



CDSS

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GOVERNOR

May 10, 2016

ORD #0614-05

Notification of 15-Day Public Availability
of Changes to Regulations and Supporting
Documents and Information

On September 16, 2015, a public hearing was held to consider the proposed adoption, amendment or repeal of the following regulations:

ITEM #2 – Indian Child Welfare Act (ICWA) Integration Throughout Division 31

Pursuant to the provisions of Section 11346.8(c) of the Government Code, the California Department of Social Services (CDSS) has revised the Statement of Reasons and the proposed regulatory language. A copy of the full text of the regulations with the proposed changes indicated is enclosed for your review. Copies of the Addendum to the Initial Statement of Reasons, Comment and Response Matrix and the Updated Informative Digest are also attached for review and comment. These documents may also be found on line at [Indian Child Welfare Act \(ICWA\) Integration throughout Division 31](http://www.cdss.ca.gov/ord/PG4808.htm) (<http://www.cdss.ca.gov/ord/PG4808.htm>).

Any person interested may submit written statements or arguments relating to the modified language and documents or information during the public comment period from May 10, 2016, to May 25, 2016. These statements may be submitted to the Office of Regulations Development (ORD) at the address listed below, by e-mail to ord@dss.ca.gov or by fax at (916) 654-3286. In order to be considered, public comments must be received by CDSS on or before 5:00 p.m., May 25, 2016.

California Department of Social Services
Office of Regulations Development
744 P Street, M.S. 8-4-192
Sacramento, CA 95814

Any questions concerning the proposed regulations and documents or information may be directed to Kenneth Jennings, Regulations Analyst of Office of Regulations Development at (916) 657-2586.

Enclosures

Description of Method Used to Illustrate
Changes to Original Text

In the attached regulations document, the language originally proposed is underlined. Deletions to existing language are shown by strikeout. Revisions made subsequent to public hearing are shown as follows:

Added language double underlined

New language added following public hearing.

Deleted language double strikeout

~~Language deleted following public hearing.~~

**Draft Division 31 Regulations Amendments
Per State and Federal Statutory ICWA Changes/Requirements
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**DRAFT DIVISION 31 REGULATION AMENDMENTS
TO CLARIFY ICWA REQUIREMENTS**

Amend Section 31-001 to read:

31-001 GENERAL

31-001

- .1 The requirements specified in Sections 31-005 through 31-525 shall be met by the county in the administration of child welfare services.
- .2 The requirements specified in Section 31-001 through Section 31-525 shall be met by county probation departments when placing children in out-of-home care.
- .3 The following special provisions shall also apply:
 - .31 (Continued)
 - .32 Provision of services to an Indian child shall be subject to the additional requirements specified in Section 31-515 and 31-520 integrated throughout Division 31 Chapters 31-000 through 31-500.
 - .33 When considering the "best interest of the child" social workers must adhere to Welfare and Institutions Code section 224(a)(2), which specifies that it is in the best interest of an Indian child that the connection to its tribe and tribal community is encouraged and protected regardless of whether the child is in the physical custody of the Indian parent or Indian custodian(s) at the commencement of a child custody proceeding, the parental rights of the child's parents have been terminated or where the child has resided or been domiciled.
 - .331 Good cause should also consider that the Indian Child Welfare Act (ICWA) 25 USC 1902 seeks to protect not only the rights of the Indian child but the rights of Indian communities and tribes in retaining their Indian children.
 - ~~.33~~.34 (Continued)
 - ~~.34~~.35 (Continued)
 - ~~.35~~.36 (Continued)

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~~.351~~ (Continued)

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Authority Cited: Sections 10553, 10554, 16520, and 16521, Welfare and Institutions Code; and Assembly Bill 1695, Section 21, Chapter 653, Statutes of 2001.

Reference: Sections 224, 361.2(c) and (d), 727, 11404, 16520, and 16521, Welfare and Institutions Code; Section 7901, Family Code; 25 USCA ~~Section~~ 1901 et seq.; and 42 USC Sections 671(a)(15), 675 and 677.

Amend Section 31-002 to read:

31-002 DEFINITIONS

31-002

- (a) (1) "Active eEfforts" means, in the case of an Indian child, those efforts intended primarily to maintain and reunite an Indian child with his or her family or tribal community and includes, all actions taken by a county to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. ~~and that~~ Active Efforts must takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe, utilizes the available resources of the child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers, as further specified in Section 31-135.23 and Section 31-420.3 with respect to the eActive eEfforts to comply with ICWA placement preferences. Examples of Active efforts are contained in the 2015 Bureau of Indian Affairs Guidelines for State Courts and Agencies in Indian Custody Proceedings (2015 BIA Guidelines) section A.2.

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2015 BIA Guidelines section A. 2 provides the following examples of Active Efforts:

- "(A) Engaging the Indian child, the Indian child's parents, extended family members, custodian(s);
- (B) Taking steps necessary to keep siblings together;
- (C) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents to obtain such services;
- (D) Identifying, notifying and inviting representatives of the Indian child's tribe to participate;
- (E) Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement;
- (F) Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;
- (G) Offering and employing all available and culturally appropriate family preservation strategies;
- (H) Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

- (I) Notifying and consulting with extended family members of the Indian child to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child;
- (J) Making arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal;
- (K) Identifying community resources including housing financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or extend family in utilizing and accessing those resources;
- (L) Monitoring progress and participation in services;
- (M) Providing consideration of alternative ways of addressing the needs of the Indian child's parents or extended family, if services do not exist or if existing services are not available;
- (N) Supporting regular visits and trial home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child; and
- (O) Providing post-reunification services and monitoring."

HANDBOOK ENDS HERE

(2) through (11) renumbered from (4) through (10) respectively (Continued)

- (b) (1) through (c) (24) (Continued)
- (c) (25) "Contact" means contact in-person, in writing, or by telephone by a social worker or other persons authorized by the Division 31 regulations to make case contacts with the child, parent(s)/guardian(s)/Indian custodian(s), the child's tribe, tribal service providers, out-of-home care providers, Indian organizations, and/or other persons involved in the case plan (e.g., siblings, other relatives).
- (c) (26) through (f) (7) (Continued)
- (f) (8) "Foster care" means the provision of 24-hour care and supervision to a child who has been placed by a child placing agency, including county child welfare services and probation departments, in one of the following types of foster homes:
 - (A) - (F) (Continued)
 - (G) A tribally licensed or approved home, in the case of an Indian child.
 - (H) A Tribally Specified Home, in the case of an Indian child, which may include any of the above.

(9) through (i) (2) (Continued)

(i) (3) "Indian" means a person who is a member of an Indian tribe, or who is an Alaskan Native and a member of a Regional Corporation as defined in 43 USC 1606.

(A) "Indian child~~(ren)~~" means any unmarried person who is under age 18 years of age and who is either (a) a member of an Indian tribe; or (b) who is eligible for tribal membership in an Indian tribe and the biological child of a tribe member of an Indian tribe.

1. Where the Indian child's dependency case continues beyond age 18, the child will continue to be defined an Indian child up to age 21, in which case ICWA standards will continue to apply unless the child. This provision in the statute allows a child or an attorney on the child's behalf, to chooses to no longer be defined as an Indian child have ICWA applied to their case.

HANDBOOK BEGINS HERE

The Welfare and Institutions Code section 224.1(b) states "As used in connection with an Indian child's dependency proceeding, the term "Indian child" also means an unmarried person who is 18 years of age or over, but under 21 years of age, who is a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe, and who is under the jurisdiction of the dependency court, unless that person or his or her attorney elects not to be considered an Indian child for purposes of the Indian child custody proceeding."

HANDBOOK ENDS HERE

(B) (Continued)

(C) "Indian child's parent" means any biological parent or parents of an Indian child; or any Indian person who has lawfully adopted an Indian child-, including Lawful adoptions include adoptions under tribal law or custom. The term does not include the unwed father when ~~where~~ paternity has not been acknowledged or established who has failed to promptly come forward and demonstrate full commitment to his parental responsibilities or who has failed to take reasonable steps to establish paternity including establishing paternity through DNA testing or acknowledging paternity in the action at issue.

(D) (Continued)

~~(E)~~ "Indian Child Welfare Act (ICWA)" means the Indian Child Welfare Act, codified in 25 U.S.C. Chapter 21, 1901, et seq. which sets forth the federal law that establishes minimum federal standards that must be applied in state child custody proceedings involving an Indian child.

~~(F)~~(F) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom, or under state law; or to whom temporary physical care, custody, and control has been transferred by the parent(s) of such Indian child.

~~(F)~~(G) (Continued)

~~(G)~~(H) ~~Indian tribal court" means a court, recognized by the Secretary of the Interior, with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses; a court established and operated under the code or custom of an Indian tribe; or any other administrative body of a tribe which is vested with jurisdiction authority over child custody proceedings.~~

~~(H)~~(H) (Continued)

(i) (4) through (n) (2) (Continued)

(n) (3) "Non-Federally-Recognized Tribe(s)" means an Indian tribe, band, nation or other organized group or community of Indians that is not recognized by the Secretary of the Interior as eligible for the federal services provided to Indians.

~~(3)~~(4)through (B)(Continued)

~~(4)~~(5)(Continued)

(o) (1) through (p) (2) (Continued)

(p) (3) "Permanency Alternative" means the type of permanency, i.e., adoption, Tribal Customary Adoption in the case of an Indian child, guardianship, and long-term foster care, or a plan for transitional independent living pursuant to Section 31-525, selected for the child if family reunification fails.

(4) - (7) (Continued)

(8) "Pre-placement preventive services" means those services designed to help children remain with their families by preventing or eliminating the need for removing the child from the home. In the case of an Indian child, pre-placement preventive services include Active Efforts consistent with Section 31-135.23 designed to prevent the breakup of the Indian family. ~~Pre-placement preventive services are early intervention services,~~ emergency response services and family maintenance services.

(9) - (10) (Continued)

(q) ~~Reserved~~ (1) "Qualified expert witness" means a person required to testify in an Indian child custody proceeding on whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. A qualified expert witness should have specific knowledge of the Indian tribe's culture and customs. A qualified expert witness may include, but is not limited to, a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leader, tribal historian, or tribal elder, provided the individual is not an employee of the person or agency recommending foster care placement or termination of parental rights.

(r) (1) through (t) (6) (Continued)

(t) (7) "Tribal ~~Child Welfare~~ Agency" for purposes of Welfare and Institution Code section 10553.12 background check certifications, means an entity designated by a federally recognized tribe as authorized to approve a home consistent with the ~~federal Indian Child Welfare Act (25 U.S.C. 1903 et. Seq.)~~ ICWA, for the purpose of placement of an Indian child into foster or adoptive care, including the authority to conduct a criminal or child abuse background check of, and grant exemptions to, an individual who is a prospective foster parent or adoptive parent, an adult who resides or is employed in the home of an applicant for approval, any person who has a familial or intimate relationship with any person living in the home of an applicant, or an employee of a ~~Tribal child welfare~~ Agency who may have contact with a child.

(8) "Tribal court" means a court with jurisdiction over child custody proceedings including a Court of Indian Offenses: a court established and operated under the code or custom of an Indian tribe; or any other administrative body of a tribe which is vested with authority over child custody proceedings.

~~(8)~~(9) "Tribal Customary Adoption" means an adoption of an Indian child ~~which~~ that is a dependent of a county court and that pursuant to Welfare and Institutions Code ~~S~~section 366.24, is finalized ~~for an Indian child who is a dependent of a county court, within~~ by and through the customs, laws or traditions of the child's tribe. ~~and where~~ termination of parental rights is not required to effectuate the adoption.

~~(9)~~(10) "Tribal Temporary Assistance to Needy Families (Tribal TANF)" refers to TANF program(s) operated by a federally-recognized American Indian tribe or association of tribes which have entered into an agreement with the federal government to conduct a Tribal TANF program; and are authorized to provide TANF services to Indian people in the service area specified in the agreement.

~~(10)~~(11) "Tribal Title IV-E Agency" means a tribe, consortium of tribes, or tribal organization that has entered into an agreement with either the state or federal government to have oversight of its own foster care program and receive draw down Title IV-E funding for the cases of Indian children in its care.

~~(11)~~(12) "Tribally Approved Home" means a home that has been licensed or approved by an Indian tribe for foster care or adoptive placements of an Indian child using standards established by the tribe pursuant to ICWA at Title 25, U.S.C. section 1915, is not required to be licensed by the state or county, and is equivalent to a state or county licensed home. ~~Welfare and Institutions Code section 361.4 requirements regarding caregiver b~~Background checks requirements for foster or adoptive placement as required by Health and Safety Code sections 1522 and 1522.1 apply to a Tribally Approved Home.

~~(12)~~(13) "Tribally Specified Home" means a home that a tribe designates as its preferred placement option for an Indian child who is in the custody of the county. This may include but not be limited to, any of the placement options outlined in Section 31-002(f)(8).

(u) (1) through (z) (Continued)

Authority Cited: Sections 10553, 10554, and 10850.4, Welfare and Institutions Code and Assembly Bill 1695, Section 21, Chapter 653, Statutes of 2001.

Reference: Sections 224.1, 224.1(b), 224.6, 300, 300(c), 300(e), 306(b), 306.6, 309(d), 319, 319(f), 727, 11402, and 16507.5(b) (as amended by AB 1695, Chapter 653, Statutes of 2001), 361, 361.2, 361.2(e)(7), 361.2(h), 361.3, 361.3(a)(8), 361.31, 361.31(k), 361.4, 361.7, 362.7, 366.22, 366.24, 366.3(e)(4) and (e)(8), 391, 636.1(c), 706.6(o), 727, 727.2, 4094, 4094.5, 4094.6, 4094.7, 5585.58, 5600.3, 10553, 10553.1, 10553.12, 10554, 10850.4, 11100, 11105, 11108.15, 11155.5, 11400(a), 11402, 11404, 11467.1, 16001.5, 16001.9, 16010, 16012, and 16501, 16501(a)(3), 16501.1(e)(9), 16501.1(f)(7), 16503, 16504, 16506, 16506(c), 16507.5(b), 16516.5, 16520, 16521, 17736, and 18951(d), Welfare and Institutions Code; Sections 11105.08, 11165 et seq., and 11170, Penal Code; Section 265, Civil Code; 25 USC 1901, 1903, 1912(d), 1915, 1919, and 1931(b), 42 U.S.C. Section 675, 675(5), 679c and 1305; 45 CFR 233.120; Sections 1502, 1502(a)(8), 1505.2, 1505(o), 1522, 1522.06, and 1530.8, Health and Safety Code; 42 U.S.C. 675(5); Sections 7002, 7901, 7911, 7911.1, and 7912, Family Code; Public Law 105-89 (Adoption and Safe Families Act of 1977); and California Rules of Court, Rule 5.552 of the California Rules of Court; and 2015 Bureau of Indian Affairs Guidelines for State Courts and Agencies in Indian Custody Proceedings, 80 Fed. Reg. 10150 (Feb. 25, 2015) sections A.2, C.3(c), D.4.

Amend Section 31-003 to read:

31-003 DEFINITIONS -- FORMS

31-003

- (a) ~~(Reserved)~~ (1) "AAP 4" (Rev. 9/13) means the form entitled "Eligibility Certification Adoption Assistance Program" hereby incorporated in its entirety by reference.
- (b) - (e) (Continued)
- (f) ~~(Reserved)~~ (1) "FC 2" (Rev. 11/04) means the form entitled "Statement of Facts Supporting Eligibility for Aid to Families with Dependent Children (AFDC) Foster Care" hereby incorporated in its entirety by reference.
 - (2) "FC 3" (Rev. 11/04) means the form entitled "Determination of Federal AFDC-FC Eligibility" hereby incorporated in its entirety by reference.
 - (3) "FC 3 A (Supplement)" (Rev. 11/04) means the form entitled "AFDC-FG/U Worksheet" hereby incorporated in its entirety by reference.
- (g) - (h) (Continued)
- (i) ~~(Reserved)~~ (1) "ICPC-100A" (Rev. 8/01) means the form entitled "Interstate Compact Placement Request" hereby incorporated in its entirety by reference.
 - (2) "ICPC-100B" (Rev. 8/01) means the form entitled "Interstate Compact Report on Child's Placement Status" hereby incorporated in its entirety by reference.
- (j) ~~(Reserved)~~ Judicial Council Forms:
 - (1) "ICWA-010(A)" (Rev. 1/08) means the form entitled "Indian Child Inquiry Attachment" hereby incorporated in its entirety by reference.
 - (2) "ICWA-020" (Rev. 1/08) means the form entitled "Parental Notification of Indian Status" hereby incorporated in its entirety by reference.
 - (3) "ICWA-030" (Rev. 1/08) means the form entitled "Notice of Child Custody Proceeding for Indian Child" hereby incorporated in its entirety by reference.
 - (4) "ICWA-030(A)" (Rev. 1/08) means the form entitled "Attachment to Notice of Child Custody Proceeding for Indian Child" hereby incorporated in its entirety by reference.
- (k) ~~(Reserved)~~ (1) "KG-2" (Rev. 1/11) means the form entitled "Statement of Facts Supporting Eligibility for Kinship Guardianship Assistance Payment" hereby incorporated in its entirety by reference.
- (l) - (r) (Continued)

(s) (1) "SOC 155C" (Rev. 1/00) means the form entitled "Voluntary Placement Agreement Parent/Agency (Indian Child)" hereby incorporated in its entirety by reference.

(~~1~~2) (Continued)

(~~2~~3) (Continued)

(~~3~~4) (Continued)

(~~4~~5) (Continued)

(t) - (z) (Continued)

Authority Cited: Sections 10553 and 10554, and 10850.4, Welfare and Institutions Code.

Reference: *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896; Section 11169, Penal Code; ~~and~~ Sections 361.7, 827 and 10850.4, Welfare and Institutions Code; and 42 USC 5106; 25 USC 1912(d); California Rules of Court, rules 5.481 and 5.482; and 45 CFR 1356.21(d).

Amend Section 31-005 to read:

31-005 CHILD WELFARE PROGRAM SUPPORT ACTIVITIES

31-005

.1 The county shall perform the following program support activities:

.11 Establish an effective system of Pre-Placement preventive services for children through liaison with the courts, ~~and with~~ probation, law enforcement, and other public and private agencies.

.111 Such a system shall provide for cooperative working arrangements with other county and community agencies for receiving appropriate referrals, and for developing remedial resources for the protection of children. In the case of an Indian child(ren), cooperative arrangements ~~can~~ should include tribes, tribal social service agencies and Indian organizations.

.12 through .171 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 361.7, 827, 10850, 16500, and 16501.1(f)(9) (~~as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997~~), Welfare and Institutions Code; and 45 CFR 1340.15(c)(2)(ii); and 25 USC 1912(d).

Amend 31-040 to read:

31-040 PARTICIPANTS IN THE REVIEW

31-040

.1 The following parties to the case under review shall be allowed to participate in the administrative review hearing:

.11 The parent(s)/guardian(s)/Indian custodian(s) from whom the child has been removed, provided that such person'(s) parental rights have not been voluntarily relinquished, or terminated by court action.

.12 In the case of an Indian child, the child's tribe.

~~.12~~.13 (Continued)

~~.13~~.14 (Continued)

~~.14~~.15 (Continued)

~~.15~~.16 The social worker(s) responsible for the case management or service delivery of the child or parent(s)/guardian(s)/Indian custodian(s).

~~.16~~.17 The representative(s), as defined in Section 31-002(r)~~(3)~~(4).

~~.16~~.171 (Continued)

Authority Cited: Sections 10553, ~~and~~ 10554, and 16503, Welfare and Institutions Code.

Reference: Section 16503, Welfare and Institutions Code; and 25 USC 1911(c).

Amend Section 31-066 to read:

**31-066 MULTIDISCIPLINARY TEAM ASSESSMENT AND
RECOMMENDATION FOR PLACEMENT IN
OUT-OF-STATE GROUP HOME**

31-066

.1 (Continued)

.2 For out-of-state group home placement purposes a "Multidisciplinary Team" means a team composed of county social services, county mental health, county probation, county superintendents of schools, and other members as determined by the county. With the addition of a county superintendent of schools member, a county's Interagency Placement Committee, as defined in Welfare and Institutions Code Section 4096, may also act as a county Multidisciplinary Team.

.21 In the case of an Indian child, pursuant to WIC ~~Section 48964(b)~~ 361.31(g), the Multidisciplinary Team ~~may permit~~ shall include a tribal social worker, or a representative of the child's tribe ~~to attend~~ at team meetings ~~and~~ in order to provide relevant information about the child.

.211 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 tribes; placement preferences shall be given serious consideration~~ any placement decision shall be made consistent with ICWA placement preferences requirements as specified in Section 31-420.3, and the agency's duties to engage in ~~a~~Active ~~e~~Efforts to comply with those placement preferences.

.3 - .32 (Continued)

.4 In assessing a child's need for an out-of-state placement, the multidisciplinary team shall consider, but is not limited to, a review of the current circumstances precipitating the request for an out-of-state placement, including a review of the reasonable efforts/services provided prior to the placement of the child in foster care or to make it possible for the child to return home, the services provided to prevent an out-of-home placement, the current location of the child and length of time there, situation and location of parents/siblings, descriptions of out-of-state placement resource(s) or type of placement resource being sought, the child's attitude toward placement, and the parents' attitude towards placement.

.41 (Continued)

.42 An assessment of the child shall include the ~~H~~history of the family including current functioning (education, employment, social and health). ~~Current~~ and the family's anticipated involvement with the child. ~~In the case of an Indian child, the assessment shall include the current and anticipated involvement of the child's tribe with the child.~~

.421 In the case of an Indian child, the assessment shall include consultation with the Indian child's tribe regarding the impact of the child's out of state placement on the child's retention of connections with his or her family, extended family and tribe or tribal community and the tribe's position on the placement. Where the tribe's position is that the out of state placement is contrary to the ICWA placement preferences, only the court can determine that there is good cause to deviate from the preferences.

.43 Permanent plan for the child: Documentation of other options available for the child's permanent placement (reunification, adoption, Tribal Customary Adoption, guardianship or preparation for independent living), anticipated duration of the proposed placement, and the relationship of proposed placement to the permanent plan.

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~~.431~~ (Continued)

HANDBOOK ENDS HERE

.5 - .61 (Continued)

Authority Cited: Sections 10553, 10554, and 16501.1, Welfare and Institutions Code.

References: Sections 7901, 7911, 7911.1, and 7912, Family Code; and Sections 361.21, 361.31, 361.31(g), 366.24, 727.1, and 16516.5, 18951, and 18964, Welfare and Institutions Code; 25 USC 1915.

Amend Section 31-075 to read:

31-075 CASE RECORDS

31-075

- .1 (Continued)
- .2 With the exception of an Indian child as stated below, case records shall be maintained at a minimum of three years in accordance with ~~Manual of Policies and Procedures Operations Manual~~ §section 23-353. The Department requires case records to be retained more than three years in certain circumstances such as, court orders, audits and/or federal mandates.

~~HANDBOOK BEGINS HERE~~

- ~~.21 The Department requires case records to be retained more than three years in certain circumstances such as, court orders, audits and/or federal mandates.~~

~~HANDBOOK ENDS HERE~~

- ~~.21 For a~~ An Indian child's, case records, including eligibility records, shall be maintained in perpetuity and made available at any time upon request of the Secretary of the Interior or the Indian child's tribe as required by 25 U.S.C. 1915 (e) and Welfare and Institutions Code section 361.31(k). Records and information regarding an Indian child must be entered into the Statewide Automated Child Welfare Information System (SACWIS), and shall never be removed via Data Deletion Requests.
- .3 Each record shall contain at least the following information:
- (a) A face sheet with identification information regarding the child; family; Indian ancestry, tribal membership or eligibility for tribal membership; and the placement services provider, if any.
- (b) Documentation of ~~all~~ each contacts with the child, the child's family; and extended family; the child's Indian custodian; an Indian tribe, where there is reason to know that a child is or may be an Indian child, or any other individuals regarding the child or family. All contacts shall be documented including those made by a social worker employed by a Foster Family Agency, by a probation officer, ~~tribal social services agency~~ or by a social worker in another State performing the visits pursuant to the ICPC.
- (c) Documentation of each contact identified and the results of an inquiry conducted as to whether the child is or may be an Indian child as set forth in Section 31-125.223. The documentation shall include, but is not limited to, a copies of the completed Judicial Council's Indian Child Inquiry Attachments ICWA-010(A) required by California Rules of Court, rule 5.481(a), and the ICWA-020 Parental Notification Of Indian Status required by California Rules of Court, rule 5.481(a)(2).

HANDBOOK BEGINS HERE

California Rules of Court rule 5.481(a) requires completion of the ICWA-010(A) and the ICWA-020 in each case where a party is seeking a foster care placement of a child. The ICWA forms are available on the Judicial Council's website at <http://www.courts.ca.gov>. The Judicial Council website contains resources pertaining to ICWA requirements and best practices for meeting the ICWA and court requirements. Additionally, Judicial Council staff is available to answer questions and provide technical assistance. They can be reached at:

Judicial Council
Center for Families, Children & the Courts
Tribal/State Programs Unit
455 Golden Gate Avenue, 6th Floor
San Francisco, California
94102-3688

E-mail
cfcc@jud.ca.gov

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- (d) Copies of each Notice of Child Custody Proceeding for Indian Child (ICWA-030) must be sent to an Indian child's parent(s) or Indian custodian, if any, ~~and~~ the Indian child's tribe ~~or~~ and to the Secretary of the Interior. The case record shall include the registered or certified mail return receipt and each response, including documentation of all verbal communications, such as notes of conversations or meetings with tribal representatives, parent(s), guardian(s), or Indian custodian(s).

HANDBOOK BEGINS HERE

~~California Rules of Court, rule 5.481(b) requires use of the ICWA-030 to provide notice that a child custody proceeding under ICWA has been initiated. The ICWA forms are available on the Judicial Council's website at <http://www.courts.ca.gov>.~~

HANDBOOK ENDS HERE

- (e) In the case of an Indian child, documentation of the ~~a~~Active ~~e~~Efforts taken to identify and provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and whether these efforts proved unsuccessful and why as described in Section 31-135.23. ~~This documentation must also be included in the case plan and court report.~~ "Documentation of Active Efforts must be included in the case plan which is required as an attachment to all court reports."

- (f) In the case of an Indian child, documentation of the ~~Active~~ ~~Efforts~~ taken to comply with the ICWA placement preferences as described in Section 31-420.3 ~~and including whether these efforts proved unsuccessful at placing the Indian child according to ICWA placement preferences.~~ If unsuccessful, document the reasons why. "Documentation of Active Efforts must be included in the case plan which is required as an attachment to all court reports."

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Welfare and Institutions Code section 361.31(k) states: "A record of each foster care placement or adoptive placement of an Indian child shall be maintained in perpetuity by the State Department of Social Services. The record shall document the ~~Active~~ ~~Efforts~~ to comply with the applicable order of preference specified in this Section."

HANDBOOK ENDS HERE

~~(e)~~(g) (Continued)

~~(d)~~(h) (Continued)

~~(e)~~(i) (Continued)

HANDBOOK BEGINS HERE

~~(4)~~ (Continued)

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~~(f)~~ through ~~(e)~~ renumbered to (j) through (v) respectively (Continued)

~~(s)~~(w) When appropriate, the following forms or equivalent documentation, which have been approved by the Department:

(1) - (9) (Continued)

(10) For a Tribally Approved Home, documentation from the tribe, such as a tribal council resolution, or a letter from the tribe's on tribal letterhead ~~ICWA Committee or the tribe's Director of Social Service,~~ confirming tribal approval of the home as meeting tribal standards for the purposes of foster or adoptive placement.

(A) Documentation that prior to placement of a child in a Tribally Approved Home, criminal record and child abuse registry background checks have been completed.

(B) If the tribe has a Tribal ~~Child Welfare~~ Agency that is authorized, pursuant to Welfare and Institutions Code section 10553.12, to receive criminal and child abuse registry information from the California Department of Justice, documentation of the following:

1. The ~~€Tribal~~ ~~Agency's~~ certification that it has completed caregiver background checks pursuant to the standards set forth in Sections 1522 and 1522.1 of the Health and Safety Code, with respect to ~~any prospective foster parent, adoptive parent, or any adult who resides or is employed in the tribally approved home.~~ the following:

a. any prospective foster parent,

b. adoptive parent,

c. any adult who resides with the applicant,

d. any adult employed in the Tribally Approved Home,

e. any person who has a familial or intimate relationship with any person living in the home of an applicant.

