

Supporting Statement A

Indian Child Welfare Act (ICWA) Proceedings in State Court

OMB Control Number 1076-0186

Terms of Clearance: OMB filed a comment on the proposed rule, withholding approval and directing the agency, prior to publication of the final rule, to submit to OMB a summary of all comments related to the information collection contained in the proposed rule and the agency response and clearly indicating any changes made to the information collection as a result of the comments.

General Instructions

A completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question “Does this ICR contain surveys, censuses, or employ statistical methods?” is checked "Yes," then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

The Indian Child Welfare Act (ICWA or Act), 25 U.S.C. 1901 *et seq.*, imposes certain requirements for child custody proceedings that occur in State court when a child is an “Indian child.” In 2016, the Department updated its regulations to more comprehensively address ICWA’s requirements and ensure consistency in State court implementation of ICWA throughout the United States. The new regulations, primarily located in Subpart I of 25 CFR 23, provide procedural guidance for implementing ICWA, which necessarily involves some information collections to determine whether the child is Indian, provide notice to the Tribe and parents or Indian custodians, and maintain records.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information**

received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.

The information collections are conducted during a civil action (i.e., a child custody proceeding). While these civil actions occur in State court, and the U.S. is not a party to the civil action, the civil action is subject to the Federal statutory requirements of ICWA, which the Secretary of the Interior oversees under the Act and general authority to manage Indian affairs under 25 U.S.C. 2 and 9. Because these information collection requirements are not exempt under a strict reading of 5 CFR 1320.4(a)(2), which require that the administrative action “involves a Federal agency,” the Department has identified these as information collections requiring OMB approval.

Compliance with the regulation requires the following information collections:

All Child Custody Proceedings – Determination & Verification of ICWA Applicability

1. § 23.107, § 23.124 – The State court must determine whether a child is an “Indian child” under ICWA in each child custody proceeding and seek information relevant to that determination from parties appearing before the court. The parties appearing before the court, which will include the State agency or other party seeking placement, must inform the court if they know, or have any reason to know, the child is an Indian child. Information courts have relied upon in the past include everything from statements under oath to genograms or ancestry charts for parents.
2. § 23.108, § 23.109 – The Tribe makes the determination as to whether a child is a member (in coordination with any other Tribes of which the child may be a member) and notifies the State court.

Confirmed Indian Child Custody Proceedings—Notice

3. § 23.110 – The State court notifies the Tribal court of a pending dismissal, based on the Tribal court’s exclusive jurisdiction or the child being a ward of the Tribal court, and provides Tribal court with all records related to the proceeding, including but not limited to the pleadings, any court record, the agency case file, and any other agency documentation in the court record.
- 4a. § 23.11, § 23.111 - For each Indian child custody proceeding, *the State agency* provided notice of the child custody proceeding to the Indian child’s parents (or custodians, if applicable) and Tribe(s) by registered mail or certified mail, return receipt requested, containing the following information. This information is necessary to allow the Tribe(s) to determine whether the child meets the definition of an “Indian child” (i.e., is a member or is eligible for membership and the biological child of a member):
 - o (1) Name of the child, the child’s birthdate and birthplace.
 - o (2) If known, all names known (including maiden, married and former names or aliases) of the parents, the parents’ birthdates and birthplaces, and Tribal enrollment numbers;
 - o (3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;
 - o (4) Name of each Indian Tribe(s) in which the child is a member or may be

eligible for membership.

- o (5) A copy of the petition, complaint or other document by which the proceeding was initiated.
- o (6) Statements setting out:
 - (i) The name of the petitioner and name and address of petitioner's attorney;
 - (ii) The right of the parent or Indian custodian, if not already a party to the proceeding, to intervene in the proceedings.
 - (iii) The Indian Tribe's right to intervene at any time in a State court proceeding for the foster care placement of or termination of a parental right.
 - (iv) If the Indian parent(s) or, if applicable, Indian custodian(s) is unable to afford counsel based on a determination of indigency by the court, the parent(s) or, if applicable, Indian custodian's have the right to court-appointed counsel.
 - (v) The right to be granted, upon request, up to 20 additional days to prepare for the proceedings due to circumstances of the particular case, the notice must specify the amount of additional time that is available.
 - (vi) The right to petition the court for transfer of the proceeding to Tribal court under ICWA § 1911, absent objection by either parent: Provided, that such transfer is subject to declination by the Tribal court of the Tribe.
 - (vii) The mailing addresses and telephone numbers of the court and information related to all parties to the proceeding and individuals notified under this section.
 - (viii) The potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians.
 - (ix) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under the Act.

