORT ACTIVITIES	Pala Band of Mission Indians	The word "can" should be replaced with the word "shall" for compliance with active efforts and placement preferences. The Statement of Reasons recognizes this as well: "With Indian children care must be given to ensure compliance with ICWA placement preferences as required by WIC section 361.31, and in ICWA at 25 U.S.C. section 1915. The need for tribal input on the out- of-state placement for Indian children thus takes on a greater significance as the process of identifying appropriate placements that are consistent with ICWA.	See response to CILS on this section.
31-005.111	CHILD WELFARE PROGRAM SUPPORT ACTIVITIES	Liz DeRouen Indian Child & Family Preservation Program	Please consider revising .111 to replace the word "can" with the word "should" in the last sentence.	See response to CILS on this section.
31-020	GRIEVANCE PROCEDURES	Pala Band of Mission Indians	This Section is not part of the Draft Regulations however; it is completely silent as to tribes and ICWA compliance. This is an egregious omission. Tribes, Indian custodians, parents and children must be included in this Section and counties must be mandated to follow the regulations. Specifically, Sec. 31-020.1 should include Indian custodians and tribes; 31-020.311 should include Indian custodians and tribes and a new section should be added to include tribally approved and tribally specified homes. The grievance process would provide proper procedure for fair due process. Indian Custodians and Tribes should be able to engage in this process completely, including a proper procedure for addressing grievances. Furthermore, it does not make sense for the process to end at the director, since the director runs the very agency with whom the Indian Custodian or Tribe has a grievance.	We cannot accept this recommendation at this time as this is outside the scope of this package. Multiple commenters raised various proposals regarding Section 31-020 grievance procedures some with new recommendations such as whistleblower protections and or separate procedures specific to ICWA. Section 31-020 as currently written pertains to complaints from foster parents, legal parents, guardians and children concerning the placement or removal of a child from a foster home. We agree that there should be a review of grievance procedures as it pertains to ICWA related parties and issues. However, it calls for a more extensive evaluation of current processes in order to give proper consideration to the full scope of due process issues raised.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-040.16	PARTICIPANTS IN THE REVIEW	Pala Band of Mission Indians	This Section and Sec.31-002(r)are also silent as to tribes, Indian custodians, parents and children in the administrative review process. Again, this is an egregious omission. Tribes, Indian custodians, parents and children must be added and counties must be mandated to follow regulations. Sec 31-040 is also silent as to tribes and Indian custodians. Clearly, tribes and Indian custodians must be permitted to participate in all grievance and administrative review hearings.	The CDSS agrees that it is necessary to clarify that an Indian child's tribe and or Indian custodian are entitled to be participants to Administrative review hearings under MPP section 31-25. These hearings are intended to allow an alternative to the six (6) month reviews held in court under the Welfare and Institutions Code (WIC), e.g. WIC sections 366.3(d) and (e). Therefore, CDSS added Section 31-040.12 to include the child's tribe and modified Section 31-040.16 to include Indian custodian. The Grievance procedures in Section 31-020 grievance procedures are separate and distinct from Administrative Review Hearings. And will not be modified at this time. See response to Pala for Section 31-020.
31-066.21	MUTLIDISCIPLINARY TEAM ASSESSMENT AND RECOMMENDATION FOR PLACEMENT IN OUT-OF-STATE GROUP HOME	Delia Parr, California Indian Legal Services	We recommend that section .21 be revised to provide that "… the Multidisciplinary Team *shall* permit a tribal social worker, or a representative of the child's tribe to attend team meetings and to provide relevant information about the child."	The CDSS agrees that it is necessary to clarify that the child's tribe must be included in a multi-disciplinary team involving the out of state placement of an Indian child. Therefore CDSS modified the regulation to use "shall include" versus the "may permit" language.
31-066.21	MUTLIDISCIPLINARY TEAM ASSESSMENT AND RECOMMENDATION FOR PLACEMENT IN OUT-OF-STATE	Pala Band of Mission Indians	The term "may" should be changed to "shall." MDT, TEAM, TDM – regardless of the term, tribes should be included, informed and engaged in the process.	See response to CILS for Section31-066.21.
31-066.21	MUTLIDISCIPLINARY TEAM ASSESSMENT AND RECOMMENDATION FOR PLACEMENT IN OUT-OF-STATE GROUP HOME	Liz DeRouen Indian Child & Family Preservation Program	We recommend that section .21 be revised to provide that "… the Multidisciplinary Team shall permit a tribal social worker, or a representative of the child's tribe to attend team meetings and to provide relevant information about the child."	See response to CILS for Section31-066.21.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-066.211	MULTIDISCIPLINARY TEAM ASSESSMENT AND RECOMMENDATION FOR PLACEMENT IN OUT-OF-STATE GROUP HOME	Pala Band of Mission Indians	Welfare and Institutions Code Sec. 361.31 provides that an Indian child's placement **shall** comply with the placement preferences of that Section. This subsection, .211, lacks compliance with Section 361.31, nowhere in state law is a social worker to give "serious consideration" the law states the court or agency shall place an Indian child in accordance with the placement preferences; this is true even if the Indian child is to be placed out of state in a group home. **31-066.211 should read**: "In making a decision whether to place the Indian child in an out of state group home, ~~information provided by the child's tribal social worker or tribal representative regarding the tribe's placement preferences shall be given serious consideration~~ any placement decision shall be made consistent with ICWA placement preferences and the agency's duties to engage in active efforts to comply with those placement preferences. The agency shall document these efforts and a record of each placement shall be maintained in perpetuity pursuant to W&I Code Section 361.31." The Statement of Reasons is in agreement: "In addition, ICWA at 25 U.S.C. section 1915 and WIC section 361.21 require that an Indian child be placed within reasonable proximity to his or her home taking into account any special needs of the child. This amendment seeks to assure compliance with these ICWA requirements."	We agree with the proposed modification of Section 31-006.211 and have incorporated the recommendation.
31-066.42	MULTIDISCIPLINARY TEAM ASSESSMENT AND RECOMMENDATION FOR PLACEMENT IN OUT-OF-STATE GROUP HOME	Pala Band of Mission Indians	**This section should be amended to read:** In case of an Indian child, the assessment shall include consultation with the Indian child's tribe, documentation of the active efforts provided prior to removal and documentation of compliance with the placement preferences pursuant to W&I Code Section 361.31.	The regulation was amended to partially include the proposed language; the regulation will cross reference to the section in the regulations pertaining to placement preference requirements in Section 31-420.3 rather than reference WIC section 361.31.
31-075.21	CASE RECORDS	Aggie Jenkins, Riverside County	Does this mean that the **Eligibility file must also be retained in perpetuity**? I think in C-IV that is essentially happening anyhow, but it would be good to let the designers of the new system know.	We agree that we should clarify that the duty to retain records in perpetuity should include eligibility records. The regulation has been modified to include eligibility documentation.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-075.21	CASE RECORDS	Pala Band of Mission Indians	BIA Guidelines, Sec. G6(a) and (b) provide that "the State shall establish a single location where all records of every voluntary or involuntary foster care, pre-adoptive placement and adoptive placement of Indian children by courts of that State will be available within seven days of a request by an Indian child's tribe or the Secretary" Subsection (b) provides the "records must contain, at a minimum, the petition or complaint, all substantive orders entered in the proceeding, and the complete record of the placement. **These requirements should be added to this Section.**	We cannot accept this recommendation at this time. It is outside of the scope of the current regulation package. We will look to the final BIA regulations for responsibilities associated with the issue of retention of records in a centralized location.
31-075.3(b)	CASE RECORDS	Delia Parr, California Indian Legal Services	Additionally, the last sentence of .3(b) includes the phrase "tribal social services agency." This should be replaced with "Tribal Child Welfare Agency" or "Tribal Agency" as defined in 31-002(t)(7).	The regulation will not be modified as suggested because a "Tribal Child Welfare Agency or "Tribal agency" as defined in Section 31-002(t)(7) is inapplicable to this section. Regulation Section 31-075.3(b) is intended to give guidance on documentation duties pertaining to social workers that are under CDSS' oversight. Tribal social workers would only fall into that category if they were working for a Title IV-E agreement program. The regulation has been modified to delete inclusion of a tribal social services agency as it is inapplicable in this section.