~~a.f.~~ The certification must provide the address of the home, the names of the individuals in the household that have been cleared, the date of the completion of the clearance for each individual, and if any exemptions were granted.

2. Documentation that the Tribal ~~Child Welfare~~ Agency has agreed to report within 24 hours to the county social worker responsible for the child placed in the ~~€Tribally~~ ~~Approved~~ ~~Home,~~ any notification to the ~~€Tribal~~ ~~Agency~~ by the Department of Justice, of a subsequent state or federal arrest or disposition notification involving an individual associated with the ~~€Tribally~~ ~~Approved~~ ~~Home.~~

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Tribes are not required to have a Title IV-E agreement in order for counties to be authorized to use Tribally Approved Homes for the placement of children under county care.

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(~~†~~)(x) (Continued)

~~(u)~~(y)(Continued)

~~(v)~~(z) Documentation of the review and the results of the child's potential for adoption, which shall specify why a child who is not reunified with his/her family is not appropriate for adoption as defined in Welfare and Institutions Code Sections 366.26(c)(1)(A) through (D). In the case of an Indian child, documentation shall also include the review and the results and documentation of discussions with the child's tribe concerning concurrent planning including the solicitation of input from, and the results of discussions, with the Indian child's tribe regarding the potential for Tribal Customary Adoption as a permanency option for the Indian child. Courts reports shall include information and supporting evidence on the outcome of consultation with the tribe regarding Tribal Customary Adoption.

Authority Cited: Sections 10553, 10554, 16002, and 16501, Welfare and Institutions Code and Assembly Bill 1695, Section 21, Chapter 653, Statutes of 2001.

Reference: Sections 224.2, 224.3, 309(d), 319, 358(b), 361.2, 361.3, 361.31(k), 361.4, 361.5, 361.7, and 366.21 (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 366.26(c), 727, 10553.12, 11402, 16002, 16501, and Sections 309(d), 319, 361.2, 727, 11402, and 16507.5(b), (as amended by Assembly Bill 1695, Chapter 653, Statutes of 2001), Welfare and Institutions Code; 45 CFR 1356.21(d); Sections 1505, 1522, and 1522.1, Health and Safety Code; and Sections 11105.08 and 11170(b), Penal Code; California Rules of Court, rules 5.481 and 5.690; 45 CFR 1355.20 and 1256.21(d); and 25 USC 1912, 1915, and 1931.

Amend 31-101 to Read:

31-101 GENERAL

31-101

.1 The county shall respond to all referrals for service which allege that a child is endangered by abuse, neglect, or exploitation.

.11 On all referrals, the county shall inquire with the child, if the child is old enough, the child's parent(s), legal guardian(s), or the child's Indian custodian, whether the child is an Indian child and shall identify and document each response.

~~.11.12~~ (Continued)

.2 - .41 (Continued)

.5 Within 30 calendar days of the initial removal of the child or the in-person investigation, or by the date of the dispositional hearing, whichever comes first, the social worker shall:

.51 Determine whether child welfare services are necessary and:

.511 (Continued)

.512 In the case of an Indian child, if child welfare services are necessary, prepare, complete and implement the case plan in collaboration with the Indian child's extended family, tribe, ~~or~~ tribal and other Indian social service agencies, and individual Indian caregiver service providers in accordance with the time frames and schedules specified in Chapter 31-210.

~~.512.513~~ (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3(a), 361.7, 11254, 16208, 16501(f), 16501.1, and 16504, ~~and 16504(d)~~, Welfare and Institutions Code; California Rules of Court, rules 5.690(c) and 5.481(a); and, 25 USC 1912(d).

Amend 31-105 to read:

31-105 EMERGENCY RESPONSE PROTOCOL

31-105

.1 (Continued)

.11 In order to be approved as a substitute for the Emergency Response Protocol form, the substitute shall at a minimum contain all of the following elements:

.111 The following identifying information:

(a) - (c)(5) (Continued)

(d) Information regarding each adult in the household, which shall include:

(1) - (4) (Continued)

(5) Tribal affiliation,

~~(5)~~(6)(Continued)

~~(6)~~(7)(Continued)

~~(7)~~(8)(Continued)

(e) - (2) (Continued)

(f) Information regarding each minor child in the family, which shall include:

(1) - (4) (Continued)

(5) Tribal affiliation,

~~(5)~~(6)(Continued)

~~(6)~~(7)(Continued)

~~(7)~~(8)(Continued)

~~(8)~~(9)(Continued)

.112 - .113 (Continued)

.114 Information regarding the collateral contacts, including the following:

(a) - (b) (Continued)

(c) Agency affiliation or person's relationship to the child, ~~and~~

(d) Contacts with tribe(s), extended family, Indian organizations, other Indian service providers, and

~~(d)~~(e) (Continued)

.115 - (g) (Continued)

.116 The decision whether an in-person investigation is required, including the following outcome options:

(a) (Continued)

(b) Evaluate out, with a referral to an appropriate community agency; ~~or~~

(1) Where there is reason to know that a child is or may be an Indian child, evaluate out with a referral ~~as appropriate~~ to the Indian child's tribe, an Indian organization or other Indian service provider, if available; or

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ICWA requires ~~a~~Active ~~e~~Efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. It is therefore ~~appropriate~~ essential for the social worker when determining to evaluate out a call involving an Indian child, to identify culturally relevant community ~~referrals~~ services that can help support the Indian family. Referrals can include known Indian service providers such as local tribes, tribal ICWA programs, or Tribal TANF programs. ~~that can assist in providing support to the family.~~

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(c) (Continued)

.117 When the decision is to evaluate out, either with or without a referral to another community agency, the following information shall be documented and included:

(a) Rationale for the decision; and

(1) In the case of an Indian child, documentation of referrals made to the child's tribe, or Indian service providers as specified in Section 31-105.116(b)(1) and if not utilized, why not, and why these efforts proved unsuccessful.

(b) - .213 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3, 361.7, 16208 and 16504, Welfare and Institutions Code; California Rules of Court rule 5.690(c); and 25 USC 1912(d).

Amend Section 31-110 to read:

31-110 IN-PERSON INVESTIGATIONS

31-110

- .1 (Continued)
- .2 If the social worker determines that an in-person investigation is not necessary, but that the services of another community agency are appropriate, the social worker shall refer the reporter or child and family to that agency. In the case of an Indian child the social worker is authorized to shall also identify and refer the family to culturally appropriate services such as those available through the child's tribe, an Indian organization or other Indian service providers, etc-if available.
- .21 (Continued)
- .3 If the social worker determines that an in-person investigation is necessary, the social worker shall make the in-person investigation immediately or within 10 calendar days, as appropriate.
 - .31 During the course of the in-person investigation the social worker shall inquire with the child, if the child is old enough, the child's parent(s), legal guardian(s), or the child's Indian custodian whether the child is or may be an Indian child.
 - ~~.31.32~~ If it is known, or there is reason to know, that the referral involves an Indian child that resides or is domiciled on an Indian reservation, Rancheria, or in an Indian community, the social worker shall contact the designated representative of the child's tribe so that aActive eEfforts to prevent the breakup of the Indian family can be commenced and coordinated by the social worker, unless there is imminent danger of physical damage or harm to the child and immediate removal is required.
 - ~~.32~~ Prior to temporary removal from the home where it is determined that such removal is necessary the social worker shall ask whether the child is or maybe an Indian.
 - .33 If the child is in imminent danger of physical damage or harm and an immediate removal is required, the social worker must contact the child's tribe as soon as possible thereafter.

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Initial inquiry regarding Indian heritage is vital to beginning contact with the child's family and tribe, and complies with ICWA requirements to engage in aActive eEfforts to prevent the breakup of the Indian family. Further, asking such questions enables documentation of the worker's and county agency's attempts to collaborate with the tribe in early intervention and prevention of removal of the child from its community.

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.4 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3, 361.7, 16208, 16501(f), and 16504, Welfare and Institutions Code; and 25 USC 1912(d).

Amend Section 31-115 to read:

31-115 IN - PERSON IMMEDIATE INVESTIGATION

31-115

- .1 The social worker shall conduct an in-person immediate investigation when:
 - .11 The emergency response protocol indicates the existence of a situation in which imminent danger to a child, such as physical pain, injury, disability, severe emotional harm or death, is likely.
 - .12 The law enforcement agency making the referral states that the child is at immediate risk of abuse, neglect or exploitation.
 - .13 The social worker determines that the child referred by a law enforcement agency is ~~at~~ in immediate risk of abuse, neglect, or exploitation.
- .2 Prior to removal from the home, the social worker shall inquire with the child, if the child is old enough, the child's parent(s), legal guardian(s), or the child's Indian custodian whether the child is or may be an Indian child. ~~If it is known, or there is reason to know that the referral involves an Indian child, the social worker shall contact the designated representative of the child's tribe, so that active efforts to prevent the breakup of the Indian family can be commenced and coordinated, unless there is imminent danger to the child and an in-person immediate removal is required.~~
 - .21 If it is known, or there is reason to know that the referral involves an Indian child, the social worker shall contact the designated representative of the child's tribe, so that Active Efforts to prevent the breakup of the Indian family can be commenced and coordinated by the social worker.
 - .211 If there is imminent danger of physical damage or harm to the child and immediate removal is required contact must be made with the designated representative of the child's tribe, as soon as possible thereafter.
 - .212 If an emergency removal and emergency placement is necessary to prevent imminent physical damage or harm to the Indian child, it should be as short as possible.

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When a social worker is considering removal and making a foster care placement of an Indian child, the ICWA requires that they engage in ~~a~~Active ~~e~~Efforts to provide remedial, rehabilitative services to prevent the breakup of the Indian family. Such ~~a~~Active ~~e~~Efforts can include, but are not limited to contacting any known collaterals, family members, or known local tribes, Indian organizations, or other Indian service providers that can assist in providing support to the family.

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Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3(a), 361.7, 16208, 16501(f), and 16504, Welfare and Institutions Code.

Amend Section 31-120 to read:

31-120 IN-PERSON INVESTIGATION WITHIN 10 CALENDAR DAYS 31-120

- .1 The social worker shall conduct an in-person investigation of the allegation of abuse, neglect, or exploitation within 10 calendar days after receipt of a referral when:
 - .11 The emergency response protocol indicates that an in-person investigation is appropriate and the social worker has determined that an in-person immediate investigation is not appropriate.
 - .12 The law enforcement agency making the referral does not state that the child is at immediate risk of abuse, neglect, or exploitation and the social worker determines that an in-person immediate investigation is not appropriate.

- .2 If it is known or there is reason to know that the referral involves an Indian child, the social worker shall contact the designated representative of the child's tribe so that ~~a~~Active ~~e~~Efforts to prevent the breakup of the Indian family can be commenced and coordinated with the tribe.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3(c), 361.7, 16208, 16501(f), and 16504, Welfare and Institutions Code.

Amend section 31-125 to read:

31-125 INVESTIGATION REQUIREMENTS

31-125

.1 - .21 (Continued)

.22 If as a result of the investigation the social worker does not find the referral to be unfounded, the social worker shall:

.221 - (b)(1) (Continued)

.222 Make necessary collateral contacts with each persons having knowledge of the condition of ~~the children~~ each child that is the subject of an allegation, including tribes, Indian organizations, or other Indian service providers when the child is or may be Indian.

.223 In all cases the social workers shall inquire with the child, if the child is old enough, the child's parent(s), legal guardian(s), or the child's Indian custodian, whether the child is or may be an Indian child, ~~and~~ complete and file with the court the Judicial Council Indian Child Inquiry Attachment form ICWA-010(A). Additionally, the social worker must provide the ICWA-020 Parental Notification of Indian Status to the parent, Indian custodian or guardian for completion and file it with the court. Social workers have an affirmative and continuing duty to inquire about a child's Indian status.

(a) Circumstances that may give rise to a further duty to inquire include, but are not limited to, the following:

(1) Information is provided by the child, parent or Indian custodian, an officer of the court, a tribe, an Indian organization, a public or private agency, or an extended family member suggesting the child may be Indian;

(2) Any agency involved in child protective or family support services has discovered information suggesting that the child is an Indian child.

~~(2)~~(3) Information is provided that one or more of the child's biological parent(s), grandparent(s), or great-grandparent(s) are or were a member of a tribe;

~~(3)~~(4) The residence or domicile of the child, or the child's parent(s), guardian(s), or Indian custodian(s) is in a predominantly Indian community; or

~~(4)~~(5) The child or the child's family has received services or benefits available to Indians from a tribe or from the federal government, such as Indian Health Services.

(6) An employee of the agency or officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

HANDBOOK BEGINS HERE

California Rules of Court, rule 5.481(a)(1) requires completion of the ICWA-010(A) and ICWA-020 Parental Notification of Indian Status for inquiry documentation. ICWA forms are available on the Judicial council's website at <http://www.courts.ca.gov>.

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.224 If the results of the inquiry indicate that the child is, or may be, an Indian child and a petition for removal pursuant to Welfare and Institutions Code section 313 is filed, the social worker must complete and comply with the notice requirements of Section 31-125.7.

.225 If the results of the inquiry indicate that the child is, or may be, an Indian child except that the child's tribe is a non-federally recognized tribe, and a petition for removal pursuant to Welfare and Institutions Code section 313 is filed, the social worker is authorized to inform the tribe that the tribe may seek permission to participate in the child's dependency case at the discretion of the court, pursuant to Section 306.6 of the Welfare and Institutions Code.

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Welfare and Institutions Code section 306.6(b) provides, as it pertains to non-federally recognized tribes:

"(b) If the court permits a tribe to participate in a proceeding, the tribe may do all of the following, upon consent of the court:

- (1) Be present at the hearing.
- (2) Address the court.
- (3) Request and receive notice of hearings.
- (4) Request to examine court documents relating to the proceeding.
- (5) Present information to the court that is relevant to the proceeding.
- (6) Submit written reports and recommendations to the court.

- (7) Perform other duties and responsibilities as requested or approved by the court."

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.23 - .5 (Continued)

.51 Perform the requirements specified in Chapter 31-200.

~~.511 If a dependency petition is to be filed and it is determined that the child is or may be an Indian child, the social worker shall follow the procedures in Section 31-515.~~

~~.6 If as a result of the In addition to inquiry required in Section 31-125.223 the social worker knows or has reason to know that the child is or may be an Indian child, and a dependency petition is filed, the social worker shall provide a copy of and explain the Parental Notification of Indian Status form (ICWA-020) to the parent(s), Indian custodian or guardian, if any, and ask that the form be completed.~~

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California Rule of Court, rule 5.481(a)(2) requires completion of the ICWA-020. Pursuant to this rule, the court may also order the county to use reasonable diligence to locate and ask a parent, Indian custodian, or guardian to complete the form if the parent, Indian custodian, or guardian does not personally appear at a hearing. ICWA forms are available on the Judicial Council's website at <http://www.courts.ca.gov>.

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.7 If, as a result of the inquiry required in Section 31-125.223, the social worker knows or has reason to know that the child is or may be an Indian child and a dependency petition is filed, notice of the proceeding(s) shall be sent to the child's parent, guardian, or Indian custodian, if any, and the tribe or tribes with whom the child is a member or eligible for membership or potential affiliation potentially affiliated. The social worker should secure verification from a tribe as early as possible to facilitate provision of Active Efforts as soon as possible. Notices shall be sent as follows:

.71 Notice shall be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended but not required. However, this could help support aActive eEfforts.

.72 Notice to a tribe shall be sent to its tribal chairperson unless the tribe has designated another tribal agent that is included and published on individual on the Department of the Interior, Bureau of Indian Affairs (BIAs) the list of "Indian Child Welfare Act Designated Tribal Agents for Service of Notice" published by the Department of the Interior, Bureau of Indian Affairs (BIAs). If an agent has been designated by a tribe, it is mandatory that the notice be sent to the agent.

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The ICWA provides that Indian tribes may designate an agent other than the tribal chair for service of notice of proceedings under the ICWA. The BIA list of designated tribal agents for service of ICWA notice can be found at: <http://www.bia.gov/cs/groups/public/documents/text/idc012540.pdf>. Always check for the most current publication of the BIA list as it is generally updated on an annual basis.

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- .73 Notice shall also be sent directly to the Secretary of the Interior and to the Bureau of Indian Affairs, Sacramento Area Director regardless of whether the identity or location of the parent/guardian/Indian custodian or the child's tribe is known or unknown. Notices shall be sent to the following two addresses:

Secretary of the Interior
Bureau of Indian Affairs, Sacramento Area Director
2800 Cottage Way
Sacramento, CA 95825; and,

Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240.

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California expanded the ICWA notice requirements to include sending a copy directly to the Secretary of the Interior even where the tribe is known.

Welfare and Institutions Code section 224.2(a)(4) states:

"If the identity or location of the parents, Indian custodians, or the minor's tribe is known, a copy of the notice shall also be sent directly to the Secretary of the Interior, unless the Secretary of the Interior has waived the notice in writing and the person responsible for giving notice under this section has filed proof of the waiver with the court."

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- .731 Notice shall be sent using the *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030). The notice must be sent by registered or certified mail and the notice must be sent far enough in advance that it will be received at least 10 days before the hearing date.

.732 Notice shall continue to be sent regarding each hearing to each tribe in which an Indian child may be a member or eligible for membership.

(a) Once a tribe has acknowledged a child is a member or eligible for membership or has intervened in the proceeding, subsequent notices of the proceedings only need to be sent to the child's tribe and no longer need to include the ancestral information, a copy of the petition in the proceeding, a copy of the child's birth certificate, nor the statement of rights.

.74 Each notice sent, its return receipt, and each response received shall be maintained and a copy of each filed with the court.

.75 Notice must be sent in a manner to ensure an Indian child's parent or legal guardian or Indian custodian, if any, and the tribe receive the notice at least 10 days prior to the hearing date. Upon request an additional 20 days will be granted. Notice prior to detention hearing must be sent as soon as possible after the filing of a petition and proof of notice filed within 10 days after filing the petition.

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Welfare and Institutions Code Section 224.2(d) provides, in part, that with the exception of a detention hearing, the parent, Indian custodian, or the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding.

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.76 If at the time of the dependency court appearance, no determination of tribal standing is made by the tribe or there has been no response from the tribe regarding the child's status as an Indian child, as defined by the ICWA, the social worker shall:

.761 Advise the court of all information which indicates that the child may be an Indian child.

.762 Advise the court of all efforts made to establish and verify the child's status as an Indian child including contacts made with parents, Indian custodians, extended family and why information may be missing from form ICWA-030.

.763 Request direction from the court on how to proceed with the dependency action.

.764 Continue contacts with the tribe and the BIA until the question of the child's status as an Indian child, as defined by the ICWA, has been resolved and the resolution is documented in the case record for future reference.

.765 If after notice has been provided and neither the tribe nor the BIA has provided a determinative response within 60 days after receiving that notice, then the court may determine that the ICWA does not apply to the proceedings, provided that the court must reverse its determination of the inapplicability of the act and must apply it prospectively if a tribe or the BIA subsequently confirms that the child is an Indian child.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.2, 224.2(d), 224.3, 300, 306.6, 361.7, 16504, 16509, and 16509.1, Welfare and Institutions Code; Section 11165.12, Penal Code; ~~and~~ 25 USCA ~~Section~~ 1901 et seq.; and California Rules of Court, rule 5.481.

Amend Section 31-135 to read:

31-135 AUTHORITY FOR REMOVAL OF CHILD

31-135

- .1 When the social worker determines that the child cannot be safely maintained in his/her own home, the social worker shall ensure that authority to remove the child exists prior to removal.
- .11 If removal is voluntary, such authority shall be a the written consent of the parent/guardian/Indian custodian; and in the case of an Indian child the social worker shall comply with the consent requirements that are more fully set forth in Section 31-430.
- .111 In the situation where the placement may no longer be voluntary, in that there is a determination the child will not be returned to the parent/guardian/Indian custodian, the social worker must comply with the higher requirements of ICWA including the duty to engage in Active Efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to comply with the ICWA placement preferences.
- .12 (Continued)
 - .121 If a determination has been made in accordance with Welfare and Institutions Code Section 308 that the minor or his/her foster family would be endangered or his/her custody would be disturbed by the disclosure to the parent(s)/guardian(s)/Indian custodian of the minor's exact whereabouts, the social worker shall notify immediately the parent(s)/guardian(s)/Indian custodian either in-person or by telephone of his/her right to apply for judicial review of that determination within 24 hours.
 - (a) If the social worker fails to notify the parent(s)/guardian(s)/Indian custodian(s) as specified in Section 31-135.121, the social worker shall document in the case record the reason(s) for failure to do so. ~~Where an Indian child is or may be involved the social worker shall evaluate the placement for whether it is no longer voluntary, thus triggering Indian child custody proceeding requirements under ICWA, such as inquiry, noticing and placement preferences.~~
 - .122 If the child is an Indian child, involuntary removal must be supported by clear and convincing evidence that the continued custody of the child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the child. The determination on emotional or physical damage to the child must be supported in court by the testimony of a qualified expert witness.

.2 The social worker shall document in the case record ~~any all preplacement~~ Pre-Placement preventive efforts made and services provided.

.21 (Continued)

.22 (Continued)

.23 In the case of an Indian child, pre-placement preventive efforts shall include ~~aActive~~ ~~eEfforts~~ to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to the removal of a child from the family.

.231 Active ~~eEfforts~~ ~~prior to removal~~ shall include but not be limited to the following efforts to:

- (a) Identify the child's Indian heritage in the assessment process.
- (b) Take into account the prevailing social and cultural standards, and way of life of the Indian child's tribe.
- (c) Utilize tribal resources to support ~~preplacement~~ Pre-Placement preventive efforts, including resources available from the child's extended family, tribe, tribally based family preservation and reunification or other services when available; and non-Indian resources when tribal resources are not available.

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Examples of ~~aActive~~ ~~eEfforts~~ are provided in Section 31-002(a) based on the 2012 BIA Guidelines A.2. Additional examples of Active Efforts include, but are not limited to, the following:

- ~~(1) Notifying and requesting involvement of the tribe through a designated tribal representative to participate in the case at the earliest point possible.~~
- (2)(1) Facilitating identification of tribal services, such as financial assistance, food, housing, health care, mental health treatment, substance abuse prevention & treatment, parenting classes, and transportation. ~~For example,~~ Local Tribal TANF agencies may be able to provide necessary supports to the family to prevent the breakup of the Indian family.
- ~~(3) Conferring with the tribe about the availability of tribal support for the family, including traditional practices, as well as other tribal services.~~
- ~~(4) Conferring with extended family members for help and guidance, including feedback on continued retention of contact between the family and the child, using them as a resource for the child.~~

~~(5) Providing services to extended family members to allow them to be considered for placement if out-of-home care becomes necessary.~~

~~(6)(2) Integrating tribal social workers or representatives into multidisciplinary teams pursuant to Welfare and Institutions Code sections 18951(d)(4) and 18964.~~

~~(7)(3) Requesting the child's tribe's participation in multidisciplinary team as provided under Welfare and Institutions Code section 18951.~~

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.233 The social worker shall document in the Indian child's case files the ~~Active~~ Efforts to prevent the removal of the child. If the determination is to remove the child, the social worker must document that the Active Efforts proved unsuccessful and the reasons why, and include this information in court reports.

.234 When it comes to the attention of the social worker that an Indian child that has been removed from the custody of his or her parent(s), or Indian custodian(s), is already a ward of the child's tribe or subject to the exclusive jurisdiction of the child's tribe, the social worker shall notify the tribe of the removal, pursuant to Welfare and Institutions Code section 305.5(a), no later than the next working day following the removal. The social worker shall do the following:

(a) Notify the child's tribe in writing that the child has been taken into protective custody, that a petition pursuant to Welfare and Institutions Code section 313 is pending or has been filed, and that the county has reason to believe the child a ward of the tribe or subject to the tribe's exclusive jurisdiction. The notice shall:

(1) Provide the child's name, date of birth, name of parent or Indian custodian, and the date of removal.

(2) Request that the tribe confirm if the child is a ward of its tribal court or under its exclusive jurisdiction.

(3) Inform the tribe that upon receipt of written confirmation that the child is a ward or -under the tribe's exclusive jurisdiction, a request shall be made to the juvenile court for an order to transfer the child custody proceeding to the tribe pursuant to Welfare and Institutions Code sections 381 and 305.5.

(4) Inform the tribe that additional information regarding the circumstances that created the reason for the removal of the child may be requested by the tribe, along with information necessary to confirm the child's status with the tribe.

- (b) The notice shall be ~~sent via facsimile or secure mail~~ addressed to the tribal chair or the ICWA designated agent for service and sent via facsimile or secure email. If communication by secure email or facsimile is not available, then notice shall be sent via overnight delivery. In addition, contact with the tribe shall be made by telephone to inform the tribe of the ~~child's~~ removal of the child.
- (c) Upon written confirmation of the child's status as a ward of the tribe or as subject to its exclusive jurisdiction, the social worker shall initiate before the juvenile court a petition to transfer pursuant to Welfare and Institutions Code section 305.5(a) and seek a determination pursuant to Welfare and Institutions Code section 381.
- (d) When the order to transfer the child custody proceeding to the tribe is issued, the social worker shall within 24 hours make arrangements for the safe physical transfer of the child, release the child's entire case file for the current episode, to the tribe subject to the tribe's agreement to maintain the documentation confidential consistent with state and federal law.
- (e) The social worker shall document each communication with the tribe regarding the notification of the removal, the final outcome and shall retain a copy of the entire case upon transfer of the child.
- (f) The social worker must advise the court of the facts that suggest the child may be a ward of a tribal court or subject to the exclusive jurisdiction of the tribe.

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Welfare and Institutions Code sections 305.5 and 381(c) provide for expedited review of transfer petitions and are to have precedence over all actions and civil proceedings not specifically given such precedence, and are to be heard at the earliest possible moment.

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.3 If the child is in out-of-home placement following a voluntary removal, and the social worker determines that continued out-of-home placement is necessary for the child's protection, the county shall implement a voluntary placement agreement as specified in Section 31-430.31.

.31 A voluntary removal of an Indian child shall comply with the consent requirements for Indian children that are set forth in Section 31-430.

- .4 If the child is in temporary custody following an involuntary removal, and the social worker determines that continued detention is necessary for the child's protection, the social worker shall take the following action:

.41 (Continued)

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~~.411~~ (Continued)

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.42 If the child is an Indian child, involuntary removal from the parent or Indian custodian or placement out of the home must be supported by clear and convincing evidence that the continued custody of the child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the child. The determination of emotional or physical damage to the child must be supported in court by the testimony of a qualified expert witness.

.421 A qualified expert witness should have specific knowledge of the Indian tribe's culture and customs. When selecting a qualified expert witness, the agency whenever possible should consider whether the child's tribe recognizes the individual 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. Such an individual can include:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.

.422 A qualified expert witness cannot be an employee of the person or agency recommending a foster care placement or termination of parental rights.

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The Welfare and Institutions Code sections 224.6(c) and (d) provide:

"(c) Persons with the following characteristics are most likely to meet the requirements for a qualified expert witness for purposes of Indian child custody proceedings:

- (1) 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) Any expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.
- (3) A professional person having substantial education and experience in the area of his or her specialty."

~~(d) The court or any party may request the assistance of the Indian child's tribe or Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses."~~

The 2015 BIA Guidelines at section D.4 provide guidance that there is a descending order on those individuals that are presumed to meet the characteristics of a qualified expert witness. The individuals listed in .421 are those presumed by the BIA Guidelines as meeting the characteristic of a qualified expert witness.

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.43 Consider the prevailing social and cultural standards and way of life of the Indian child's tribe, including that tribe's family organization and childrearing practices.