4b. § 23.11, § 23.111 - For each Indian child custody proceeding, the *party seeking placement (including private placement agencies)* provided notice of the child custody proceeding to the Indian child's parents (or custodians, if applicable) and Tribe(s) by registered mail or certified mail, return receipt requested, containing the following information. (Same information as 4a, but a different respondent.)

Emergency Removal of Indian Child

- 5. § 23.113(c) - Agency petition or supporting documents requesting a court order authorizing emergency removal/placement should include the following information:
 - o (1) A statement of the active efforts undertaken to prevent the breakup of the Indian family before removal of the Indian child, the steps taken to contact the child's parents, custodians, and Tribe about any proceeding regarding the emergency removal or placement, risk of imminent physical damage or harm to the child, and any evidence that the removal or emergency placement continues to be necessary to prevent such imminent physical damage or harm to the child.
 - o (2) The name, age and last known address of the Indian child.

- o (3) The name and address of the child's parents and Indian custodians, if any.
- o (4) If the parents or Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate BIA Regional Director.
- o (5) The residence and domicile of the Indian child.
- o (6) If either the residence or domicile is believed to be on an Indian reservation, the name of the reservation.
- o (7) The Tribal affiliation of the child and of the parents and/or Indian custodians.
- o (8) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action.
- o (9) If the child is believed to reside or be domiciled on a reservation where the Tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the Indian child to the Tribe's jurisdiction.
- o (10) A statement of the active efforts that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody.

Transfer to Tribal Court

6. § 23.116, § 23.119 - State court notifies Tribal court of the transfer request and (unless the Tribal court declines transfer) provides Tribal court with all records related to the proceeding, including but not limited to the pleadings, any court record, the agency case file, and any other agency documentation in the court record.

Involuntary Indian Child Custody Proceedings

7. § 23.120 – State agency documents “active efforts” to prevent removal.

Voluntary Indian Child Custody Proceedings

8. §§ 23.125-23.126 – Parent provides consent to voluntary termination of parental rights or adoption in writing to court. If there are any conditions to the consent, the consent document should clearly set out the conditions. In addition, the rule recommends also including: the name and birthdate of the Indian child, the name of the Indian child's Tribe, any identifying Tribal enrollment number or other indication of the child's or parent's membership in the Tribe, if known, the name and address or other identifying information of the consenting parent or Indian custodian, plus: the name and address of the person or entity by or through whom the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.
9. §§ 23.127, 128 – State court must promptly notify the party by or through whom placement has been arranged that child must be returned to parent/custodian.

Post-Trial

10. § 23.136 – State court must provide notice of the petition to all parties to the adoption proceedings and the Tribe if the parent who executed a written consent to termination of parental rights or adoption petitions the court to vacate.
11. § 23.138 – State court must inform adult adoptee of Tribal affiliation and other information upon adoptee's request.

12. § 23.139 – State court provides notice to biological parents or prior Indian custodians of change in status quo of adopted child.
13. § 23.140 – State court provides copy of final adoption decree/order to BIA within 30 days for BIA maintenance in case an adult adoptee later contacts BIA for Tribal affiliation information.
14. § 23.141 – State court must maintain records of both voluntary and involuntary foster care, preadoptive placement and adoptive placements.
15. § 23.141 – State court must provide placement records Tribe or Secretary within 14 days of request by Tribe or Secretary.
16. § 23.141 – State court notifies BIA whether records are maintained within the court system or by a State agency.

The following items are not listed because they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument. See 5 CFR § 1320.3(h)(1). Requirements:

- For parties to make statements on the record;
- To request assistance from the Secretary (§ 23.11(d), § 23.71, § 23.107);
- To request an extension of time before a hearing is held (§ 23.112);
- To request a transfer of jurisdiction to the Tribe (§ 23.115);
- To file a notice of withdrawal of consent (§ 23.127); or
- To file a notice of waiver of right to receive notice regarding a change in status quo (§ 23.139).

