

INDIAN AFFAIRS MANUAL

1.1 Purpose. This chapter establishes Indian Affairs' (IA) policy and procedures regarding the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-1963.

ICWA established Federal Government requirements that apply to state child custody proceedings involving an Indian child who is a member of, or eligible for membership in, a federally recognized Tribe. In enacting ICWA, Congress delegated to the Department of the Interior (the Department) certain responsibilities in the implementation of ICWA, which are specifically enumerated in 25 CFR Part 23. In addition to other requirements, ICWA authorized the Bureau of Indian Affairs (BIA) to provide funding to Tribes to support their Indian child and family service programs. Tribes provide services once a child is identified as an Indian child under ICWA. The BIA provides ICWA funding to both Title I (Self Determination) Tribes (also referred to as P.L. 93-638 Tribes) and to Title IV (Self Governance) Tribes.

1.2 Scope. This policy applies to all programs and offices under the authority of the Assistant Secretary - Indian Affairs (AS-IA) that are involved in the ICWA process. This policy also applies to entities carrying out activities on behalf of AS-IA that are authorized under Title I (Self Determination) and/or under Title IV (Self Governance), if expressly agreed to in their contracts, compacts, or if the requirement to abide by such policy is otherwise required by law.

1.3 Policy. It is the policy of IA to comply with all applicable federal laws and regulations, and any Departmental policies and procedures as they relate to ICWA.

1.4 Authority.

A. Statutes and Regulations.

- 1) P.L. 93-638, ISDEAA, as amended
- 2) P.L. 101-630, The Indian Child Protection and Family Violence Prevention Act
- 3) P.L. 114-165, Native American Children's Safety Act (NACSA) of 2016
- 4) 25 CFR 23, ICWA
- 5) 25 U.S.C. § 1901 et seq., ICWA of 1978

B. Guidance.

- 1) Guidelines for Implementing the Indian Child Welfare Act, 96476 Federal Register, Volume 81, No. 251, December 30, 2016

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- 2) Office of Management and Budget (OMB) Circular A-123 Revised, Management Accountability and Control

1.5 Responsibilities.

- A. **AS-IA** provides oversight of IA and has authority to appoint a designee responsible for directing the update or publication of the ICWA Designated Tribal Agent list, as necessary.
- B. **Director, BIA** is responsible for ensuring that IA processes and resources are in place to facilitate compliance with ICWA, including the publication and maintenance of the ICWA Designated Tribal Agent list (25 U.S.C. § 1912 (a), 25 CFR § 23.12).
- C. **Director, Office of Self Governance (OSG)** is responsible for implementation of the Tribal Self Governance Act of 1994, including development and implementation of regulations, policies, and guidance in support of self governance initiatives as they relate to operating IA programs under ICWA grants, contracts, or compacts.
- D. **Deputy Bureau Director (DBD), Office of Indian Services (OIS), BIA** is responsible for approving funding documents for non-base ICWA distributions, as appropriated to the BIA, and for oversight of the maintenance and publication of the ICWA Designated Tribal Agent list (25 U.S.C. § 1912 (a), 25 CFR § 23.12).
- E. **Chief, Division of Human Services (DHS), OIS** is responsible for providing technical expertise, training, and other materials/guidance as needed to support ICWA on a nationwide basis. The DHS Chief also serves as a liaison to coordinate ICWA related services with BIA regions, federally recognized Tribes, and other federal agencies.
- F. **DHS staff** is responsible for the administrative oversight of the ICWA notification process as required by the ICWA (25 U.S.C. § 1912 (a), 25 CFR § 23.11 and § 23.111), including publishing the Designated Tribal Agents for Service of ICWA Notice in the Federal Register, and maintenance of adoption records.
- G. **ICWA Specialist, DHS** is responsible for:
 - 1) managing the adoption notice process as required by 25 CFR § 23.140 and § 23.71;
 - 2) maintaining the federally recognized Tribes listing¹ in the Financial Assistance and Social Services – Case Management System (FASS-CMS Cloud) and the Designated Tribal Agents list in coordination with the servicing Regional Social Worker (RSW);

¹ As provided in the annual publication in the Federal Register of the federally recognized Tribes.