.44 The social worker may request the assistance of the Indian child's tribe or the BIA agency serving the Indian child's tribe, in locating persons qualified to serve as an expert witness.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3, 224.6, 224.6(d), 305, 305.5, 306, and 308 (as amended by Assembly Bill 4122, Chapter 320, Statutes of 1990); 361.7, 381, and 16507.4, Welfare and Institutions Code; and 25 USC 1903(6), 1911, 1912, 1913(a), and 1915; and 2015 Bureau of Indian Affairs Guidelines for State Courts and Agencies in Indian Custody Proceedings, 80 Fed. Reg. 10150 (Feb. 25, 2015) A.2, D.4.

Adopt Section 31-136 to read:

31-136 **TRANSFER OF AN INDIAN CHILD**

31-136

.1 **Transfer of An Indian Child to A Tribe:** In the case of an Indian child under state court jurisdiction, where a petition is granted to transfer the case to a tribe the following shall apply:

.11 In all cases where a child is being transferred, the social worker shall ensure the physical transfer of the child, without undue delay, to the designated representative of the child's tribe or tribal program. The physical transfer of the Indian child to his or her tribe must be made consistent with local child welfare protocols that are mutually agreed upon between a county and a tribe, where such protocols exist.

.12 Where the transfer is not to a Tribal Title IV-E Agency pursuant to the juvenile court's order of transfer, the entire case file shall be provided to the tribe subject to the tribe's agreement to maintain the ~~confidentiality of the~~ documentation confidential consistent with state and federal law. A copy of the file shall be retained by the child welfare agency.

.2 **Transfer to Tribal Title IV-E Agency:** Pursuant to 45 CFR 1356.67, in order to preserve the child's eligibility for federal Title IV-E AFDC-FC benefits, - the following shall apply when an Indian child is being transferred from county jurisdiction to a Tribal Title IV-E Agency:

.21 The social worker shall transfer the child in a manner that does not affect the child's eligibility for or payment of, Title IV-E or other federal benefits, including medical assistance under Title XIX.

.22 Prior to transfer of the child, the child's Title IV-E eligibility determination must be completed, and all documentation related to that determination, shall be provided to the Tribal Title IV-E Agency.

.23 The entire case file for the child's current foster care episode shall be provided to the Tribal Title IV-E Agency. The child welfare agency shall retain a copy of the documents provided upon transfer.

.24 Essential documents that must be provided upon transfer are the following:

.241 All judicial determinations that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts have been made to prevent or eliminate the need for removal of the child.

.242 Documentation that relates to the child's Title IV-E eligibility, including the following, as applicable:

- (a) Foster Care Form 3 (FC3) "Determination of Federal Aid to Families with Dependent Children (AFDC) Foster Care Eligibility".
- (b) Adoption Assistance Form 4 "Eligibility Certification Adoption Assistance Program" (AAP4).
- (c) Kinship Guardianship "Statement of Facts Supporting Eligibility for Kinship Guardianship Assistance payment (KinGAP)" (KG2).

.243 Documentation pertaining to the child's eligibility for other federal benefits including Medicaid programs under Title XIX, Social Security Disability or other federal benefits.

.244 The most recent provider's license or approval including background check documentation verifying clearances for all adults in the caregiver's household and complaint information.

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Certain California tribes that have entered into a Title IV-E agreement with the CDSS. In addition, there are tribes in other states that have entered into Title IV-E agreements with their states or directly with the Federal Administration on Children and Families. To the extent available, a list of IV-E tribal programs can be found on the CDSS ICWA website at: <http://www.childsworld.ca.gov/PG1322.htm>.

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.3 Transfer of a Ward of A Tribal Court or An Exclusive Jurisdiction Tribe:

- .31 Where the social worker is informed that an Indian child that has been taken into temporary protective custody is already a ward of a tribal court or is from an exclusive jurisdiction tribe, the social worker shall, no later than the next working day, seek written confirmation of the child's status from the tribe by providing notice as specified in Section ~~31-233~~431-135.234.
- .32 Upon written confirmation of the child's status as a ward of the tribe or subject to its exclusive jurisdiction, the social worker, shall expeditiously initiate a petition for the transfer of the child custody proceeding pursuant to Welfare and Institutions Code sections 305.5(a) and 381(a) and 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.

- .33 When the court order to transfer the child custody proceeding to the tribe is issued, the social worker shall within 24 hours make arrangements for the safe physical transfer of the child, and release the child's entire case file for the current episode, to the tribe subject to the tribe's agreement to maintain confidentiality of the documentation confidential consistent with state and federal law. The child welfare agency shall retain a copy of the documents provided to the tribe upon transfer.

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Welfare and Institutions Code section 305.5(a) provides:

"(a) If an Indian child, who is a ward of a tribal court or resides or is domiciled within a reservation of an Indian tribe that has exclusive jurisdiction over child custody proceedings as recognized in Section 1911 of Title 25 of the United States Code or reassumed exclusive jurisdiction over Indian child custody proceedings pursuant to Section 1918 of Title 25 of the United States Code, has been removed by a state or local authority from the custody of his or her parents or Indian custodian, the state or local authority shall provide notice of the removal to the tribe no later than the next working day following the removal and shall provide all relevant documentation to the tribe regarding the removal and the child's identity. If the tribe determines that the child is an Indian child, the state or local authority shall transfer the child custody proceeding to the tribe within 24 hours after receipt of written notice from the tribe of that determination."

Questions regarding exclusive jurisdiction tribes or other issues related to transfers, contact the CDSS ICWA staff at:

Email: ICWA@dss.ca.gov
California Department of Social Services
Children and Family Services Division
744 P Street
Sacramento, CA 95814
~~(916) 657-2614~~

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Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 305.5, 381, 827.15, and 10553.1, Welfare and Institutions Code; 25 USC 1911, 1918, and 1919; 42 USC 670, 679c et seq.; 45 CFR 1357.67; and PL 110-351.

Amend Section 31-201 to read:

31-201 ASSESSMENT AND CASE PLANNING PROCESS

31-201

.1 (Continued)

.11 (Continued)

.111 An assessment is completed for each child for whom child welfare services are to be provided, and includes gathering and evaluating information relevant to the case situation and appraising case service needs.

(a) In the case of an Indian child, the assessment shall include ~~Active~~ ~~Efforts~~ as specified in Sections 31-135.23 and 31-420.3. The assessment shall include information received from the child's tribe, the child's extended family and Indian service providers regarding the resources available to the child and the family. Additionally, in appraising the case service needs the social worker shall consider the child's tribe placement and permanency preferences when removal is necessary.

.12 (Continued)

.121 When determining the case plan goal, the social worker shall consider the following order of priority for services:

(a) Family maintenance services - In order to maintain the child in his/her own home, when the protective needs of the child can be met. In the case of an Indian child, family maintenance services shall include ~~Active~~ ~~Efforts~~ to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family as described in Section 31-135.23.

(b) Family reunification services - If the family potentially can be successfully reunified within the time limits specified in Welfare and Institutions Code Sections 16507 and 16507.3. In the case of an Indian child, family reunification services shall include ~~Active~~ ~~Efforts~~ to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family as described in Section 31-135.23. If the child is placed out of home and is receiving family reunification services, the case plan shall have two tracks:

(1) (Continued)

(2) (Continued)

- (c) Permanent placement services – Only when there are no feasible means of maintaining or reuniting the child with his/her parent(s)/guardian(s).

(1) - (2)(F) (Continued)

- (3) When recommending ~~a~~ permanent placement services, the social worker shall adhere to the following order of priority for permanent placement:

(A) Adoption – Before the social worker recommends to the court that family reunification services be terminated, a case review conducted jointly by foster care and adoption staff to determine potential for adoption shall have been completed.

1. (Continued)

2. If the case review is to address a potential adoption of an Indian child, the following shall also apply when evaluating the child’s permanency alternatives:

a. In any pre-adoptive or adoptive placement of an Indian child, preference shall be given, in the absence of good cause to the contrary, in descending priority order to placement with:

(i) A member of the Indian child's extended family which shall be defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(ii) Other members of the child’s tribe;

(iii) Another Indian family;

(iv) If a different order has been established by the tribe, the order preferred by the tribe so long as the placement is in the least restrictive setting appropriate for the child;

- (v) When no preferred placement 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.
- 3. If the permanent placement may lead to the termination of parental rights of the Indian child's parent, the social worker must consider that no termination may be ordered in such proceeding in the absence of a determination, which will have to be supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Evidence must also be presented that Active Efforts have been made designed to prevent the breakup of the Indian family and that the efforts proved unsuccessful.
- 4. Before the social worker recommends termination of parental rights, the review shall evaluate whether the termination of parental rights would substantially interfere with the child's connection to his or her tribal community, or tribal membership.
- 5. The review shall evaluate whether there is another planned permanent living arrangement for the child that does not require termination of parental rights but that nonetheless provides the child with permanency.
- 6. The review shall evaluate, after soliciting input and consulting with the child's tribe, whether a Tribal Customary Adoption is a potential option for the child pursuant to Welfare and Institutions Code Section 366.24.
- 7. If the tribe elects to consider Tribal Customary Adoption for the child, the social worker shall collaborate with the tribe in meeting the requirements set forth in Welfare and Institutions Code Section 366.24.

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The Indian child's tribe is the only entity that can elect Tribal Customary Adoption as the permanency option for the child. The tribe may express a preference for a different option. [Welfare and Institutions Code section 366.26(c)(1)(B)(vi)(II)]. No tribe is required to elect Tribal Customary Adoption.

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~~2.8.~~ (Continued)

(B) (Continued)

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~~4.~~ (Continued)

~~2.~~ (Continued)

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(C) (Continued)

.13 - .132 (Continued)

.133 Case management activities to be performed.

- (a) Parent(s)/guardian(s) shall be requested to participate in the development of the case plan. In the case of an Indian child, the child's extended family, tribe, or tribal advocate or Indian custodian, if the child has one, shall also be requested to participate in the development of the case plan.
- (b) (Continued)

Authority Cited: Sections 10553, 10554, and 11369, Welfare and Institutions Code.

Reference: Sections 224.6, 358.1(e), and 361~~(as added by Assembly Bill 1544, Chapter 793, Statutes of 1997), 361.5, 361.7, 361.31, 366.23, 366.24, 366.26, 366.26(c)(1)(B)(vi)(II), 366.26(e)(2), 16501, 16501.1~~ ~~(as added by Assembly Bill 1544, Chapter 793, Statutes of 1997), 16501.1(f), 16506, 16507, and 16508, Welfare and Institutions Code; Sections 8714.5 and 8714.7~~ ~~(as added by Assembly Bill 1544, Chapter 793, Statutes of 1997), Family Code; California Rules of Court; rule 5.690(c); and 25 USC 1912 and 1915.~~

Amend Section 31-205 to read:

31-205 ASSESSMENT DOCUMENTATION

31-205

.1 The social worker shall document the following assessment information:

(a).11 The relevant social, cultural, and physical factors relating to the following:

(1).111 The child.

(a) In the case of an Indian child, the social worker shall ~~assess and document~~ include information about the prevailing social and cultural standards and way of life of the Indian child's tribe, including family organization and child-rearing practices.

(2).112 The child's parent(s)/guardian(s), Indian custodian(s) or person(s) serving in that role.

(3).113 (Continued)

(b).12 (Continued)

(c).13 Whether the child may safely remain at home if ~~pre-placement~~ Pre-Placement preventive services are provided, and, if so, the specific services to be provided.

.131 In the case of an Indian child, the social worker shall document the ~~pre-placement~~ Pre-Placement preventive services that comprise the ~~Active~~ Efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family as described in Section 31-135.23 that have been or will be provided.

(d).14 (Continued)

(e).15 (Continued)

(f).16 Any known social services previously offered and/or delivered to the child or family and the result of those services.

.161 In the case of an Indian child, documentation shall additionally include information about all known social services previously offered and/or delivered to the child or family including those provided as ~~Active~~ Efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, as required by Section 31-135.23, and the results of those efforts.

~~(g).~~17 If family reunification services are recommended, relatives or others who could provide or assist with legal permanency - adoption, guardianship, or preparation for independence - should family reunification fail.

~~.171 In the case of an Indian child, if family reunification services are recommended, ICWA requires the inclusion of documentation shall additionally include information about relatives and extended family members, tribal representatives, other Indian social service agencies and individual Indian caregivers who can provide or assist with legal permanency should family reunification fail. Documentation shall include concurrent planning discussions with the child's tribe including solicitation of input and the result of consultation regarding Tribal Customary Adoption as an option for the child, should reunification fail.~~

~~(h).~~18 (Continued)

~~(i).~~19 (Continued)

~~(j).~~20 (Continued)

.2 - .22 (Continued)

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.6, 361, 361.31, 361.5, 361.7, 366.24, 4094, 4094.5, 4094.6, 4094.7, 5585.58, 5600.3, 11467.1, 16501, 16501(e), 16501.1(e)(9), and 16507, Welfare and Institutions Code; ~~42 U.S.C.—Sections 675(1) and 677;~~ and Sections 1502 and 1502(a)(8), Health and Safety Code; and 25 USC 1912 and 1915.

Amend Section 31-206 to read:

31-206 CASE PLAN DOCUMENTATION

31-206

.1 - .22 (Continued)

.221 The social worker shall include specific descriptions of the responsibilities of the social worker, other county staff, other individuals, and community agencies in the provision of services and the performance of case management activities.

(a) In the case of an Indian child, the social worker shall include a description of the specific services available and being provided to the child by the tribe, the Indian caregiver, other Indian service agencies or Indian organizations.

.222 For children in out-of-home care, the social worker shall document the two services tracks identified for children receiving family reunification services.

(a) The services to be provided to assist the parents(s), guardian, or Indian custodian in reunifying with the child as identified in the family reunification services track. In the case of an Indian child, the social worker shall also document ~~a~~Active ~~e~~Efforts to prevent the breakup of the Indian family as required by Section 31-135.23.

(b) The services to be provided and steps to be taken to implement the permanency alternative identified in the case plan if family reunification fails.

(1) In the case of an Indian child, the social worker shall document the services to be provided and the steps to be taken to implement the permanency alternative, including, in the case of an Indian child, Tribal Customary Adoption, identified in the case plan, if family reunification fails. Permanent placement may only occur if there is evidence beyond a reasonable doubt that is supported by the testimony of a qualified expert witness as required by Section 31-135.542 that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The social worker shall also document compliance with the standards required by ICWA as detailed in Section 31-201.121(c)(3)(A)2 through 7.

.23 - .241 (Continued)

.3 For children receiving out-of-home care, the social worker shall also document in the case plan, the following:

.31 An assessment of the child's placement needs and a determination and description of the type of home or institution which will best meet those needs.

~~.311~~ In the case of an Indian child, if an out of home placement is not made consistent with the placement preference standards the assessment shall include a description of the social worker's Active Efforts made to comply with the ICWA placement preference standards as further specified in Section 31-420.3 the social worker shall document what active efforts were made to place the child in accord with the ICWA placement preferences and if this did not occur document reasons why this did not occur.

(a) The assessment shall include all efforts made, or to be 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. Deviation from the ICWA placement preference order, may occur only with good cause as determined by the court.

~~.312~~ The prevailing social and cultural standards of the Indian community in which the parent or extended family members reside or maintain social and cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied.

(a) Whether preference shall be given to the child's placement with one of the placement preferences defined in ICWA at 25 U.S.C. 1912(e). The ICWA placement preferences can be found at the following link: <http://www.childsworld.dss.ca.gov/>

(b) Whether Tribal placement preferences were followed as required by the ICWA at 25 U.S.C. 1912(e), and if not, documentation that there was good cause to deviate, as specified in ICWA.

~~.311,313,312~~ (Continued)

~~.312,314,313~~ - (a) (Continued)

~~.313,315,314~~ (Continued)

~~.314,316,315~~ (Continued)

~~.315,317,316~~ (Continued)

~~.316,318,317~~ (Continued)

.32 - .522 (Continued)

Authority Cited: Sections 10553, 10554, and 16501.1, Welfare and Institutions Code; and Section 17552, Family Code; and Public Law 109-288.

Reference: Sections 224.6, 224.6(b)(2), 358.1(e), 361, 361(b), 361.31, 361.31(k), 361.5, 361.7, 4094, 4094.5, 4094.6, 4094.7, 5585.58, 5600.3, 16002, 16501, 16501.1(e), and 16507, Welfare and Institutions Code; 25 USC 1912(e); ~~42 U.S.C.—Sections~~ 675(1) and 677; Sections 7901, 7911, 7911.1, 7912, and 17552, Family Code; and Sections 1502 and 1502(a)(8), Health and Safety Code; and Public Law 109-288.

Amend Section 31-310 to read:

31-310 SOCIAL WORKER RESPONSIBILITIES FOR SERVICE DELIVERY 31-310

.1 - .12 (Continued)

.13 When a child's family is being provided services in order to maintain the child in the home, take action as necessary to ensure that the child's protective needs continue to be met.

.131 In the case of an Indian child, the services to maintain the child in the home must be provided in accordance with the requirement to engage in ~~Active~~ ~~Efforts~~ to provide remedial and rehabilitative services to prevent the breakup of the Indian family as further specified in Section 31-135.23. This standard requires additional efforts on the part of the social worker to work with the child's family and tribe to identify and utilize tribally based resources that may be available to the family, such as tribal and other Indian social service agencies and organizations.

.14 - .161(d) (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.6, 361.2, 361.31, 361.7, 10850, and 16501.1, Welfare and Institutions Code; ~~and~~ Section 19, Penal Code; and 25 USC 1912(d).

Amend Section 31-315 to read:

31-315 SERVICE-FUNDED ACTIVITIES

31-315

.1 Service-funded activities shall be available to children and their families in all phases of the Child Welfare Services program as specifically identified in the child's case plan.

.11 In the case of an Indian child, social workers shall seek and make available to Indian children and their families service-funded activities that reflect the unique values of the Indian culture and promote the stability and security of Indian children, Indian families and Indian communities. Sources of such services may be found in the Indian child's tribe, ~~Indian organizations~~, Tribal TANF programs, and other Indian organizations. ICWA requires documentation when ~~Active e~~Efforts to provide these services prove unsuccessful.

.2 - .4(j)(3) (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 16501(a)(1) and (2), and 16501(b), Welfare and Institutions Code; and 25 USC 1912(a) and (d).

Amend 31-335 to read:

31-335 SOCIAL WORKER CONTACTS WITH OTHER SERVICE PROVIDERS

31-335

.1 The social worker shall have contact with other professionals working with the child, parents/guardians/Indian Custodians and the out-of-home care provider including, but not limited to, the following:

.11 - .15 (Continued)

.16 Social Workers from other counties or states providing services-

.17 In the case of an Indian child, social workers must establish and maintain contact with representatives from the child's tribe, other Indian social service agencies, Indian agencies, Indian organizations or individual Indian service providers that assist Indian children and families.

HANDBOOK BEGINS HERE

~~2~~ The purpose of social worker contact with other professionals is to achieve the following objectives:

~~21~~. (Continued)

~~22~~. (Continued)

~~23~~. (Continued)

~~24~~. (Continued)

5. Document "Active Efforts" in cases involving Indian child(ren).

HANDBOOK ENDS HERE

~~3.2~~ The social worker shall request written reports from the professionals specified in Section 31-335.1, when their services are being provided to a child, parent/guardian/Indian custodian, or the out-of-home care provider as part of a case plan.

HANDBOOK BEGINS HERE

Examples of other service providers that often work with an Indian child and family include: a tribal ICWA advocate, a tribal designated representative, a tribal spiritual leader, a Tribal TANF program, Indian Health Services, an Indian education program, or a non-tribal community agency.

HANDBOOK ENDS HERE

~~31.21~~ The social worker shall ensure that such reports are received and documented in the case record.

~~311.211~~ If the social worker is unable to obtain a written report, a verbal report shall be obtained and documented in the case record.

(a) In addition, in the case of an Indian child, social workers shall document in the case record all reports, written or verbal, obtained from tribal representatives or service providers as specified in Section 31-335.17. It is critical to maintain a clear record of all Active Efforts being provided to the Indian child and his/her family as part of the case plan. See case record requirements in Section 31-075.3(e).

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 361.3, 361.31, 361.7, 16501.1(f)–(4), (5), and (6), Welfare and Institutions Code; and 25 USC 1912 and 1913.

Amend Section 31-405 to read:

31-405 SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT

31-405

.1 When arranging for a child's placement the social worker shall:

~~(a).~~11 (Continued)

~~(b).~~12 Give preferential consideration for placement of the child to an adult who is a grandparent, aunt, uncle or sibling of the child.

~~.121~~ .121 In the case of an Indian child the first preference shall be placement with a member of the child's extended family, as defined in Section 1903(2), of 25 U.S.C. and if an extended family member is not available, then Active Efforts shall be made to comply with the ICWA placement preferences and standards as set forth in required by Section 31-420.3 shall be followed. The first preference shall be placement with a member of the child's extended family, as defined in Section 1903(2), of 25 U.S.C.

~~(4).~~122 (Continued)

~~(2).~~123 (Continued)

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The ICWA Section 1903(2) provides that an "Indian child's "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent."

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~~(e).~~13 Consider relatives identified by the social worker as willing and appropriate to care for the child if no non-custodial parent or relative given preferential consideration is available.

~~.131~~ .131 In the case of an Indian child, aActive eEfforts shall be made to comply with the ICWA placement preferences and standards as required by Section 31-420.3 for foster care placement= and shall:

(a) Consider the placement preferences of the child's tribe.

(b) Consider the Tribally Specified Home when designated as the preference of the Indian child's tribe.

(c) If adoption of the child is being considered the social worker shall take into account the ICWA preferences for adoptive placement, which absent good cause to the contrary as determined by the court, should be to are a placement with:

(1) A member of the child's extended family

(2) Other members of the Indian Tribe or

(3) Other Indian families.

~~(4).~~132 (Continued)

~~(2).~~133 (Continued)

~~(4).~~14 (Continued)

~~(4).~~141 (Continued)

~~(e).~~15 (Continued)

.16 When considering the placement of an Indian child in a Tribally Approved Home, the following requirements shall apply:

.161 The social worker must conduct the caregiver background checks on all adults (over age 18) living in the home or persons that may have significant contact with the child unless the tribe has an authorized Tribal ~~Child Welfare~~ Agency that conducts the caregiver background checks pursuant to Welfare and Institutions Code section 10553.12.

.162 If the tribe has a Tribal ~~Child Welfare~~ Agency that is approved to receive criminal and child abuse registry information from the California Department of Justice pursuant to Welfare and Institutions Code section 10553.12 the social worker shall secure documentation of the following:

(a) The Tribal ~~Child Welfare~~ Agency's certification that it has completed caregiver background checks pursuant to the standards set forth in Sections 1522 and 1522.1 of the Health and Safety Code, with respect to any prospective foster parent, adoptive parent, or any adult who resides or is employed in the Tribally Approved Home.

(1) The certification must provide the address of the home, the names of the individuals in the household that have been cleared, the date of the completion of the clearance for each individual, and if any exemptions were granted.

(2) Documentation that the Tribal ~~Child Welfare~~ Agency has agreed to report within 24 hours to the county social worker responsible for the child placed in the ~~€Tribally €Approved €Home~~, any notification to the ~~€Tribal €Agency~~ by the Department of Justice, of a subsequent state or federal arrest or disposition notification involving an individual associated with the ~~€Tribally €Approved €Home~~.

(b) The social worker shall conduct the verifications required by Section 31-445.14.

.1643 Should the social worker have any concerns about the safety of the home, the social worker must consult and collaborate with the tribe to address any concerns.

.1654 ~~Absent good cause to the contrary, €~~The social worker must follow the ICWA placement preferences, which include the Tribally Approved or Tribally Specified Home designated by the child's tribe. Deviation from the preference order may occur only with good cause, as determined by the court. The social worker must provide the court with facts and supporting evidence that justify a 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.

~~(f).~~17 (Continued)

~~(f).~~171 (Continued)

~~(A)~~ through ~~(F)~~ renumbered to (a) through (f) respectively (Continued)

~~(g).~~18 (Continued)

~~(h).~~181 (Continued)

~~(A)~~(a) (Continued)

~~(B)~~(b) (Continued)

~~(h) — Meet the requirements specified in Section 31-515 when placing an Indian child.~~

~~(i).~~19 (Continued)

~~(j).~~20 (Continued)

~~(k).~~21 (Continued)

~~(l).~~22 (Continued)

~~(m)~~.23 (Continued)

~~(n)~~.24 (Continued)

~~(1)~~.241 (Continued)

~~(o)~~.25 (Continued)

~~(p)~~.26 (Continued)

~~(q)~~.27 (Continued)

~~(r)~~.28 (Continued)

~~(s)~~.29 (Continued)

~~(4)~~ through ~~(5)~~ renumbered to .291 through .295 respectively (Continued)

~~(t)~~.30 (Continued)

~~(4)~~.301 (Continued)

(a) through (d) (Continued)

~~(u)~~.31 (Continued)

~~(v)~~.32 (Continued)

~~(w)~~.33 Document the reason(s) for the following, when applicable:

~~(4)~~.331 The child's transfer to another placement location.

(a) In the case of an Indian child, in addition to documenting the reasons for the transfer, also document the Active Efforts taken to make the transfer within the order of ICWA placement preferences as required by Section 31-420.3, which shall include making contact with the child's tribe to solicit assistance and support in identifying an appropriate placement for the child.

~~(2)~~.332 (Continued)

~~(x)~~.34 Develop a discharge plan for any child who:

~~(4)~~.341 (Continued)

~~(2).~~342 Is leaving a group home placement to return to parent(s), ~~kin~~ guardian(s), or Indian custodian(s), relative(s) or extended family member(s) or an adoptive family or to a placement in a foster family home.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code and Assembly Bill 1695, Section 21.

Reference: Sections 224.6, 309, 319, 361.2, 361.3 (~~as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997~~), 361.31, 361.4, 361.7, 309(d), 361.3, and 362.7 (~~as amended by Assembly Bill 1695, Chapter 653, Statutes of 2001~~), 10553.12, 11467.1, and 16501, Welfare and Institutions Code; ~~and~~ Sections 1505(o) and 1530.8, Health and Safety Code; 25 USC 1915 and 1931; and 45 CFR 1355.20.

Amend Section 31-406

**31-406 SOCIAL WORKER/PROBATION OFFICER RESPONSIBILITIES 31-406
FOR PLACEMENTS IN COMMUNITY TREATMENT FACILITY**

.1 - .124(b)(4) (Continued)

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(e) (Continued)

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.13 - .133 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

References: Sections 4094, 4094.5, 4094.6, 4094.7, 5585.58 and 5600.3, Welfare and Institutions Code; Sections 1502 and 1502(a)(8), Health and Safety Code; and In re Roger S. (1977) 19 Cal. 3d 921.

Amend Section 31-410 to read:

31-410 TEMPORARY PLACEMENT

31-410

- .1 Temporary placement services shall consist of emergency shelter care and out-of-home respite care.
- .2 Temporary placement services shall be provided when the social worker has considered and/or used in-home services and has determined that the provision or continued provision of these services will not safely maintain the child in his/her own home.
- .3 For temporary placement services involving an Indian child, the social worker shall, to the extent possible, collaborate with the child's tribe in an attempt to prevent the removal of the child and to solicit tribal assistance and support in the placement of the child.
 - .31 When selecting a temporary placement for an Indian child, the social worker shall, ~~to the extent possible, adhere to~~ engage in Active Efforts to place the child in compliance with the ICWA placement preference order required in Section 31-420.3.
 - .3.4 (Continued)
 - .4.5 (Continued)
 - .41.51 (Continued)
 - .42.52 (Continued)
 - .421.521 (Continued)
 - .43.53 (Continued)
 - .431.531 (Continued)
 - .432.532 (Continued)
 - .5.6 (Continued)
 - .51.61 The assessment shall include, but is not limited to, all of the following:
 - .511.611 An in-home inspection to assess the safety of the home as required in Welfare and Institutions Code Section 309(d); except in the case of an Indian child whose tribe has recommended a home they have approved according to their tribal standards, pursuant to 25 U.S.C. 1915(b).

.612 Where an Indian child is being placed in a Tribally Approved Home, the tribe's home assessment is considered as equivalent to state licensing standards applicable to foster family homes and shall be consistent with Section 31-405.4(16).