The rule also includes requirements for the State courts to make certain determinations, that are information collections for which there is no burden associated because these determinations are conducted as a regular course of business under 5 CFR § 1320.3(b)(2):

1. § 23.110(d) – State court makes determination of residence and domicile of Indian child
2. § 23.113 – State court makes determination that emergency removal and placement is necessary and continues to be necessary
3. § 23.118 – State court makes determination that good cause to deny transfer exists
4. § 23.132 - State court makes determination that good cause to depart from placement preferences exists
5. § 23.132 – State court makes determination that diligent search to locate placements was made
6. § 23.136 – State court makes finding that parent's consent was obtained through fraud or duress.

Each of the listed information collections is necessary to document compliance with the Act and/or improve consistency in implementation of the Act across States.

The Department receives final adoption decrees that it uses to assist adult adoptees in reconnecting with their Tribes in case an adult adoptee later contacts the Department seeking Tribal affiliation information. The Department does not receive most of the remaining information, so it has not made any use of it in the past. The Department is entitled to receive records of foster care and preadoptive placements upon request, but there is no record of the

Department requesting such information in the past; it is possible that the Department may request such information in the future to assist Tribes with discrete cases upon request. The statutory right for the Department to receive placement records upon request is important as a check on States to ensure they are complying with the Act's policy and requirements.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.**

Notice of Indian child custody proceedings may be made electronically, but only as a supplementary method because ICWA specifies that the notice must be provided by registered mail, return receipt requested (the rule allows certified mail, return receipt requested as well). 25 U.S.C. 1912(a). Otherwise, State courts and agencies use whatever electronic collection techniques they choose.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

These information collections are uniquely required by the Indian Child Welfare Act.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This information collection may affect small private adoption agencies, in that the regulation requires agencies to contact Tribes to verify a child's Tribal membership in voluntary proceedings, and agencies may choose to seek this verification through formal notice to Tribes. The Department has minimized burden by allowing for formal notice by certified mail, rather than the more expensive registered mail.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

If this collection is not conducted, or is conducted less frequently, there will be no direct consequence to a Federal program but Congress's intent in passing the Indian Child Welfare Act would be thwarted. The Department has determined that the listed information collections are necessary to fully comply with the Act and the stated policy of the Act to promote the stability and security of Indian Tribes and families through minimum Federal standards.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- * **requiring respondents to report information to the agency more often than quarterly;**
- * **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- * **requiring respondents to submit more than an original and two copies of any document;**
- * **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- * **in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- * **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- * **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- * **requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Special circumstances exist that require a respondent to provide information in fewer than 30 days, because States must determine whether ICWA applies and whether it has jurisdiction over the case as soon as possible. The rule requires States to provide placement records within 14 days of a request by a Tribe or the Department to fulfill the statute, which requires the State to make the record available “at any time upon the request.” See 25 U.S.C. 1915(e). Although the rule does not specify a time period for retention of records, special circumstances also exist that may require retention of records for more than three years, to allow adult adoptees to learn about their Tribal affiliation and parents. Most, if not all, applicable State laws already require retention of these records permanently. See *e.g.*, 40 Texas Administrative Code §700.114. Respondents may be required to submit confidential information regarding parentage; State courts have procedures for protecting such confidential information and the rule directs parties to maintain the confidentiality.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Comment was taken on this information collection in the proposed rule, as part of the public notice and comment period proposed rule, in compliance with OMB regulations. The proposed rule was published on March 20, 2015 with a comment deadline of May 19, 2015. See 80 FR 14880. The Department received over 2,100 written comment submissions on nearly all aspects

of the rule. One commenter, the California, Health and Human Services Agency, Department of Social Services (CHHS) submitted comments specifically in response to the request for comments on the information collection burden.

