



Prairie Band Potawatomi Nation
Government Center

May 7, 2015

Ms. Elizabeth Appel
Office of Regulatory Affairs and Collaborative Action
Indian Affairs, U.S. Department of the Interior
1849 C Street NW, MS 3642
Washington, DC 20240

Re: Notice on Proposed Rulemaking- Regulations for State Courts and Agencies in Indian Child Custody Proceedings- RIN 1076-AF25- Federal Register (March 20, 2015)

Dear Ms. Appel,

The Prairie Band Potawatomi Nation (hereinafter the "Nation") is pleased to have the opportunity to comment on the Notice of Public Rulemaking (NPRM) regarding the Regulations for State Courts and Agencies in Indian Child Custody Proceedings. This NPRM was published in the Federal Register on March 20, 2015, pages 14880-14894. This proposed rule would establish a new subpart to regulations implementing ICWA at 25 CFR 23 to address Indian child welfare proceedings in State courts.

The Nation applauds the Secretary and the Bureau of Indian Affairs (BIA) for their quick response to the pleas of tribal nations for revised BIA ICWA guidelines and for regulations to ensure implementation of the guidelines. The time for revised ICWA guidelines was overdue as it had been nearly 40 years from the date the Bureau first issued the guidelines in 1979. The revised guidelines and the proposed regulations seek to clarify ambiguous language which has resulted in inconsistent procedural applications and uncertain results for native children and families as well as the attorneys, child welfare workers and state court judges involved in such cases.

The children of the Prairie Band Potawatomi are the strength and the future of the Nation. They are the heart of the community. The Nation is continually working on improving the lives of our youth and providing them opportunities for education, recreational and cultural activities for themselves and their progeny. In order to maximize these opportunities for all tribal youth, the Nation's District Court accepts the transfer of as many

ICWA cases as possible and our child welfare and social service workers reach out to work with their state counterparts in order to provide assistance with genealogy, relative placements, cultural activities, education and social services and more.

These proposed federal regulations will ensure courts and agencies working with ICWA-eligible children and their families, understand how the law is to be applied and interpreted. The regulations will clarify what actions are expected from the parties to an ICWA case; what actions are required to be compliant with the ICWA, and what the timeline is to accomplish these actions. These uniform standards will help to eliminate wasted time not only for Native families and relatives but also state courts and welfare agencies in the numerous cases where many practitioners, both legal and child welfare, are hesitant on what the legal requirements are in an ICWA case.

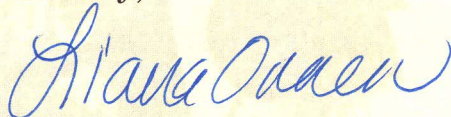
Specifically the Nation would like to provide the following comments on the proposed regulations:

1. §23.2 Definitions. *Active Efforts*. Some of these appear to be redundant, ie (10) and (14). Recommend shortening the list of examples and focus on those most important, ie (1), (2), (12), (14) and (15) could be eliminated if they are considered to be Reasonable Efforts instead of Active Efforts.
2. §23.2 (4) Specify which or all of the proceedings the tribal representatives are to be invited to participate in, ie case planning meetings, court proceedings, and Citizen Review Board (CRB) meetings.
3. §23.2 (13) Eliminate “consideration of” and instead require the provision of alternative ways to addressing needs.
4. §23.2 Foster Care Placement. Consider the situation where a child is not physically removed from the home, but remains in the home, but the parent is required to leave the home, and another relative moves into the home. Sometimes state courts think the ICWA does not apply in these cases.
5. §23.113 (a) (2) Define the term “promptly,” ie “in no cases beyond 72 hours.”
6. §23.113 (a) (3) Define the term “emergency”. This term is subject to interpretation such that the emergency could be a parent who is alcohol-dependent and does not get the child to school, so that child is truant. Is this an emergency requiring out of home placement? Is it imminent physical damage or harm? Greater clarity or more examples would be helpful in this area.

7. §23.111 (d) The requirement for the enumerated information to be included in an affidavit to the petition for emergency removal is extremely helpful. Is it possible that there will not have been a possibility for any active efforts to have been made in some of these emergency situations?
8. §23.111 (e) This is one of the most important concepts in the proposed regulations: that at each stage of the proceeding, to require the court make a determination if the removal is no longer necessary.
9. §23.111 (f) (1) Clarify that the hearing must be held within the 30 days of temporary emergency custody. A timeline is very helpful for courts to know what findings to make and when.
10. §23.111 (f) (2) Provide examples or a definition of "extraordinary circumstances" otherwise this term may be subject to broad interpretation.
11. §23.115 (b) Clarify. Does the right only attach at each proceeding? The right continues throughout the case, and at each stage of the proceeding, the court should inform the parties that they have the right to transfer the case.

The Nation continues to work with state agencies and courts to facilitate the transfer of ICWA cases to tribal court as well as to educate state courts and child welfare organizations and agencies with regard to available tribal child welfare resources and on ICWA compliance. The Nation fully supports these proposed regulations and we thank you for the opportunity to provide comments. Should you have any need for additional information, please contact me immediately.

Sincerely,



Liana Onnen
Tribal Council Chairperson

Cc: Antoinette Houle, Superintendent Horton Area Office