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(a) (Continued)

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~~.512~~..613 (Continued)

~~.513~~..614 (Continued)

HANDBOOK BEGINS HERE

(a) (Continued)

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~~.514~~..615 (Continued)

HANDBOOK BEGINS HERE

(a) (Continued)

(b) (Continued)

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~~.515~~..616 (Continued)

(a) through (d) (Continued)

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~~.52~~ (Continued)

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~~.6.7~~ (Continued)

~~.61~~ through ~~.66~~ renumbered to .71 through .76 respectively (Continued)

.8 ~~The temporary placement of an Indian child shall be based on the following needs of the child as well as those needs specified in Section 31-410.7 above:~~ In addition to those needs specified in Section 31-410.7, the temporary placement of an Indian child shall require Active Efforts to comply with the ICWA placement preference requirements as specified in Section 31-420.3 and shall also be based on the following:

.81 The least restrictive setting which most approximates a family-like environment and in which the child's special needs, if any, can be met.

.82 The reasonable proximity to the child's home, taking into account any special needs of the child.

.83 The prevailing social and cultural standards of the Indian child's tribe and community in which the parent or extended family members reside or maintain social and cultural ties.

Authority Cited: Sections 10553 and 10554, 16507.5(b), Welfare and Institutions Code and Assembly Bill 1695, Section 21 (Chapter 653, Statutes of 2001).

Reference: Sections ~~309 (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 319 (as amended by Senate Bill 2232, Chapter 1530, Statutes of 1990), 319(d) (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 309, 309(d), 319, 319(d), 319(f), 361.2(b), 361.2(g), 361.2(h), 361.2(e)(7), 361.31, 361.7, 362.7, 366(c), 727, 11402, 11467.1, 16501.1(c), and 16507.5(b) (as amended by Assembly Bill 1695, Chapter 653, Statutes of 2001), 361.2(b) and (g), 366(c), 11467.1, and 16501.1(e), Welfare and Institutions Code; Sections 1505(o) and 1530.8, Health and Safety Code; Sections 11170(b)(10)(A) and 11170(c), Penal Code; 25 USC 1901 et seq. and 42 U.S.C. Section 675(1)(A); and *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896.~~

Amend Section 31-420 to read:

31-420 FOSTER CARE PLACEMENT

31-420

.1 The foster care placement shall be based on the following needs of the child including, but not limited to:

.11 - .12 (Continued)

.13 In the case of an Indian child, the child's tribal affiliation and the cultural and traditional practices of the tribe shall be considered.

~~.13~~ through ~~.18~~ renumbered to .14 through .19 respectively (Continued)

.2 When selecting a foster care placement for the child, the social worker shall adhere to the following priority order:

.21 The home of a relative, including the non-custodial parent, in which the child can be safely placed as assessed according, but not limited to, the requirements specified in Welfare and Institutions Code Section 361.3.

.211 Preferential consideration for placement of the child shall be given to a non-custodial parent, then an adult who is a grandparent, aunt, uncle or sibling of the child, except that if the child is an Indian child and the non-custodial parent is not available or appropriate for placement of the child, then the placement requirements of Section 31-420.3 shall apply.

(a) (Continued)

HANDBOOK BEGINS HERE

~~.212~~ A copy of the written assessment made pursuant to Welfare and Institutions Code Section 361.3 may be made available to the appropriate adoption agency in the event that the relative(s) considered agree to become a permanency planning family, so that an abbreviated adoption assessment may be made if adoption becomes the permanency alternative implemented for the child. See ~~Section 31-410.513(a) and Sections 31-410.514(a) and (b)~~ Handbook Sections 31-410.614 and .615.

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~~.213~~.212 (Continued)

.22 - .232 (Continued)

.232 ~~(4)~~ and ~~(2)~~ renumbered to (a) and (b) respectively (Continued)

~~.25.24~~ (Continued)

~~.251.241~~ (Continued)

(a) - (b)(2) (Continued)

.3 When selecting a foster care placement for an Indian child the social worker shall engage in
~~Active~~ ~~Efforts~~ to adhere to the following ICWA placement preference requirements:

.31 The prevailing social and cultural standards of the Indian community in which the parent or extended family members reside or maintain social and cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied.

.311 A determination of the applicable prevailing social and cultural standards may be confirmed by the Indian child's tribe or by the testimony or other documented support of a qualified expert witness who is knowledgeable regarding the social and cultural standards of the Indian child's tribe.

.32 The services of the Indian child's tribe shall be used, when available, in seeking to secure a placement ~~within the order of~~ that meets their placement preferences order.

.33 The social worker shall select the least restrictive placement that most approximates a family-like environment and in which the child's special needs, if any, may be met. The placement shall be within reasonable proximity to the child's home, taking into account any special needs of the child.

.331 Preference shall be given to the child's placement with one of the following, in descending order:

(a) A member of the Indian child's extended family, which shall be defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(b) A Tribally Approved Home or a Tribally Specified Home as so designated by the Indian child's tribe.

(c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority (a state licensed home; a home certified by a licensed foster family agency).

(d) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

- .332 A tribe may establish a different preference order, which must be followed so long as the placement is in the least restrictive setting appropriate to the particular needs of the child.
- .333 Deviation from the preference order may occur only with good cause, as determined by the court, which may include but not necessarily be limited to the following:
- (a) The request of the parent or Indian custodian;
 - (b) The request of the Indian child, when of sufficient age;
 - (c) The extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness; or
 - (d) The unavailability of suitable families based on documented ~~Active~~ ~~Efforts~~ to identify families meeting the preference criteria.
- .334 The social worker must provide the court with 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.
- .34 When no preferred placement is available, ~~Active~~ ~~Efforts~~ shall be made and documented 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.
- .35 A record of each placement shall be maintained in perpetuity, including the ~~Active~~ ~~Efforts~~ made to comply with the placement preference order, and the placement history shall be available to the Secretary of the Interior and/or the child's Indian tribe, upon request to the county.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code and Assembly Bill 1695, Section 21 (Chapter 653, Statutes of 2001).

Reference: Sections 309(d), 319(f), 361.2(b), 361.2(e)(2) and (3), 361.2(g) and (h), 361.3, (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 309(d), 319(f), 361.2(h), 727, 11402, and 16507.5(b) (as amended by Assembly Bill 1695, Chapter 653, Statutes of 2001), 361.31, 361.31(h), 361.31(j), 361.7, 366(c), 727, 4094, 4094.5, 4094.6, 4094.7, 5585.58, 5600.3, ~~16501.1(b) and (c)~~, 11402, 11467.1, 16501.1(b) and (c), and 16507.5(b), Welfare and Institutions Code; Sections 1502, 1502(a)(8), and 1530.8, Health and Safety Code; Section 275, Civil Code; 25 USC 1915; ~~42 U.S.C. Section 671(1)(A)~~; and Public Law 105-89 (Adoption and Safe Families Act of 1997).

Amend Section 31-425 to read:

31-425 PERMANENT PLACEMENT

31-425

- .1 The permanent placement shall be based on the following needs of the child including, but not limited to:
 - .11 (Continued)
 - .12 The child's age, sex, tribal affiliation and cultural background, including racial or ethnic and religious identification.
 - .13 Capability of a relative, Indian custodian, the out-of-home care provider(s), adoptive parent(s), or guardian(s) to meet the specific needs of the child.
 - .131 (Continued)
 - .132 (Continued)

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~~.133 See Handbook Sections 31-410.513(a), .514(a) and (b), and .52 .614, .615, and .616(d).~~

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- .133 In the case of an Indian child, capacity to encourage and protect the child's retention of connections to its tribe.
- .14 - .16 (Continued)
- .2 When selecting a permanent placement for the Indian child, the social worker shall adhere to the priority order specified in Sections 31-201.121(c)(~~23~~)(A)2 through ~~(C)~~7.
 - .21 When selecting a permanent placement for an Indian child that may involve the adoption of the child or termination of parental rights, the social worker shall adhere to the adoptive placement preference standards specified in Sections 31-201.121(c)(3)(A)2 through 7.
 - .22 When the permanent placement of an Indian child may involve a foster care or guardianship placement the social worker shall adhere to the placement preferences standards specified in Section 31-420.3.

.23 When selecting a permanent placement of the Indian child, the social worker shall consider and consult with the child's tribe regarding Tribal Customary Adoption.

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The Indian child's tribe is the only entity that can elect Tribal Customary Adoption as the permanency option for the child. The tribe may express a preference for a different option. (WIC section 366.26(c)(1)(B)(VI)). No tribe is required to elect Tribal Customary Adoption.

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.3 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224, 361.2, and 361.3 (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 361.31, 366.24, 366.26, 366.27 (as amended by AB 2129, Chapter 1089, Statutes of 1993), 16501 and 16501.1, Welfare and Institutions Code; and Section 275, Civil Code; and 25 USC 1915.

Amend Section 31-430 to read:

31-430 ADDITIONAL REQUIREMENTS FOR VOLUNTARY PLACEMENTS

31-430

- .1 (Continued)
- .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.
 - .21 If the voluntary placement is of an Indian child, the consent to the placement shall be the written consent of a parent or Indian custodian and comply with the following:
 - .211 The consent must be recorded no less than ten days after the birth of the child, in the presence of the judge of the Superior Court on SOC form 155C;
 - .212 The judge must certify that the terms and consequences of the consent were fully explained in detail and that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language the person understood; and
 - .213 The parent or Indian custodian is informed that consent may be withdrawn for any reason at which time the child must be returned to the parent or Indian custodian.
 - .214 If the child is or may be an Indian child, ICWA notice shall be conducted as set forth in Section 31-125.7.
 - .22 In the situation where the placement may no longer be voluntary, in that there is a determination the child will not be returned to the parent(s)/guardian(s)/Indian custodian(s), the social worker must comply with the requirement to engage in Active Efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to comply with the ICWA placement preferences.
- .3 The social worker shall:
 - .31 (Continued)
 - .32 Provide a written statement informing the parent(s)/guardian(s)/Indian Custodian(s) that he/she may be responsible for a share of the family reunification services costs.

.33 Assist the parent(s)/guardian(s)/Indian Custodian(s) of voluntarily placed children to understand that he/she still retains legal custody of the child even though he/she voluntarily places the child with the agency; and that he/she may limit, by written agreement, the scope of the foster parent's authority to give parental consent.

.34 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 224.3, 16507.2, 16507.3, and 16507.4, Welfare and Institutions Code; Sections 8606.5 and 8620, Family Code; 25 USC 1903 et. seq.; and California Rules of Court, rule 5.481.

Amend Section 31-445 to read:

31-445 REQUIREMENTS FOR APPROVAL OF RELATIVE AND 31-445
NONRELATIVE EXTENDED FAMILY FOSTER FAMILY HOMES

.1 Prior to the placement of a child in a relative or nonrelative extended family member home, the child welfare agency shall assess the home and the caregiver to the approval standards by completing the following requirements:

.11 (Continued)

.12 An in-home evaluation of the home to verify that the home meets the health and safety standards set out in Title 22, Division 6, Chapter 9.5, Article 3 of the California Code of Regulations and has no safety defects that could pose a hazard to the child; except in the case of an Indian child being placed in a Tribally Specified or Approved Home, the home shall be evaluated as specified in Section 31-405.16.

.13 (Continued)

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~~.131~~ (Continued)

~~.132~~ (Continued)

~~.133~~ (Continued)

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.14 - .142 (Continued)

.2 Prior to the issuance of an approval document the agency must ensure the caregiver and home meet all the standards in California Code of Regulations, Title 22, Division 6, Chapter 9.5, Article 3, Caregiver Standards; except that in the case of an Indian child being placed in a Tribally Approved Home, the home shall be evaluated as specified in Section 31-405.16.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code; and Assembly Bill 1695, Section 21 (Chapter 653, Statutes of 2001).

Reference: Sections 309, 319, 361.2, 361.3, 361.31, 361.4, 361.5, 362.7, 366, 366.1, 727, 11400, 11401, 11402, 11461, 16504.5, 16507.5, 16507.5(b), and 16518, Welfare and Institutions Code; Section 11105.2, Penal Code; ~~and~~ Sections 1505, 1521.5, 1521.6, 1522, and 1525.5, Health and Safety Code; and 25 USC 1915 and 1931.

Amend Section 31-510 to read:

31-510 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)

31-510

.1 - .134 (Continued)

.2 The ICPC shall not be applicable ~~when a potential foster family makes a routine inquiry or application to an agency in a member state other than the state of the family residence.~~ between member states under the following circumstances:

.21 When a potential foster family makes a routine inquiry or application to an agency in a member state other than the state of the family residence.

~~.21.211~~ (Continued)

.22 The ICPC shall not be applicable to any placement (sending or receiving) of an Indian child if the placement is made:

.221 between an Indian tribe and another Indian tribe; or

.222 between a county compact member and ~~an Indian~~ a Tribal court that is assuming jurisdiction of the Indian child's case.

.3 - .91 (Continued)

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 7900, 7901, 7906, 7907.3, 7911, 7911.1 and 7912, Family Code; ~~and~~ Sections 361.2(c), 361.2(d), 361.21, 727.1, 16501.1(f)(4), and 16516.5, Welfare and Institutions Code; and Association of Administrators of the Interstate Compact on the Placement of Children Regulation No. 11.

Repeal Section 31-515, in its entirety

~~31-515 INDIAN CHILD WELFARE ACT (ICWA) PROVISIONS 31-515~~

- ~~.1 When a dependency petition is initiated by the social worker on behalf of a child who is or may be an Indian child the social worker shall:~~
- ~~.11 Identify in the petition that the child is or may be an Indian child as defined by the ICWA.~~
- ~~.111 To make such a determination, the social worker shall ask the child, his parent or custodian whether the child is or may be a member of an Indian tribe, or whether the child identifies himself/herself as a member of a particular Indian organization.~~
- ~~(a) When there is any oral or written information which indicates that the child is or may be an Indian child, the social worker shall:~~
- ~~(1) Obtain the name, address, date of birth, and tribal affiliation of birth parents, grandparents, and great grandparents.~~
- ~~(2) Obtain the name and address of tribal governing organizations.~~
- ~~(3) Complete Request for Confirmation of Child's Status as an Indian (SOC 318).~~
- ~~(4) Obtain a copy or photocopy of the child's state certified birth certificate.~~
- ~~(5) Send completed Request for Confirmation of Child's Status (SOC 318) and the birth certificate to the Bureau of Indian Affairs (BIA), Attention Tribal Operations for a determination as to whether or not the child is an Indian as defined by the ICWA.~~
- ~~.112 If a determination is made that a child is or may be an Indian child as defined by the ICWA after the initial petition is filed with the court, the county shall file an amended petition notifying the court of this determination.~~
- ~~.12 Give notice to the Indian child's parent(s) or Indian custodian(s) and the child's tribe(s), by registered mail with return receipt requested, of the pending proceedings and their right to intervene at any point in the proceedings. This notice shall be sent on Form SOC 319 "Notice of Hearing" and must be received by the Indian child's parent(s) or custodian and tribe no later than 10 days prior to the hearing date.~~

~~.121 When the identity or location of the parent(s), Indian custodian(s), or tribe cannot be determined, notice shall be given to the Secretary of the Interior (Secretary) by registered mail, return receipt requested.~~

~~(a) Notice to the Secretary shall be mailed to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California, 95825.~~

~~(b) The notice shall include the following information if known:~~

~~(1) Indian child's name, birthdate, and birthplace.~~

~~(2) Indian child's affiliation.~~

~~(3) Name, birthdate, birthplace and mother's maiden name of the Indian child's parent(s) or Indian custodian(s).~~

~~(4) A copy of the petition, complaint, or other document by which the proceeding was initiated.~~

~~.122 The Secretary will have 15 days from receipt of notice to provide the required notice in Section 31-515.12 to the parent(s), Indian custodian and tribe.~~

~~HANDBOOK BEGINS HERE~~

~~.123 A tribe, parent or Indian custodian entitled to notice of the pending of a child custody proceeding has a right, upon request to the court, to be granted an additional 20 days from the date upon which notice was received to prepare for participation in the proceeding.~~

~~HANDBOOK ENDS HERE~~

~~.13 Document efforts made to provide services and rehabilitative programs designed to prevent the breakup of the Indian family, and that such efforts were unsuccessful.~~

~~.131 It shall not be necessary to show such efforts have been made in emergency situations prior to temporary removal from the home where it is determined that, even with reasonable services being provided, such removal is essential to protect the child from serious physical or emotional damage.~~

~~(a) Efforts to provide services shall be made subsequent to such emergency removal.~~

- ~~.132~~ Where an emergency situation exists and it has been determined that an Indian child must be temporarily removed from the home, the worker shall make efforts to place the child in an Indian home, and shall notify the appropriate Indian tribal entity of the removal in order to solicit tribal assistance and support in the placement of the child.
- ~~.14~~ Present to the court clear and convincing evidence, by qualified expert witnesses in addition to testimony of county staff involved in the dependency action, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Where the county provides the expert witness, the witness shall be:
- ~~.141~~ A person other than the social worker who initiated the dependency action and:
- ~~(a)~~ 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 child rearing practices; or
 - ~~(b)~~ A lay expert witness who has substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or
 - ~~(c)~~ If a person described in Section 31 515.141(a) or (b) is not available a professional person who has substantial education and experience in the area of his or her specialty.
- ~~.2~~ If at the time of the dependency court appearance, no determination has been made regarding the child's status as an Indian child, as defined by the ICWA, the social worker shall:
- ~~.21~~ Advise the court of all information which indicates that the child may be an Indian child.
 - ~~.22~~ Advise the court of all efforts made to establish the child's status as an Indian child.
 - ~~.23~~ Request direction from the court on how to proceed with the dependency action.
 - ~~.24~~ Continue contacts with the BIA until the question of the child's status as an Indian child, as defined by the ICWA, has been resolved and the resolution is documented in the case record for future reference.

~~.3 The provisions of Section 31-515 et seq. shall be met when a petition for continued detention is filed by the social worker on behalf of an Indian child.~~

~~Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code.~~

~~Reference: 25 USCA Section 1901 et. seq.~~

Repeal Section 31-520, in its entirety

~~31-520 PLACEMENT OF INDIAN CHILDREN 31-520~~

~~.1 In addition to the placement requirements specified in Chapter 31-400, the following requirements shall also apply when placing Indian children:~~

~~.11 The standards to be applied in Indian child placements shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family member maintains social and cultural ties.~~

~~.12 In any placement of an Indian child, the agency shall select the least restrictive placement which most approximates a family.~~

~~.121 Unless there is good cause to the contrary or the child's tribe establishes a different order of preference by resolution, the order of placement preference shall be as follows:~~

~~(a) A member of the Indian child's extended family.~~

~~(b) A foster home approved, specified or licensed by the Indian child's tribe.~~

~~(c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.~~

~~(d) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.~~

~~.13 The order of placement preference specified in Sections 31-520.121(a) through (d) shall not override current state licensing regulations.~~

~~.14 Licensure by an Indian child's tribe shall not constitute licensure by the state, nor shall licensure by the state constitute licensure by the Indian child's tribe.~~

~~.2 When an Indian child's parent(s) or Indian custodian voluntarily consents to a foster care placement, the following requirement shall be met:~~

~~.21 The authorized agency official and the Indian child's parent(s) or Indian custodian shall appear together before a judge of the Superior Court to sign the consent Form SOC 155-C.~~

~~.211 If a parent wishes to make a voluntary foster care placement of a newborn through a licensed adoption agency, and is considering relinquishment of the newborn to the agency, the appearance before the judge shall not be required~~

~~unless the foster care placement continues for more than 30 calendar days because the relinquishment is not taken within such time period.~~

~~.22 In the presence of the judge and before the consent can be signed, the agency official shall explain the terms and consequences of the consent in detail to the Indian child's parent(s) or Indian custodian in a language understood by the parent(s) or Indian custodian.~~

~~.23 For the consent to be valid, it shall be necessary for the judge to certify in writing that the terms and consequences of the consent were fully explained in detail and fully understood, including that:~~

~~.231 The consent may be withdrawn and the child returned to the parent(s) at any time.~~

~~.232 The placement of the child will be in accordance with the order of placement preference specified in Sections 31-520.121(a) through (d).~~

~~(a) When a consenting parent evidences a desire for anonymity, the agency shall inform the court of the desire and shall request direction from the court in applying the preferences.~~

~~.233 The return of the child shall be within an agreed-upon time period, ordinarily not to exceed three working days. In no case shall the return of the child require more than seven calendar days following the parent's request.~~

~~.24 Any consent given prior to or within ten working days of the birth of the Indian child shall not be valid.~~

~~.241 During such time period, the child shall be provided with necessary child protective services.~~

~~.3 Requirements regarding case records shall include the following:~~

~~.31 All Indian child placements shall be clearly documented on the placement history Form SOC 153.~~

~~.32 Efforts to comply with the placement preference order specified in Sections 31-520.121(a) through (d) shall be documented, and any deviations to the order shall be fully explained.~~

~~.33 The placement history shall be available to the Secretary of the Interior and/or the child's Indian tribe, upon request to the county.~~

~~Authority Cited Sections 10553 and 10554, Welfare and Institutions Code.~~

~~Reference: 25 USCA Section 1901 et seq.~~

ADDENDUM TO THE INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations are Necessary

Section 31-001.32Specific Purpose:

This section is modified to inform social workers of state policies regarding the provision of services to Indian children as integrated throughout the Division 31 regulations in Chapters 31-000 through 31-500. This change is made to remove the cross references to prior provisions and requirements related to the Indian Child Welfare Act (ICWA) of 1978 [Public Law (P.L.) 95-608] codified at Title 25 of the United States Code (U.S.C.) section 1901, et. seq. which are currently in the Manual of Policies and Procedures (MPP) sections 31-515 and 31-520. The ICWA requirements will now be included throughout the MPP Division 31 regulations so that social workers are made aware of their duty to comply with the specific requirements of ICWA and its correlating California statutes at the various decision making points of a child welfare case.

Factual Basis:

This section is necessary to inform and clarify for, social workers regarding practice requirements that Senate Bill (SB) 678 (Chapter 838, Statutes of 2006) added in Welfare and Institutions Code (WIC) section 224 related to legislative findings on the application of ICWA in California.

Until now, the minimum federal standards for Indian child custody proceedings as required in the ICWA were separated from the rest of Division 31 regulations into Sections 31-515 and 31-520. Current references in Sections 31-515 and 31-520 for compliance with ICWA are no longer sufficient because of the more extensive and/or higher specification of standards enacted by Senate Bill (SB) 678 (Chapter 838, Statutes of 2006), which incorporated ICWA into the Welfare and Institutions, Family and Probate Codes. Assembly Bill (AB) 1325 (Chapter 287, Statutes of 2009) on Tribal Customary Adoptions, AB 2418 (Chapter 468, Statutes of 2010) changing the definition of an Indian child per California law, SB 1460 (Chapter 772, Statutes of 2014) adding provisions related to Tribally Approved Homes and the transfer of information to tribes and recently promulgated 45 Code of Federal Regulations (CFR) part 1356.67 regarding the transfer of Indian children to tribal Title IV-E programs by state agencies. In order to assure compliance with these significant statutes, the regulations will now reference Indian child welfare requirements throughout the regulations to promote and assure compliance throughout the life of an Indian child's case.

Further, feedback from social workers, tribal representatives and other stakeholders has been that keeping the ICWA related standards and requirements separate from the rest of Division 31 in Sections 31-515 and 31-520, diminishes knowledge, understanding and compliance with ICWA and the cited laws and regulations. The alternatives that California Department of Social Services (CDSS) has used have included All County Letters (ACLs) or All County Information Notices (ACINs) on the above referenced laws and regulations. However, ACLs or ACINs are less effective than regulations, as they can be overlooked or not uniformly distributed to line staff. Therefore, by incorporating these requirements throughout the regulations and providing for standardized application will promote compliance with the critical requirements associated with Indian children.

Final Modification:

Although no changes to the regulation text were made, AB 403 (Chapter 773, Statutes of 2015) is added as a document relied upon which made modifications to provisions contained in SB 1460 (chapter 772, Statutes of 2014) related to 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.

Section 31-001.33

Specific Purpose:

This section is adopted to inform social workers of state policy on the "best interest" standard for Indian children to encourage and protect their connection to their tribe and tribal community, regardless of whether the child is in the physical custody of the Indian parent(s) or Indian custodian(s) at the commencement of the proceeding, whether the parental rights of the child's parent have been terminated or regardless of where the child resides.

Factual Basis:

This section is necessary because SB 678 added WIC section 224 related to legislative findings on the application of ICWA in California. This section is adopted to insure that the best interest standard specifically applicable to Indian children is made clear and implemented.

Final Modification:

Made Technical language change by adding "the" and added Section 31-001.331 in response to comments.

Section 31-001.331

Specific Purpose:

Section 31-001.331 is added in response to public comments for Section 31-001.33 regarding the need to further clarify that the ICWA was intended to protect not only the rights of Indian children but also the rights of tribes in retaining their children as a part of their nations. This change is made based on the 2015 Bureau of Indian Affairs Guidelines for State Courts and Agencies in Indian Custody Proceedings (2015 BIA Guidelines) section C.3 which clarifies the intent of the ICWA. Because these guidelines are referenced throughout this document, we call this to the attention of the reader and will not repeat the reference to the reason for this change.

Factual Basis:

In response to public comments, this change is made based on the 2015 BIA Guidelines; section C.3 to states that "good cause" should also consider that the ICWA seeks to protect not only the rights of the Indian child but also the rights of Indian communities and tribes in retaining their Indian children. This regulation change is a substantial duplication of 2015 BIA Guidelines, which is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Handbook Section 31-001.36 Renumbered from Section 31.001.351

Specific Purpose/Factual Basis:

This Handbook Section is amended to delete the outline numbering and is renumbered from Section 31-001.351 to Handbook Section 31-001.36.

Section 31-002(a)(1)

Specific Purpose:

This section is adopted to provide a definition of "active efforts" to add consistency and understanding of the requirement as applicable to the provision of remedial efforts to prevent the removal of an Indian child. It is also amended to specify the augmentation in California law of active efforts to comply with ICWA placement preferences as set forth in WIC section 361.31(k). The SB 678 further added that there is to be documentation of active efforts to comply with ICWA placement preferences thereby augmenting the protections of ICWA. 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." Instead of duplicating language, this section cross references those sections within the regulations that further clarify the application of "active efforts" as adopted in California.

Factual Basis:

The adoption of this section is necessary to provide clarity by providing a definition that is consistent with the ICWA at 25 U.S.C. section 1912(d) and WIC sections 361.31(k) and 361.7.

Final Modification:

In response to public testimony, this section was modified to incorporate more specifically the language from the 2015 BIA Guidelines, which state "Active Efforts are intended primarily to maintain and reunite an Indian child with his or her family or tribal community." The CDSS agreed the language helps to clarify the broader interest of ICWA in application of Active Efforts that go beyond the interests of the nuclear family.

The regulation was also modified to reference the examples of Active Efforts contained in the 2015 BIA Guidelines. Multiple commentators opined that the examples would provide needed guidance to social workers on appropriate actions that could constitute Active Efforts. The regulation was thus amended to reference the examples and a new handbook section was added to list the examples.

Further, per public comments, the term "Active Efforts" has been capitalized throughout the proposed regulations.

Handbook Section 31-002(a)(1)

Specific Purpose/Factual Basis:

This handbook section was added for ease of reference in response to multiple commentators that CDSS should include the examples of Active Efforts provided by the BIA in their 2015 Guidelines, section A. The list provides examples of Active Efforts that CDSS considered potentially helpful to social workers.

Section 31-002(c)(25)

Specific Purpose:

In response to the public testimony to incorporate the definition of contact already in the existing Division 31 Manual of Policies and Procedures, Section 31-002(c)(25) was added and modified to include Indian Custodian(s), the child's tribe, tribal providers and Indian organizations as parties with whom a social worker or other persons authorized to make case contacts.

Factual Basis:

This addition is necessary to make clear that social workers must include Indian custodian(s), the child's tribe, tribal providers and Indian organizations in the parties with whom a social worker will make contact when developing an Indian child's case plan. This is consistent with the ICWA section 1903(6) and throughout the act.

Section 31-002(i)(3)(A)

Specific Purpose:

This section is amended to make consistent the definition of an Indian child with the definition in ICWA.

