pleaded guilty or nolo contendere shall be controlling.

Regular contact with or control over an Indian child means responsibility for an Indian child(ren) within the scope of the individual's duties and responsibilities or contact with an Indian child(ren) on a recurring and foreseeable basis.

Tribal Organization as defined in the ISDEA, means the recognized governing body of any Indian Tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

§ 136.404 What does the Indian Child Protection and Family Violence Prevention Act require of the IHS and Indian Tribes or Tribal organizations receiving funds under the ISDEA?

(a) The IHS must compile a list of all authorized positions with duties and responsibilities that involve regular contact with or control over Indian children; investigate the character of each individual who is employed or is being considered for employment in such a position; and prescribe minimum standards of character that each individual must meet to be appointed or employed in such positions.

(b) All Indian Tribes or Tribal organizations receiving funds under the authority of the ISDEA must identify those positions that permit regular contact with or control over Indian children; conduct an investigation of the character of each individual who is employed or is being considered for employment in a position that involves regular contact with or control over Indian children; and employ only individuals who meet standards of character that are no less stringent than those prescribed by regulations in this subpart.

§ 136.405 What are the minimum standards of character for individuals placed in, or applying for, a position that involves regular contact with or control over Indian children?

The minimum standards of character shall mean a benchmark of moral, ethical, and emotional strengths established by character traits and past conduct to ensure that the individual is competent to complete his/her job without harm to Indian children. In order to protect Indian children, the IHS has established minimum standards of character requiring completion of a satisfactory background investigation that ensures that no individuals who have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children, are placed in positions involving regular contact with or control over Indian children.

§ 136.406 Under what circumstances will the minimum standards of character be considered to be met?

The minimum standards of character shall be considered met only after the individual has been the subject of a satisfactory background investigation. The background investigation shall include a review of:

(a) The individual's trustworthiness, through inquiries with the individual's references and places of employment and education;

(b) A criminal history background check, which includes a fingerprint check through the Criminal Justice Information Services Division of the Federal Bureau of Investigation (FBI), under procedures approved by the FBI, and inquiries to State and Tribal law enforcement agencies for the previous five years of residence listed on the individual's application; and

(c) A determination as to whether the individual has been found guilty of or entered a plea of nolo contendere or guilty to any felonious offense or any of two or more misdemeanor offenses

under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children.

§ 136.407 Under what circumstances should a conviction, or plea of nolo contendere or guilty to, be considered if there has been a pardon, expungement, set aside, or other court order of the conviction or plea?

All convictions or pleas of nolo contendere or guilty to should be considered in making a determination unless a pardon, expungement, set aside or other court order reaches the plea of guilty, plea of nolo contendere, or the finding of guilt.

§ 136.408 What are other factors, in addition to the minimum standards of character, that may be considered in determining placement of an individual in a position that involves regular contact with or control over Indian children?

(a) All Federal employees are subject to suitability criteria contained in 5 CFR part 731 as a condition of employment.

(b) Section 231 of the Crime Control Act of 1990, Pub. L. 101–647, 42 U.S.C. 13041, provides that an individual may be disqualified from consideration or continuing employment if such individual has been convicted of a sex crime, an offense involving a child victim or a drug felony, or any other crime if such conviction bears on an individual's fitness to have responsibility for the safety and well-being of children.

(c) Tribes or Tribal organizations may but are not required to apply additional criteria in determining whether an individual is suitable for a position with duties and responsibilities that involve regular contact with or control over Indian children. Any additional suitability criteria established by Tribes or Tribal organizations beyond the minimum standards of character described in § 136.405 and § 136.406 would be determined by each individual Tribe or Tribal organization in accordance with its own personnel policies and procedures.

§ 136.409 What positions require a background investigation and determination of eligibility for employment or retention?

(a) All positions that allow an individual regular contact with or control over Indian children are subject to a background investigation and determination of eligibility for employment. The IHS has compiled a list of positions within the agency in which the duties and responsibilities could involve regular contact with or control over Indian children. The list will be periodically updated and made available at all IHS Personnel Offices upon request. Positions should be reviewed on a case-by-case basis to determine whether the individual in that position has regular contact with or control over Indian children.

(b) Tribes and Tribal organizations may use the list compiled by the IHS or develop their own procedures to determine within their program those positions that involve regular contact with or control over Indian children.

§ 136.410 Who conducts the background investigation and prepares determinations of eligibility for employment?

(a) The IHS must use the Office of Personnel Management (OPM) to conduct background investigations for Federal employees. The IHS must designate qualified security personnel to adjudicate the results of background investigations.

(b) Indian Tribes and Tribal organizations may conduct their own background investigations, contract with private firms, or may request that a Federal or State agency conduct investigations. (FBI criminal history record information, however, may only be received or evaluated by governmental agencies, including Tribes or Tribal organizations as defined in these regulations at § 136.403, and may not be disseminated to private entities.)

§ 136.411 Are the requirements for IHS adjudication different from the requirements for Indian Tribes and Tribal organizations?

Yes, in conducting background investigations and adjudicating eligibility for employment in Tribal positions