- *Comment on Proposed § 23.111:* The proposed rule states that notice must be by registered mail, whereas the current 23.11(a) allows for notice by certified mail. To require registered mail will increase costs that undermine noticing under ICWA. *Response:* The statute specifies “registered mail with return receipt requested.” 25 U.S.C. 1912(a). In response to these comments, the Department examined whether certified mail with return receipt requested is allowable under the statute, and determined that it is because certified mail with return receipt requested better meets the goals of prompt, documented notice. The final rule allows for certified mail.
- *Comment on Proposed § 23.104, providing information on how to contact a Tribe:* The rule should clarify BIA’s obligation in gathering the information for the list of Tribe’s designated agents and contact information because the current list is outdated, inefficient, and inconsistently maintained. The list is hampered by publication in the Federal Register and BIA should be required to publish updates on the Web. The list also no longer maintains the historical affiliations, which was helpful. *Response:* BIA is now publishing the list using historical affiliations, as requested, and making the list available on its website, where it can be updated more frequently. The rule does not address this because these are procedures internal to the BIA.
- *Comment on Proposed § 23.111(i), requiring notice by both States where child is transferred interstate:* Requiring both the originating State court and receiving State court to provide notice is duplicative and burdensome because notice should only be required in the State where the actual court proceeding is pending. Another commenter stated that the provision appears to apply to transfers between Tribes and States, where notice is unnecessary. *Response:* The final rule deletes this provision.
- *Comment on Proposed § 23.134, requiring BIA to disclose information to adult adoptees:* This section appears to be creating duplicative work of the BIA and States, because both sections require each to provide adult adoptees information for Tribal enrollment. *Response:* The Act imposes this responsibility on both BIA and the State. Section 1951(b) of the Act imposes the responsibility on BIA, which is in § 23.71(b) of the final rule. Section 1917 of the Act imposes the responsibility on States, which is addressed at § 23.134 of the final rule.
- *Comment on Proposed § 23.137, requiring the State to establish a single location for placement records:* This requirement would be an unfunded mandate with undue burden and would require relocating 1,145 files to a different location and require changes to existing recordkeeping systems. Another State agency commented that there is a significant fiscal and annual burden due to the staffing, costs for copying, packaging and transferring physical files to a different location. *Response:* The final rule deletes the provision requiring States to establish a single, central repository. The associated

information collection request has also been deleted.

- *Comment on Proposed § 23.137, requiring providing records to the Department or Tribe upon request:* The 15-minute burden estimate allocated to this task is too low. The time to copy, package and mail the documents will be no less than one hour, but more realistically two hours. *Response:* The final rule updates the burden estimates to reflect 1.5 hours.

In addition, the Department reviewed substantive comments for comments related specifically to the burdens associated with the information collections. They are summarized below, to the extent not already addressed in response to CHHS's comments.

- *Comment on Proposed § 23.107(b), providing that courts may require agencies to provide genograms or ancestry charts:* Several commenters opposed the proposed rule's statement that agencies should complete genograms or ancestry charts, stating it would impose a significant burden on States. One commenter noted that a typical genealogist charges up to \$150/hour and takes two to three months to conduct research. *Response:* The Department has deleted this provision of the rule. The final rule continues to direct State courts to ask participants in a proceeding if they know or have reason to know the child is an Indian child, and this is identified as an information collection. However, the final rule imposes no requirement on the agency to provide genograms or ancestry charts. We have not adjusted the burden, however, because regardless of whether genograms or ancestry charts are conducted, time is required to investigate whether the child meets the definition of "Indian child."
- *Comment on Proposed § 23.109(c)(3), requiring notification to "all Tribes" that a determination of the child's Tribe has been made:* A commenter opposed this requirement as unnecessary and taking resources away from meeting substantive ICWA requirements once a child has been confirmed to a specific Tribe. *Response:* The final rule deletes this provision. It was not identified as an information collection in the proposed rule because it was determined to entail no burden under 5 CFR 1320.3(h)(1).
- *Comment on Requiring Notice in Voluntary Proceedings:* A commenter stated that the proposed rule's expansion of notice requirements to voluntary placements increases the burden on State agencies without additional funding. *Response:* The final rule does not require formal notice in voluntary proceedings, but does require taking reasonable steps to contact the Tribe to verify a child's Tribal membership to determine whether ICWA applies.
- *Comment on Proposed § 23.111, requiring notice of each proceeding:* A commenter stated that it would cost the State \$7,000 to send notices to every party in every proceeding under 23.111 and, if a Tribe is already a party, then the State should not have to send notice by mail. *Response:* The final rule defines "proceeding" to be a foster care, preadoptive placement, adoptive placement or termination of parental rights proceeding, rather than the more frequent hearings within each proceeding.