31-075.3(b)	CASE RECORDS	Pala Band of Mission Indians	Indian custodian should be included after the phrase, "the child's family'. In addition, see comment re: Sec. 31-002(t)(7) for consistency in terminology. The Statement of Reasons provides the following language as to the "specific purpose" of the amendment, but the new language doesn't capture the specific purpose and should include mention of the ICWA requirements. Specific Purpose: "This section is amended to require that social workers document each contact made with an Indian child's tribe when there is reason to know the child may be Indian. Further, this amendment is intended to ensure that social workers including those employed by a Foster Family Agency, probation officers or social workers in another state performing required visits with the child pursuant to the Interstate Compact on the Placement of Children (ICPC) understand and recognize that the child they are working with is an Indian child and thus the ICWA requirements regarding placement preferences, services provided and tribal involvement must be met per ICWA at 25 U.S.C. section 1915."	The regulation has been modified to include "Indian custodian" and "extended family"

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-075.3(b)	CASE RECORDS	Liz DeRouen Indian Child & Family Preservation Program	Additionally, the last sentence of .3(b) includes the phrase "tribal social services agency." This should be replaced with "Tribal Child Welfare Agency" or "Tribal Agency" as defined in 31-002(t)(7).	The regulation is intended to give guidance on documentation duties pertaining to social workers that are under CDSS' oversight. Tribal social workers would only fall into that category if under an agreement or contract with the county. The regulation has been modified to delete "tribal social services agency because inclusion of a tribal social services agency was inapplicable in this section.
31-075.3(c)	CASE RECORDS	Delia Parr, California Indian Legal Services	The additionally required California Rules of Court form, the ICWA-020 *Parental Notification of Indian Status*, in addition to the ICWA-010(A) *Indian Child Inquiry Attachment,* should be added. (See Rule 5.481(a).)	We agree that the ICWA 020 should be included as part of the documentation of compliance with the duty of inquiry. We added language, "including but not limited to," to clarify that the ICWA 010 and 020 are not the only form of documentation.
31-075.3(c)	CASE RECORDS	Judicial Council	In terms of consistency with state law, we recommend: regulation 31-075.3(c) concerning documentation of initial inquiry, be revised to include reference to Judicial Council form ICWA-020 *Parental Notification of Indian Status* in addition to the ICWA 010(A) *Indian Child Inquiry Attachment*. Rule of Court 5.481(a) requires both forms in each case when the party is seeking foster care placement of a child.	We agree that the ICWA 020 should be included as part of the documentation of compliance with the duty of inquiry. We added language, "including but not limited to," to clarify that the ICWA 010 and 020 are not the only form of documentation.
31-075.3(c)	CASE RECORDS	Pala Band of Mission Indians	This Section should include the following language: "…as to whether the child is or may be an Indian child as set forth in Sections 31-125.223 - 31-125.225." Documentation is required for more than just inquiry as provide in Welfare and Institutions Code Sections 224.2 and 224.3. In addition, the BIA Guidelines also mandate and require detailed inquiry and notice pursuant to Sections B.1, B.2 and B.6.	The CDSS will not make this recommended amendment. We believe the regulation is sufficient as written.
31-075.3(c)	CASE RECORDS	Liz DeRouen Indian Child & Family Preservation Program	The additionally required California Rules of Court form, the ICWA-020 Parental Notification of Indian Status in addition to the ICWA-010(A) Indian Child Inquiry Attachment, should be added. (See Rule 5.481(a).)	The regulation was modified to include reference to ICWA-020.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-075.3(d)	CASE RECORDS	Delia Parr, California Indian Legal Services	Revise regulation to provide that copies of form ICWA-030 Notice of Child Custody Proceeding for Indian Child must be provided to "…the Indian child's tribe and the Secretary of the Interior" rather than or the Secretary of the Interior.	This section was modified to correct the error regarding sending copies of the Notice of Child Custody Proceeding for Indian Child to the Secretary of the Interior.
31-075.3(d)	CASE RECORDS	Judicial Council	In terms of consistency with state law, we recommend: …revise section 31-075.3(d) to provide that copies of form ICWA-30 *Notice of Child Custody Proceeding for Indian Child* must be provided to "…the Indian child's tribe and the Secretary of the Interior" rather than or the Secretary of the Interior.	See response to CILS on this section.
31-075.3(d)	CASE RECORDS	Pala Band of Mission Indians	**Change to "the Indian child's tribe AND the Secretary of the Interior."** This is required pursuant to Welfare and Institutions Code Sec. 224.2. Nowhere in Section 31-075 is there a statement that the ICWA 010, 020 and 030 forms must be filed with the court and served on the parties. This should be included throughout the Regulations and not assumed it is understood at the county level.	See response to CILS on this section.
31-075.3(d)	CASE RECORDS	Liz DeRouen Indian Child & Family Preservation Program	Revise regulation to provide that copies of form ICWA-30 Notice of Child Custody Proceeding for Indian Child must be provided to "… the Indian child's tribe and the Secretary of the Interior" rather than or the Secretary of the Interior.	See response to CILS on this section.
31-075.3(e)	CASE RECORDS	Pala Band of Mission Indians	The Regulations should reference and follow the BIA Guidelines A.2 and A.3. See comment to Sec. 31-002(a)(1).	We are not prepared to fully implement the BIA Guideline as suggested. The regulation will not be modified as suggested. We will look to the final BIA regulations for responsibilities associated with case record requirements. .

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-075.3(f)	CASE RECORDS	Diane Childs, San Bernardino County	CFS is concerned that there is unnecessary duplication of efforts and information if active efforts are documented in **CWS/CMS,** the case plan AND the court report. The court report is a legal document signed by the social worker and supervisor under penalty of perjury. Since the case plan is an attachment to the court report and the parent/Indian custodian receives copies of both the case plan and court report, we believe documentation of active efforts can be ensured if the information is documented in **CWS/CMS** and the court report. CFS suggests the requirement to duplicate the information in the case plan is unnecessary to satisfy the State's desire to ensure active efforts are documented. CFS suggests the requirement to document active efforts in the case plan be removed from the regulations.	We agree that this regulation as written unintentionally results in duplication of documentation. Pursuant to WIC section 358(b) "Any social study or report submitted to the court by the social worker shall include the individual child's case plan. " We therefore we agree it is not necessary to specify the information is to be duplicated in both documents. The regulation is thus amended to state "Documentation of Active Efforts must be included in the case plan which is required as an attachment to all court reports."
31-075.3(f)	CASE RECORDS	Judicial Council	In terms of consistency with state law, we recommend: … revise regulations 31-075.3(f) to require that the documentation of active efforts taken to comply with the ICWA placement preferences be included in court reports. This information and supporting evidence are required by the court.	We agree that the court needs the information however, as noted by San Bernardino, it is not necessary to require the same information in both the case plan and the court report. The court report includes a copy of the case plan. The regulation will therefore be modified to add the following language, "This documentation must also be included in the case plan which is to be included in court reports."
31-075.3(f)	CASE RECORDS	Pala Band of Mission Indians	The Specific Purpose language is a bit clearer than the draft Regulation: "This section specifies the duty to document, in the case record, active efforts made to comply with ICWA placement preferences. It also adds the duty to specify why an Indian child is not placed in accordance with the tribe's placement preferences." The Regulations should reference and follow the placements preferences and obligations found in W&I Code Sec. 361.31. Counties must understand their obligations to place Indian children in ICWA compliant homes. BIA Guidelines Sec. F.1, F.2 and F.3	We do not think it is necessary to modify the regulation. The regulation cross-references Section 31-420 which contains further specification of the placement preference requirements. We will look to the final BIA regulations on additional obligations related to placement preferences
31-075.3(w)(10)	CASE RECORDS	Delia Parr, California Indian Legal Services	This section should be revised to create consistency with the definition of "Tribal Child Welfare Agency" or "Tribal Agency" at 31-002(t)(7).	The CDSS agrees. See response to CILS for Section31-002(t)(7).

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-075.3(w)(10)	CASE RECORDS	Pala Band of Mission Indians	See comment to Section 31-002(t)(7) and the need for consistency with terminology; not all tribes have an "ICWA Committee" or a "Director of Social Service" this could be eliminated by simply stating: "For a Tribally Approved Home, documentation from the tribe, such as a tribal council resolution, confirming tribal approval…." See also, Sec. 31- 075.3(w)(10)(A) and (B) the terms "Tribal Child Welfare Agency" and "tribal agency" are used and as noted in Sec. 31-002(t)(7) the definition should be clarified for consistency in the Regulations.	We agree that the use of "ICWA Committee" or "Director of Social Services" may be overly specific. However we also do not want to mislead social workers to think that only a tribal council resolution will suffice, therefore we are replacing the examples to include "or a letter on tribal letterhead."