Factual Basis:

This is a technical amendment to make the definition in the regulations consistent with the definition of Indian child in ICWA at 25 U.S.C. Section 1903(4) and as provided for in Section 30 of SB 678 which added WIC section 224.1(a) pertaining to definitions related to Indian child custody proceedings. This regulation is a substantial duplication of 25 U.S.C. Section 1903(4) and WIC section 224.1(a), which is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Final Modification:

In response to the public testimony to mirror the language in the Welfare and Institutions Code section 224.1 and in the federal definition of "Indian child(ren)" this section was modified to remove the "who" wording herein.

Section 31-002(i)(3)(A)1

Specific Purpose:

This section is adopted to provide that when a dependency case continues beyond age 18, the child will continue to be defined as an Indian child and ICWA standards will continue to apply, unless the youth or the youth's attorney on behalf of the youth, elects to no longer have the ICWA standards applied in their case. As codified in WIC section 224.1(b), AB 2418, Section 1, expands the definition of an Indian child to continue up to age 21 and thus continues to provide protections to tribes, families and children in certain custody proceedings involving Indian children who are no longer minors, but are still under the jurisdiction of the dependency court. By expanding the definition of an Indian child, AB 2418 expanded the application of ICWA. This regulation further incorporates the provision from the statute that allows a child or an attorney on the child's behalf to choose to no longer have ICWA applied to the case.

Factual Basis:

This section is necessary because social workers need to be aware that ICWA would continue to apply where an Indian child's dependency case remains under the court's jurisdiction beyond age 18. The adoption of this section is necessary to inform and provide clarification on the application and effect of changes made by AB 2418 (Chapter 468, Statutes of 2010) Section 1, regarding the definition of an Indian child. This regulation is a substantial duplication of WIC section 224.1(b) as amended by AB 2418, which is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Final Modification:

In response to the public testimony for Section 31-002(i)(3)(A), the Department also adjusted language in the Section 31-002(i)(3)(A) subsection (A)1 to reflect the Indian child's right to decline the application of ICWA to their case.

Section 31-002(i)(3)(C)

Specific Purpose:

This section is amended for clarity by making the definition of Indian child's parent consistent with the definition in the ICWA.

Factual Basis:

This is a technical amendment necessary to provide clarity and consistency in the definition of an Indian child's parent with ICWA, at 25 U.S.C. section 1903(9). This regulation is a substantial duplication of 25 U.S.C. section 1903(9) and as codified in WIC section 224.1(b), which is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Final Modification:

In response to public comments this section was modified per a provision in the 2015 BIA Guidelines section A.2 that clarifies that an unwed father may qualify as a "parent" by taking specified reasonable steps to establish or acknowledge paternity. This regulation change is a substantial duplication of the 2015 BIA Guidelines, which is necessary to provide clear program requirements to the workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Section 31-002(i)(3)(H)

Specific Purpose/Factual Basis:

This section was renumbered from Section 31-002(i)(3)(H) to Section 31-002(i)(3)(I) due to adopting "ICWA" definition in sequence and inserting in alphabetical order as Section 31-002(i)(3)(E).

Final Modification:

Section 31-002(i)(3)(I) is reverted to Section 31-002(i)(3)(H) due to the explanation below.

In response to public comments Section 31-002(i)(3)(H), as proposed, is deleted as this definition is now titled Tribal Court as commenters did not deem it necessary to include "Indian" in the title as this is not used in the definition of tribal court in the ICWA definitions at 25 U.S.C. section 1903(12). Hence this section is moved to Section 31-002(t)(8) and language was modified to clarify that a Tribal court is a court with jurisdiction over child custody proceedings; including a Court of Indian Offenses.

Section 31-002(n)(3)

Specific Purpose:

The adoption of this section adds a definition for a "Non-federally recognized tribe."

Factual Basis:

California has over 109 federally recognized tribes and an estimate of non-federally recognized tribes minimally range from 35 to 65. The inclusion of a definition for a "non-federally recognized tribe" is necessary to provide clarity and consistency of understanding of what is a non-federally recognized tribe as provided in SB 678, Section 45, which added WIC section 306.6 to permit, at the discretion of a dependency court, that a non-federally recognized tribe may participate in what would otherwise be an ICWA covered child custody proceeding. The ICWA applies to children from federally recognized tribes pursuant to ICWA, U.S.C. section 1903(8). Children belonging to non-federally recognized tribes are thus otherwise excluded from the protections of ICWA.

Final Modification:

Made technical edit to "Non-Federally Recognized Tribe(s)" by adding "(s)."

Section 31-002(p)(8)

Specific Purpose:

This section is amended to expand the definition of pre-placement preventive services to include the duty to conduct active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian child's family.

Factual Basis:

The amendment to this section is necessary to clarify that there is a duty to engage in active efforts as part of pre-placement preventive services for an Indian child. This is consistent with active efforts as required by ICWA at 25 U.S.C. section 1912(d), WIC section 361.7(b) and in California Rules of Court, rule 5.484(c).

Final Modification:

Made general grammatical changes.

Section 31-002(q)(1)

Specific Purpose:

This section is adopted to provide a definition for a "qualified expert witness" to add consistency and understanding throughout the regulations.

Factual Basis:

This section is adopted because it is necessary to provide clarity and consistency in identifying who can be considered an expert witness and to better implement the qualified expert witness requirement when there is a proposed foster care placement or proposed termination of parental rights (TPR) of an Indian child as specified by ICWA at 25 U.S.C. section 1912(e) and in WIC sections 224.6, 361(c)(6), 361.31(f) and 361.7(c).

Final Modification:

Public comments suggested that the definition of a Qualified Expert Witness (QEW) should be revised and made consistent with the 2015 BIA guideline and include that the order is a hierarchy. We are limited in the extent to which we can reconcile the BIA guidelines on QEW that 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 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 that 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.

In addition, response to the public comments this section is modified to include that a QEW should have specific knowledge of the Indian tribe's culture and customs consistent with the BIA Guidelines.

Section 31-002(t)(7)

Specific Purpose:

This section is adopted to provide a definition for "Tribal Child Welfare–Agency" as specifically applicable to a tribal agency authorized to conduct criminal and child abuse background checks for the purpose of foster or adoptive placement in Tribally Approved Homes.

Factual Basis:

This section is necessary to inform social workers regarding the specific definition and context in which a Tribal Child Welfare Agency is authorized to clear individuals for the purpose of foster or adoptive placement of an Indian child. SB 1460 (Chapter 772, Statutes of 2014) enacted Penal Code section 11105.08 and amended Section 11170(b)(8) to authorize a Tribal Child Welfare Agency to receive criminal and child abuse background information for the purpose of clearing individuals for foster or adoptive placement of Indian children. Section 10553.12 of the WIC enacted by Section 15 of SB 1460 defines a Tribal Child Welfare Agency as applicable to tribal agencies with authority to receive criminal and child abuse information and approve foster or adoptive homes for Indian children.

Final Modification:

This definition was modified to change Tribal Child Welfare Agency to Tribal Agency in light of AB 403, Chapter 773, Statutes of 2015, which modified the definition in Welfare and Institutions Code section 10553.12 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. The definition also added provisions from AB 403 that specified authority by the tribal entities to grant exemptions and the addition of persons subject to such background checks, any person who has a familial or intimate relationship with any person living in the home of the applicant, who may have contact with a child. This section is a substantial duplication WIC Section 10553.12 for the purpose of specific applicability. This section is also modified to make technical changes identified by CDSS.

Section 31-002(t)(8)

Specific Purpose:

This is a technical amendment to make the title of the definition of tribal court consistent with the definition in ICWA 25 U.S.C. section 1903(12).

Factual Basis:

The CDSS has used the terminology of "Indian tribal court" for purposes of locating "Indian" and ICWA related definitions in close proximity to each other. However, in response to public comments, the title of this definition was modified to remove "Indian" from "Tribal Court" to make this definition consistent with federal and state law, the California Rules of Court and the 2015 BIA Guidelines that refer to "tribal court." This definition is modified to remove "which is either" and add "including" to a Court of Indian Offenses. Additionally, there are minor edits to this section to make technical changes identified by CDSS. Section 31-002(i)(3)(H) is deleted and moved to Section 31-002(t)(8) to accommodate the title change after dropping the "Indian" in the title "tribal court." Further, the subsequent sections are renumbered from Sections 31-002(t)(8) through (t)(12) to Section 31-002(t)(9) through (t)(13) due to the movement of Section 31-002(i)(3)(H).

Section 31-002(t)(9) was renumbered from Section 31-002(t)(8)

Specific Purpose:

This section is adopted to provide a definition for "Tribal Customary Adoption (TCA)" and to provide consistency and understanding throughout the regulations.

Factual Basis:

Tribal Customary Adoption is a permanency alternative for dependent Indian children authorized by AB 1325 (Chapter 287, Statutes of 2009) and WIC section 366.24. Feedback from social workers and stakeholders, including tribal representatives, has been that there is a need in regulation to provide guidance on when assessments and consideration of Tribal Customary Adoptions must be made throughout the life of an Indian child's case. Tribal Customary Adoptions becomes an option for an Indian child as early as the dispositional hearing; social worker assessments and consultation with the tribe continue through to the finalization of the adoption.

Final Modification:

In response to public comments and on further review, CDSS has modified the definition of "Tribal Customary Adoption" to bring the definition more in line with the definition at WIC section 366.24. We have also added further specification that this type of adoption applies to an Indian child that is a dependent of a county court. Section 31-002(t)(8) was renumbered to Section 31-002(t)(9) due to the addition of the "Tribal Customary Adoption (TCA)"

Section 31-002(t)(10) was renumbered from Section 31-002(t)(9)

Specific Purpose:

This definition is adopted to provide a definition for "Tribal Temporary Assistance to Needy Families (TANF)."

Factual Basis:

This section is necessary and adopted to define Tribal TANF to clarify use by social workers. This term is used to clarify culturally appropriate services that may be available to Indian families when active efforts are utilized to the prevent breakup of the Indian family.

Final Modification:

Section 31-002(t)(10) was renumbered to Section 31-002(t)(11) due to the movement of the definition of Tribal Court to Section 31-002(t)(8).

Section 31-002(t)(11) was renumbered from Section 31-002(t)(10)

Specific Purpose:

This definition is adopted to provide a definition for a "Tribal Title IV-E Agency" to inform and clarify that there are tribes, consortium of tribes or tribal organizations that have entered into agreements with either the state or federal government to have oversight of their own foster care program and to draw down Title IV-E funding for cases of Indian children in their care.

Factual Basis:

The adoption of this section is necessary so that social workers are aware and understand that there are and will be tribes or tribal organizations that have such agreements as noted above. This addition is consistent with the provisions in WIC section 10553.11, which authorizes the Director of the Department of Social Services to enter into Title IV-E agreements.

Final Modification:

Section 31-002(t)(10) was renumbered to Section 31-002(t)(11) due to the movement of the definition of Tribal Court to Section 31-002(t)(8). There were no other modifications to this section.

Section 31-002(t)(12) was renumbered from Section 31-002(t)(11)

Specific Purpose:

This definition is adopted to provide a definition for a "Tribally Approved Home" and for consistency and understanding throughout the regulations and in practice. Further, this clarifies that "Tribally Approved Homes" are not subject to state licensing requirements for foster care and are an option for placement of the Indian child.

Factual Basis:

The adoption of this definition is necessary to clarify that a "Tribally Approved Home" is a home approved, licensed or specified by the tribe of the Indian child that is the subject of the child custody proceeding. While guidance has been provided through ACIN number I-86-08, it is not an effective alternative because the ACIN does not have the strength of regulations. This definition is consistent with the ICWA Sections 1915(b)(ii) and 1931(a)(1) of Title 25 U.S.C., 45 CFR part 1355.20 and HSC section 1505(o)(1) and (2). Such homes are authorized placement options as "foster homes" in accord with 25 U.S.C. section 1915, which provide that tribes can approve or specify homes for the placement of Indian children.

Final Modification:

Section 31-002(t)(11) was renumbered to Section 31-002(t)(12) due to the movement of the definition of Tribal Court to Section 31-002(t)(8). Changed "received" to "draw down" to clarify the expensing of Title IV-E funding. After further internal review, in light of systemic changes to how foster and adoptive homes are approved, it was determined more accurate to cite the Health and Safety Code background check sections rather than Welfare and Institutions Code section 361.4, which is currently applicable to relative approval processes.

Section 31-002(t)(13) was renumbered from Section 31-002(t)(12)

Specific Purpose:

This section it adopted to add the definition of "Tribally Specified Home." This definition was added to provide clarification of the term for social workers and to differentiate between "Tribally Approved Homes" and "Tribally Specified Homes." It is referred to extensively when discussing placement preferences according to ICWA. It has been expressed by county and tribal representatives that there is a need for clarification on the distinction between a "Tribally Specified Home" and a "Tribally Approved Home." In practice, a tribe can specify a home that can come from multiple potential placement options including a home that the tribe has licensed. For example, a tribe can license a home and specify that home as its preference for the placement of its tribe's child. In another scenario, the tribe may accept a home licensed by the state or county as the appropriate placement option which meets the needs of the child.

Factual Basis:

This definition is consistent with the ICWA, 25 U.S.C. sections 1915(b)(ii) and 1931(a)(1), 45 CFR part 1355.20 and HSC sections 1505(o)(1) and (2). Such homes are authorized placement options as "foster homes" in accord with WIC section 361.2(e)(7) and 25 U.S.C. section 1915, which provide that tribes can approve or specify homes for the placement of Indian children.

Final Modification:

Section 31-002(t)(12) was renumbered to Section 31-002(t)(13) due to the movement of the definition of Tribal Court to Section 31-002(t)(8). There is a technical change by adding a quotation mark.

Section 31-003(j)(2)

Specific Purpose:

This section is adopted to incorporate by reference the ICWA-20 "Parental Notification of Indian Status." The petitioner in child custody cases as specified in WIC section 224.1(d) must ask each of the child's parents (if available) about Indian ancestry and tribal connections in order to determine whether further requirements of the ICWA, implementing California statutes and rules of court may apply to the proceeding. This form is required and there are no substitutes permitted.

Factual Basis:

This form is required to be used if a parent, guardian or Indian custodian states they are enrolled, eligible for enrollment in a tribe or may have Indian ancestry. California Rules of Court, rule 5.481(a)(2) requires the use of this form. This is consistent with WIC section 224.3 which requires inquiry of Indian ancestry in child custody proceedings. This form is not printed in CDSS MPP Division 31 because it would be cumbersome and impractical; however this form is readily available from CDSS in CWS/CMS and on the Judicial Council of California website at <http://www.courts.ca.gov/forms.htm?filter=ICW>.

Final Modification:

The Department added "in its entirety" to this section to reflect that the ICWA is incorporated in its entirety by reference.

Section 31-005.111

Specific Purpose:

This section is amended to include tribes, tribal social service agencies and Indian organizations as other entities that should be considered when providing pre-placement preventative services for Indian children and their families. This amendment is made to clarify that social workers and county agencies may engage in cooperative working arrangements and thus collaborate with Indian tribes, tribal social service agencies and Indian organizations as part of their resources for pre-placement services for Indian children and families.

Factual Basis:

This amendment implements the requirement to engage in active efforts as stated in ICWA at 25 U.S.C. section 1912(d) to prevent the breakup of an Indian family and as further specified in WIC section 361.7.

Final Modification:

Commenters recommended different modifications of Section 31-005.111, to state that cooperative arrangements involving an Indian child shall or should rather than "can" include tribes, tribal social services agencies and Indian organization. After consideration of the context of the .111 subsection that 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. This is consistent with the ICWA Active Efforts requirements in 25 U.S.C. section 1912(d) that child welfare agencies must provide remedial and rehabilitative programs to prevent the breakup on the Indian family.

Sections 31-040.11

Specific Purpose:

This section is modified to include Indian custodian(s) as parties to an Administrative review hearing.

Factual Basis:

Public comment for Section 31-040.16 pointed out that the regulation package had failed to clarify that an Indian custodian or a tribe is rightfully a participant in Administrative Review proceedings. After review of the substantive rights specified by ICWA for tribes and Indian custodians including the right to intervene as a party to a child custody proceeding per ICWA section 1911(c), this section was amended to specify an Indian custodian's participatory rights within the Administrative Review hearings, consistent with Welfare and Institutions Code section 16503.

Sections 31-040.12

Specific Purpose:

In response to public comments for Section 31-040.16, this section was adopted to add an Indian child's tribe as a participant to an Administrative Review hearing.

Factual Basis:

Public comments for Section 31-040.16 pointed out that the regulation package had failed to clarify that a tribe is rightfully a participant in Administrative Review proceedings. After review of the substantive rights specified by ICWA for tribes including the right to intervene as a party to a child custody proceeding per ICWA section 1911(c), this section was amended to specify the participatory rights of an Indian child's tribe within the Administrative review hearing process, consistent with Welfare and Institutions Code section 16503.

This amendment is necessary in order to clarify that the child's tribe and or Indian custodians have the right to intervene as provided by ICWA section 1911(c) and the right of intervention extends to Administrative Review proceedings authorized by Welfare and Institutions Code section 16503.

Sections 31-040.13 through 31-040.15 were renumbered from Sections 31-040.12 through 31-040.14

Specific Purpose/Factual Basis:

Sections 31-040.12 through 31-040.14 were renumbered to Sections 31-040.13 through 31-040.15 due to the addition of the new Section 31-040.12.

Section 31-040.16 was renumbered from Section 31-040.15

Specific Purpose:

In response to public comments, Section 31-040.16 was amended to add "Indian custodian(s)" as a person or persons for whom a social worker may have responsibility in the case management or service delivery of a child's case. The section was also renumbered from Section 31-040.15 to Section 31-040.16 to accommodate the addition of new Section 31-040.12.

Factual Basis:

In response to public comments, Section 31-040.16 was necessary in order to clarify that "Indian custodian(s)" can be a person or persons for whom a social worker may have responsibility in the case management or service delivery.

Section 31-040.17 was renumbered from Section 31-040.16

Specific Purpose/Factual Basis:

This is a technical amendment to correct an error in the citation for the definition of a "representative" in this section from Section 31-002(r)(3) to Section 31-002(r)(4).

Final Modification:

Section 31-040.16 was renumbered to Section 31-040.17 to accommodate the addition of new Section 31-040.12. The reference in this section was updated.

Section 31-040.171 was renumbered from Section 31-040.161

Specific Purpose/Factual Basis:

Section 31-040.161 was renumbered to Section 31-040.171 to accommodate the addition of new Section 31-040.12.

Section 31-066.21

Specific Purpose:

This section is adopted to clarify that a tribal social worker or a tribal representative is permitted to attend and provide information to a Multidisciplinary Team (MDT) regarding an Indian child begin considered for an out-of-state group home placement.

Factual Basis:

The WIC section 18964(b) specifies that a child's tribe or tribe's representative is permitted to attend meetings and provide information about the child that "will be considered" by the team. In all cases, careful evaluation must occur when an out-of-state group home placement is being considered. 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 placement preferences can be more complicated.

Final Modification:

In response to public comments this section was modified to remove the reference to WIC section 18964, as unnecessary, and to instead use WIC section 361.31(g) to clarify that the MDT shall include a tribal social worker or a tribal representative at team meetings in order to receive from the tribe relevant information about the child.

Section 31-066.211

Specific Purpose:

This section is adopted to require that information provided by a child's tribe to the team is to be given serious consideration in making the decision whether to place an Indian child out-of-state.

Factual Basis:

Out-of-state group home placements are subject to additional scrutiny by a multidisciplinary team as demonstrated by the provisions of Section 31-066. WIC section 18964(b) requires a team considering an out-of-state placement for an Indian child to give tribes an opportunity to give relevant information to be considered in the decision making. This amendment assures that additional ICWA standards applicable to Indian children are given serious consideration because ICWA placement preferences must be complied with, absent good cause to the contrary. In addition, ICWA at 25 U.S.C. section 1915 and WIC section 361.31 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.

Final Modification:

In response to public comments this section is modified to make clear that in making a decision regarding the placement of an Indian child in an out of state group home, such a decision must be consistent with the ICWA placement preference requirements and the agency's duties to engage in Active Efforts to comply with those placement preferences. Further, Section 31-420.3 is cross referenced to guide the worker to the details provided in that section regarding ICWA placement preference requirements.

Section 31-066.42

Specific Purpose:

This section is amended to correct a grammatical error on the provision for assessment of family history. This section is also amended to require the assessment of a tribe's involvement with the child.

Factual Basis:

The existing regulations for this section are unclear regarding the intent of the required assessment and did not speak to the involvement of the Indian child's tribe. The WIC sections 361.31 and the ICWA at 25 U.S.C. section 1915, require that the standards to be applied in meeting preference requirements shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties. Requiring an assessment of the tribe's involvement with the child will thus assist in meeting this requirement.

Final Modification:

In response to public comments this section was modified to delete that the assessment must include the current and anticipated involvement of the child's tribe and instead require that the assessment be done in consultation with the Indian child's tribe.

Section 31-066.421

Specific Purpose:

This section is adopted to require consultation with the child's tribe regarding the impact of the child's out of state placement on the child's retention of connections with his or her family, extended family and tribe or tribal community and the tribe's position on the placement. It also specifies that when the tribe's position is that the out of state placement is contrary to the ICWA placement preferences, that only the court can determine there is good cause to deviate.

Factual Basis:

This section was adopted in response to public comments for Section 31-044.42, which noted there was insufficient direction given in the situation when an Indian child is being placed out of state. ICWA section 1915(b) requires that the child shall be placed within reasonable proximity to his or her home. This section was therefore adopted to assure that where an Indian child is being considered for out of state placement, the assessment requires consultation with the child's tribe on the tribe's position regarding the out of state placement and on the impact to the retention of connections by the child to the family, tribe and tribal community.

Moreover when a tribe disagrees with the out of state placement, then the court must evaluate whether there is good cause to deviate from ICWA placement preferences.

Section 31-075.21

Specific Purpose:

This section is adopted to mandate that all case records pertaining to an Indian child be maintained indefinitely, be made available to the Secretary of the Interior upon request, and must never be removed from the CWS/CMS, or an equivalent case management system.

Factual Basis:

This section is necessary because the ICWA at 25 U.S.C. section 1915(e) and WIC section 361.31(k) require that all documents related to an Indian child's case must be retained by the State and made available at the request of the Secretary of the Interior or the child, or child's tribe. Specifically, Section 361.31(k) states the records must be retained in perpetuity.

Final modification:

In response to public comments this section was modified to add clarification that case records for an Indian child must be maintained in perpetuity, in accordance with WIC section 361.31(k). Further clarification was necessary to specify that records to be retained included eligibility records. A technical change was made by CDSS replacing CWS/CMS with the Statewide Automated Child Welfare Information System (SACWIS), due to system changes that are in progress. The SACWIS is the federal name of the information systems required to be established by all states.

Section 31-075.3(b)

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.

Factual Basis:

Active efforts are required by ICWA at 25 U.S.C. section 1912(d) and in WIC section 361.7(a). Evidence of these efforts is to be presented to a court at specified points in a child's case. Documentation of active efforts must therefore be assured. This section will help promote compliance with this requirement.

Final Modification:

In response to public comments this section was modified to add extended family, the child's Indian custodian and an Indian Tribe to the list of contacts that must be documented in each case record regarding an Indian child. Additionally, this section was modified to delete "tribal social services agency" as this was included in error and is not under the purview of CDSS.

Section 31-075.3(c)

Specific Purpose:

This section is adopted to require documentation of the results of the inquiry into whether a child is or may be an Indian child and that it is made in accord with new Sections 31-125.223 pertaining to ICWA inquiry.

Factual Basis:

The adoption of this section is necessary to implement specifications regarding the affirmative and ongoing duty to inquire into whether a child is or may be an Indian child by cross referencing the relevant sections where there is direction on carrying out the requirements for fulfilling the duty to inquire. This will implement WIC section 224.3(a) and California Rules of Court, rule 5.481(a).

Final Modification:

In response to public comments this section was modified to add "but is not limited to" to clarify that the forms referenced are not everything that must be documented in the case records. Additionally, the form ICWA-020 *Parental Notification of Indian Status* was added to what must be included in the case record regarding an Indian child.

Handbook Section 31-075.3(c)

Specific Purpose/Factual Basis:

This section is provided for ease of reference and to inform social workers that the California Rules of Court, rule 5.481(a)(3) requires completion of the Indian Child Inquiry Attachment [form ICWA-010(A)] in each case a county welfare department is seeking foster case placement of a child. This section also provides a hyperlink to ICWA forms required by the court and in case management.

Final Modification:

This section was modified by CDSS as a technical amendment to add information on the Judicial Council's website and their Center for Families, Children & the Courts' Tribal/State Programs Unit as a resource for social workers that may have questions or need technical assistance regarding ICWA requirements and best practices.

Section 31-075.3(d)

Specific Purpose:

This section is adopted to confirm the requirements that must be followed to document the sending of ICWA related notices to parents, guardians, Indian custodians, tribe(s) and the Secretary of the Interior. In addition, the case record must include documentation of all communications such as notes of conversations or meetings with tribal representatives, parent(s), guardian(s) or Indian custodian(s).

Factual Basis:

The adoption of this section adds consistency by clarifying the procedures for the noticing and documentation required by ICWA 25 U.S.C. sections 1912(a) and (d); further specified by SB 678 in WIC section 224.2, Family Code section 180 and by California Rules of Court, rules 5.481(b). The ICWA noticing regulations were previously provided for in Section 31-515 and are now to be contained here for consistency and more effective implementation.

Final Modifications:

In response to public comments this section was modified to correct a wording error regarding sending copies of the *Notice of Child Custody Proceeding for Indian Child (ICWA-030)* "to" rather than "or" the Secretary of the Interior.

Handbook Section 31-075.3(d)

Specific Purpose/Factual Basis:

This section is provided for ease of reference for social workers to remind them that the California Rules of Court, rule 5.481(b) requires use of the Notice of Child Custody Proceeding for Indian Child (form ICWA-030) to provide notice that a child custody proceeding under ICWA has been initiated. This section also provides a hyperlink to the ICWA forms, which is maintained by the Judicial Council of California.

Final Modification:

In response to public comments language regarding the court rules this handbook section was added to Section 31-075.3(d) as part of the regulation to make clear that the court requires that the ICWA-030 be completed as part of the noticing requirement regarding a child custody proceeding. Thus, this handbook section was deleted as no longer necessary.

Section 31-075.3(e)

Specific Purpose:

This section is adopted to assure that there is documentation of active efforts with specification of whether those efforts proved unsuccessful and why. Compliance will be strengthened by specifying the duty that this documentation must be also included in the case plan and court report.

Factual Basis:

The adoption to this section provides clarity that a record of active efforts must be kept in the case record of an Indian child in order to assure compliance with ICWA 25 U.S.C. section 1912(d), and as further specified in WIC section 361.7(b). Compliance with ICWA required active efforts will be strengthened by creating the duty that this documentation must be included in the case plan. This requirement was previously provided for in Section 31-515 and is moved here for consistency and better compliance.

Final Modification:

This section was modified per public comments that noted there was potential duplication of documentation by requiring documentation of Active Efforts in both the case plan and in court reports. On further review CDSS notes that social workers are required to include a copy of the case plan with court reports pursuant to WIC section 358(b). The regulation was thus modified to read "Documentation of Active Efforts must be included in the case plan which is required as an attachment to all court reports."

Section 31-075.3(f)

Specific Purpose:

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.

Factual Basis:

The section is adopted to provide clarity for social workers that there must be documentation of active efforts made to place an Indian child in accordance with ICWA placement preferences as specified in WIC section 361.31. Further, SB 678 expanded the duty to engage in active efforts to comply the ICWA placement preferences.

Final Modification:

Section 31-075.3(f) was modified per public comments that in the case of an Indian child, case documentation must include the rational for whether or not the Active Efforts made were successful and if not why not. Additionally, that this documentation must be included in the case plan which is required as an attachment in court reports pursuant to WIC section 358(b). This modification is necessary to ensure that social workers are informed and include this information in the case file.

Handbook Section 31-075.3(f)

Specific Purpose/Factual Basis:

This handbook section is adopted for ease of reference to the SB 678 statutory language on WIC section 361.31 regarding the keeping in perpetuity the documentation of active efforts as applicable to ICWA placement preferences.

