

state without the necessity of engaging in protracted litigation. The procedures in this part also permit such tribes to secure unquestioned exclusive, concurrent or partial jurisdiction over Indian child custody matters without relinquishing their claim that no Federal statute had ever deprived them of that jurisdiction.

(c) Some tribes may wish to join together in a consortium to establish a single entity that will exercise jurisdiction over all their members located on the reservations of tribes participating in the consortium. These regulations also provide a procedure by which tribes may reassume jurisdiction through such a consortium.

(d) These regulations also provide for limited reassumptions including jurisdiction restricted to cases transferred from state courts under 25 U.S.C. 1911(b) and jurisdiction over limited geographical areas.

(e) Unless the petition for reassumption specifically states otherwise, where a tribe reassumes jurisdiction over the reservation it occupies, any land or community occupied by that tribe which subsequently acquires the status of reservation as defined in 25 U.S.C. 1903(10) also becomes subject to tribal jurisdiction over Indian child custody matters.

### § 13.2 Information collection.

The information collection requirement contained in § 13.11 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0112. The information is being collected when federally recognized tribes request reassumption of jurisdiction over child custody proceedings. The information will be used to determine if reassumption of jurisdiction over Indian child custody proceedings is feasible. Response is required to obtain a benefit.

[53 FR 21994, June 13, 1988]

## Subpart B—Reassumption

### § 13.11 Contents of reassumption petitions.

(a) Each petition to reassume jurisdiction over Indian child custody pro-

ceedings and the accompanying plan shall contain, where available, the following information in sufficient detail to permit the Secretary to determine whether reassumption is feasible:

(1) Full name, address and telephone number of the petitioning tribe or tribes.

(2) A resolution by the tribal governing body supporting the petition and plan. If the territory involved is occupied by more than one tribe and jurisdiction is to be reassumed over all Indians residing in the territory, the governing body of each tribe involved must adopt such a resolution. A tribe that shares territory with another tribe or tribes may reassume jurisdiction only over its own members without obtaining the consent of the other tribe or tribes. Where a group of tribes form a consortium to reassume jurisdiction, the governing body of each participating tribe must submit a resolution.

(3) The proposed date on which jurisdiction would be reassumed.

(4) Estimated total number of members in the petitioning tribe or tribes, together with an explanation of how the number was estimated.

(5) Current criteria for membership in the tribe or tribes.

(6) Explanation of procedure by which a participant in an Indian child custody proceeding may determine whether a particular individual is a member of a petitioning tribe.

(7) Citation to provision in tribal constitution or similar governing document, if any, that authorizes the tribal governing body to exercise jurisdiction over Indian child custody matters.

(8) Description of the tribal court as defined in 25 U.S.C. 1903(12) that has been or will be established to exercise jurisdiction over Indian child custody matters. The description shall include an organization chart and budget for the court. The source and amount of non-tribal funds that will be used to fund the court shall be identified. Funds that will become available only when the tribe reassumes jurisdiction may be included.

(9) Copy of any tribal ordinances or tribal court rules establishing procedures or rules for the exercise of jurisdiction over child custody matters.

(10) Description of child and family support services that will be available to the tribe or tribes when jurisdiction reassumed. Such services include any resource to maintain family stability or provide support for an Indian child in the absence of a family—regardless of whether or not they are the type of services traditionally employed by social services agencies. The description shall include not only those resources of the tribe itself, but also any state or federal resources that will continue to be available after reassumption of jurisdiction.

(11) Estimate of the number of child custody cases expected during a year together with an explanation of how the number was estimated.

(12) Copy of any tribal agreements with states, other tribes or non-Indian local governments relating to child custody matters.

(b) If the petition is for jurisdiction other than transferral jurisdiction under 25 U.S.C. 1911(b), the following information shall also be included in the petition and plan:

(1) Citation of the statute or statutes upon which the state has based its assertion of jurisdiction over Indian child custody matters.

(2) Clear and definite description of the territory over which jurisdiction will be reassumed together with a statement of the size of the territory in square miles.

(3) If a statute upon which the state bases its assertion of jurisdiction is a surplus land statute, a clear and definite description of the reservation boundaries that will be reestablished for purposes of the Indian Child Welfare Act.