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- 3) responding to requests for assistance from the state and public regarding ICWA;
- 4) facilitating the OMB A-123 internal control review process for ICWA programs, including reviewing ICWA files and contract agreements, and offering technical assistance to the Awarding Official Technical Representative (AOTR) for Title I (Self Determination) Tribes on ICWA operations;
- 5) serving as the field expert by providing technical assistance and guidance to the BIA's regional and Tribal staff regarding the ICWA;
- 6) serving as a Team Leader on a wide variety of projects, studies, etc., either as assigned or as independently identified to enhance programs and regulations to ensure program efficiency; and
- 7) acting as a representative of the BIA to promote working relationships at the national level with federal and state social service agencies to interpret the objectives of the BIA's Indian Child Welfare and Child Protection programs.

H. Regional Director (RD) is responsible for the administration, monitoring, and oversight of DHS programs operated by the BIA in his/her respective region. The RD provides oversight of the RSW in the administration of Title I (Self Determination) Tribal ICWA grant programs in his/her respective region. The RD is also the Officer in Charge (OIC) over Bureau Line Officers and RSWs in his/her respective region.

I. RSW is responsible for administering the ICWA grant process within his/her respective region, and for monitoring Title I (Self Determination) Tribal ICWA programs. Specific responsibilities include:

- 1) providing technical assistance and training to Title I Tribes, states, local officials, other federal agencies, and the public regarding ICWA compliance as requested;
- 2) conducting annual reviews of Title I Tribal ICWA programs;
- 3) responding to ICWA Notices and final decrees of adoption notices as required in 25 CFR § 23.11 and § 23.111;
- 4) updating and maintaining the ICWA Designated Tribal Agents list in the FASS-CMS Cloud;
- 5) serving as the AOTR for Title I Tribes;
- 6) providing a written response to state, county, or local courts within 15 calendar days with a list of Designated Tribal Agents or Tribal ICWA contacts;
- 7) participating in regular meetings on ICWA referrals; and
- 8) compiling and submitting the ICWA Quarterly and Annual Reports to IA Headquarters.

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1.6 Definitions. Additional definitions applicable to this chapter are found in 25 CFR 23, Subpart A, § 23.2.

A. ICWA Designated Tribal Agent is the individual identified in the Federal Register as the Tribal official who serves as the point of contact to receive ICWA notices for the identified Tribe, as described in 25 CFR § 23.12.

B. Financial Assistance and Social Services – Case Management System (FASS-CMS Cloud) is the BIA’s comprehensive cloud-based case management system for the FASS, Individual Indian Money (IIM), and ICWA programs. The FASS-CMS Cloud maintains the contact information for each federally recognized Tribe’s ICWA Designated Tribal Agent.

1.7 Standards, Requirements, and Procedures.

The OIS, DHS serves as the point of contact for other social service agencies that are responsible for child protection, placement, and services to Indian children, and is responsible for updating and publishing in the Federal Register (as necessary) the names and addresses of the designated Tribal agents (i.e., the ICWA Designated Tribal Agent list of a designated federally recognized Tribe) in accordance with 25 CFR 23.12. The ICWA regulations provide that Tribes can designate an agent other than a Tribal Chairperson for service of notice of ICWA proceedings. The purpose of the ICWA Designated Tribal Agents list is to provide contact information of the person(s) authorized by a Tribe for service of notice of an Indian child custody proceeding, or in any case where a party is seeking to place an Indian child in foster care or to terminate parental rights. In these situations, the Tribe must be notified or informed of its right to intervene (25 U.S.C. § 1912 (a)).

Additional information regarding ICWA can be found on the BIA’s ICWA website: <https://www.bia.gov/bia/ois/dhs/icwa>. The following standards, requirements, and procedures also apply:

A. Appointment of Counsel

Payment of appointed counsel in state Indian child custody proceedings is authorized by section 102(b) of the ICWA (25 U.S.C. § 1912; 25 CFR § 23.13), subject to available funding. The servicing regional office provides oversight for payment of appointed counsel where eligible.

B. Confidentiality of Records

Department employees are required to adhere to the provisions of the Privacy Act and the

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Freedom of Information Act. Employees must safeguard confidential information concerning their client and must not disclose information concerning their clients or cases unless requested by an authorized BIA official or as required by law.