Final Modification:

Made technical edits to capitalize "Active Efforts."

Section 31-075.3(w)(10)

Specific Purpose:

This section is adopted to specify that for a Tribally Approved Home social workers shall obtain written documentation from the tribe approving the home as a placement option. This clarifies what documentation must be secured by the social worker and what is to be placed in the child welfare services case management file.

Factual Basis:

A child may be placed in a Tribally Approved Home that has been approved in accord with ICWA as specified in WIC section 361.2(e)(7). This section is necessary in order to provide clarification regarding what documentation the social worker must secure from a tribe regarding the tribe's approval of a home in order to verify the home is a home approved in accord with ICWA.

Final Modification:

In response to public comments this section is modified to clarify the examples of documentation from a tribe for a Tribally Approved Home can include a tribal council resolution or a letter on tribal letterhead. Commenters noted the prior examples were too specific in nature. Therefore, CDSS deleted "or a letter from the tribe's ICWA Committee or Director of Social Services."

Sections 31-075.3(w)(10), (B), (B)1 and (B)2

Specific Purpose:

These sections are adopted to clarify that a social worker is authorized pursuant to WIC section 10553.12 to place a child in a Tribally Approved Home where a Tribal Child Welfare Agency has conducted the criminal and child abuse background checks for the home. Subsections 1, 1.a. and 2. further specify that placement of a child can be made by the county social worker in a home cleared by the Tribal Child Welfare Agency, without conducting a separate background check, where the tribal agency has certified the individuals have been cleared consistent with HSC sections 1522 and 1522.1 and the tribe agrees to report to the county social worker any subsequent arrests or criminal dispositions involving cleared individuals, of which it has been informed by the California Department of Justice.

Factual Basis:

SB 1460 (Chapter 772, Statutes of 2014) enacted Penal Code (PC) section 11105.08 and amended PC section 11170(b)(8) to authorize a Tribal Child Welfare Agency to receive criminal and child abuse background information for the purpose of clearing individuals for foster or adoptive placement of Indian children. In addition, Section 10553.12 of the WIC was enacted by SB 1460 (Chapter 772, Statutes of 2014) section 15 to specify the requirements for a social worker to be able to place an Indian child in a Tribally Approved Home where the tribal agency, pursuant to the above code sections, has cleared the individuals in a Tribally Approved Home.

Final Modification:

In response to public comments these Sections 31-075.3(w)(10)(B), (B)1, and (B)2 are modified to incorporate "Tribal Agency" as the terminology utilized in (AB 403 Chapter 773, Statutes of 2015). These sections are also modified to make a technical change identified by CDSS due to the omission of the Department of Justice after "California" as the department that must authorize a Tribal Agency to receive caregiver background information for purposes of certifying Tribally Approved Homes.

Section 31-075.3(z) were renumbered from Section 31-075.3(v)

Specific Purpose:

This section is amended to ensure active efforts are documented including evaluation and review of concurrent planning and discussions with the Indian child's tribe regarding the potential for Tribal Customary Adoption as an option for the Indian child. Further, it is renumbered from Section 31-075.3(v) to Section 31-075.3(z) to accommodate the numbering change made by adopting Sections 31-075.3(c) through (f) above.

Factual Basis:

This section is amended to include the addition of Tribal Customary Adoption as an option in the permanency planning as stated in WIC sections 361.5(f), 361.5(g)(i) and (ii), 366.26(c) and California Rules of Court, rule 5.690.

Final Modification:

In response to public comments this section is modified to clarify that in the case of an Indian child, documentation regarding the permanency planning process is to include consultation with the child's tribe regarding Tribal Customary Adoption. Also added, is the clarification that court reports are to include information and evidence on the outcome of consultation with the tribe regarding Tribal Customary Adoption as an option for the child. This modification is necessary to make clear that the supporting information is required by the court.

Section 31-101.11

Specific Purpose:

This section is adopted to require that when responding to a referral, the social worker shall inquire whether the child is an Indian child, and identify and document each response.

Factual Basis:

This section is adopted to ensure inquiry is made concerning Indian ancestry and or tribal membership consistent with WIC section 224.3(a). This section will also promote compliance with ICWA requirements to engage in active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family per WIC section 361.7(a) and ICWA 25 U.S.C. section 1912(d). Early identification that a child is or may be Indian is critical in order that active efforts be commenced if possible prior to removal of a child. The CDSS has been made aware by tribal stakeholders of the need for early identification of an Indian child and to promote early contact with an Indian child's tribe or tribally based services and thus facilitate better provision of a culturally appropriate response during the initial stages of a referral.

Final Modification:

This section was amended to make language consistent throughout these regulations when referring to whom the county shall inquire about the child's Indian heritage.

Section 31-101.512

Specific Purpose:

This section is adopted to ensure the Indian child's tribe, service providers and/or Indian organizations are included early in the preparation and implementation of the case plan in accordance with the required time frames and schedules.

Factual Basis:

This section is adopted to provide specific procedures that will include the tribe in case planning and ensure the appropriate services are being offered to an Indian child. This is consistent with WIC section 361.7 active efforts requirements and California Rules of Court, rule 5.690(c) regarding coordination with the Indian child's tribe.

Final Modification:

In response to public comments this section is modified to be consistent with WIC section 371.7; and include the extended family, tribal and other Indian social service agencies and individual Indian caregiver as persons or entities with whom the workers can collaborate in the preparation and implementation of the case plan.

Section 31-105.114(d)

Specific Purpose:

The adoption of this section provides clarity that the child's tribe, tribal organizations and other Indian service providers are appropriate to contact to obtain information about the child, and their relationship to the child. This section is adopted to require documentation regarding contacts with the child's tribe, tribal organizations and other Indian service providers.

Factual Basis:

Counties have expressed concerns over the extent of authority to contact tribes in light of confidentiality requirements in child welfare investigations. This section is amended to clarify that it is appropriate to include tribal representatives and organizations early on in the investigation in an Indian child's case in order to comply with provision of remedial and rehabilitative services designed to prevent the breakup of the Indian family per WIC section 361.7(a) and ICWA at 25 U.S.C. section 1912(d). This section further allows for early identification of potential tribal resources that may assist a family and prevent unnecessary removal of the child.

Final Modification:

In response to public comments, this section is modified to add "extended family" to the list of tribal collateral contacts from which information is to be gathered and documented as part of the emergency response protocol.

Section 31-105.116(b)(1)

Specific Purpose:

This section is adopted to clarify that in a case where a child is known to be or there is a reason to know the child is an Indian child, the child's tribe and tribally specific programs are appropriate resources when referring the family for services and evaluating out the referral.

Factual Basis:

The adoption of this section is necessary to provide clarity that the child's tribe and other tribally based community resources are appropriate community referrals where a referral is evaluated out. This is consistent with active efforts as stated in ICWA at 25 U.S.C. section 1912(d) to help prevent the break-up of an Indian family and to provide culturally appropriate rehabilitative services in accordance with WIC section 361.7(b).

Final Modification:

In response to public comments Section 31-105.116(b)(1) is modified to delete the phrase "as appropriate" and replace it with "essential" to make clear that in cases where there is reason to know a child is or may be an Indian, the worker should "evaluate out" the case with a referral to the child's tribe, an Indian organization or other Indian service provider for follow-up services.

Handbook Section 31-105.116(b)(1)

Specific Purpose/Factual Basis:

This handbook section is provided for ease of reference and to inform social workers that "active efforts" require, in particular, efforts to prevent the breakup of the Indian family through the provision of remedial and rehabilitative services. This handbook section informs social workers that they must identify and utilize available culturally relevant community resources, including tribal services and programs that can support the family. Further, this section is necessary to provide social workers with examples of types of services that may be available in the tribal community. This is consistent with active efforts as stated in ICWA at 25 U.S.C. section 1912(d) to help prevent the breakup of an Indian family and to provide culturally appropriate rehabilitative services in accordance with WIC section 361.7(b).

Final Modification:

In response to public comments Handbook Section 31-105.116(b)(1) is modified to delete the phrase "as appropriate" and replace it with "essential" to make clear that in cases where there is reason to know a child is or may be an Indian, the worker should "evaluate out" the case with a referral to the child's tribe, an Indian organization or other Indian service provider for follow-up services. Further, this section was modified to delete "referrals" and replace it with "services" that can help support the Indian family. Finally, the language "that can assist in providing support for the family" was deleted as it was redundant to the previous sentence.

Section 31-105.117(a)(1)

Specific Purpose:

In response to public comments for Section 31-105.117 is added to clarify that when evaluating out an Indian child's case, referrals by the social worker, 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. This is consistent with ICWA requirement to engage in Active Efforts to provide remedial and rehabilitative programs to prevent the breakup of the Indian family.

Factual Basis:

The addition of this section is necessary to make clear to social workers that when a case involves an Indian child, they must document the referrals made to the child's tribe or Indian service providers as specified in Section 31-105.116(b)(1). If such referrals were not made, then the worker must document why not. This addition is consistent with the ICWA 25 U.S.C. section 1912(d).

Section 31-110.2

Specific Purpose:

This section is amended to clarify that when a social worker determines that an in-person investigation is not necessary, but that the services of another community agency would benefit the child and family, the social worker is authorized to refer to culturally appropriate services.

Factual Basis:

This section is necessary to clarify that at early stages in the case it is appropriate to refer an Indian family to culturally appropriate resources that may be available through the child's tribe, Indian organizations or other Indian service providers. Making such referrals is compliant with the ICWA requirement to engage in active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family as stated in ICWA at 25 U.S.C. section 1912(d) as well as WIC section 361.7(b).

Final Modification:

In response to public comments Section 31-110.2 was modified to change the wording "authorized" to "shall also" refer Indian families to culturally appropriate services. Additionally, "if available" was added to the last sentence as these services are not always available in all locales.

Section 31-110.31

Specific Purpose:

In response to public comments this section is adopted to clarify that during the course of an in-person investigation the social worker has the responsibility to inquire if the child is or may be an Indian.

Factual Basis:

This addition 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 Indian resources can be identified as early as possible to comply with ICWA U.S.C. section 1912(d) regarding the Active Efforts that must be made to provide remedial and rehabilitative programs to prevent the breakup of the Indian family.

Section 31-110.32 is renumbered from Section 31-110.31

Specific Purpose:

This section is adopted to require that workers ask about Indian heritage and tribal membership prior to removal from the home. The adoption of this section is necessary to provide clarity that a social worker must ask about Indian heritage or tribal membership, prior to removal when it is known or there is reason to know that the child is or may be Indian.

Factual Basis:

This is consistent with the inquiry requirements stated in WIC section 224.3(a) as well as consistent with active efforts in ICWA at 25 U.S.C. section 1912(d). This is intended to allow for coordinated efforts between child welfare agencies and tribes, particularly in those areas where child welfare agencies are located near Indian reservations and children are already known to be associated with a tribe.

Final Modification:

The proposed Section 31-110.31 is renumbered to Section 31.110.32 to add a provision to make clear the social workers' responsibilities when conducting in-person investigations that potentially involve Indian children. Further, new language is added to make clear that the social worker must work with the child's tribe to prevent the removal of the child and the breakup of the Indian family unless the child is in imminent danger of physical damage or harm.

Section 31-110.32

Specific Purpose:

This section is adopted to require that workers ask about Indian heritage and tribal membership prior to removal from the home. The adoption of this section is necessary to provide clarity that a social worker must ask about Indian heritage or tribal membership, prior to removal when it is known or there is reason to know that the child is or may be Indian.

Factual Basis:

This is consistent with the inquiry requirements stated in WIC section 224.3(a) as well as consistent with the active efforts in ICWA at 25 U.S.C. section 1912(d). This is intended to allow for coordination efforts between the child welfare agencies and tribes, particularly in those areas where child welfare agencies are located near Indian reservations and children are already known to be associated with a tribe.

Final Modification:

In response to public comments this section was deleted in its entirety and recreated as Section 31-110.33.

Section 31-110.33

Specific Purpose:

In response to public comment for Section 31-110.32, Section 31-110.33 is added to clarify that if the child is in imminent danger of physical damage or harm and immediate removal is required, contact with the child's tribe must be made as soon as possible thereafter.

Factual Basis:

The addition of this section is necessary to ensure that social workers maintain the utmost priority of protecting a child from physical damage or harm but that when such a determination is made the social worker must then contact the child's tribe at the earliest convenience as possible. This protects the integrity of the social workers' responsibility to protect the child while at the same time involving the child's tribe as early as possible to identify tribal resources to prevent the breakup of the Indian family. This is consistent with the ICWA 25 U.S.C. section 1912(d).

Handbook Section 31-110.33 was renumbered from Handbook Section 31-110.32

Specific Purpose/Factual Basis:

This handbook is added to inform social workers of the importance to begin the inquiries into the Indian status of the child and must involve the child's family and tribe in beginning the ICWA mandated active efforts to prevent the breakup of the Indian family and the removal of the Indian child from their tribal community. This is the key to the ICWA as specified in 25 U.S.C. section 1912(d).

Final Modification:

Handbook Section 31-110.32 was renumbered to Handbook Section 31-110.33 due to the addition of Handbook Section 31-110.33. Made technical edit to capitalize "Active Efforts."

Section 31-115.3

Specific Purpose/Factual Basis:

Made technical change to replace "at" with "end."

Sections 31-115.2, .21, .211 and 212

Specific Purpose:

This section is adopted to clarify that prior to the removal of a child from the home a social worker who knows or has reason to know that the referral involves an Indian child must inquire whether the child is an Indian. If it is known or there is reason to know the referral is or may be regarding an Indian child, the social worker is required to contact the Indian child's tribe so as to initiate active efforts to prevent the breakup of the Indian family. Further, this clarifies that the initiation of pre-placement preventative efforts is required unless there is imminent danger to the child and an immediate in-person investigation is more urgent.

Factual Basis:

The adoption of this section is necessary to provide clarity that contacting the tribe is appropriate and consistent with active efforts per WIC section 224.3(c) and as required by ICWA at 25 U.S.C. section 1912(d). However, addressing the imminent danger to the child is paramount and the investigation must not be delayed.

Final Modification:

This section was modified in response to public comments that suggested this section be made more consistent with the modifications also made in Section 31-110. In addition, comments suggest BIA Guidelines section B8 (a) provided valuable guidance on emergency response. While we are not prepared to fully integrate the cited BIA Guidelines, modifications were made that clarified social worker duties when conducting In-person Immediate Investigations.

Therefore, this section has been reorganized by splitting the section into additional subsections as follows:

Section 31-115.2 retains the requirement that prior to removal the social worker must inquire regarding whether the child is or may be Indian, adding to whom inquiry is to be directed.

New Section 31-115.21 is established to make clear the social worker is authorized to contact the child's tribe so that Active Efforts may be started and coordinated.

New Section 31-115.211 is added to clarify that if the child is in imminent danger of physical damage or harm and immediate removal is required, contact with the child's tribe must be made as soon as possible thereafter.

New Section 31-115.212 is added to make clear that when an emergency removal and placement is necessary due to the imminent threat of physical damage or harm, it must be as short as possible.

Handbook Section 31-115.212 is renumbered from Handbook Section 31-115.2

This handbook is added to clarify, with examples of different collateral contacts, how social workers may exercise the requirements of WIC section 224.3(c) and ICWA at 25 U.S.C. section 1912(d) when any party is seeking the foster care placement of an Indian child.

Final Modification:

Handbook Section 31-115.2 is renumbered to Handbook Section 31-115.212 to accommodate the changes and additions of Sections 31-115.21, .211 and .212. Made technical edits to capitalize "Active Efforts."

Section 31-120.2

Specific Purpose:

The adoption of this section provides clarity that contacting a tribe as part of an in-person ten-day investigation is permitted as consistent with active efforts where it is known, or there is reason to know a child is an Indian child. This is intended to allow for coordinated efforts between child welfare agencies and tribes, particularly in those areas, where child welfare agencies are located near Indian reservations and children are already known to be associated with a tribe. Similarly, if a child has been previously identified as an Indian in the child welfare system, then early contact with the tribe will further active efforts.

Factual Basis:

The adoption of this section is necessary to provide clarity that contacting a tribe as part of an in-person ten-day investigation is permitted as consistent with active efforts per WIC section 224.3(c) and as required by ICWA at 25 U.S.C. section 1912(d).

Final Modification:

Made technical edits to capitalize "Active Efforts."

Section 31-125.222

Specific Purpose:

The amendment of this section is necessary to provide clarity that social workers must make necessary collateral contacts with each person who has knowledge of the condition of each child and that it is appropriate and consistent with active efforts to contact tribes, tribal organizations or other Indian service providers, that may have knowledge of the condition of the Indian child, as some of the collateral contacts made during an investigation.

Factual Basis:

This is necessary to promote active efforts and facilitate coordination between child welfare agencies, tribes and relevant organizations. This amendment is consistent with the requirements in ICWA at 25 U.S.C. section 1912(d) and WIC section 361.7.

Final Modification:

Made grammatical change to remove "s."

Section 31-125.223, .223(a) and (a)(1) through (a)(6)

Specific Purpose:

These sections are adopted to clearly require that social workers, in all cases, must inquire into a child's Indian status as their affirmative and continuing duty. These sections further specify who must be asked and clarifies to social workers what circumstances may give reason to inquire further into Indian status. In addition, instruction is given on the use of Judicial Council's "Indian Child Inquiry Attachment" form, ICWA-010(A).

Factual Basis:

The adoption of this section is necessary to ensure compliance with the affirmative and continuing duty to inquire into Indian status as specified by WIC section 224.3 and the California Rules of Court, rule 5.481(a)(1).

Final Modification:

Section 31-125.223 was modified in response to public comments which noted that social workers were required by Judicial Council rule 5.481 to provide the ICWA-020 to the child's parent/Indian custodian or guardian and to file the form with the court.

Additionally, new Sections 31-125.223(a)(2) and (a)(6) are added in response to public comments which recommended consistency with BIA Guidelines section B2(c) regarding reasons to know a child may be Indian.

The new Section 31-125.223(a)(2) was added because, while we were not prepared to fully integrate the BIA guidelines, language was drawn from them to augment circumstances that may give rise to a further duty to inquire. BIA Guidelines section 9a(2) added any agency involved in child protective or family support services that discovers information suggesting the child is Indian.

A new Section 31-125.223(a)(6) was added to identify that an employee of an agency or officer of the court involved in the child welfare proceedings has knowledge that the child is Indian.

Finally, Sections 31-125.223(a)(2) through (a)(4) are renumbered to Sections 31-125.223(a)(3) through (a)(5) to accommodate the addition of the new Section 31-125.223(a)(2).

Handbook Section 31-125.223(a)(4) was renumbered to Handbook Section 31-125.223(a)(6)

Specific Purpose/Factual Basis:

This handbook provides the Judicial Council's requirements as stated in California Rules of Court, rule 5.481(a)(1) and to provide a link to the Judicial Council's ICWA forms for ease of reference.

Final Modification:

Handbook Section 31-125.223(a)(6) was renumbered from Section 31-125.223(a)(4) to accommodate the addition of the new 31-125.223(a)(2). Also, adds ICWA-20 to the guidance for inquiry documentation requirement.

Section 31-125.6

Specific Purpose:

This section is adopted for clarity that the social worker is required to provide, explain to and ask the child's parent(s), Indian custodian(s), or legal guardian(s), to complete the Judicial Council's "Parental Notification of Indian Status" form, ICWA-020.

Factual Basis:

The adoption of this section is necessary because once a petition for removal is filed, the court will order completion of the ICWA-020 pursuant to California Rules of Court, rule 5.482(a)(2). If the parent(s), Indian custodian(s) or legal guardian(s) is not at the initial hearing, social workers can be ordered to use reasonable diligence to seek out the parent(s), Indian custodian(s) or legal guardian(s) to get the form completed. Such early active efforts by social workers to secure a completed ICWA-020 will help avoid the necessity to locate the parent(s), Indian custodian(s) or legal guardian(s) later.

Final Modification:

In response to public comment this section was modified to remove language that inappropriately limited the circumstances when social workers are required to provide the ICWA-020 to parents, Indian custodian or guardian of an Indian child. The Judicial Council noted that the ICWA-020 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 31-125.7

Specific Purpose:

This section is adopted to make specific the social workers' procedural requirements to be followed when conducting ICWA noticing. This section is also adopted to clarify who must be notified when the social worker knows or has reason to know the child is or may be an Indian child.

Factual Basis:

This section is necessary because the ICWA at 25 U.S.C. section 1912(a) and the WIC section 224.2(a) provide the noticing requirements and specify who should be notified when a dependency petition is filed and there is reason to know the child is or may be an Indian.

Final Modification:

In response to public comments, Section 31-125.7 was modified to add that a social worker should seek verification from a tribe as early as possible prior to the formal notice of an upcoming hearing. This modification is necessary to inform and encourage social workers to secure verification from a tribe as early as possible prior to the formal notice of an upcoming hearing so as to facilitate provision of Active Efforts as soon as possible.

Section 31-125.71

Specific Purpose:

This section is adopted to make specific social workers' requirements of communicating the notice of the custody proceeding by registered or certified mail with a return receipt requested, to the tribal chair or the tribe's designated agent registered with the Bureau of Indian Affairs (BIA) in order for the notice to be legally sufficient in meeting active efforts requirements. This section also provides a recommendation that social workers also send an additional notice via first class mail as a way of expanding active efforts and increase the probability of success.

Factual Basis:

This section is necessary to comply with ICWA at 25 U.S.C. section 1912(a) and WIC section 224.2 which specify to whom and when notices are to be sent out.

Final Modification:

Made technical edits to capitalize "Active Efforts."

Handbook Section 31-125.72

Specific Purpose/Factual Basis:

This handbook is added to communicate that ICWA allows Indian tribes to designate an agent other than the tribal chairperson as the point person for ICWA notices. This handbook also informs child welfare staff that the BIA updates the list and advises workers to seek current information. This handbook provides a link to the BIA list of tribal contacts for ICWA noticing purposes.

Final Modification:

Made structural and technical edits to clearly notice an individual other than the chairperson on the BIA list. The handbook addresses the location of list.

Section 31-125.731

Specific Purpose:

This section is adopted to make clear to a social worker that notices of the proceeding must be sent using the Judicial Council's "Notice of Child Custody Proceeding for Indian Child" form, ICWA-030 and ICWA-030(A) "Attachment to Notice of Child Custody Proceeding for Indian Child," as appropriate.

Factual Basis:

This section is necessary to specify, in accordance with WIC section 224.2, 25 U.S.C. section 1912(a) and California Rules of Court, rule 5.481(b)(1), how and to whom notices regarding child custody proceedings shall be sent and includes a link to the ICWA forms.

Final Modification:

This section was modified to add that the notice must be sent by registered or certified mail and sent far enough in advance that it is received at least 10 days in advance of the hearing.

Sections 31-125.76 through .765

Specific Purpose:

These sections are adopted to make specific and clarify the requirement to advise the court that there has been no confirmation of the Indian child's tribal standing and to inform the court of the efforts made to secure such information. This section provides social workers with instruction regarding proceeding with the dependency action and continuing efforts to confirm the child's tribal status. Additionally, this provides instruction to the social worker as to what may happen after 60 days of not securing a determinative response from the BIA or the child's tribe; and what may happen if subsequent confirmation on the child's Indian status is received.

Factual Basis:

Prior to SB 678, Statutes of 2006, it was unclear at which point in time a child's custody proceeding could continue in the absence of confirmation by a tribe as to a child's status with the tribe. These sections reflect the requirements specified in WIC sections 224.3(e)(3) and (f) per SB 678. Subsection 31-135.765 is a substantial duplication of WIC section 224.3(e)(3) which is necessary to inform social workers that the court can make the determination that ICWA does not apply if a response has not been received within 60 days after the notice was received by the intended recipient. It is necessary that social workers also know that the court is the one responsible for making that determination.

Final Modification:

Section 31-125.762 is modified to remove the term "active" as not accurately used in this context. Modification is also made to Section 31-125.762 in response to public comments recorded for Sections 31-125.76 and .761 that the court should be advised of efforts made to verify whether the child is Indian, including contacts made with parents/Indian custodians/extended family and why information may be missing from mandatory Judicial Council form ICWA-030.

Section 31-135.11

Specific Purpose:

This section is amended to include an "Indian custodian" as a party who has the authority to consent to the voluntary removal of an Indian child for whom they have custody.

Factual Basis:

This amendment is necessary to be consistent with ICWA at 25 U.S.C. section 1913(a) which specifies an Indian custodian may voluntarily consent to a foster care placement of the child.

Final Modification:

In response to public comments cross reference was added to Section 31-430 which more fully sets forth consent requirements pertaining to voluntary placements of Indian children. Comments raised a concern that the section did not sufficiently address the requirements under ICWA pertaining to consents where there is a voluntary placement of an Indian child. In addition, CDSS response to these comments continues with the addition of Section 31-135.111 below.

Section 31-135.111

Specific Purpose:

Section 31-135.111 was adopted to require that were the voluntary placement of an Indian child is no longer voluntary; the social worker must apply the higher ICWA standards applicable to involuntary child custody. This must occur when the social worker makes a determination that the placement is no longer voluntary as the parent has exceeded the temporary timelines for voluntary placement or demonstrated an inability to care for the child.

Factual Basis:

This section was adopted after further review when it was noted in public comments for Section 31-135.111 that language in Section 31-135.121(a) pertaining to voluntary placements was misplaced or unclear.

Sections 31-135.121

Specific Purpose:

This section is amended to include an "Indian custodian" as a party who should be notified of the right to apply for judicial review of a determination to not inform him or her of the child's whereabouts.

Factual Basis:

This amendment is necessary to be consistent with ICWA at 25 U.S.C. section 1903(1). It is necessary to inform the Indian custodian of the rights to request a judicial review.

Final Modification:

Made grammatical change to hyphenate "in person."

Sections 31-135.121(a)

Specific Purpose:

This section is amended to include the words "Indian custodian" to make clear that the Indian custodian must be included as a party who is to be notified if their right to apply for judicial review of a determination pursuant to WIC section 308. Failure to do so must be documented in the case record. It is also amended to require an evaluation on whether the placement is no longer voluntary which triggers other ICWA requirements.

Factual Basis:

This amendment is necessary to be consistent with ICWA at 25 U.S.C. section 1903(1). A decision to not inform the parents or Indian custodian of an Indian child's whereabouts could convert a voluntary placement under ICWA section 1913 into an ICWA child custody proceeding as defined in Section 1903(1) 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 and it is necessary to require that the case be reviewed when an Indian child's whereabouts are withheld.

Final Modification:

The proposed language in Section 31-135.121(a) regarding the movement of an Indian child from a voluntary placement to an involuntary one was not suitably placed in this section that had to do with notifying a parent, guardian or Indian custodian and failure to do so. Therefore, the misplaced language in Section 31-135 .121(a) was deleted. New Section 31-135.111 was adopted as more appropriately located to require that the ICWA requirements be followed when the placement is no longer voluntary. In addition, a new section was added at Section 31-430.22 with similar language.

Section 31-135.2

Specific Purpose:

This section is amended to delete the word "any" and replace it with "all" ensuring the clarity that every effort and service provided is documented.

Factual Basis:

This amendment is necessary to ensure proper field interpretation of the required documentation and to ensure documentation of active efforts as stated in ICWA at 25 U.S.C. sections 1912(d) and 1915(e).

Final Modification:

Made grammatical change to capitalize and hyphenate "pre-placement."

Section 31-135.23

Specific Purpose:

This section is adopted to implement and clarify the requirement that social workers must engage in active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family prior to the removal of a child from the family.

Factual Basis:

The adoption of this section is necessary for clarity and to set uniform standards and procedures when conducting active efforts pursuant to ICWA at 25 U.S.C. section 1912(d), and as specified in WIC section 361.7.

Final Modification:

Made technical edits to capitalize "Active Efforts."

Sections 31-135.231, .231(a) through (c)

Specific Purpose:

These sections are adopted to make clear and specific to social workers that active efforts must include identifying the child's Indian heritage in the assessment process, taking into account the prevailing social and cultural standards and the way of life of the Indian child's tribe, and utilizing available resources of the Indian child's family and tribe or other Indian social service organizations, including tribally based family preservation and reunification services when available, and non-Indian resources when tribal resources are not available.