- *Comment on Proposed §§ 23.126 and 23.127, requiring withdrawal of consent to be filed in the same court where original was filed.* A few commenters stated that requiring the parent to file a withdrawal of consent in a court he or she may not know the identity of would be unduly burdensome. Another commenter stated that State law may permit a parent to withdraw consent without filing an instrument in court. *Response:* The final rule deletes the provision requiring the withdrawal of consent to be filed in the same court in which the consent was filed. The final rule also adds a provision stating that State law may allow for additional methods to withdraw consent. (Note: This was not identified as an information collection because it was determined to entail no burden under 5 CFR 1320.3(h)(1)).
- *Comment on Proposed § 23.128(b) to notify all preferred placements:* A commenter stated that the requirement to notify all parties who meet the placement preferences is an onerous additional step. *Response:* The final rule deletes the provision requiring State agencies to notify the list of people about the placement proceeding and steps to propose an alternative placement. (Note: This had not been identified as an information collection in the proposed rule).
- *Comment on Proposed § 23.137, requiring providing records to the Department or Tribe upon request:* A State agency stated that the requirement to make information available within 7 days is an undue burden. *Response:* The final rule increases the time available for compiling records in response to a request to 14 days.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The BIA consulted with a judicial assistant in Children’s Court in the Second District of the State of New Mexico (Julie Parras (505) 841-7602). Ms. Parras stated that there were 30 active State child custody proceedings subject to ICWA as of February 23, 2015. Ms. Parras indicated that the Children’s Court already fulfills the ICWA requirements. She estimated that compiling the information necessary to provide notice and actually providing notice takes approximately 30 minutes for each proceeding. In the past six years, she has seen only two or three cases transferred to Tribal court. The State of New Mexico already maintains all its placement records in a single location, in its statewide database called “Odyssey.” Ms. Parras stated that, in her view, the information is necessary for ICWA compliance and had no suggestions for reducing burden.

BIA also consulted with the Tribal Affairs Director, Oregon Department of Human Services (Nadja Jones (971) 301-1668). Ms. Jones stated that a head count of all the ICWA-eligible children in the state system on a given day (on April 1, 2014) found there were 127 ICWA-eligible children from Tribes in Oregon, and 231 from Tribes outside of Oregon, for a total of 358. Regarding burden, Ms. Jones stated that in cases where it is unclear whether the child is an Indian child, it may take approximately 3 hours for an initial assessment, plus up to three meetings of approximately 3 hours each to complete an ancestry chart and other background information to provide the Tribe in the notice, for a total of 12 hours to determine whether a child is an “Indian child,” and then 6 hours to send out notices to the Tribes and parents/custodians. Ms. Jones mentioned that, in a handful of cases, the State had to send out over 200 letters to determine which out-of-State Tribe the child was a member or eligible for membership in. Ms. Jones stated that the process is necessary to ensure that the Tribes have sufficient information to determine whether the child is eligible for membership.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts are provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

State courts and agencies may provide some assurance of confidentiality under applicable State law. The regulation requires all parties to maintain confidentiality, but provides no assurance of confidentiality.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The State agency may ask questions regarding parentage, which may be considered sensitive, in order to determine whether a child is an “Indian child” under the Act.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary**

widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

- * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.
- * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.