31-075.3(w)(10)	CASE RECORDS	Liz DeRouen Indian Child & Family Preservation Program	This section should be revised to create consistency with the definition of "Tribal Child Welfare Agency" or "Tribal Agency" at 31-002(t)(7).	We agree that reference to Tribal Child Welfare Agency should be modified in light of AB 403, Chapter 773, Statutes of 2015, which modified the definition of the tribal entities authorized to receive from the Department of Justice, criminal and child abuse information for the approval of foster or adoptive homes for Indian children. This section has been modified accordingly.
31-075.3(z)	CASE RECORDS	Judicial Council	In terms of consistency with state law, we recommend: … revise regulations 31-075.3(z) to require that the documentation of discussions with an Indian child's tribe concerning concurrent planning including discussion of the potential for tribal customary adoption be included in court reports. This information and supporting evidence is required by the court.	The regulation has been modified to better clarify the documentation requirements for Tribal Customary Adoption consultation.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-101.11	GENERAL	Pala Band of Mission Indians	Inquiry by social workers at the referral and/or investigation stage is not always in conformity with state or federal law or these Regulations. Too often tribes are not notified of an investigation which is a critical time to get services to a family to avoid removal. The 2015 BIA Guidelines provide that "even in those cases in which the child is not removed from the home, such as when an agency opens an investigation or the court orders the family to engage in services to keep the child in the home as part of diversion, differential, alternative response or other program, agencies and courts should follow the verification and notice provisions of these guidelines." Sec. A.3(c). The language from Sec. A.3(c) should be incorporated and this Sec. 31-101.11 should include language that the county shall document all contact and collaboration with the Indian child's tribe.	The regulation will not be modified as suggested. We are not prepared to integrate the BIA section cited. We note however, that this regulation package has made modifications to the pre-removal investigation process to require inquiry, at the pre-removal stage e.g. Section 31-110.32.
31-101.512	GENERAL	Pala Band of Mission Indians	Change the "or" to "and" to be inclusive as possible	This modification has been made to Section 31-101.512.
31-101.512	GENERAL: Tribal Involvement	Judicial Council	In terms of consistency with state law, we recommend: … revise 31-101.512 to include reference to an Indian child's extended family and individual Indian caregiver consistent with Welfare and Institutions Code section 361.7(b) which requires that active efforts include extended family and individual Indian caregiver in addition to the tribe and Indian service providers.	CDSS' goal is to provide clarity and consistency between Division 31 Regulations related to ICWA. Hence, we modified the language to promote a greater understanding of the active efforts requirements in ICWA and WIC codes. We added "extended family" where noted as well as the child, if the child is old enough, the child's parent(s), legal guardian(s).

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-105.116(b)(1) and Handbook	EMERGENCY RESPONSE PROTOCOL	Pala Band of Mission Indians	The Indian child's tribe must receive notice of the investigation and should not be characterized as "a referral**.**" Tribes are sovereign nations and the State and counties must engage with tribes on a government-to-government basis. Indian organizations and Indian service providers must be used as referrals for Indian children and their families, and the Indian child's tribe may have services and programs available, but the tribe receives notice of the investigation and can actively participate. See, BIA Guidelines, Sec. A.2(c). Failure to notify the tribe at this stage violates federal and state ICWA laws and is a disservice to Indian children, families and tribes who can be involved and possibly prevent removal. **The Handbook language should be amended to change "<u>appropriate" to "mandatory</u>" and a new last sentence should be added which states: "Said referrals shall be documented in the case record." This also complies with the active efforts prior to removal requirement.**	Slight edits were made to this section and the Handbook. However the regulation is not modified as suggested. In this context, "evaluate out, with a referral" does not pertain to the formal notice given under ICWA. This section pertains to the situation were a social worker determines that an In person Investigation will not be conducted and instead the matter will be concluded with a referral to a community agency, described as "Evaluate out." "Referral to community agency" means informing another service agency that a child and/or that child's family desires or requires that agency's services; and assisting the child and/or family to avail themselves of such services. Section 31.110.116(b)(1) is added in order to inform the social worker that where an Indian child is involved the process to evaluate out is different and is to include a referral to the tribe, an Indian organization or Indian service provider. The tribe is included in this list because the child's tribe may be aware of tribally based services available to the family. There is no need to specify documentation in the "case records" because the emergency response protocol includes documentation of the information on the Emergency Response Protocol form, SOC 423 (10/92), or approved substitute.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-105.117	EMERGENCY RESPONSE PROTOCOL	Pala Band of Mission Indians	The Statement of Reasons provides: Section 31-105.117 Specific Purpose: This section is amended to clearly indicate requirements and specify that when the decision is made to evaluate out with or without a referral to a community agency, Indian organization or other Indian service provider the rationale for the decision to evaluate out with or without a referral must be documented as specified in Sections 31- 105.117(a) and (b). Factual Basis: This section is amended to ensure active efforts in the case of an Indian child and referrals to appropriate service providers are made. More importantly, this requires that the social worker document why a referral to an Indian tribe, Indian organization or other Indian service provider is or is not made. This amendment is consistent with active efforts and the required documentation for the basis of actions taken by social workers as stated in ICWA at 25 U.S.C. section 1912(d) as well as WIC section 361.7(b). The draft Regulation 31-105.117 does not express the purpose or factual basis outlined in the Statement of Reasons. There must be a clear statement of referral, utilization and reasons why this was not accomplished if the social worker failed to make the appropriate referrals and contact.	Section 31-105.117(a)(1) was added to clarify that when evaluating out an Indian child's case referrals to the child's tribe or Indian service providers must be made and documented including if such referrals were not made or utilized, why not.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-110.2	IN-PERSON INVESTIGATIONS	Pala Band of Mission Indians	**Change "that" to "who" and add "by the social worker" at the end of the sentence.** **The new Sec. 31-115.2 language (as amended below) should be included in this Section**. Both 31-110 and 31- 115 pertain to in-person investigations. 31-110.31 is limiting because it only speaks to Indian children residing on an Indian reservation, Rancheria, or in an Indian community. 31-115.2 is limiting because there is no reference to Indian children residing on an Indian reservation, Rancheria of in an Indian community. See edits at left. If this language is inserted, .32 can be deleted and this language can be the new .32.	We agree the language identified as limiting, is not necessary and it has been deleted. This section was also reorganized and modified in part, to clarify that during the course of an in-person investigation the social worker has the responsibility to ask if the child is or may be an Indian. We agree that it is necessary to make clear to social workers that they have an on-going responsibility to inquire if a child is or may be an Indian so that contact with the child's tribe or other tribal resources can be identified as early as possible to comply with the active efforts that must be made to provide remedial and rehabilitative programs to prevent the breakup of the Indian family. Modification was therefore made with the addition of a new Section 31-110.31, with additional edits to renumbered .32 and new .33.
31-110.32	IN-PERSON INVESTIGATIONS	Judicial Council	… we recommend … regulation be revised to require ICWA inquiry even when removal is not contemplated consistent with Guideline A.3(c) which states that child welfare agencies must ask about a child's Indian status"… Even in those cases in which the child is not removed from the home, such as when an agency opens an investigation or the court orders the family to engage in services to keep the child in the home as part of a diversion, differential response or other program…."	Section 31-110.31 was added to require inquiry even where removal is not contemplated which we believe is sufficient. See also response to the Pala Band of Mission Indians for Section 31-110.31. Section 31-110.32, as noticed, is deleted and Section 31-110.33 is added.
31-110.32	IN-PERSON INVESTIGATIONS	Pala Band of Mission Indians	See comment above re: **replace this language with the language from 31-115.2**	See response to the Pala Band of Mission Indians for Section31-110.31.
31-115.2	IN-PERSON INVESTIGATION	Judicial Council	… we recommend … regulation 31-115.2 be revised to require that if a removal is effectuated prior to contacting a tribe, contact must be made as soon as possible thereafter;	In response to multiple comments made on this section regarding contact with a child's tribe Section 31-115.2 has been reorganized and augmented. While we agree that there are potential modifications that can be made to Section 31-115.2 to assist social workers in carrying out In-person Investigations, we are not prepared to fully integrate the BIA Guidelines at section B.8 as suggested by commenters to this section. We will look to the final BIA regulations.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-115.2	IN-PERSON IMMEDIATE INVESTIGATION	Pala Band of Mission Indians	Replace "danger" with "physical damage or harm" to make consistent with BIA Guideline B.8(a). **Insert in 31-115.2**: "The standard for whether emergency removal or emergency placement is appropriate for a child who is or may be an Indian child is whether it is necessary to prevent imminent physical damage or harm to the child. Any such removal must be as short as possible. These requirements apply whether or not the child is domiciled or reside in a reservation (BIA Guidelines B.8(a) and (b)), except such requirement does not authorize removal of a child from a reservation where a tribe exercises exclusive jurisdiction." See also, BIA Guidelines, A.3(c). See comment for Sec. 31-110.31 and 31-110.32. **Add new section 31-115.21 – italicized language.** The Indian child's tribe must be consulted and included in all investigations and removals.	See response to Judicial Council for Section31-115.2.