C. Electronic ICWA Designated Tribal Agent List

The ICWA Designated Tribal Agent list is maintained electronically in the FASS-CMS Cloud. This allows the RSWs to update the designated Tribal Agents' contact information when notification changes occur at the Tribal level. The information is then used to:

1) prepare the Designated Tribal Agents for Service of Notice publication for the Federal Register, and 2) to make the listing available electronically on the BIA.gov website. The list is electronically transferred each quarter to the BIA ICWA website here:

<https://www.bia.gov/bia/ois/dhs/icwa>

Procedures for RSWs in creating and maintaining the ICWA Designated Tribal Agent list are as follows:

Step 1: Check the FASS-CMS Cloud to verify if the Tribe is listed in the system. If the Tribe is listed, proceed to Step 2 below. If the Tribe is not listed, follow these procedures:

1. The RSW will notify the ICWA Specialist at IA Headquarters that a Tribe needs to be created in the FASS-CMS Cloud. The ICWA Specialist with system administrative authorization will create a Tribe in the FASS-CMS Cloud if it is a federally recognized Tribe.
2. Prior to creating the Tribal record, the ICWA Specialist must first verify that the Tribe is included in the BIA's current list of federally recognized Tribes. This list is updated as necessary and published in the Federal Register by January 30th of each year. If questions remain, a referral will be made to the OIS, Division of Tribal Government to confirm in writing that the Tribe is, or is not, on the BIA's annual list of federally recognized Indian Tribes.

If it is determined that the Tribe is not a federally recognized Tribe, the ICWA Specialist will advise the servicing RSW of the finding.

3. Once verification as a federally recognized Tribe is obtained, then the Tribal record is created. Once the record is created, the ICWA Specialist will contact the RSW to inform him/her that he/she can enter the Tribe's ICWA Designated Tribal Agent's contact information in the system.

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Step 2: Create and/or update the ICWA Designated Tribal Agent information for the Tribe's entry in FASS-CMS Cloud.

1. After a Tribe's entry is created or found in FASS-CMS Cloud, the RSW enters the information that he/she obtained from the appropriate Tribal official regarding the Tribe's ICWA Designated Tribal Agent(s). The following information should be collected and updated in the system:
 - Name of the ICWA Designated Tribal Agent
 - Title of ICWA Designated Tribal Agent
 - Physical Address
 - Mailing Address
 - Email Address
 - Phone Number
 - Fax Number
2. On a quarterly basis, the ICWA Specialist will email the RSW (with a cc: to the appropriate BIA RD) regarding the requirement to update the ICWA Designated Tribal Agents' information. The RSW must complete the updates in the FASS-CMS Cloud by December 31, March 31, June 30, and September 30 of each calendar year.

If a Tribe does not provide its ICWA Designated Tribal Agent contact information or there are no updates needed by the quarterly timeframe(s), the BIA will use the previous ICWA Designated Tribal Agent information submitted by the Tribe or the information found in the Tribal Leaders Directory, which will include the Tribal Chairperson as the ICWA Designated Tribal Agent.

Step 3: Transfer the electronic ICWA Designated Tribal Agent list to the BIA.gov website and create the ICWA Designated Tribal Agent List for Federal Register publication.

1. The ICWA Specialist will export and review the ICWA Designated Tribal Agents list from the FASS-CMS Cloud quarterly. This will occur on the following dates each calendar year: January 15th, April 15th, July 15th, and October 15.
2. The ICWA Specialist is also responsible for coordinating the submission of the ICWA Designated Tribal Agents list to the IA Office of Information Management and Technology (OIMT) for electronic transfer to the BIA website. Before it is submitted, the ICWA Specialist will compare the federally recognized Tribal entities in the FASS-CMS Cloud with the BIA's annual list of federally recognized Tribes. The ICWA

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Specialist will make any necessary corrections in the FASS-CMS Cloud to ensure the titles of the federally recognized Tribes in the FASS-CMS Cloud match the titles in the BIA's annual list of federally recognized Tribes.