	Sec.	Respondent	Information Collection	Annual Number of Respondents	Frequency of Responses	Annual Number of Responses	Completion Time per Response	Total Annual Burden Hours	\$ Value of Annual Burden Hours*
1	23.107	State court and/or agency	Obtain information on whether child is "Indian child"	50	260	13,000	12	156,000	\$6,658,080
2	23.108, 109	Tribe	Respond to State regarding Tribal membership	567	23	13,041	1	13,041	\$556,590
3	23.110	State court	Notify Tribal court of dismissal and provide records	50	5	250	0.25	63	\$2,668
4A	23.11, 23.111	State court and/or agency	Notify Tribe, parents, Indian custodian of child custody proceeding	50	273	13,650*	6	81,900	\$3,495,492
4B	23.11, 23.111	Private placement agency	Notify Tribe, parents, Indian custodian of child custody proceeding	1,289	2	2,578	6	15,468	\$660,174
5	23.113	State agency or State court	Document basis for emergency removal/placement	50	260	13,000*	0.5	6,500	\$277,420
6	23.116, 23.119	State court	Notify Tribal court of transfer request and provide records	50	5	250***	0.25	63	\$2,668
7	23.120	Agency	Document "active efforts"	50	167	8,350	0.5	4,175	\$178,189
8	23.125, 126	Parent / Indian custodian	Consent to termination or adoption (with required contents)	5,000	1	5,000	0.5	2,500	\$106,700
9	23.127, 128	State court	Notify placement of withdrawal of consent	50	2	100****	0.25	25	\$1,067
10	23.136	State court	Notify of petition to vacate	50	5	250^	0.25	63	2,668
11	23.138	State court	Inform adult adoptee of Tribal affiliation upon request	50	20	1,000	0.5	500	\$21,340
12	23.139	State court	Notify of change in status quo of adopted child	50	4	200^^	0.25	50	\$2,134
13	23.140	State court	Provide copy of final adoption decree/order	50	47	2,350	0.25	588	\$25,075
14	23.141	State court	Maintain records of each placement (including required	50	167	8,350	0.5	4,175	\$178,189

			documents)						
15	23.141	State court or State agency	Provide placement records to Tribe or Secretary upon request within 14 days	50	167	8,350	1.5	12,525	\$534,567
16	23.141	State court or State agency	Notify where records maintained	50	167	8,350	0.5	4,175	\$178,189
						98,069		301,811	\$12,881,208

Respondents: The total number of respondents is 6,906, consisting of the sum of the following:

- The number of States (50). The annual number of State court and agency respondents is estimated to be 50. While there may be several State courts and agencies within each State handling child custody proceedings, for simplification, we have estimated one court and agency per State.
- The number of private placement agencies (1,289). This number is from the Child Welfare Information Gateway’s list, by State, of “private domestic foster care and adoption agencies.”
- The total number of federally recognized Indian Tribes (567).
- Parents and Indian custodians (5,000). The annual number of individual respondents submitting consent to termination of parental rights or adoption is estimated at an average of 5,000, though this number is expected to fluctuate greatly from year to year.

Responses: We estimated the number of responses as follows. These estimates are intended to be averages. Note that the number of responses in the chart above, are based on estimates of the number of foster care placements and adoptions, but these numbers fluctuate in the estimates below based on rounding frequency of responses to the nearest whole number.

- For potential ICWA cases, we estimated that there are approximately **13,000 potential ICWA cases annually**. This estimate is based on the fact that, under the current regulations at 25 CFR 23, the Department receives copies of approximately 200-300 of these notices each week that States send to Tribes of child custody proceedings that may involve an “Indian child” under the Act. The Department estimates conservatively that only about half of these notices result in ICWA eligibility. For estimates in which States are investigating whether a child is an “Indian child” under ICWA, we estimate there to be 250/week, or 13,000 potential ICWA cases annually.
- For actual ICWA cases, we estimate approximately **8,323 confirmed ICWA proceedings** each year, based on a combination of foster care placements and adoptive placements.
 - We estimated approximately **5,960 foster care placements** per year. The U.S. Department of Health and Human Services’ Fiscal Year (FY) 2014 Adoption and Foster Care Analysis and Reporting System (AFCARS) system reported that there were 5,960 American Indian / Alaska Native children in foster care in FY 2014.
 - We estimated approximately **2,363 adoptions** per year. There were 135,813 total adoptions in the U.S. in 2008; of these, 13% were intercountry.¹ Based on these

¹ *How Many Children Were Adopted in 2007 and 2008?* U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Child Welfare Information Gateway.

estimates, there were approximately 118,157 domestic adoptions (87% of total adoptions) in 2008. As of 2011 (the most recent year for which these data are available), 2% of the children adopted with public agency involvement were American Indian/Alaska Native.² Statistics of private and independent options are not available, but we are assuming the same percentage of American Indian/Alaska Native children in those instances. Therefore, we are estimating approximately 2,363 American Indian/Alaska Native children are adopted each year. While some of these adoptions may have resulted from involuntary proceedings, for simplicity, we are assuming that these are all voluntary adoptions.