(4) Estimated total number of Indian children residing in the affected territory together with an explanation of how the number was estimated.

**§13.12 Criteria for approval of re-assumption petitions.**

(a) The Assistant Secretary—Indian Affairs shall approve a tribal petition to reassume jurisdiction over Indian child custody matters if:

(1) Any reservation, as defined in 25 U.S.C. 1903(10), presently affected by the petition is presently occupied by the petitioning tribe or tribes;

(2) The constitution or other governing document, if any, of the petitioning tribe or tribes authorizes the tribal governing body or bodies to exercise jurisdiction over Indian child custody matters;

(3) The information and documents required by §13.11 of this part have been provided;

(4) A tribal court, as defined in 25 U.S.C. 1903(12), has been established or will be established before reassumption and that tribal court will be able to exercise jurisdiction over Indian child custody matters in a manner that meets the requirements of the Indian Civil Rights Act, 25 U.S.C. 1302;

(5) Child care services sufficient to meet the needs of most children the tribal court finds must be removed from parental custody are available or will be available at the time of reassumption of jurisdiction; and

(6) The tribe or tribes have established a procedure for clearly identifying persons who will be subject to the jurisdiction of the tribe or tribes upon reassumption of jurisdiction.

(b) If the technical assistance provided by the Bureau to the tribe to correct any deficiency which the Assistant Secretary—Indian Affairs has identified as a basis for disapproving a petition for reassumption of exclusive jurisdiction has proved unsuccessful in eliminating entirely such problem, the Bureau, at the request of the tribe, shall assist the tribe to assert whatever partial jurisdiction as provided in 25 U.S.C. 1918(b) that is feasible and desired by the tribe. In the alternative, the Bureau, if requested by the concerned tribe, shall assist the tribe to enter into agreements with a state or states regarding the care and custody of Indian children and jurisdiction over Indian child custody proceedings, including agreements which may provide for the orderly transfer of jurisdiction to the tribe on a case-by-case basis or agreements which provide for concurrent jurisdiction between the state and the Indian tribe.

**§13.13 Technical assistance prior to petitioning.**

(a) Upon the request of a tribe desiring to reassume jurisdiction over Indian child custody matters, Bureau

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agency and Area Offices shall provide technical assistance and make available any pertinent documents, records, maps or reports in the Bureau's possession to enable the tribe to meet the requirements for Secretarial approval of the petition.

(b) Upon the request of such a tribe, to the extent funds are available, the Bureau may provide funding under the procedures established under 25 CFR 23.22 to assist the tribe in developing the tribal court and child care services that will be needed when jurisdiction is reassumed.

**§ 13.14 Secretarial review procedure.**

(a) Upon receipt of the petition, the Assistant Secretary—Indian Affairs shall cause to be published in the FEDERAL REGISTER a notice stating that the petition has been received and is under review and that it may be inspected and copied at the Bureau agency office that serves the petitioning tribe or tribes.

(1) No final action shall be taken until 45 days after the petition has been received.

(2) Notice that a petition has been disapproved shall be published in the FEDERAL REGISTER no later than 75 days after the petition has been received.

(3) Notice that a petition has been approved shall be published on a date requested by the petitioning tribe or

within 75 days after the petition has been received—whichever is later.

(b) Notice of approval shall include a clear and definite description of the territory presently subject to the re-assumption of jurisdiction and shall state the date on which the re-assumption becomes effective. A copy of the notice shall immediately be sent to the petitioning tribe and to the attorney general, governor and highest court of the affected State or States.

(c) Reasons for disapproval of a petition shall be sent immediately to the petitioning tribe or tribes.

(d) When a petition has been disapproved a tribe or tribes may repetition after taking action to overcome the deficiencies of the first petition.

**§ 13.15 Administrative appeals.**

The decision of the Assistant Secretary—Indian Affairs may be appealed under procedures established in 43 CFR 4.350–4.369.<sup>1</sup>

**§ 13.16 Technical assistance after disapproval.**

If a petition is disapproved, the Bureau shall immediately offer technical assistance to the tribal governing body for the purpose of overcoming the defect in the petition or plan that resulted in the disapproval.

<sup>1</sup>Sections 4.350–4.369 of 43 CFR part 4, were removed at 46 FR 7335, Jan. 23, 1981.