3. The ICWA Specialist will upload the final listing of the ICWA Designated Tribal Agents for Federal Register publication into the Document Tracking System (DTS) for management's review. This will be completed on or before January 30th each calendar year.
4. Once any updates to the ICWA Designated Tribal Agent list are approved by BIA senior management, the ICWA Specialist is responsible for working with the BIA's web content team to request an electronic transfer of the listing to the BIA.gov website. The ICWA Specialist will ensure that the listing is transferred within 30 days.

D. BIA Responsibilities for ICWA Notices (25 CFR § 23.11(a) - (c), 25 CFR § 23.111(e))

In any involuntary proceeding in a state court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or Indian custodian or Tribe are known, the party seeking the foster care placement of, or termination of parental rights to, an Indian child, must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child custody proceedings and their right of intervention (i.e., ICWA Notice). In addition, copies of ICWA Notices must be sent to the appropriate RD listed at CFR § 23.11 (a)-(b). No BIA response is required when a copy of an ICWA Notice is received under 25 CFR § 23.11(a)-(b).

If, however, the RSW receives an ICWA Notice but the identity or location of the child's parents, the child's Indian custodian, or the Tribe(s) in which the child is a member or eligible for membership is unknown, the RSW must respond within 15 days of receipt of a certified/registered ICWA Notice. Depending on whether the RSW is able to locate the relevant parties, the response may be either: 1) notice to the child's parent, Indian custodian, or Tribe, with a copy to the court; or 2) notice informing the court that the BIA was unable to locate any relevant parties or that additional time is needed to complete the verification or search as required in 25 CFR § 23.11(c) (d), and 25.23.111 (e).

ICWA Notices must be sent to, and responded to, by the appropriate RD as listed in CFR § 23.11 by registered or certified mail, return receipt, or personal delivery. ICWA Notices received by a region, RSW, or designee who is not designated to respond according to 25 CFR § 22.11(a)-(b) will be disposed of if FASS-CMS documentation verifies the appropriate BIA region has received it. If there is no documentation in FASS-Cloud of the ICWA Notice, the receiving RSW will forward it to the serving region or designee. Current

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addresses for BIA regions can be located at <https://www.bia.gov/bia/ois/dhs/icwa>. If the ICWA Notice is a duplicate, as verified by FASS-CMS Cloud documentation, it may be disposed of.

In the FASS-CMS Cloud system, “No Response Required” and “15 Day Response” tabs have been established for BIA to document its assistance with an ICWA Notice. The servicing BIA RSWs should adhere to the following guidelines when assisting requestors with ICWA Notices:

1. 15 Day Response Required (25 CFR § 23.11 Notice (c) and 25 CFR § 23.111 (e))

If the party seeking foster care placement or termination of parental rights submits an ICWA Notice to BIA but cannot ascertain the child’s Tribe, parent, or Indian custodian, the RSW will make reasonable documented efforts to locate and notify the child’s Tribe, parent, or Indian custodian.

If the RSW is able to locate the relevant parties within 15 days of receipt of the certified/registered ICWA Notice, the RSW will notify the child’s Tribe, parent, or Indian custodian, with a copy to the court.

If, after reasonable efforts, the RSW is unable to verify the child’s status, the RSW will respond to the ICWA Notice requestor with a written request for any of the following information:

- A family tree that shows who in the family has Tribal membership or citizenship.
- Information about the child or family receiving services or funds (such as per capita, trust funds, etc.) from a Tribal or Indian organization, the BIA, or the Indian Health Services (IHS), or if they have been involved with a Tribal court matter. Please list the name of the organization and include the Tribe’s name, and/or state in which the Tribe or organization is located.
- Information about the child or family currently living (or previously lived) on or near a reservation in the United States, Tribal community, or on Tribal lands.
- Copy of a Tribal enrollment card, Tribal descendant card, or Certification of Degree of Indian Blood (CDIB) belonging to the child and/or the child’s parents.
- Basic information about the child if known, including but not limited to:
 - Full name and nicknames
 - Date of birth, birthplace

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- Current and previous addresses
- Names of individuals residing in the same home
- School records and/or medical records
- Any other information which may help identify the child (i.e., correspondence from a Tribe or Tribal Organization)

After the request for additional information is mailed, the servicing RSW's research efforts are considered complete per 25 CFR § 23.11(c) unless additional information is received from the requestor. The RSW must complete all research efforts, even if it will not occur before the child custody proceeding begins.