Factual Basis:

The adoption of these sections are necessary to provide clear program requirements to social workers that pre-placement preventive efforts must include active efforts consistent with the requirements specified in SB 678, Statutes of 2006, Section 50, regarding the need to recognize the unique way of life of Indian tribes and the valuable resources that exist within the tribe, tribal community, and the child's family, to help prevent the breakup of the Indian family. This regulation is a substantial duplication of WIC section 361.7 but is necessary so that social workers minimally include the factors specified in Section 361.7 as part of their active efforts.

Final Modification:

On further review by staff, Section 31-135.231 was amended to remove the qualifying language "prior to removal." Section 31-135.23 that includes Section 31-135.231(a) is cross referenced in different places throughout the regulation whenever the requirement to engage in Active Efforts is applicable. Active Efforts are required before and after removal. The edit was therefore necessary to prevent confusion.

Several commenters recommended that the section be completely replaced with the 2015 BIA Guideline language that set forth a list of examples of Active Efforts. However, this section seeks to include statutory language in ICWA and state law at WIC section 361.7. Nonetheless in response to public comments, amendments were made to the definition of Active Efforts in Section 31-002(a)(1) to cross reference the list in the 2015 BIA Guidelines and a handbook section was added for Section 31-002(a)(1) to list the examples. Also, Handbook Section 31-135.231(c) is modified to list additional examples.

Finally, in Section 31-135.21(c) grammatical changes were made to capitalize and hyphenate "pre-placement."

Handbook Section 31-135.231(c)

Specific Purpose/Factual Basis:

This handbook is added to provide social workers with examples of active efforts. Feedback from county representatives has been that they are not certain what actions meet this requirement.

Final Modification:

Handbook Section 31-135.231(c) is modified because of the addition in Section 31-002(a)(1) which was amended to include a handbook reference to examples of Active Efforts provided in the 2015 BIA Guidelines. This section was therefore modified to delete duplicative examples but retained examples of activities that can constitute Active Efforts that are not necessarily included in the BIA examples. The introduction to this handbook section was modified to clearly indicate the differences between the 2015 BIA Guideline examples and these examples provided by CDSS. The numbering within these examples was renumbered according to those items deleted. The new item number 2 was modified to include "or representatives" as persons other than tribal social workers that should be integrated into the county multi-disciplinary teams.

Section 31-135.233

Specific Purpose:

This section is adopted to require that social workers document active efforts in the Indian child's case file. Further, this section specifies that if the determination is made to remove the child, the documentation must include what efforts were made, if they were unsuccessful and the reasons why they were unsuccessful.

Factual Basis:

The adoption of this section is necessary to assure documentation of active efforts because WIC section 361.7 requires that a party seeking the involuntary foster care placement or termination of parental rights over an Indian child, must provide evidence to the court that active efforts were made, and they proved unsuccessful. This section is consistent with the active effort requirements in ICWA at 25 U.S.C. section 1912(d).

Final Modification:

Section 31-135.233 was modified in response to public comments that clarification should be provided to social workers that information of Active Efforts much also be included in court reports.

Sections 31-135.234, .234(a), (a)(1) through (4), .234(b) through (e) and Handbook Section 31-135.234(e)

Specific Purpose:

These sections are adopted to make clear the social worker's responsibility to notify the child's tribe if the child is a member of an exclusive jurisdiction tribe or if the child is already a ward of their tribe. Additionally, this section specifies the timelines for the court ordered transfer of the child, and specifies what information is to be provided to the tribe in regards to the child's case, and the documentation that must be kept by the county. Finally, a handbook is inserted after Section 31-135.234(e) to inform social workers that Section 305.5 transfer petitions are given expedited priority over other petitions.

Factual Basis:

California has one tribe within its borders that has exclusive jurisdiction and there are tribes in other states that also have such jurisdiction, and hence, have state and federal authority to take immediate custody of their children who come to the attention of child welfare agencies. California tribes also have authority to take their children under their protective custody. Such tribes have the right to request their children be transferred expeditiously to the tribe. California law specifies in WIC sections 381(c) and 305.5(a) that a transfer of the child to such tribes must be made expeditiously and with the release of specified case files. The handbook is included to make clear to the social worker that WIC sections 305.5 and 381(c) require the expeditious transfer of an Indian child to its tribe when the tribe has exclusive jurisdiction, or where their tribe has already taken the child under its protective custody and state child welfare services has also taken the child into protective custody.

Final Modification:

Sections 31-135.234(b) and .234(c) made technical edits to clarify the transition of a notice.

Section 31-135.234(f)

Specific Purpose/Factual Basis:

Section 31-135.234(f) is added as a result of public comments recommending that language be added to clarify that social workers must advise the court of facts that suggest the child may be a ward of a tribal court or subject to the exclusive jurisdiction of the tribe.

Handbook Section 31-135.134(f) is renumbered from Handbook Section 31-135.134(e).

Handbook Section 31-135.134(e) was renumbered to Handbook Section 31-135.134(f) due to the addition of Section 31-135.134(f).

Section 31-135.421 and .421(a) through (d)

Specific Purpose:

Section 31-135.421 is adopted to specify that a qualified expert witness should have specific knowledge of the child's tribe, culture and customs. It adds that the agency when selecting the expert, should consider whether the child's tribe recognizes the individual as having substantial experience in the delivery of service to Indians and knowledge of the prevailing social and cultural and childrearing practices with the child's tribe. Subsections (a) through (d) add a list of individuals that can be included as individuals that can meet such criteria. The list is from the 2015 BIA Guidelines D.4.

Factual Basis:

This regulation is adopted in response to public comments for Section 31-135.42 that asserted that the descending order as listed in the 2015 BIA Guidelines D.4, would assist social workers in the determination of appropriate qualified expert witnesses for Indian children. We felt limited in the extent to which we could incorporate 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 also sets forth a list of those individuals that are "most likely" to meet the requirements of a qualified expert witness, which does not currently include all of those, listed in the BIA Guidelines and also does not include a descending order. The lists do not completely reconcile. To fully integrate the BIA provisions, we believe that statutory changes will be needed. However, we do agree that the BIA Guidelines provide clarification that can assist social workers when selecting an expert. We felt it was consistent with the objectives of California's incorporation of ICWA into state codes to clarify that social workers should consider whether a child's tribe recognizes an individual as qualified including the options contained in the BIA list.

Section 31-135.422

Specific Purpose:

This section was adopted to specify that an employee of the person or agency recommending a foster care placement or termination of parental rights cannot be a qualified expert witness.

Factual Basis:

This section is adopted after public comment for Section 31-135.43 pointed out that regulation did not set forth the explicit prohibition adopted by SB 678 in WIC section 224.6(a) which precluded an employee of the person or agency seeking the foster care placement or termination of parental rights in the case of an Indian child. Although the prohibition is included within the definition of a qualified expert witness, CDSS agreed that the prohibition was necessary in this regulation.

Handbook Section 31-135.422 was renumbered from Handbook Section 31-135.42

Specific Purpose/Factual Basis:

This handbook is added to refer social workers to WIC section 224.6 regarding a qualified expert witness and which further specifies the requirements to consider the prevailing social and cultural standards of the child's tribe.

Final Modification:

Handbook Section 31-135.42 is renumbered to Handbook Section 31-135.422. Handbook Section 31-135.421 and Handbook Section 31-115.422 have been added. This Handbook section was modified to remove WIC section 224.6 subsection (d) as duplicative of the language in Handbook Section 31-135.44.

This handbook section was also modified to include reference to the 2015 BIA Guidelines on expert witness characteristics, so that social workers are aware that the BIA has expressed its view on those individuals presumed to meet the qualifications of an expert witness and that they are on the list now included in Handbook Section 31-135.421.

Sections 31-136.3 to .33

Specific Purpose:

These sections are adopted to clarify the requirements applicable where an Indian child has been taken into protective custody by a county, but the child is already a ward of a tribal court or is from a tribe with exclusive jurisdiction over child custody proceedings involving its children. Section 31-136.31 cross references Section 31-135.234 which contains specific direction on notification to a tribe for purposes of notice required under WIC section 305.5(a).

Factual Basis:

These sections are necessary to provide clarity on what steps are required in order to comply with the transfer requirements in WIC section 305.5(a) as applicable when a child is already under the jurisdiction of a tribal court or is from an exclusive jurisdiction tribe. The notice that is required by WIC section 305.5 (a) is not the same as notice under ICWA and therefore this section directs the social worker to comply with the crossed referenced Section 31-135.234. In addition, the transfer timelines under WIC section 305.5(a) are shortened and require expeditious transfer of the child. This section seeks to provide social workers with specific guidelines on what is required.

Final Modification:

Section 31-136.31: 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 notification 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 that is necessary 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 citation has been corrected.

Section 31-134.32: In response to public comments Section 31-136.32 is modified to specify that 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 modification adds clarification of the duty of the social worker to provide this information to the state court.

Handbook Section 31-136.33

Specific Purpose/Factual Basis:

This handbook is provided for ease of reference to WIC section 305.5(a) regarding the transfer requirements for an Indian child that is already under protective wardship of its tribe or is from an Indian tribe that has exclusive jurisdiction over child custody proceedings pursuant to ICWA at 25 U.S.C. section 1911(a).

Final Modification:

Made technical edits moved the word "confidentiality" to a different location in the paragraph.

Section 31-201.111(a)

Specific Purpose:

This section is adopted to clearly specify requirements in the assessment and determination of the case plan for an Indian child. Active efforts as required by ICWA must include the gathering of information from the tribe, child's family and Indian service providers and to ultimately consider tribal placement preferences and permanency options if removal becomes necessary. To avoid duplication of language, it cross references Sections 31-135.23 and Section 31-420.2, which provide more specification on active efforts.

Factual Basis:

The adoption of this section is necessary to create consistency and include the requirement to engage in ICWA related active efforts and to comply with placement preferences as required by ICWA at 25 U.S.C. sections 1912 and 1915, and specified in WIC sections 361.31 and 361.7.

Final Modification:

Made technical edits to capitalize "Active Efforts."

Section 31-201.121(a)

Specific Purpose:

This section is amended to clearly specify the requirement that in the provision of family maintenance services, active efforts are required by ICWA at 25 U.S.C. section 1912(d) and as further specified by WIC section 361.7(b). To avoid duplicative language, it cross references Section 31-135.23, which provides more specificity regarding active efforts.

Factual Basis:

The amendment of this section is necessary so that the family maintenance track complies with the active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family required by ICWA 25 U.S.C. section 1912(d) and as further specified by WIC section 361.7(b).

Final Modification:

In response to the public comments Section 31-205.121(a) was amended to include language regarding Active Efforts to "provide remedial services and rehabilitative programs to prevent the breakup of the Indian family" with the family maintenance services provided by the social worker. This language change is added to clarify that Active Efforts are required by the ICWA with the intent of family maintenance services to maintain the child in his/her home while meeting the protective needs of the child.

Section 31-201.121(b)

Specific Purpose:

This section is amended to clearly specify that in the provision of family reunification services, active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family are required by ICWA 25 U.S.C. section 1912(d) as specified by WIC section 361.7(b). To avoid duplication, it cross-references Section 31-135.23, which provides more specification on active efforts.

Factual Basis:

The amendment of this section is necessary so that the reunification track must also comply with the active efforts required by ICWA 25 U.S.C. section 1912(d) and as further specified in WIC section 361.7(b).

Final Modification:

Made technical edits to capitalize "Active Efforts."

Section 31-201.133(a)

Specific Purpose:

This section is amended to instruct social workers to include the child's tribe, tribal advocate and Indian custodian if the child has one, in the assessment and case planning process.

Factual Basis:

The amendment of this section is necessary to add clarity as to the appropriateness to include the tribe, the involvement of the Indian custodian and the tribal advocate to take part in the assessment and case planning process. Under ICWA a tribe and Indian custodian have the right to intervene in a child custody proceeding. As parties they have the right to access documents related to the proceeding, express placement preferences and voice their perspective on what is in the best interest of the child. This section assures that they are an integral part of the assessment and case planning process per ICWA at 25 U.S.C. sections 1911, 1912(c) and 1915, WIC sections 361.31 and 361.7(b) and California Rules of Court, rule 5.690(c).

Final Modification:

In response to the public comments for Section 31-201.111(a), "extended family" was added to the list of individuals that can be asked to participate in the development of the case plan for an Indian child.

Sections 31-205.11 and .111 Renumbered from Sections 31-205.1(a) and .1(a)(1)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-205.1(a) and 31-205.1(a)(1) to Sections 31-205.11 and 31-205.111 to reformat the outline numbering for consistency. There is no change to the regulation text.

Section 31-205.111(a)

Specific Purpose:

This section is adopted to make clear that the Indian social, cultural and traditional practices including family organization and child-rearing practices of the child's tribe must be included in the assessment documentation.

Factual Basis:

The adoption of this section is necessary as it clarifies that the prevailing social and cultural standards and way of life of the Indian child's tribe are to be included in the child's assessment documentation. The ICWA at 25 U.S.C. section 1915, as codified in WIC section 361.31(f), specifies that in meeting ICWA placement preferences, the prevailing social and cultural standards of the Indian community are to be applied. The adoption supports compliance with this requirement.

Final Modification:

Section 31-205.111(a) was modified in response to public comments expressing concerns that a social worker would most likely be unable to "assess and document" the prevailing social and cultural standards and way of life of the Indian child's tribe. Therefore, the language "assess and document" was deleted and "include information about" was added as more appropriate.

Sections 31-205.113, .12 and .13 Renumbered from Sections 31-205.1(a)(3), .1(b) and .1(c)

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-205.1(a)(3), 31-205.1(b) and 31-205.1(c) to Sections 31-205.113, 31-205.12 and 31-205.13 to reformat the outline numbering for consistency. There is no change to the regulation text.

Final Modification:

Section 31-205.13 grammatical changes were made to capitalize and hyphenate "pre-placement."

Section 31-205.131

Specific Purpose:

The adoption of this section clarifies the requirements that the assessment documentation must include information on active efforts as required by ICWA and as implemented in state law. This addition complies with the higher standards applicable to the removal of Indian children and that the information on the active efforts taken are documented.

Factual Basis:

The adoption of this section is necessary to provide consistency throughout the documentation in the case file that active efforts and the testimony of a qualified expert witness was utilized as required by ICWA at 25 U.S.C. sections 1912(d) through (e), 1915 and WIC sections 224.6 and 361.7.

Final Modification:

Section 31-205.131 grammatical changes were made to capitalize and hyphenate "pre-placement and capitalize "Active Efforts."

Section 31-205.161

Specific Purpose:

This section is adopted to clarify the requirement of documentation of the active efforts to provide pre-placement preventative services to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and the results of those efforts.

Factual Basis:

The adoption of this section is necessary to document the active efforts that were required, offered and delivered to the child and their family and the results of those efforts as required by ICWA at 25 U.S.C. section 1912(d) and WIC section 361.7.

Final Modification:

This section was edited to grammatically clarify that documentation must include the requirement of active efforts.

Section 31-205.171

Specific Purpose:

This section is adopted to clarify the requirement that when family reunification services are recommended social workers must document the active efforts to include the Indian child's relatives, extended family members, the tribe and tribal agencies in planning for permanency in case family reunification fails.

Factual Basis:

This section is necessary to provide that relatives, extended family, the tribe and tribal agencies are considered as individuals who could assist in permanency planning or provide legal permanency should family reunification fail, as per ICWA 25 U.S.C. section 1912(d). Further, this section again reminds social workers about Tribal Customary Adoption as a permanency option as stated in WIC section 366.24 that must be considered in the assessment and documented.

Final Modification:

In response to public comments, this section was revised to clarify the requirement to also include specific tribal resources that can be accessed for an Indian child to assist in legal permanency should reunification fail. In addition, the last sentence was deleted as not necessary for purposes of this section.

Section 31-206.222(a)

Specific Purpose:

31-206.222(a): This section is amended to clarify that the social worker must document that the Indian child's parents, guardians or Indian custodians are provided reunification services as part of the active efforts to prevent the breakup of the Indian family per ICWA at 25 U.S.C. section 1912(d).

Factual Basis:

The amendment of this section is necessary to expand, and clarify that, the term "parents" should include guardians and "Indian custodian" and to clarify the active efforts requirements in ICWA 25 U.S.C. section 1912(d) and WIC section 361.7.

Final Modification:

Made technical edits to capitalize "Active Efforts."

Section 31.206.222(b)(1)

Specific Purpose:

This section is adopted to specify the requirement that the testimony of a qualified expert witness is required before a permanent placement order.

Factual Basis:

The adoption of this section is necessary to provide clarity as to the requirement that a higher level of evidence brought by a qualified expert witness in the ICWA at 25 U.S.C. section 1912(e) and (f) and WIC sections 224.6(b)(1) and 361.7(c).

Final Modification:

This section is modified by to correct an error in the cross reference from Section 31-135.5 to 31-135.42 and in the cross reference in Section 31-201.121(c)(3)(A)2 to extend the reference through Subsection 31-201.121(c)(3)(A)7.

Section 31-206.311 and 311(a)

Specific Purpose:

This section is adopted to make specific the requirement for documentation of active efforts to place an Indian child per ICWA placement standards; and, justification for not meeting the ICWA placement standards as required by WIC section 361.31(j).

Factual Basis:

The adoption of this section is necessary to provide clarity as to the required documentation of the social worker's actions to follow the active efforts requirements as to placement preferences in ICWA at 25 U.S.C. section 1915(b) and WIC section 361.31. If the social worker was not able to make a placement according to the specified placement preference, they must provide reasons why this did not occur as stated in WIC section 361.31(j).

Final Modification:

In response to public comments Section 31-206.311 is modified to provide clarification that the assessment of the child's placement needs must include a description of the social worker's Active Efforts to comply with the ICWA placement preference standards. Additionally, language unnecessary as a result of this change was deleted.

Subsection 31-206.311(a) was also added to clarify the assessment must include all efforts to comply with the order of placement preferences required by the ICWA, the position of the child's tribe and facts if any to provide good cause to deviate from the preferences.

Sections 31-206.312, .312(a) and .312(b)

Specific Purpose:

These sections are adopted to clarify that ICWA placement preferences are well defined, that a social worker must be informed of the specifics of those preferences and to provide a link to those details which social workers can access online. Further, this section calls the attention of social workers to the "good cause" standard in ICWA that requires that deviation from the tribal placement preferences must be well documented.

Factual Basis:

These sections are necessary to comply with ICWA at 25 U.S.C. section 1912(e) which specifies the placement preferences for Indian children which are provided herein to emphasize their importance to the welfare of Indian children and Indian tribes. The importance that social workers follow these placement preferences and document those efforts as confirmed in WIC section 361.31(e).

Final Modification:

In response to public comments it was determined that Section 31-206.312 did not adequately specify the more extensive ICWA placement preference requirements that are more fully set forth in Section 31-420.3. Section 31-206.312 was therefore determined as not necessary, particularly since Section 31-420.3 is referenced in the immediately preceding paragraph. In addition, the link to CDSS page pertaining to placement preferences was removed as not necessary.

Sections 31-206.312 through .317 Renumbered from Sections 31-206.311 through .316

Specific Purpose/Factual Basis:

These sections are renumbered from Sections 31-206.311 through 31-206.316 to Sections 31-206.313 through 31-206.318 to make consistent with the additions of adopted language. This change is necessary to make these sections consistent with the existing numbering pattern. There are no changes to the regulation text.

Final Modification:

Proposed Sections 31-206.313 through .318 are renumbered to Sections 31-206.312 through .317 due to deleting the proposed Sections 31-206.32, .312(a) and .312(b).

Section 31-310.131

Specific Purpose:

This section is adopted to require that in the provision of services aimed at maintaining an Indian child with his or her family, the social worker is to comply with the requirement to engage in active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family as further specified in Section 31-135.23, and clarify that such efforts include working with the child's family, tribe, tribal and other Indian social service agencies and organizations.

Factual Basis:

The adoption of this section is necessary to clarify that ICWA at 25 U.S.C. section 1912 and WIC section 361.7 require additional efforts to prevent the breakup of the family when an Indian child is involved. This section is consistent with the requirements of ICWA at 25 U.S.C. sections 1912 and 1915 and WIC sections 361.31 and 361.7(b).

Final Modification:

Made technical edits to capitalize "Active Efforts."

Section 31-315.11

Specific Purpose:

This section is adopted to ensure that as part of service funded activities, social workers comply with their responsibility to refer Indian children and families to culturally appropriate services consistent with the requirements of ICWA to provide remedial, rehabilitative and preventative services to prevent the breakup of the Indian family. Further, this section speaks about potential tribal resources that must be considered and made available to Indian children and families. This section also reminds social workers of the ICWA requirements for documentation of active efforts and why those efforts were unsuccessful.

Factual Basis:

The adoption of this section is necessary to ensure that social workers as part of service funded activities comply with the ICWA requirement at 25 U.S.C. sections 1912(d) that remedial services and rehabilitative program and preventive measures to prevent the breakup of the Indian family must be made available to Indian children and families.

Final Modification:

A technical change is made to delete the duplication of "Indian organizations" and to capitalize "Active Efforts" as done throughout the regulations.

Section 31-335.1

Specific Purpose:

This section is amended to include the "Indian custodian" as someone with whom other professionals may be working and with whom the social worker must maintain contact.

Factual Basis:

This amendment is necessary to include Indian custodian(s) pursuant to ICWA at 25 U.S.C. section 1912(a). Further, this amendment adds "the" before "out-of-home care provider" as a grammatical change only.

Final Modification:

Made technical edits to lower case "custodian(s)" and add parenthesis around the "s."

Handbook Section 31-335.17 Renumbered from Section 31-335.2 through .24

Specific Purpose/Factual Basis:

This handbook section is amended to delete the regulation outline numbering of Sections 31-335.2 through 31-335.24, which will now be referenced as Handbook Section 31-335.17 because it comes immediately after. In addition, the handbook is updated to add an objective regarding ICWA active efforts to the handbook for guidance of the social worker. This handbook does not change the meaning of the regulations, but is intended for guidance in the field. The numbering sequence 1 through 5 is only for the list of objectives and is not part of an outline.

Final Modification:

Made technical edits to capitalize "Active Efforts."

Section 31-335.211(a)

Specific Purpose:

In response to public comments for Section 31-335.17, this section is added to more explicitly clarify that documentation of all written or verbal reports obtained from tribal contacts is required in order to assure thorough case record documentation of Active Efforts.

Factual Basis:

Public comments noted the importance that documentation in an Indian child's case record be thorough as to all contacts particularly because case workers will change throughout the life of a child's case. In this regulation, social workers are more specifically instructed to document all written or verbal reports from tribal representatives and service providers in Section 31-335.17, so as to maintain a clear record of Active Efforts as defined in these regulations.

Section 31-405.121

Specific Purpose:

This section is adopted to make clear that the relative placement preferences for an Indian child are different and include a longer list of extended family members. This section also informs the social worker that if the first preference per ICWA is not an option for the child, then the placement preferences specified in Section 31-420.3 are to be followed.

Factual Basis:

This section is necessary to clarify that ICWA's first preference for placement of Indian children is with a member of the child's extended family and that ICWA has a specific definition for extended family as per 25 U.S.C. section 1915.

Final Modification:

In response to public comments, this section was modified to require Active Efforts to comply with the ICWA placement preferences and additional requirements which are more fully set forth in Section 31-420.3. Further, this modification added clarification that the first placement preference is with a member of the child's extended family as specified in the ICWA placement preference order in 25 U.S.C. section 1903(2).l

Handbook Section 31-405.123

Specific Purpose/Factual Basis:

This handbook section is added for ease of reference to the language in ICWA at 25 U.S.C. section 1915 for the definition of extended family members.

Final Modification:

Made technical changes to correct quotation marks.

Sections 31-405.131 through .131(c)(3)

Specific Purpose:

These sections are adopted to specify that active efforts must be engaged in to comply with the ICWA placement preferences pursuant to WIC section 361.31(k). It further specifies standards that must be applied when engaging in active efforts related to placement preferences.

Factual Basis:

This section is necessary to provide clarity that active efforts must also be engaged for placement preferences as stated in ICWA at 25 U.S.C. section 1915(d) and WIC section 361.31(k), to consider the social and cultural ties with the child's tribe.

Final Modification:

After further review, modifications were made in Section 31-405.131 to capitalize Active Efforts and to add language to affirmatively require social workers to follow the provisions in subsections (a) through (c). Section 31-405.131(b) was modified to add "when" and correct a grammatical error.

In addition, Section 31-405.131(c) was modified to add language clarifying that the "good cause determination," on whether there is justification to deviate from the ICWA placement preferences, is made by the court.

Sections 31-405.16 through .165

Specific Purpose:

These sections are adopted to specify a process, clarify duties and specify safety standards when making the determination to place a child in a Tribally Approved Home. These sections intend to provide a process that clarifies the role of the social worker including the duty to conduct criminal background checks and Child Abuse Central Index (CACI) checks. It also clarifies the social worker's duty in those instances where a Tribal Child Welfare Agency pursuant to, and as defined in, WIC section 10553.12, conducts its own background checks. While the licensing requirements are excluded, certain protocols are retained that will provide additional support to prospective foster parents such as the provision to the caregivers of an orientation on the child welfare system as provided by Section 31-445.141 or the rights of children in out-of home care contained in Section 31-445.142. Finally, this section clarifies that absent good cause to the contrary, the placement should follow the list of ICWA placement preferences at 25 U.S.C. section 1915(b)(i – iv), such as a Tribally Approved Home, which is second on the list.

Factual Basis:

The adoption of this section is necessary because county social workers as well as tribal representatives have expressed confusion, during ICWA Workgroup meetings and at Tribally Approved Homes Sub-Committee Meetings, over the appropriate county role in the approval of the home for the placement of an Indian child. This section clarifies that Tribally Approved Homes are authorized by ICWA, in which they are identified as the equivalent of state licensed or approved foster care homes and are contained within the federal definition of a foster care home eligible for Title IV-E. Tribally Approved Homes are not subject to state licensing requirements for foster care because they are licensed or approved according to the tribe's standards. They are an option for placement of Indian children, consistent with the ICWA at 25 U.S.C. sections 1915 and 1931; 45 CFR part 1355.20; HSC section 1505; and WIC section 361.2(e)(7).

Final Modifications:

Sections 31-405.161, .162, .162(a) and 162(a)(2) were modified to change "Tribal Child Welfare Agency" to "Tribal Agency" pursuant to AB 403, Chapter 773, Statutes of 2015. AB 403 modified the definition in Welfare and Institutions Code section 10553.12, of 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.

Section 31-405.164 and Section 31-405.165 were renumbered to 31-405.163 and 31-405.164 due a technical error where the 31-405.163 was previously omitted.

In response to public comments, Section 31-405.164 was modified to clarify that deviation from the ICWA placement preference order can only occur with good cause as determined by the court and that the social worker has a duty to provide the court with facts and supporting evidence to justify the deviation.

Section 31-410.31

Specific Purpose:

This section is adopted to clarify that when selecting a temporary placement for an Indian child, social workers are required, to the extent possible, to follow the ICWA active efforts and placement preference requirements.

Factual Basis:

The adoption of this section is necessary to make clear that when selecting a temporary placement for an Indian child, social workers are required, to the extent possible, to follow the ICWA active efforts and placement preference requirements specified in 25 U.S.C. section 1915. This section cross-references the placement preference requirements in Section 31-420.3. Additionally, this section is necessary because prior Division 31 regulations did not address this issue regarding the important relationship between active efforts to prevent the removal of an Indian child from their family even when seeking a temporary placement.

Final Modification:

Modifications were made in response to public comments, including from the Judicial Council, which noted this section needed to be clear that even when placing a child in a temporary placement, social workers are required to engage in Active Efforts to place the child in compliance with ICWA placement preferences. After further consideration, we agree that using the terminology "to the extent possible" made it appear as an optional duty to place children in compliance with the ICWA placement preferences. The regulation has therefore been modified to require Active Efforts to place the child in compliance with ICWA preferences.

