

### § 13.12

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 re-assumption 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 re-assumption 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 re-assumption 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,

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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 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

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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.

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