If the RSW is unable to verify the child's status or is unable to locate the child's parents, Tribe, or Indian custodian within 15 days of receipt of the ICWA Notice, the RSW will inform the court and state how much more time, if any, is needed to complete the verification or search.

If the RSW is successful in locating the child's Tribe or affiliated Tribe, parent, or Indian custodian, the RSW must notify in writing all relevant parties per 25 CFR § 23.11(c).

The RSW's research efforts should be logged in the FASS-CMS Cloud system under response type "15 Day Response". When using the "15 Day Response" tab, a written response from the servicing RSW to the requestor must be mailed within 15 days of receiving the ICWA Notice. ICWA Notices falling under the "15 Day Response" type must be filed according to the Departments Record Schedule.

2. No Response Required (25 CFR 23.11(a)-(b))

The RSW, as designated by the RD, is responsible for receiving and reviewing the ICWA Notice to determine if a response is required.

When the appropriate RSW receives the ICWA Notice copy, he/she must verify that the child(s) Tribe, parent, or Indian custodian were properly notified as required by 25 CFR § 23.11. Upon verification that notice was properly made to the relevant parties, the ICWA Notice will be logged into the FASS-CMS Cloud system under the "No Response Required" tab. Any questions regarding records retention should be directed to IA Records Management Officer.

When a BIA employee (not an RSW) receives a written ICWA Notice, the BIA recipient is to direct the requestor or the documents to the appropriate RSW. The list of RSWs designated to receive ICWA Notices is documented here:

<https://www.bia.gov/bia/ois/dhs/icwa>.

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3. Acknowledgement of Requests for Assistance (25 CFR § 23.11(d))

The BIA also receives requests for assistance pursuant to 25 CFR § 23.11(d) without an accompanying ICWA Notice, in which case the RSW must make a reasonable attempt to identify and locate the child's Tribe, parents, or Indian custodian. Because such requests are not made in connection with an ICWA Notice, they are not subject to the 15 day response requirement set forth in 25 CFR § 23.11(c), and must be documented in the FASS-CMS Cloud system under "Acknowledgement."

The servicing RSW should take the following actions:

- Use the FASS-CMS Cloud or ICWA website to type in the Tribe's name; the system will bring up all Tribes closely associated, attached, or connected to that Tribe. The servicing RSW can then provide the requestor with a list of all Tribes associated with or affiliated with the identified Tribe, and information on their ICWA Designated Tribal Agent(s).
- Advise the requestor to send a certified/registered ICWA Notice to all affiliated or associated Tribes with a copy to the appropriate BIA region by registered or certified mail with return receipt requested.

4. Procedures for ICWA Notice Retention of Records

It is the responsibility of each BIA regional office to determine if the ICWA Notices it receives meet ICWA eligibility according to federal guidelines (25 CFR 23.2), and whether the document is a record to retain or be disposed. Any questions regarding records management should go to the IA Records Management Officer.

When the BIA regional office receives an ICWA Notice that meets the statutory definition of ICWA, that document falls under the records retention policy. As the direct recipient of an ICWA Notice, the BIA regional office is the federal office with primary responsibility for maintaining the ICWA Notice in compliance with established recordkeeping requirements. Any questions regarding records retention should go to the IA Record Management Officer.

It is the responsibility of the RSWs to distinguish the record from or non-record status of documentary material subject to Destruction of Records and Non-records Policy since RSWs are designated to receive and review ICWA Notices on behalf of their appropriate RD. Listed below are guidelines to assist the RSWs in making this determination:

- **Substantiated:** Substantiated means the ICWA Notice provides sufficient supporting evidence to prove ICWA eligibility according to 25 CFR § 23.2. Questions on

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substantiated ICWA Notices and records retention filing according to policy should be referred to the IA Records Management Officer. The information should be entered into the FASS-CMS Cloud under sub-grids ICWA Children, ICWA Requestor, and ICWA Notices. If the ICWA Notice is a copy, the response type will be “No Response Required.”

- **Unsubstantiated:** The ICWA Notice has no supporting evidence that the child is:
 - A member of or citizen of an Indian Tribe; or
 - Is eligible for membership or citizenship in an Indian Tribe and is the biological child of a member/citizen of an Indian Tribe (25 CFR § 23.2).