31-115.2	IN-PERSON IMMEDIATE INVESTIGATION	Delia Parr, California Indian Legal Services	We suggest that this section specify that if a removal occurs prior to contacting a tribe, contact must be made as soon as possible.	See response to Judicial Council for Section31-115.2.
31-115.2	IN-PERSON IMMEDIATE INVESTIGATION	Liz DeRouen Indian Child & Family Preservation Program	We suggest that this section specify that if a removal occurs prior to contacting a tribe, contact must be made as soon as possible.	See response to Judicial Council for Section31-115.2.
31-120.2	IN-PERSON INVESTIGATION WITHIN 10 CALENDAR DAYS	Pala Band of Mission Indians	The following language should be added to the end of this section to comply with inquiry, notice and placement requirements: **"…with the tribe, and the tribe can participate in the investigation and assist with placement."**	The regulation will not be modified as we do not believe there is sufficient legal authority to require that tribe be made a part of investigations.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-125.223	INVESTIGATION REQUIREMENTS	Judicial Council	…we recommend …revise regulation 31-135.223(s) to be consistent with Guideline section B.2(c) concerning when there is reason to believe a child maybe an Indian child. In terms of consistency with state law, we recommend: … revise regulations 31-125.223 to require that the social worker have the parents complete the form ICWA-020 *Parental Notification of Indian Status*.	Section 31-125.223 has been modified to require social workers to complete and file form ICWA 010(A) on Indian child Inquiry with the court and to provide the ICWA 020 Parental Notification of Indian Status form to the parent, Indian custodian or guardian and when completed file it with the court.
31-125.223	INVESTIGATION REQUIREMENTS	Pala Band of Mission Indians	As noted in Sec. 31-075.3(d) the draft Regulations must instruct the agency to file the ICWA 010, 020, and 030 forms with the court. **This section should be amended as follows:** Insert a comma after "child", delete the word "and", and insert the phrase "and file with the court" after the word "complete." **The sentence will read: "…may be an Indian child, complete and file with the court, the Judicial Council Indian Child Inquiry Attachment form…"** See, BIA Guidelines B.2(c) and Welf. & Inst. Code Sec. 224.3 on the court and agency's duty to inquire and reason to know. See also, BIA Guidelines, A.3(c).	In response to this comment, the suggested edits to the first sentence in section 31-125.223 were accepted. While CDSS is not prepared to fully integrate the cited provisions in BIA Guidelines section B.2(c), modifications were made by adding a new Section 31-125.223(a)(2) stating "Any agency involved in child protective or family support services has discovered information suggesting that the child is an Indian child."; In addition Section 31-125.223(a)(6) was added to state, "An employee of the agency or officer of the court involved in the proceeding has knowledge that the child may be an Indian child." Languages for these sections were taken from the BIA Guidelines as suggested, to augment circumstances that can lead to a further duty to inquire.
31-125.223(a)	INVESTIGATION REQUIREMENTS	Delia Parr, California Indian Legal Services	Please consider revising this section to be consistent with BIA Guideline B.2(c) concerning when there is reason to believe a child may be an Indian child.	While CDSS is not prepared to fully integrate the BIA Guidelines section B.2(c), language was drawn from the section to augment circumstances that may give rise to a further duty to inquire. See response to the Pala Band of Mission Indians on Section 31-125.223.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-125.223(a)	INVESTIGATION REQUIREMENTS	Judicial Council	…we recommend …31-125.223(a) be revised to be consistent with Guideline B.2(c) concerning when there is reason to believe a child may be an Indian child.	See response to CILS for Section31-125.223(a).
31-125.223(a)	INVESTIGATION REQUIREMENTS	Liz DeRouen Indian Child & Family Preservation Program	Please consider revising to be consistent with Guideline B.2 (c) concerning when there is reason to believe a child may be an Indian child.	See response to CILS for Section31-125.223(a).
31-125.223(4)	INVESTIGATION REQUIREMENTS	Judicial Council	In terms of consistency with state law, we recommend … revise the notation following 31-125.223(4) to identify form ICWA-020 *Parental Notification of Indian Status* which is also required under rule of court 5.481.	Section 31-125.223 was modified to include the ICWA-020.
31-125.6	INVESTIGATION REQUIREMENTS	Judicial Council	In terms of consistency with state law, we recommend … revise regulation 31-125.6 to reflect that, per rule 5.481 form ICWA-020 *Parental Notification of Indian Status* must be completed as part of the initial inquiry in every child welfare case, not only when the social worker knows or has reason to know that the child is or may be an Indian child;	Section 31-125.6 has been modified to remove the reason to know language.
31-125.6	INVESTIGATION REQUIREMENTS	Pala Band of Mission Indians	Often times the ICWA 020 form is prepared with assistance of a parent's court appointed attorney; but social workers also have an obligation to ensure the form is completed and filed with the court. The Regulations must state that the ICWA 010, 020, and 030 forms are mandatory forms and must be filed with the court. See comment above and to Sec. 31-075.3(d). See also, BIA Guidelines, A.3(c).	The regulation was not modified to incorporate these suggestions, because these forms are not required in all investigation scenarios. The suggested forms are addressed in a different section for proper applicability.
31-125.6 Handbook	INVESTIGATION REQUIREMENTS	Pala Band of Mission Indians	The handbook language must include the following: "The ICWA-020 must be filed with the court." The Regulations should also state that the ICWA 010, 020, and 030 forms are mandatory forms. See also, BIA Guidelines, A.3(c).	The handbook was not modified as we believe the language is sufficient as written.
31-125.7	INVESTIGATION REQUIREMENTS	Delia Parr, California Indian Legal Services	We recommend that this be revised to be consistent with BIA Guideline A.3(c) to reflect that the agency should seek verification from a tribe at an early stage prior to formal notice of a hearing.	We are not prepared to fully integrate the cited provisions in BIA Guidelines. However, we have added clarification to section .7 that the social worker should secure verification from a tribe as early as possible to facilitate provision of Active Efforts as soon as possible. See response to Pala Band of Mission Indians on this section.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-125.7	INVESTIGATION REQUIREMENTS	Judicial Council	…we recommend …regulations 31-125.7 be revised to be consistent with Guideline A.3(c) to reflect that the agency should seek verification from a tribe at an early state prior to formal notice of a hearing.	See response to CILS on this section.
31-125.7	INVESTIGATION REQUIREMENTS	Liz DeRouen Indian Child & Family Preservation Program	We recommend that this be revised to be consistent with Guideline A.3 (c) to reflect that the agency should seek verification from a tribe at an early stage prior to formal notice of a hearing.	See response to CILS on this section.
31-125.71	INVESTIGATION REQUIREMENTS	Pala Band of Mission Indians	**The Regulations do not provide the federal and state law requirements regarding what notice to the Indian child's tribe must include**. Too often the Indian child's birth certificate is not included, the ICWA 030 form is inadequately completed making it difficult for tribes to identify members, and basic information is left blank. Notice is a key provision under state and federal law for tribes to engage with the agency pre-removal and once a petition is filed. Without proper and timely notice tribal participation is minimal or non-existent. This results in devastating effects to Indian children and families as well as tribes. The BIA Guidelines layout the notice requirements in Sec. B.6; as does Welfare and Institutions Code section 224.2. The new section 31.125.72 will require the re-numbering of this entire section.	The requirements of the notice are incorporated in Judicial Council form ICWA 030. We believe the regulation as written is sufficient to inform social workers on notice requirements and to the extent there are aspects not included, we believe the Judicial Council form is legally sufficient. We will look to the final BIA regulations for further requirements on notice.
31-125.731	INVESTIGATION REQUIREMENTS	Judicial Council	In terms of consistency with state law, we recommend … revise regulations 31.125.731 and 31-125.761 to require that, if any information requested by the ICWA-030 is not available, the social worker must explain in the court report why the information is missing and what efforts were made to obtain that information sufficient to comply with the requirements of Welfare and Institutions Code section 224.3(c);	This recommendation was not made to Section 31-125.731. The purpose to this section is limited to requiring the social worker to use the ICWA-030 when sending ICWA notice of the proceeding. It is not intended to get into the requirements associated with the social worker's communications about the form before the court. However, in response, modification was made to Section 31-125.762 where language was added to more specifically require advising the court of contacts made with the parents, Indian custodian and extended family as well as why information may be missing from the ICWA-030.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-125.75	INVESTIGATION REQUIREMENTS	Judicial Council	In terms of consistency with state law, we recommend … revise regulation to clarify that notice must be sent by registered or certified mail, and that the notice must be sent far enough in advance that it will be received at least 10 days before the hearing date;	In response Section 31-125.731 was modified to add that notice must be sent by registered or certified mail.