- The number of ICWA cases may vary greatly by State, with some States having many more and some States having very few; the States we reached out to (Oregon and New Mexico) reflect that variance.

*We estimate that approximately 5% (650) of all potential ICWA cases (13,000) are transferred interstate. In those 650 cases, there may be 650 additional responses because the receiving State may provide notice in addition to the originating State, so the total number of responses for this information collection is 13,650.

**We estimate the number of emergency removal/placements to be the same as potential ICWA cases (13,000) because many, and possibly all, cases begin with an emergency removal or placement.

***Number of transfers to Tribal court estimated based on public outreach response to question no. 8 of this supporting statement that only two to three transfers occur every six years (or 0.4 per year) for one of the thirteen districts in New Mexico, meaning approximately 5 annually occur (0.4 x 13) per State. While it is possible the Tribal court will deny transfer, we estimate that this will happen on such rare occasions as to be *de minimis*; these estimates therefore assume Tribes will accept transfer in all cases.

****We estimate that parents or Indian custodians withdraw their consent to a voluntary placement in approximately 2% (approximately 50, rounded up from 47.26) of all voluntary placements (2,363) on an annual basis.

^We estimate that petition to vacate is filed in approximately 3% (approximately 250) of all confirmed ICWA cases (8,323).

^^We estimate a change in status quo of adopted children occurs in approximately 200 cases a year.

Dollar Value of Burden Hours: To obtain the hourly rate for State and Tribal government employees, we used **\$28.45**, the wages and salaries figure for State and local government workers from BLS Release USDL 15-2329, *Employer Costs for Employee Compensation—September 2015 (released December 9, 2015)* Table 4, *Employer costs per hour worked for employee compensation and costs as a percent of total compensation: State and local government workers, by major occupational and industry group*. To account for benefits, we then multiplied this rate by 1.5, to obtain a total rate of **\$42.68**.

13. Provide an estimate of the total annual non-hour cost burden to respondents or

² *AFCARS Report*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, <http://www.acf.hhs.gov/programs/cb>, Preliminary Estimates for FY 2011 as of July 2012.

recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)

- * **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- * **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- * **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

There are no start-up costs associated with these information collections because State courts are agencies are already implementing child custody actions and it can be assumed that States are complying with the statutory mandate to have all placement records available, as the statutory mandate is over 30 years old.

The annual cost burden to respondents associated with providing notice by registered mail is \$11.95 and the cost of a return receipt green card is \$2.80. However, we estimate that all parties will choose the less expensive option of certified mail, which is a cost of \$6.74. With the cost of a return receipt green card, this totals \$9.54. For each Indian child custody proceeding, at least two notices must be sent—one to the parent and one to the Tribe, totaling \$19.08.

While ultimately notice is required only for those confirmed ICWA involuntary proceedings, it is possible that parties seeking placement will take a cautious approach and issue notice in all cases, involuntary and voluntary, that could potentially be subject to ICWA. At an annual estimated 13,000 child welfare proceedings that may involve an “Indian child,” where approximately 650 of these include an interstate transfer (13,650), this totals: \$260,442. In addition, there are approximately 2,578 voluntary proceedings for which notice must be provided, at a cost of \$49,118. Together, the total cost burden is \$309,630.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

There are no annualized costs to the Federal government associated with this collection, because the Federal government does not administer the collection.

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

These information collections are identified as a program change because new regulations are being promulgated to require the information collections to implement the statute.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

There are no plans to publish the results of this collection of information.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

We plan to display the expiration date for OMB approval on the Department's Guidelines and any other document restating ICWA's information collection requirements. The OMB Control Number is stated at 25 CFR § 23.142.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no exceptions.