Unsubstantiated ICWA Notices where it is determined the child is ineligible for ICWA are not to be added in the FASS-CMS Cloud. They should be determined as being ‘non-records’ and handled according to guidance from the IA Records Management Officer. However, if the servicing region aided as required in 25 CFR § 23.111(e), the assistance provided should be documented in FASS-CMS Cloud for future reference.

5. Procedures for ICWA Adoption Records

There are three types of adoption records:

- 1) **ICWA Inquiry:** An Indian child welfare inquiry is when an RSW receives inquiries from state or private agencies requesting information regarding Tribal membership or possible Tribal membership of a child(ren) or parent(s) to determine the applicability of the ICWA for adoption.
- 2) **ICWA Petition for Adoption:** This is an ICWA notification record from the state or a private agency notifying the Tribe and sending a copy to the BIA regional office of a petition for adoption of an eligible, or possibly eligible, servicing child subject to ICWA.
- 3) **Indian Adoption Record:** This is a file that includes the final adoption decree, name and Tribal affiliation of the child, name and addresses of the biological parents, the identity of any agency having files or information relating to the adoptive placement, and any affidavits relating to the adoption.

The servicing RSW will review and respond to all Indian Child Welfare inquiries and ICWA notification records received on adoptions of substantiated ICWA eligible children. If a response is required, the servicing RSW will do so using the ICWA Notice procedures outlined in this policy under section D. BIA Responsibilities for ICWA Notices (25 CFR § 23.11(a) - (c), 25 C.F.R. § 23.111(e)).

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IA Headquarters will keep on file all adoption decree records (files) in accordance with the approved policies and 25 CFR § 23.140. No response is required for an adoption decree.

Any state court entering a final adoption decree or order in any voluntary or involuntary child adoption placement must furnish a copy of the decree or order within 30 days to the following address as listed in 25 CFR § 23.140:

Bureau of Indian Affairs, Chief, Division of Human Services
1849 C. Street, N.W., MS-3645-MIB, Washington, D.C. 20240

The state court must mail it to this address marking the envelope “Confidential.” Sending an adoption decree by email to the BIA is unacceptable.

If the RSW or a BIA employee (not an RSW) receives an adoption decree from the state, he/she will mail it to the OIS DHS using the same process listed above. If the RSW receives a document as defined as an “Indian Adoption Record,” the record will be kept at IA Headquarters per 25CFR § 23.140. ICWA adoption inquiries and petition files should remain at the region. Any questions on maintenance of the adoption decrees should be directed to the IA Record Management Officer.

1.8 Reports and Forms.

- 1) Title I and Title IV Tribes/Tribal organizations receiving ICWA funding under ICWA are required to complete the Indian Child Welfare Quarterly and Annual Report (OMB Form 1076-0131). This report is found on the webpage: <https://www.bia.gov/policy-forms/online-forms> (click on the tab labeled “IA Paperwork Reduction Act (PRA) Forms”).

One of the purposes of the ICWA Quarterly and Annual Report is to provide data on the number of notices received by Tribes on potential ICWA cases, and the services provided to ICWA identified children and their families. The AOTR for the ICWA contracts in each region is responsible for on-site monitoring for compliance, reviewing reports submitted, compiling data from the reports, and ensuring the data and reports are submitted to IA Headquarters in a timely manner.

- 2) The BIA will coordinate with the IA Office of Regulatory Affairs & Collaborative Action (RACA) to publish the ICWA Designated Tribal Agent list in the Federal Register as necessary once management clearance is obtained.
- 3) The Indian Affairs Performance Measurement Standards (IA-PMS) quarterly report includes measures on all ICWA Notices received at BIA offices for which a response is

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required under 25 CFR § 23.11(c) because the child's Tribe, parent, or Indian custodian has not been identified or located. The BIA regions submit this information to IA Headquarters to address Government Performance and Results Act (GPRA) reporting requirements.

Approval

Darryl LaCounte Digitally signed by Darryl LaCounte
Date: 2022.06.07 09:49:21 -04'00'

Darryl LaCounte
Director, Bureau of Indian Affairs

Date