31-125.76	INVESTIGATION REQUIREMENTS	Pala Band of Mission Indians	Add a **new subsection**, 31-125.765: "Advise the court of all active efforts that the social worker has taken and will continue to take while verifying whether the child is an Indian child." This is consistent with BIA Guidelines B.1 (a). Add language reminding social workers and the courts of the continuing on going duty to inquire: **Social workers have an affirmative and continuing duty to inquire about a child's Indian status.** Social workers must be clear that the court makes the determination as to ICWA's applicability if there is no determination within 60 days after receiving notice.	We will look to the final BIA regulations for additional responsibilities associated with active efforts. However, modification was made to Section 31-125.762 to augments the information provided to the court regarding efforts to verify the child's status. We do not think it is necessary to remind social workers in this section of the continuing duty to inquire.
31-125.761	INVESTIGATION REQUIREMENTS	Judicial Council	In terms of consistency with state law, we recommend … revise regulations 31.125.731 and 31-125.761 to require that, if any information requested by the ICWA-030 is not available, the social worker must explain in the court report why the information is missing and what efforts were made to obtain that information sufficient to comply with the requirements of Welfare and Institutions Code section 224.3(c);	This recommendation that the social worker must inform the court why information is missing, was added to Section 31-125.762

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-135.11	AUTHORITY FOR REMOVAL OF CHILD	Pala Band of Mission Indians	The language from Section 31-430 should be incorporated in this section and clarified that ICWA applies to voluntary removals and placements of Indian children. A.2 Voluntary placement of a nondependent child shall occur only when there is a written voluntary placement agreement between the county and the parent(s)/guardian(s)/Indian custodian(s) pursuant to the provisions of Sections 16507.2, 16507.3, and 16507.4(b), Welfare and Institutions Code. In addition, the BIA Guidelines provide: A.3 (f) "Voluntary placements that do not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand are not covered by the Act. (1) Such placements should be made pursuant to a written agreement, and the agreement should state explicitly the right of the parent or Indian custodian to regain custody of the child upon demand. (2) Nevertheless, it is a best practice to follow the procedures in these guidelines to determine whether a child is an Indian child and to notify the tribe. A.3 (g) Voluntary placements in which a parent consents to a foster care placement or seeks to permanently terminate his or her rights or to or place the child in a preadoptive or adoptive placement are covered by the ACT." See also, BIA Guidelines, Sec B.6 (j).	The regulation was amended to cross reference Section 31-430 where the requirements for voluntary placements pertaining to Indian children are more fully set forth. Additionally, Section 31-135.111 was added to provide direction to social workers regarding ICWA active effort requirements when a voluntary placement becomes an involuntary placement.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-135.121	AUTHORITY FOR REMOVAL OF CHILD	Diane Childs, San Bernardino County	The reason given for the inclusion in regulation is "A decision to not inform the parents or Indian custodian of an Indian child's whereabouts arguably converts a voluntary placement…which triggers the higher substantive requirements of ICWA applicable to involuntary foster care or adoptive actions involving the child. It is necessary to inform the Indian custodian of the rights to request a judicial review." *CFS is requesting clarification on the above regulation. If the Indian child is removed due to exigency, or by warrant or court order, (not a voluntary placement), and the social worker believes the child and/or foster family would be endangered or the placement disrupted by disclosing the child's whereabouts to the parent/Indian custodian, does the notification of judicial review still apply?*	The proposed language related to voluntary placements in Section 31-135.121(a), is misplaced and not applicable to the removal of a child that is involuntary. The language was deleted There was no intention to disrupt the process provided for in Section 31-135.121 which allows the appropriate discretion with the social worker to determine whether a child would be put in danger by informing a parent/guardian or custodian of the child's exact location when removed due to exigent circumstances. Notification of the right of judicial review would still apply regardless of whether the child is an Indian child. In response, a new section was added at Section 31-135.111 to cover social worker duties when a child's voluntary placement is no longer voluntary and language added to Section 31-430.22.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-135.121(a)	AUTHORITY FOR REMOVAL OF CHILD	Delia Parr, California Indian Legal Services	This section is problematic where it improperly limits the application of the ICWA. The 2015 Guidelines provide that even in voluntary placements where ICWA does not apply, it is still best practice to notice tribes. (BIA Guidelines, A.3(f)(2).) Additionally, according to Section 31-430 of these Regulations, "Voluntary placement of a nondependent child shall occur only when there is a written voluntary placement agreement…pursuant to the provisions of Sections 16507.2, 16507.3, 16507.4(b), Welfare and Institutions Code." Voluntary Placement Agreements may be provided foster care under the Aid to Families with Dependent Children program is available to those children, and therefore a child who is the subject of a VPA is either entering foster care of at risk of entering foster care such that ICWA would apply. Therefore, we recommend that the last sentence of this section be modified to read, "Where an Indian child is or may be involved, the social worker shall apply the requirements under ICWA, such as inquiry and notice."	The proposed language involving voluntary placements was misplaced and not applicable to Section 31-135.121 (a). The section pertains to involuntary removals and a duty to notify parent/guardian/Indian custody of the right to apply for judicial review within 24 hours of the determination not to inform them of the exact location of the child. Subsection 31-135.121(a) requires documentation in the case record of the reason for failing to notify the parent/guardian/Indian custodian of the location of a child's placement. The proposed language referencing voluntary placement of a child will be deleted. The concern about the ICWA voluntary placement requirements are addressed by amendment of Section 31-135.11 which will cross reference the voluntary placement requirements that are more fully set forth in Section 31-430.
31-135.121(a)	AUTHORITY FOR REMOVAL OF CHILD	Pala Band of Mission Indians	Section 31-135.121 pertains to when to prohibit disclosure of the minor's exact whereabouts with the parent/guardian/Indian custodian. The new language in 31-135.121(a) regarding voluntary placement's viability doesn't seem appropriate here. It is recommended the underlined language be separated into a new section, 31-135.121(b). See comments above Sec. 31-135.11. The BIA Guidelines provide that even in voluntary placements where ICWA does not apply, it is still best practice to notice tribes. (2015 BIA Guidelines, A.3 (f)(2))	We agree the proposed language is not applicable. See response to CILS and San Bernardino comments regarding this section. Notice to tribes where a placement is voluntary, is addressed in amendments to Section 31-430.214 which does require notice to a child's tribe where a placement is voluntary.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-135.121(a)	AUTHORITY FOR REMOVAL OF CHILD	Liz DeRouen Indian Child & Family Preservation Program	This section is problematic where it improperly limits the application of the ICWA. The 2015 Guidelines provide that even in voluntary placements where ICWA does not apply, it is still best practice to notice tribes. (2015 BIA Guidelines, A.3 (f)(2)) Additionally, according to Section 31-430 of these Regulations, "Voluntary placement of a nondependent child shall occur only when there is a written voluntary placement agreement… pursuant to the provisions of Sections 16507.2, 16507.3, 1607.4(b), Welfare and Institutions Code." Voluntary Placement Agreements may be provided foster care under the Aid to Families with Dependent Children program is available to those children, and therefore a child who is the subject of a VPA is either entering foster care or at risk of entering foster care such that ICWA would apply. Therefore, we recommend that the last sentence of this section be modified to read, "Where an Indian child is or may be involved the social worker shall apply the requirements under ICWA, such as inquiry and notice."	See response to CILS for Section 31-135.121(a).