Sections 31-410.6, .61 and .611 Renumbered from Sections 31-410.5, .51 and .511

Specific Purpose:

These sections are renumbered from Sections 31-410.5, 31-410.51 and 31-410.511 to Sections 31-410.6, 31-410.61 and 31-410.611 due to the adoption of Section 31-410.3 above. Specifically, Section 31-410.611 is amended to add the exception for an Indian child whose tribe selects a Tribally Approved Home for the placement of its Indian child per ICWA at 25 U.S.C. section 1915(b). Section 31-410.611 is intended to clarify that the social worker must conduct criminal background checks and CACI checks that apply to the placement of a child that is under juvenile court jurisdiction unless the tribe has a Tribal Child Welfare Agency approved by the Department of Justice to conduct criminal background and CACI checks. This provision is consistent with the changes implemented via SB 1460 (Chapter 772, Statutes of 2014). While the licensing of the Tribally Approved Home is not required, this section clarifies that nonetheless certain protocols are retained that will provide additional support to prospective foster parents such as the provision to the caregiver of an orientation on the child welfare system provided by Section 31-445.141 or the rights of children in out-of home care contained in Section 31-445.142. Finally, this section clarifies that absent good cause to the contrary, the placement should follow the list of ICWA placement preferences at 25 U.S.C. section 1915(b) and Section 31-420.3, such as a Tribally Approved Home, which is second on the list.

Factual Basis:

This amendment to Section 31-410.611 is necessary to demonstrate Tribally Approved Homes are authorized by ICWA, in which they are identified as the equivalent of state licensed foster care homes and are contained within the federal definition of a foster care home eligible for Title IV-E funding. Such homes are not subject to licensing requirements for foster care, yet are an option for placement of Indian children, consistent with the ICWA at 25 U.S.C. sections 1915 and 1931; 45 CFR part 1355.20; and HSC section 1505. Confusion has been expressed by county social workers as well as tribal representatives, over county duties when an Indian child is being placed in a Tribally Approved Home.

Final Modification:

Section 31-410.611 is amended to include "their decision" as a technical modification.

Section 31-410.612

Specific Purpose:

This section is adopted to clarify that a Tribally Approved Home and the tribal assessment is considered equivalent to state licensing standards, applicable to foster family homes consistent with Section 31-405.1(f) and therefore eligible for Title IV-E funding.

Factual Basis:

This adoption is necessary to be consistent with ICWA at 25 U.S.C. sections 1915 and 1931; 45 CFR part 1355.20; and HSC section 1505, stating tribes are authorized to license and approve their own foster or adoptive homes.

Final Modification:

The CDSS modified Section 31-410.612 to correct a technical error in the cross reference from Section 31-405.1(f) to Section 31-405.16.

Section 31-410.8

Specific Purpose:

This section is adopted to clarify placement standards and requirements for Indian children, including for temporary placements.

Factual Basis:

This section is necessary to make specific ICWA placement standards, which must be considered when placing an Indian child in a temporary placement consistent with ICWA at 25 U.S.C. section 1915(b), and WIC section 361.31.

Final Modification:

The section was modified in response to public comments for Section 31-410.81, raising a concern that compliance with the ICWA placement preferences was not clear. It now requires Active Efforts to comply with the ICWA placement preference requirements when placing an Indian child and added the cross-reference to Section 31-420.3 where the placement preference requirements are more fully detailed. In response to public comments, this regulation was modified to require Active Efforts to comply with the ICWA placement preference requirements.

Section 31-420.211

Specific Purpose:

This section is amended to specify in the regulations that ICWA placement preference requirements and standards must be applied when placing an Indian child into a foster care placement. This cross references Section 31-420.3, which lays out each of the ICWA placement preference requirements.

Factual Basis:

This amendment is necessary to incorporate, make consistent and clarify the duties associated with ICWA placement standards, when placing an Indian child in a foster care placement as specified by ICWA at 25 U.S.C. section 1915(d) and WIC section 361.31.

Final Modification:

Section 31-420.211 was modified to add "placement" to the cross reference regarding the preference requirements, so that social workers seeking to make a foster care placement involving an Indian child are alerted of the ICWA placement preference requirements.

Sections 31-420.232(a) and (b) Renumbered from Sections 41-420-232(1) and (2)

Specific Purpose/Factual Basis:

Sections 31-420.232(1) and (2) are renumbered to Sections 31-420.232 (a) and (b) to make the outline numbering consistent. This is a non substantive change. There are no changes to the regulation text.

Section 31-420.3

Specific Purpose:

This section is adopted to clarify for social workers that California requires active efforts to comply with ICWA placement preferences. This section provides the details of those placement standards and requirements.

Factual Basis:

The adoption of this section is necessary to require social workers to engage in active efforts to comply with ICWA placement preferences when placing an Indian child in a foster care placement. ICWA at 25 U.S.C. section 1915(b) sets forth placement preferences, and California at WIC section 361.31 incorporates those preferences but adds at WIC section 361.31(k) active efforts to comply with the preferences.

Final Modification:

Made technical edits to capitalize "Active Efforts."

Sections 31-420.333 and .333(a) through .333(d)

Specific Purpose:

These sections are adopted to make clear to social workers the conditions under which any deviation from the placement preference order specified in ICWA at 25 U.S.C. section 1915(b) and WIC sections 361.31(b) and (c) is acceptable.

Factual Basis:

These sections are necessary to make clear that any deviation from the placement preference order specified in ICWA at 25 U.S.C. sections 1915(a) and (b), and WIC sections 361.31(b) and (c) cannot occur without good cause; and to provide the specific types of good cause considerations. This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA placement preference requirements in their child welfare practice.

Final Modification:

In response to public comments Section 31-420.333 was amended to clarify that the court makes the determination on whether there is good cause to deviate from the ICWA placement preference requirements. Section 31-420.334 is proposed due to these public comments.

Section 31-420.334

Specific Purpose:

In response to public comments for Section 31-420.333, this section is added to require that the social worker must provide the court with evidence to support a position that the placement of an Indian child should deviate from the ICWA placement preferences.

Factual Basis:

This modification is necessary to clarify and implement the requirement that social workers must provide information to the court to support a deviation from the ICWA placement preference requirements. This change is consistent with the Welfare and Institutions Codes section 361.31(j), which states, "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."

Section 31-420.34

Specific Purpose:

This section is adopted to make clear what must occur when no preferred placement as specified in ICWA at 25 U.S.C. section 1915(b) and WIC sections 361.31(b) and (c) is available.

Factual Basis:

This section is necessary to make clear that when no preferred placement as specified in ICWA at 25 U.S.C. section 1915(b) and WIC sections 361.31(b) and (c) social workers must document active efforts 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. This is consistent with WIC section 361.31(i). This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Final Modification:

Made technical edits to capitalize "Active Efforts."

Section 31-420.35

Specific Purpose:

This section is adopted to make clear to social workers that all active efforts to comply with ICWA placement preferences, the records of each placement of an Indian child, and the placement history must be kept indefinitely and made available for review upon request by the Secretary of the Interior or the child's tribe.

Factual Basis:

This section is necessary to make clear that a record of each placement of an Indian child and the placement history must be kept in perpetuity, including documentation of each of the active efforts to comply with the placement preference order as specified in ICWA at 25 U.S.C. sections 1915(a) and (b) and WIC sections 361.31(b) and (c). Further, this informs social workers that such placement history must be made available upon request to the Secretary of the Interior and the child's tribe. This is consistent with ICWA at 25 U.S.C. section 1915(e) and WIC section 361.31(k). This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Final Modification:

Made technical edits to capitalize "Active Efforts."

Handbook Section 31-425.132 Renumbered from Section 31-425.133

Specific Purpose/Factual Basis:

This Handbook Section is amended to delete the regulation outline numbering of Section 31-425.133, which will now be referenced as Handbook Section 31-425.132 because it comes immediately after. There are no changes to the handbook text.

Final Modification:

The Handbook is updated to reflect the appropriate cross references.

Sections 31-425.2

Specific Purpose:

This section is amended to include the requirement to adhere to ICWA placement preference (which include specific adoption placement) requirements when selecting a permanent placement for an Indian.

Factual Basis:

The amendment of this section is necessary to make consistent and clarify the duties associated with ICWA placement standards, when placing an Indian child as specified by ICWA at 25 U.S.C. section 1915 and WIC section 361.31.

Final Modification:

The CDSS made technical changes necessary to correct errors in the cross references in Section 31-425.2 and Section 31-425.21.

Section 31-425.21

Specific Purpose:

This section is adopted to include the requirement to adhere to ICWA adoptive placement preference which includes specific adoption placement requirements when selecting a permanent placement for an Indian child that may result in the termination of parental rights.

Factual Basis:

The adoption of this section is necessary to make consistent and clarify the duties associated with ICWA placement standards when placing an Indian child in a permanent placement as specified by ICWA at 25 U.S.C. section 1915 and WIC section 361.31.

Final Modification:

The CDSS made technical changes necessary to correct errors in the cross references in Section 31-425.2 and Section 31-425.21.

Section 31-425.22

Specific Purpose:

This section is adopted to inform and clarify that social workers must follow the ICWA placement preference requirements when selecting a permanent placement of an Indian child.

Factual Basis:

This section is necessary to make clear that when a permanent placement involves a foster care or guardianship placement, the social worker must adhere to the placement preferences specified in the ICWA placement standards as specified by ICWA at 25 U.S.C. sections 1915(a) and (b); and WIC sections 361.31(b) and (c). This language is a substantial duplication of the statutory language referenced in this regulatory section but is necessary to provide clear program requirements to the social workers that are responsible for carrying out the ICWA requirements in their child welfare practice.

Final Modification:

Grammatical changes were made to add an (s) to "preferences."

Section 31-430.22

Specific Purpose:

This section is adopted to clarify that where a voluntary placement may no longer be voluntary, the social worker is to comply with the Active Effort requirements to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to comply with the ICWA placement preferences.

Factual Basis:

In response to public comments for Section 31-430.214 and after further review it was noted a social worker can make a determination that the placement is no longer voluntary as the parent has exceeded the temporary timelines for such a placement or demonstrated an inability to care for the child requiring the filing of a petition to formally remove the child. In that situation the placement will no longer be voluntary and thus will require application of the higher standards of ICWA for involuntary child custody proceedings. It is therefore necessary to require that the social worker provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and to comply with the ICWA placement preferences.

Section 31-430.32

Specific Purpose:

This section is amended to include the Indian custodian as persons that the social worker must include in completing the Voluntary Placement Agreements. The social worker must inform them in writing of their responsibilities and their share of the responsibility for the family reunification service costs or if they are eligible to receive services without a fee under specified circumstances.

Factual Basis:

The amendment to this section is necessary to add an Indian custodian as one of the individuals identified on the duties associated with a voluntary placement pursuant to ICWA at 25 U.S.C. sections 1913(a) through (c) and further as set forth in state law in WIC section 16507.4.

Final Modification:

Made technical edits to lower case "custodian(s)."

Section 31-430.33

Specific Purpose:

This section is amended to include the Indian Custodian as persons that must be assisted in understanding the retention of legal custody and the potential limits of parental consent.

Factual Basis:

The amendment to this section is necessary to add an Indian custodian as one of the individuals identified in the duties associated with a voluntary placement pursuant to ICWA at 25 U.S.C. sections 1913(a) through (c) and further as set forth in state law in WIC section 16507.4.

Final Modification:

Made technical edits to lower case "custodian(s)."

Sections 31-510.22, .221 and .222

Specific Purpose:

These sections are adopted to clarify those placement circumstances that do not meet the conditions for applying the ICPC and to exclude cases that involve an Indian child that is under the jurisdiction of an Indian court.

Factual Basis:

These sections are necessary because there has previously been no specification on how the ICPC does or does not apply to Indian children. As provided in Family Code section 7907.3, these sections are adopted to clarify for social workers that the ICPC does not apply between two tribes, or between a compact member and an Indian Tribe that is assuming jurisdiction of the Indian child's case. Tribes are not signatories to the ICPC and its provisions therefore do not apply in the situations specified in the amendments.

Final Modification:

Section 31-510.222 was amended to remove the term "Indian" before Tribal Court to make this consistent with the amendments to the definition made in Section 31-002 (i)(3). In response to public comments and consistent with the ICWA at 25 U.S.C. section 1903(12) "Indian Tribal Court" was revised by removing "Indian" and moving the definition to Section 31-002(t) to place it in alphabetical order in keeping with existing formatting in the definition section.

b) Additional Documents Upon Which Department Is Relying

Updated BIA Guidelines effective 2/25/2015, 80 FR 10146

c) 45-Day Public Notice/Public Comment Period

These regulations were noticed to the public for a minimum of 45-days beginning July 31, 2015, and considered as Item #2 at the public hearing held on September 16, 2015, in Sacramento, California. The public comment period closed at 5:00 p.m. on September 16, 2015. Public comments were received during the comment period in writing and orally at the public hearing. The CDSS has put the public comments with responses in a separate document named Comment Response Matrix.

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
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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.	<p>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.</p> <p>To the extent addition of Indian custodian was appropriate in those sections amended within this package, amendments were made.</p>
	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.

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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 recommendthe 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.

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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.

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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	<p>...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.</p> <p>See link: http://www.bia.gov/WhoWeAre/RegionalOffices/Pacific/TribalOperations/index.htm.</p>	<p>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 <i>"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.),..."</i></p> <p>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.</p>

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Section	Title	Commenter(s)	Comments	Final Response
31-002(I)(3)	DEFINITIONS	Mary Risling-	<p>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."</p>	<p>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:</p> <p><i>"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."</i></p> <p>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.</p> <p>See also response on Section 31-002(I)(3) to the California Judicial Council.</p>

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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 Section 31-002(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 Section 31-002(i)(3)(A).

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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 qualify 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.

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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.

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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).

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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.

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Section	Title	Commenter(s)	Comments	Final Response
31-005.111	CHILD WELFARE PROGRAM SUPPORT ACTIVITIES	Pala Band of Mission Indians	<p>The word "can" should be replaced with the word "shall" for compliance with active efforts and placement preferences.</p> <p>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.</p>	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	<p>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.</p>	<p>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.</p> <p>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.</p>

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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.	<p>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.</p> <p>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.</p>
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 <i>shall</i> 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.

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31-066.211	MULTIDISCIPLINARY TEAM ASSESSMENT AND RECOMMENDATION FOR PLACEMENT IN OUT-OF-STATE GROUP HOME	Pala Band of Mission Indians	<p>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."</p> <p>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."</p>	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	<p>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.</p>	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.

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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"

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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 <i>Parental Notification of Indian Status</i> , in addition to the ICWA-010(A) <i>Indian Child Inquiry Attachment</i> , 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 <i>Parental Notification of Indian Status</i> in addition to the ICWA 010(A) <i>Indian Child Inquiry Attachment</i> . 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 <i>Parental Notification of Indian Status</i> in addition to the ICWA-010(A) <i>Indian Child Inquiry Attachment</i> , should be added. (See Rule 5.481(a).)	The regulation was modified to include reference to ICWA-020.

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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 <i>Notice of Child Custody Proceeding for Indian Child</i> must be provided to "...the Indian child's tribe <u>and</u> the Secretary of the Interior" rather than <u>or</u> 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. .

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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 Section 31-002(t)(7).

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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.

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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).

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Section	Title	Commenter(s)	Comments	Final Response
31-105.116(b)(1) and Handbook	EMERGENCY RESPONSE PROTOCOL	Pala Band of Mission Indians	<p>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.</p> <p>The Handbook language should be amended to change "<u>appropriate</u>" to "<u>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.</p>	<p>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.</p> <p>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.</p>

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Section	Title	Commenter(s)	Comments	Final Response
31-105.117	EMERGENCY RESPONSE PROTOCOL	Pala Band of Mission Indians	<p>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.</p>	<p>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.</p>

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Section	Title	Commenter(s)	Comments	Final Response
31-110.2	IN-PERSON INVESTIGATIONS	Pala Band of Mission Indians	<p>Change "that" to "who" and add "by the social worker" at the end of the sentence.</p> <p>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.</p>	<p>We agree the language identified as limiting, is not necessary and it has been deleted.</p> <p>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.</p>
31-110.32	IN-PERSON INVESTIGATIONS	Judicial Council	<p>... 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...."</p>	<p>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.</p>
31-110.32	IN-PERSON INVESTIGATIONS	Pala Band of Mission Indians	<p>See comment above re: replace this language with the language from 31-115.2</p>	<p>See response to the Pala Band of Mission Indians for Section31-110.31.</p>
31-115.2	IN-PERSON INVESTIGATION	Judicial Council	<p>... 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;</p>	<p>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.</p>

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Section	Title	Commenter(s)	Comments	Final Response
31-115.2	IN-PERSON IMMEDIATE INVESTIGATION	Pala Band of Mission Indians	<p>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).</p> <p>See comment for Sec. 31-110.31 and 31-110.32. Add new section 31-115.21 – italicized language.</p> <p>The Indian child’s tribe must be consulted and included in all investigations and removals.</p>	See response to Judicial Council for Section 31-115.2.
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 Section 31-115.2.
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 Section 31-115.2.
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.

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31-125.223	INVESTIGATION REQUIREMENTS	Judicial Council	<p>...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.</p> <p>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 <i>Parental Notification of Indian Status</i>.</p>	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	<p>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.</p> <p>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..."</p> <p>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).</p>	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.

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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 <i>Parental Notification of Indian Status</i> 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 <i>Parental Notification of Indian Status</i> 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.

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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.

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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	<p>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).</p> <p>Add language reminding social workers and the courts of the continuing on going duty to inquire: <u>Social workers have an affirmative and continuing duty to inquire about a child's Indian status.</u></p> <p>Social workers must be clear that <u>the court</u> makes the determination as to ICWA's applicability if there is no determination within 60 days after receiving notice.</p>	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

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Section	Title	Commenter(s)	Comments	Final Response
31-135.11	AUTHORITY FOR REMOVAL OF CHILD	Pala Band of Mission Indians	<p>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.</p> <p>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.</p> <p>(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.</p> <p>(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.</p> <p>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).</p>	<p>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.</p>

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Section	Title	Commenter(s)	Comments	Final Response
31-135.121	AUTHORITY FOR REMOVAL OF CHILD	Diane Childs, San Bernardino County	<p>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." <i>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?</i></p>	<p>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</p> <p>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.</p> <p>Notification of the right of judicial review would still apply regardless of whether the child is an Indian child.</p> <p>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.</p>

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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."	<p>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.</p> <p>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.</p>
31-135.121(a)	AUTHORITY FOR REMOVAL OF CHILD	Pala Band of Mission Indians	<p>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.</p> <p>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))</p>	<p>We agree the proposed language is not applicable. See response to CILS and San Bernardino comments regarding this section.</p> <p>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.</p>

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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.

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Section	Title	Commenter(s)	Comments	Final Response
31-135.231	AUTHORITY FOR REMOVAL OF CHILD	Pala Band of Mission Indians	<p>The language of Section 31-135.231 should be deleted. The 2015 BIA Guidelines provide an extensive definition and examples of active efforts and the entire text of A.2 "Active efforts" should be included in the Regulations.</p> <p>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."</p>	<p>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.</p>
31-135.231 Handbook	AUTHORITY FOR REMOVAL OF CHILD	Pala Band of Mission Indians	<p>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.</p>	<p>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.</p>
31-135.233	AUTHORITY FOR REMOVAL OF CHILD	Judicial Council	<p>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.</p>	<p>The section was modified to include this recommendation.</p>

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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	<p>D.4. Who may serve as a qualified expert witness?</p> <p>(a) A qualified expert witness should have specific knowledge of the Indian tribe's culture and customs.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>	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.

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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 (<i>Procedures for Making Requests for Transfer to Tribal Court</i>) 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.

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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	<p>Revise to be consistent with BIA Guidelines D.2(b): "...the assessment shall include detailed documentation of active efforts..."</p> <p>The assessment shall also include collaboration and consultation with the Indian child's tribe – this language should be included.</p>	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."

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Section	Title	Commenter(s)	Comments	Final Response
31-201.121(a)	ASSESSMENT AND CASE PLANNING PROCESS	Pala Band of Mission Indians	<p>All references in this Section to Section 31-135-23 should be corrected to reference Section 31-135- 231.</p> <p>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."</p> <p>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.</p>	<p>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.</p> <p>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"</p>

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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. <u>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.</u> " <u>Emphasis added.</u> 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.	<p>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.</p> <p>Section 31-201.133(a) is also amended to include extended family."</p> <p>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.</p>
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

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Section	Title	Commenter(s)	Comments	Final Response
31-206.311	CASE PLAN DOCUMENTATION	Judicial Council	<p>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;</p>	<p>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.</p>
31-206.311	CASE PLAN DOCUMENTATION	Pala Band of Mission Indians	<p>This section should clarify the requirements of state law: Welf. & Inst. Code Sec. 361.31(h) – (j) provide:</p> <p>(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).</p> <p>(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.</p> <p>(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.</p> <p>Good cause is determined by the court, not social workers.</p>	<p>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.</p>

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Section	Title	Commenter(s)	Comments	Final Response
31-206.312	CASE PLAN DOCUMENTATION	Pala Band of Mission Indians	<p>Welf. & Inst. Code Sec. 361.31(h) – (j) provide:</p> <p>(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).</p> <p>(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.</p> <p>(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.</p> <p>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.</p>	<p>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.</p>
31-310.131	ASSESSMENT DOCUMENTATION	Pala Band of Mission Indians	<p>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.</p>	<p>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.</p>
31-315.11	SERVICE-FUNDED ACTIVITIES	Pala Band of Mission Indians	<p>Revise to state that "ICWA requires detailed documentation when active efforts to provide these services prove unsuccessful." Consistent with BIA Guidelines D.2(b).</p>	<p>The regulation will not be modified because this section does not pertain to documentation requirements.</p>

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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 <u>do not and cannot</u> 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

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Section	Title	Commenter(s)	Comments	Final Response
31-405.162	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Aggie Jenkins, Riverside County	<p>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:</p> <ul style="list-style-type: none"> • 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. <p>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?</p>	<p>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.</p>
31-405.162	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Delia Parr, California Indian Legal Services	<p>Please clarify that the Social Worker must request a good cause determination by a court <u>prior</u> 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.</p>	<p>Clarification that the determination is made by the court has been made in Section 31-405.164.</p>
31-405.162	SOCIAL WORKER RESPONSIBILITIES FOR PLACEMENT	Pala Band of Mission Indians	<p>See definition of "Tribal Child Welfare Agency" Sec. 31- 002(t)(7)</p>	<p>Tribal Agency was inserted to reflect changes from AB 403, Chapter 773, Statutes of 2015.</p>

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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 <u>prior</u> 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.

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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 Section 31-410.31. 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.

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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.

UPDATED INFORMATIVE DIGEST

Current laws and regulations provide procedures for county social workers in dealing with Indian child welfare, including but not limited to, adoption, placement, custody, and working with Indian tribes and California child welfare agencies.

Existing laws and regulations:

Indian Child Welfare Act, 25 U.S.C. Section 1901, Public Law (P.L.) 95-608
 Title IV-E of the Social Security Act, 42 U.S.C. section 670 et. seq.
 Senate Bill 678 (Chapter 838, Statutes of 2006) Pertinent sections: 29, 30, 31, 32, 33, 34, 35, 44, 45, 48, 49, 50, 52, 53, 54 and 55
 Assembly Bill 12 (Chapter 559, Statutes of 2010) Pertinent sections: 5, 13, 14 and 66
 Assembly Bill 1325 (Chapter 287, Statutes of 2009) Pertinent sections: 6, 7, 12, 15 and 16
 Assembly Bill 1695 (Chapter 653, Statutes of 2001) Pertinent sections: 2, 11.3 and 11.6
 Assembly Bill 1712 (Chapter 846, Statutes of 2012) Pertinent sections: 4, 15, 15.1, 15.2, 15.3, 21, 23 and 56
 Assembly Bill 2417 (Chapter 467, Statutes of 2010)
 Assembly Bill 2418 (Chapter 468, Statutes of 2010)
 Senate Bill 1460 (Chapter 772, Statutes of 2014) Pertinent sections 6, 8, 12, 14 and 15
 California Rules of Court, rules 5.480, 5.481, 5.482, 5.484, 5.552, and 5.690
 The Bureau of Indian Affairs (BIA) Guidelines of 2015, 80 Federal Register (FR) 10146 (February 25, 2015)

The following forms are incorporated by reference in the regulations:

AAP 4 (Rev. 9/13) - Eligibility Certification Adoption Assistance Program
 FC 2 (Rev. 11/04) - Statement of Facts Supporting Eligibility for Aid to Families with Dependent Children (AFDC) Foster Care
 FC 3 (Rev. 11/04) - Determination of Federal AFDC-FC Eligibility
 FC 3 A (Supplement) (Rev. 11/04) - AFDC-FG/U Worksheet
 ICPC-100A (Rev. 8/01) - Interstate Compact Placement Request
 ICPC-100B (Rev. 8/01) - Interstate Compact Report on Child's Placement Status
 ICWA-010(A)" (Rev. 1/08) - Indian Child Inquiry Attachment
 ICWA-020 (Rev. 1/08) - Parental Notification of Indian Status
 ICWA-030 (Rev. 1/08) - Notice of Child Custody Proceeding for Indian Child
 ICWA-030(A) (Rev. 1/08) - Attachment to Notice of Child Custody Proceeding for Indian Child
 KG-2 (Rev. 1/11) - Statement of Facts Supporting Eligibility for Kinship Guardianship Assistance Payment
 SOC 155C (Rev. 1/00) - Voluntary Placement Agreement Parent/Agency (Indian Child)

The AAP, FC, KG, ICPC and SOC forms are available on the CDSS website at:

<http://www.cdss.ca.gov/cdssweb/PG19.htm>

The ICWA forms are available on the Judicial Council's website at <http://www.courts.ca.gov>

This regulation change is made for purposes of clarity and non-duplication as the requirements that currently are included in Sections 31-515 and 31-520 will now be included throughout the Manual of Policies and Procedures Division 31 regulations, which will cause these sections to be duplicative therefore they are being repealed in this change. Until now, the ICWA requirements were separated from the rest of Division 31 regulations (currently Sections 31-515 and 31-520). These regulations are amended because of Senate Bill (SB) 678 Statutes of 2006 which was passed to incorporate into various state codes, minimum federal standards for Indian child custody proceedings as required by the ICWA of 1978 (P.L. 95-608) codified in the U.S.C. at Title 25 section 1901, et. seq. The requirements specified by SB 678, apply at specific points throughout a child's case. State child welfare agencies and State courts must follow these requirements when removing Indian children from their homes and placing them into foster care or adoptive homes.

Feedback from social workers and stakeholders is that keeping the related standards and requirements separate from the rest of Division 31 regulations as Special Requirements, at Chapter 31-500 in Sections 31-515 and 31-520, diminishes the extent to which compliance with ICWA occurs. The ICWA requirements are more likely to be overlooked during the different stages of a child's case when an ICWA standard is required. The modification to include ICWA standards throughout Division 31 adds clarity and consistency by addressing each ICWA requirement at the various points in the life of a child's child welfare case when the ICWA requirements are applicable.

The anticipated benefits of the proposed changes to the Division 31 Regulations would be: improved state and county compliance with the requirements of the federal mandates of ICWA, as well as state law compliance regarding county child welfare service agencies involving Indian children. These changes will:

- greatly improve the working relationship between the State and California Tribes;
- promote better collaboration between child welfare agencies and tribes; and
- produce better outcomes for Indian children that come into contact with California child welfare agencies.

Determination of Inconsistency/Incompatible with Existing State Regulations

The CDSS has determined that the proposed regulations are not inconsistent or incompatible with existing regulations. The CDSS has evaluated the proposed regulations and found that these are the only regulations concerning county social workers activities dealing with Indian Child Welfare; therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

45-Day Public Notice Public Comment Period

These regulations were noticed to the public for a minimum of 45-days beginning July 31, 2015, and considered as Item #2 at the public hearing held on September 16, 2015, in Sacramento, California. The public comment period closed at 5:00 p.m. on September 16, 2015. Public comments were received during the comment period in writing and orally at the public hearing. The CDSS has put the public comments with responses in a separate document named Comment Response Matrix. The additional changes will be noticed to the interested public, as defined by Government Code sections 11347.1(b)(1) through (4), and made available for public inspection during a 15-day renote comment period.