31-135.122	AUTHORITY FOR REMOVAL OF CHILD	Pala Band of Mission Indians	This section must include language pertaining to inquiry, notice, active efforts and placement.	Section 31-125.223 was amended on the duty to inquire about a child's potential status as an Indian child. Active efforts are already contained in Section 31-135.23 and it is thus not necessary to modify Section 31-135.122.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-135.231	AUTHORITY FOR REMOVAL OF CHILD	Pala Band of Mission Indians	**The language of Section 31-135.231 should be deleted. The 2015 BIA Guidelines provide an extensive definition and examples of active efforts and <u>the entire text of A.2 "Active efforts" should be included in the Regulations.</u>** Active efforts remain a confusing and conflicting area for social workers and counties. The BIA Guidelines provide examples and a clear articulation of when and how active efforts are to be provided. The language in A.3(c) should also be added. Many counties believe active efforts do not apply for voluntary placements or are reluctant to engage with the Indian child's tribe on the provision of services. BIA Guidelines B.1 states that "(a) the requirement to engage in active efforts begins from the moment the possibility arises that an agency case or investigation may result in the need for the Indian child to be placed outside the custody of either parent or Indian custodian in order to prevent removal. (b) Active efforts to prevent removal of the child must be conducted while investigating whether the child is a member of the tribe, is eligible for membership in the tribe, or whether a biological parent of the child is or is not a member of a tribe."	This regulation will not be modified to include BIA Guideline language as suggested. However, the definition of Active Efforts has been modified with language from the BIA Guidelines to clarify that Active Efforts are intended primarily to maintain and reunite an Indian child with his or her family or tribal community. Cross reference to the examples in the definition has been added to the handbook section. Further, the Handbook lists additional examples not listed in the BIA Guidelines.
31-135.231 Handbook	AUTHORITY FOR REMOVAL OF CHILD	Pala Band of Mission Indians	**This Handbook language should be deleted** and the language from the BIA Guidelines Section A.2 should be added to the Regulations. See comment to 31-135.231 above.	We agree that the examples in the BIA Guideline can guide social worker's on Active Efforts. The examples from the BIA Guidelines have been inserted in Handbook after the Definition of Active Efforts in Section 31-002(a) (1). The examples in this Handbook at Section 31-135.231 have been modified to eliminate examples that would now be redundant to those in the BIA Guidelines. However, we are retaining in this Handbook section, additional examples of activities that can constitute Active Efforts that are not necessarily included in the BIA examples or that are particular to California such as integration into multidisciplinary teams.
31-135.233	AUTHORITY FOR REMOVAL OF CHILD	Judicial Council	In terms of consistency with state law, we recommend … revise 31-135.233 to require that the social worker must document all active efforts in the court report.	The section was modified to include this recommendation.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-135.234	AUTHORITY FOR REMOVAL OF CHILD	Judicial Council	In terms of consistency with state law, we recommend … revise regulation 31-135.234 to require that, when the social worker becomes aware that the child may already be the ward of a tribal court or subject to the exclusive jurisdiction of a tribe and a petition has been filed in state court, the social worker must advise the state court of the facts that suggest the child may be ward of a tribal court or subject to the exclusive jurisdiction of a tribe.	The recommendation that the social worker must advise the court has been added to Section 31-135.234(f) and Transfer Section 31-136.32.
31-135.42	AUTHORITY FOR REMOVAL OF CHILD	Pala Band of Mission Indians	D.4. Who may serve as a qualified expert witness? (a) A qualified expert witness should have specific knowledge of the Indian tribe's culture and customs. (b) Persons with the following characteristics, in descending order, are presumed to meet the requirements for a qualified expert witness: A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices. (2) A member of another tribe who is recognized to be a qualified expert witness by the Indian child's tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child's tribe. (3) A layperson who is recognized by the Indian child's tribe as having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe. (4) A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's tribe. (1) (c) The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses. (BIA Guidelines D.4). See also, W&I Code Sec. 224.6. Too often counties fail to engage with the tribe on the expert witness and fail to adhere to the hierarchy of qualified individuals. It is important to add this language to fully comply with federal and state law.	We are limited in the extent to which we can reconcile the BIA Guidelines on qualified expert witnesses with California statutory law. The BIA Guidelines sets forth a list, in descending order, of those presumed to meet the characteristics of a QEW. WIC section 224.6 sets forth a list of those individuals that are most likely to meet the requirements of a QEW. The lists do not completely reconcile. To fully require the BIA Guidelines on the presumed order of QEWs, CDSS believes that California statutory changes will be needed. Nonetheless, Section 31-135.421 has been modified to add language that clarifies that social workers should consider whether a child's tribe recognizes an individual as a QEW. And while social workers are not required to follow the BIA Guidelines on presumed individuals meeting the characteristics of a QEW, Section 31-135.421 subparagraphs (a) through (d) is added to lists out individuals that can be included as meeting the requirements for QEWs. Subparagraphs (a)-(d) are those listed in the BIA Guidelines. In addition, Handbook Section following Section 31-135.421 was modified to reference the 2015 BIA Guidelines that list the presumed order of QEWs.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-135.43	AUTHORITY FOR REMOVAL OF CHILD	Pala Band of Mission Indians	**A new section 31-135.45 should be added which states: At no time may the individual serving as the qualified expert witness be an employee of the person or agency recommending foster care placement or termination of parental rights. See, W&I Code Sec. 244.6(a).**	We agree it is necessary to specify the prohibition at WIC section 224.6(a). The prohibition was added in new Section 31-135.422.
31-136	TRANSFER OF AN INDIAN CHILD	Pala Band of Mission Indians	Section 31-136 is a new section to the Division Regulations. This section pertains to transferring an ICWA case from state court to tribal court. **Section 31-136.1 Delete this language and adopt BIA Guideline C (*Procedures for Making Requests for Transfer to Tribal Court*) in its entirety.** CDSS may want to create a separate section which pertains to the Title IV-E issues after the BIA Guidelines C language. Bear in mind, the transfer requirements also apply in Title IV-E cases.	The regulation will not be modified to include BIA Guideline C, which largely pertains to the role of the courts when a transfer petition is filed. Section 31-136 was proposed to implement and clarify social worker duties when a case is to be transferred to tribal jurisdiction under varying circumstances, e.g. the child is already a ward of a tribe, or when the child is being transferred to a title IV-E tribe. When the final BIA regulations are implemented, at that time state legislation may be required to clarify state statutes on the transfer of Indian children to tribal jurisdiction.
31-136.242	TRANSFER OF AN INDIAN CHILD	Aggie Jenkins, Riverside County	When a child's jurisdiction is transferred to a Tribal IV-E Agency, **should Eligibility be sending the agency a packet similar to an Inter-County Transfer packet, with all the child's eligibility forms**? Note: We do not currently experience ICTs in AAP, and only very rarely in Kin-GAP, so this would mean we would need to introduce the process to those staff, and inform Dependency staff of the fact that they will be sending "ICT" packets to Tribal IV-E Agencies.	The regulation will not be amended to specify expected county transfer packets. All County Letter number 14-15 provided information and guidance on requirements applicable to transfer of children to Tribal Title IV-E agencies. The ACL included requirements related to eligibility information that was to be provided to the Tribal IV-E agency. The CDSS will work with County agencies to provide more guidance on the implementation processes that may need further guidance.
31-136.31	TRANSFER OF AN INDIAN CHILD	Delia Parr, California Indian Legal Services	This section references Section 31-135.23 with regard to providing notice, but Section 31-135.23 is about active efforts. It appears that the appropriate reference is Section 31-125.23.	The noticed version adopting this section had a typo in the cross reference. For clarity, the referenced section is deleted and replaced with the correct cross reference. This section directs a social worker on the duties associated with the transfer of a child that is already a ward of a tribal court pursuant to WIC section 305.5(a). The notice under WIC section 305.5 (a) is not the same as notice under ICWA. This section therefore directs the social worker to comply with the crossed referenced Section 31-135.234.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-136.31	TRANSFER OF AN INDIAN CHILD	Liz DeRouen Indian Child & Family Preservation Program	This section references Section 31-135 .23 with regard to providing notice, but Section 31-135 .23 is about active efforts. It appears that the appropriate reference is 31-125 .23.	The published version of this cross reference failed to strike out duplication in the citation. This section direct a social worker on the duties associated with the transfer of a child that is already a ward of a tribal court pursuant to WIC section 305.5(a). The notice t under WIC section 305.5 (a) is not the same as notice under ICWA. This section therefore directs the social worker to comply with the crossed referenced Section 31-135.234. The regulation was corrected.
31-201.111(a)	ASSESSMENT AND CASE PLANNING PROCESS	Pala Band of Mission Indians	Revise to be consistent with BIA Guidelines D.2(b): "…the assessment shall include **detailed documentation of** active efforts…" The assessment shall also include collaboration and consultation with the Indian child's tribe – this language should be included.	The regulation will not be amended as suggested as we believe the section is sufficient as written. In addition, language was added to Section 31-201.121(a) and (b) clarify that the type of Active Efforts required for family maintenance and family reunification services is "to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family."

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-201.121(a)	ASSESSMENT AND CASE PLANNING PROCESS	Pala Band of Mission Indians	**All references in this Section to Section 31-135-23 should be corrected to reference Section 31-135- 231.** The Indian child's tribe must be consulted and the agency must collaborate with the tribe on all service levels: family maintenance, family reunification and permanent placement services. Active efforts must be included in all case plans, including any voluntary family maintenance or pre-removal plans. This section should include language from BIA Guidelines A.2 "Active efforts." California Rule of Court, Rule 5.725(d) provides that at the 366.26 hearing the Court must state on the record that it has read and considered the reports, the case plan and any other evidence, and "must proceed as follows: **(1)** In the case of an Indian child, after the agency has consulted with the tribe, when the court has determined with the concurrence of the tribe that tribal customary adoption is the appropriate permanent plan for the child, order a tribal customary adoption in accordance with section 366.24…" Tribal Customary Adoption should be identified first.	The regulation will not be amended as suggested. The regulation retains the cross reference to Section 31-135.23 where the purpose of Active efforts is specified, and is inclusive of Section 31-135.231 where Active efforts are further described and set forth. Citation to only the Section 31-135.231 section might be confusing in that it would not reference the purpose for Active Efforts which is set forth in Section 31- 135.23. Moreover, Section 31-201.121 is focused in scope to listing the priority for services between family maintenance, family reunification or other permanent placement services. Section 31-201.121 is not intended to include detailed description of Active Efforts, collaboration or consultation with a child's tribe or the more extensive elements of the case plan. Nonetheless, this section is amended to clarify that the type of Active Efforts required are "to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family"

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-205.111(a)	ASSESSMENT DOCUMENTATION	Pala Band of Mission Indians	Social workers are not trained, equipped or qualified to "assess" "the prevailing social and cultural standards and way of life of the Indian child's tribe, including family organization & child-rearing practices." Many cultural practices are private & traditionally are not disclosed. These should not be documented. Welf. & Inst. Code Sec. 361.31(f) provides that: "The prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or extended family members maintain social & cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied in meeting the placement preferences under this section. A determination of the applicable prevailing social & cultural standards may be confirmed by the Indian child's tribe or by the testimony or other documented support of a qualified expert witness, as defined in subdivision (c) of Section 224.6, who is knowledgeable regarding the social & cultural standards of the Indian child's tribe." Emphasis added. Social workers do not have the ability to make these determinations. See also, Welf. & Inst. Code Sec. 361.31(g): "Any person or court involved in the placement of an Indian child shall use the services of the Indian child's tribe, whenever available through the tribe, in seeking to secure placement within the order of placement preference established in this section and in the supervision of the placement." Tribal involvement is mandatory.	We agree this requirement was misstated. The section was modified to rephrase from stating the social worker will "assess" information to the social worker shall "include" information about the social and cultural standards of the child's tribe. Section 31-201.133(a) Is also amended to include extended family." Section 31-205.171 is also amended to inform the social workers of their duty to include relatives and extended family members regarding legal permanency should family reunification fail.
31-205.131	ASSESSMENT DOCUMENTATION	Pala Band of Mission Indians	**All references in this Section to Section 31-135-23 should be corrected to reference Section 31-135- 231.** Revise to be consistent with BIA Guidelines D.2(b): "…the assessment shall include **detailed documentation of** active efforts…"	The regulation will not be modified. Citation to only the Section 31-135.231 section might be confusing in that it would not reference the purpose for Active Efforts which is set forth in Section 31- 135.23. Moreover, Section 31-135.23 is inclusive of Section 31-135.231 where Active efforts are further described and set forth. As to BIA Guidelines on assessment provisions, we will look to the final BIA
31-205.161	ASSESSMENT DOCUMENTATION	Pala Band of Mission Indians	**All references in this Section to Section 31-135-23 should be corrected to reference Section 31-135- 231.** Revise to be consistent with BIA Guidelines D.2(b): "…the assessment shall include **detailed documentation of** active efforts…"	The regulation will not be modified. See response to Pala Band of Mission Indians for Section 31-205. 131

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-206.311	CASE PLAN DOCUMENTATION	Judicial Council	In terms of consistency with state law, we recommend … revise regulations 31-206.3111 to require that the social worker include in the court report information concerning all efforts made to find a placement within the order of preference required by ICWA, the position of the Indian child's tribe on the placement, and what facts, if any, provide good cause to deviate from the ICWA placement preferences;	In response, Section 31-206.311(a) has been modified to require that the assessment is to include a description of Active Efforts made to comply with the placement preferences including the position of the child's tribe and facts if any that support good cause to deviate from the preferences.
31-206.311	CASE PLAN DOCUMENTATION	Pala Band of Mission Indians	This section should clarify the requirements of state law: Welf. & Inst. Code Sec. 361.31(h) – (j) provide: (j)The court may determine that good cause exists not to follow placement preferences applicable under subdivision (b), (c), or (d) in accordance with subdivision (e). (i) When no preferred placement under subdivision (b), (c), or (d) is available, active efforts shall be made to place the child with a family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe. (j) The burden of establishing the existence of good cause not to follow placement preferences applicable under subdivision (b), (c), or (d) shall be on the party requesting that the preferences not be followed. Good cause is determined by the court, not social workers.	Section 31-206.311 has been modified to add that the assessment shall include description of the social workers duty to engage in Active Efforts to prevent the break-up of the Indian family as more fully set forth in Section 31-420.3.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-206.312	CASE PLAN DOCUMENTATION	Pala Band of Mission Indians	Welf. & Inst. Code Sec. 361.31(h) – (j) provide: (j)The court may determine that good cause exists not to follow placement preferences applicable under subdivision (b), (c), or (d) in accordance with subdivision (e). **(i)** When no preferred placement under subdivision (b), (c), or (d) is available, active efforts shall be made to place the child with a family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe. **(j)** The burden of establishing the existence of good cause not to follow placement preferences applicable under subdivision (b), (c), or (d) shall be on the party requesting that the preferences not be followed. Good cause is determined by the court, not social workers. Section needs to be rewritten for clarity and conformity with the law. **Do not include a link to the placement preferences, include them in the Regulations.**	We agree that the section as proposed did not adequately clarify placement preference requirements which are more extensive and more fully set forth in Section 31-420.3. Section 31-206.312 was therefore determined as neither not adding clarification nor necessary because the immediately preceding paragraph, Section 31-206.311 cross references Section 31-420.3. It was therefore deleted.
31-310.131	ASSESSMENT DOCUMENTATION	Pala Band of Mission Indians	Revise to "In the case of an Indian child, the services to maintain the child in the home must be provided **by the social worker/County** in accordance with the requirement…" Too often agencies defer or depend on tribes to carry the burden to fulfill the active efforts requirement. While tribes are mindful and willing to assist with active efforts, the burden is on the agency and attempts to shift the burden are misplaced.	The regulation will not be modified as we believe the regulation is sufficiently clear that the social worker has the responsibility to engage in Active Efforts.
31-315.11	SERVICE-FUNDED ACTIVITIES	Pala Band of Mission Indians	Revise to state that "ICWA requires **detailed** documentation when **active** efforts to provide these services prove unsuccessful." Consistent with BIA Guidelines D.2(b).	The regulation will not be modified because this section does not pertain to documentation requirements.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-335.17	SOCIAL WORKER CONTACTS	Pala Band of Mission Indians	This section should also instruct social workers to document the case record of all contacts due to shifting of workers throughout a case. For example, a social worker handling the investigation most likely will not be the social worker handling family reunification. Excellent case record management and up to date service logs and CWS/CMS maintenance are critical.	Section 31-335.17 will not be modified as suggested because it pertains to the duty to establish and maintain contacts with tribal entities. However in response to this recommendation, modification was made to Section 31-335.211, which does pertain to documentation of reports received from providers. Section 31-335.211(a) was added to require documentation of written or verbal reports from service providers as part of the case plan and cross referenced additional record requirements in Section 31-075.3(e).
31-405.121	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Pala Band of Mission Indians	Expand to include Welf. & Inst. Code Section 361.31; BIA Guidelines Sec. F.1.	The regulation will not be modified to include language from WIC section 361.31 or the 2015 BIA Guidelines. This section cross references Section 31-420.3 which fully details all the ICWA placement preferences as specified in 25 USC 1904(2). We did however modify the language to make clear that the worker understands they must comply with the ICWA placement preference requirements in ICWA requirements.
31-405.131	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Pala Band of Mission Indians	Expand to include Welf. & Inst. Code Section 361.31; BIA Guidelines Sec. F.1. Social workers **do not and cannot** make good cause determinations. This must be stressed in the Regulations.	The regulation will not be modified to include language from the BIA Guidelines section F.1. We will look to the final BIA regulations for further clarifications on placement requirements. WIC section 361.31 contains multiple provisions that these regulations have sought to integrate throughout Division 31 and in particular Section 31-420.3 which specify placement preference requirements. We do not believe there is a need to modify this provision except to clarify that the court makes the determination on whether there is good cause to not follow the ICWA placement preferences. The regulation was therefore modified in Section 31-405.131(c) to clarify the

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

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31-405.162	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Aggie Jenkins, Riverside County	Currently the Eligibility home approval policy says: "Some Indian Tribes have their own process of home approval for Indian children placed in an Indian relative/NREFM home. When a child is placed in a Tribal Approved Home: • the specific tribe provides a letter of approval for that home to RAU • RAU completes only the background/fingerprint clearance for all adults in the home, which are documented on form SOC 815. When the letter of tribal approval is received and all background clearances are complete, RAU attaches the letter of tribal approval to form SOC 815 and forwards them to Foster Care. Foster Care payment then follows established procedures." It sounds like we will need to amend that to say that some tribes are approved to complete background/fingerprint clearances, and when a child is placed through such a tribe, RAU will forward (something) to Eligibility documenting that the tribal agency's certification is on file?	SB 1460 Chapter 772, Statutes of 2014, and as updated by AB 403, Chapter 773, Statutes of 2015, made changes allowing Tribal Agencies to apply to the California Department of Justice for background check information for the purpose of approving tribal homes for foster or adoptive placement of children. Through the process, the approved Tribal Agencies can therefore conduct the full background checks that would otherwise be conducted by County Child Welfare Agencies. The County would not be required to complete the background clearances, where the Tribal Agency provides the certifications specified by WIC section 10553.12. This section makes clear what counties should do in cases where a tribe does the criminal record clearances.
31-405.162	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Delia Parr, California Indian Legal Services	Please clarify that the Social Worker must request a good cause determination by a court prior to deviating from ICWA's placement preferences. Also, please clarify that the good cause determination is reserved to the court and is not within the social worker's discretion.	Clarification that the determination is made by the court has been made in Section 31-405.164.
31-405.162	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Pala Band of Mission Indians	See definition of **"Tribal Child Welfare Agency"** Sec. 31- 002(t)(7)	Tribal Agency was inserted to reflect changes from AB 403, Chapter 773, Statutes of 2015.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-405.164	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Pala Band of Mission Indians	Tribally Approved Homes are not subject to state licensing standards. This section should be deleted.	The regulation will not be modified. This provision is not applying state licensing standards. The provision is intended to acknowledge that social workers must evaluate whether a placement will be suitable to meet the needs of a child. If something is apparent to the social worker the situation must be raised particularly when it pertains to safety concerns. The provision reflects long-standing state practice and policy as reflected in All County Information Notice no. I-86-08. This section was renumbered to Section 31-405.163 due to a numbering error.
31-405.165	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Judicial Council	In terms of consistency with state law, we recommend … revise regulation 31-405.165 to clarify that it is the court, and not the social worker, that determines whether there is good cause to deviate from the ICWA placement preferences and that the social worker must provide in the court report the facts and supporting evidence that would justify deviation from the placement preferences.	This section was renumbered to Section 31-405.163 due to a numbering error. The CDSS agrees that it is necessary to clarify that it is the court that determines whether there is good cause to deviate from the ICWA placement preferences and that the social worker has a duty to provide information in support of a request to deviate. The regulation has been modified to include the recommendation.
31-405.165	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Pala Band of Mission Indians	Social workers **do not** make any good cause determinations; they are only made by the court.	This section was renumbered to Section 31-405.163 due to numbering error. The CDSS agrees that it is necessary to clarify that it is the court that determines whether there is good cause to deviate from the ICWA placement preferences and that the social worker has a duty to provide information in support of a request to deviate. The regulation will be modified to reflect the clarification.
31-405.165	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Delia Parr, California Indian Legal Services	Please clarify that the social worker must request a good cause determination by a court prior to deviating from ICWA's placement preferences. Also, please clarify that the good cause determination is reserved to the court and is not within the social worker's discretion.	This section was renumbered to Section 31-405.163 due to numbering error. The CDSS agrees that it is necessary to clarify that it is the court that determines whether there is good cause to deviate from the ICWA placement preferences and that the social worker has a duty to provide information in support of a request to deviate. The regulation will be modified to reflect the clarification.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-405.165	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Liz DeRouen Indian Child & Family Preservation Program	Please clarify that the Social Worker must request a good cause determination by a court prior to deviating from ICWA's placement preferences. Also, please clarify that the good cause determination is reserved to the court and is not within the social worker's discretion.	This section was renumbered to Section 31-405.163 due to numbering error. The CDSS agrees that it is necessary to clarify that it is the court that determines whether there is good cause to deviate from the ICWA placement preferences and that the social worker has a duty to provide information in support of a request to deviate. The regulation was modified to reflect that and the requirement to provide the court with justification to deviate.
31-405.331	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Pala Band of Mission Indians	The language should include making contact with the Indian child's tribe and collaborating on all placements.	We will not be making this modification as we believe the current language is sufficiently clear.
31-410.3	TEMPORARY PLACEMENT	Pala Band of Mission Indians	Add .32: "Any temporary emergency placement of an Indian child must be as short as possible." Consistent with BIA Guidelines B.8(b).	The modification will not be made at this time. We will look to the final BIA regulations for direction on obligations pertaining to the emergency removal of an Indian child, as state statutory changes may be required.
31-410.31	TEMPORARY PLACEMENT	Judicial Council	In terms of consistency with state law, we recommend … revise to specify that the social worker must make active efforts to comply with the ICWA placement preferences when making a temporary placement;	This section was modified to make clear that the social worker shall engage in active efforts to place the child in compliance with the ICWA placement preference order required in Section 31-420.3
31-410.31	TEMPORARY PLACEMENT	Delia Parr, California Indian Legal Services	We recommend that specifying that the social worker must make active efforts to comply with the ICWA placement preferences when making a temporary placement.	See response to Judicial Council for Section31-410.31. The regulation was modified to reflect the recommendation.
31-410.31	TEMPORARY PLACEMENT	Liz DeRouen Indian Child & Family Preservation Program	We recommend that specifying that the social worker must make active efforts to comply with the ICWA placement preferences when making a temporary placement.	See response to Judicial Council for Section 31-410.31.
31-410.81	TEMPORARY PLACEMENT	Pala Band of Mission Indians	The Regulations should reference and follow the placement preferences and obligations found in Welf. & Inst. Code Sec. 361.31. Counties must understand their obligations to place Indian children in ICWA compliant homes.	The regulation has been modified to require Active Efforts to comply with the ICWA placement preferences.

COMMENTS REGARDING PROPOSED ICWA REGULATIONS
July to September 2015

Section	Title	Commenter(s)	Comments	Final Response
31-420.333	FOSTER CARE PLACEMENT	Delia Parr, California Indian Legal Services	Please clarify that the Social Worker must request a good cause determination by a court prior to deviating from ICWA's placement preferences. Also, please clarify that the good cause determination is reserved to the court and is not within the social worker's discretion.	Several commenters recommended this should be modified to clarify that only the court makes a good cause determination. The regulation has been modified to reflect that the determination is made by the court. In addition, a new Section 31-420.334 was added to clarify the social worker has a duty to provide the court with facts and supporting evidence to justify deviation from the placement preferences.
31-420.333	FOSTER CARE PLACEMENT	Judicial Council	In terms of consistency with state law, we recommend … revise regulations 31-420.333 to clarify that it is the court, and not the social worker that determines whether there is good cause to deviate from the ICWA placement preferences. The social worker must provide the court with the facts and supporting evidence that justify the request to deviate from the placement preferences and must ask the court for a finding that there is good cause to deviate from the ICWA placement preferences.	See response to CILS for Section 31-420.333. for Section
31-420.333	FOSTER CARE PLACEMENT	Liz DeRouen Indian Child & Family Preservation Program	Please clarify that the Social Worker must request a good cause determination by a court prior to deviating from ICWA's placement preferences. Also, please clarify that the good cause determination is reserved to the court and is not within the social worker's discretion.	See response to CILS for Section 31-420.333.
31-430.214	ADDITIONAL REQUIREMENTS FOR VOLUNTARY PLACEMENTS	Pala Band of Mission Indians	See revisions to notice requirements in Section 31-125.7.	Any revisions made into Section 31-125.7 are incorporated into Section 31-430.214 by the cross reference. Regulation Section 31-430.214 will therefore not be modified as it is not necessary. However, Section 31-430.22 was added to make clear the social worker's responsibility when a placement may no longer be voluntary.