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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Triptaa Surve, AAC Contact
Department of Health and Social Services

FROM: Scott Meriwether 
Special Assistant
907.465.4081

DATE: April 15, 2015

RE: Filed Emergency Regulations: Petition of Adoption of children in state custody
(7 AAC 54.600)

Attorney General File:	Emergency Regulations
Regulation Filed:	April 15, 2015
Effective Date:	April 15, 2015
Expiration Date:	August 12, 2015 unless made permanent by the adopting agency
Print:	214, July 2015

cc with enclosures: Linda Miller, Department of Law
Genevieve Wojtusik, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

FINDING OF EMERGENCY

The Department of Health and Social Services finds that an emergency exists and that the attached regulations are necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency include the following:

The Department of Health and Social Services, Office of Children's Services (DHSS) finds that an emergency exists under AS 44.62.250 and that the attached change to its regulations are necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency and supporting this finding include the following:

Congress passed the Indian Child Welfare Act (ICWA), 25 U.S.C. §1901 *et seq.*, in 1978 due to an alarming number of Alaska Native and American Indian children being removed from their families and communities by nontribal private and public agencies. ICWA determined that it is in the best interests of Native children, and to protect the stability and security of Tribes, for Native children to be raised in homes that reflect the unique values of Native culture. Recently to renew this commitment, the Bureau of Indian Affairs adopted new guidelines to assist states in achieving ICWA compliance. DHSS believes that maintaining connections with extended family, Tribe, and culture promotes the mental and behavioral health of a Native child, and the long-term health of the child's Tribe. What is in the best interests of Alaska Native and American Indian children, including for those children to be raised within their families and communities, is in the best interests of Tribes and the State of Alaska.

ICWA requires that Alaska Native and American Indian children placed for adoption be placed with (in descending order of preference): 1) a member of the child's extended family, 2) other members of the Indian child's Tribe, or 3) other Indian families. 25 U.S.C. §1915(a). It was been widely accepted that these placement preferences are the most important substantive provision of ICWA. The United States Supreme Court has held that these placement preferences do not apply unless and until a preferred family takes a formal step to seek to adopt the child. However, states retain the power to determine what constitutes a sufficiently formal request to adopt a child. Existing practice now requires families to file for adoption in a court setting. For Alaska Native families, cultural and language barriers create added difficulties for families wishing to adopt a relative child. The existing practice unintentionally limits a person's ability to make the formal step to seek an adoption of a child. Geographic barriers with state courts located at a distance from interested families, only compounds this problem. Thus, Alaska

Native and American Indian children are at a disadvantage to the full protections of the ICWA protections, when potential adoptive families are experiencing barriers to the adoption process. Currently, there are over 2,500 children in foster care of which approximately 1,500 are Alaska Native or American Indian Children. Approximately 35%, or 525 children, will achieve permanency through adoption. There is an immediate need to improve access to the formal adoption process for Alaska Native and American Indian children and potential Alaska Native adoptive families.

Today, the majority of children in the custody of DHSS are Alaska Native and American Indian children, to whom ICWA applies. However, the majority of Native children in the custody of DHSS are placed in non-Native homes. ICWA recognizes an ICWA preference home as meeting the best interest standard for Alaska Native and American Indian children. Children cannot wait in foster care. The longer a child remains in foster care the more trauma can occur to the child, resulting in poorer longer term outcomes such as increased mental health problems, homelessness or incarceration. Placement with a relative or a tribal member for purposes of adoption allows for the child to grow up with the necessary familial and cultural connections to reduce this trauma. For those children who will ultimately find permanency through adoption, their best interests are served by adoptive placement in homes that reflect the unique values of Native culture: ICWA-preferred adoptive placements.

One way that an ICWA-preferred adoptive placement could make a formal request to adopt a Native child in the custody of DHSS is to file an adoption petition in state court. Filing an adoption petition in state court is a sufficiently challenging requirement, especially in rural Alaska. This places a significant obstacle between Native children in the custody of DHSS and ICWA-preferred placements that want to adopt them. For example: Child In Need of Aid proceedings, the proceedings by which children in the custody of DHSS may be freed for adoption, are confidential; filing a petition to adopt a Native child requires the assistance of a lawyer; the majority of rural Alaskans and low-income Alaskans do not have access to a lawyer; in rural Alaska, limited access to computers, printers, reliable internet service, and the lack of Native-language court forms further limit access to the courts. Currently, there is no other action that clearly satisfies the requirement that an ICWA-preferred family formally seek to adopt a child in the custody of DHSS.

Emergency regulations are necessary because children in the custody of DHSS need permanency as soon as possible. For the majority of children in the custody of DHSS, permanency in the homes that serve their best interests is more likely to occur if actions other than filing an adoption petition in state court are clearly recognized as sufficiently formal to trigger the application of ICWA's placement preferences.

The adoption of the attached emergency regulation, which identifies actions that constitute a sufficiently formal request to adopt a child in the custody of DHSS, for the purposes of applying the adoptive placement preferences set forth in the ICWA, will further the purposes of the Indian Child Welfare Act, AS 47.05.65, AS 47.10.088, AS 47.10.080; AS 47.14.010, and AS 47.14.100. DHSS intends on making these regulations permanent.

ADOPTION ORDER

Under the authority of AS 47.05.065, AS 47.14.100; AS 47.14.010; AS 47.10.080; and AS 47.10.088, the attached 1 pages of regulation changes are therefore adopted as emergency regulations to take effect immediately upon filing by the lieutenant governor, as provided in AS 44.62.180(3).

This action is not expected to require an increased appropriation.

DATE: 4/15/15
Juneau, Alaska



Valerie "Nurt'araaluk" Davidson
Commissioner Designee, Department of
Health and Social Services

FILING CERTIFICATION

I, *Byron Mallott*, Lieutenant Governor for the State of Alaska, certify that on April 15, 2015, at 1:24 p.m./p.m., I filed the attached regulations according to the provisions of AS 44.62.



Lieutenant Governor

Effective: April 15, 2015.
Register: 214, July 2015

Expires August 12, 2015
unless made "permanent"
by the adopting agency.

EMERGENCY REGULATION

Register 214, July 20 15 Department of Health and Social Services.

7 AAC 54 is amended to add a new section:

7 AAC 54.600. Adoption of Children subject to the Indian Child Welfare Act. For Indian children who are in the custody of the state where the department's permanency goal for the child is adoption, the department will consider the following to constitute a proxy for a formal petition for adoption:

- (1) The request of a relative, tribal member or other Indian family interested in immediate placement and adoption of a child at any court hearing in the Child in Need of Aid matter; or
- (2) The request of a relative, tribal member or other Indian family interested in immediate placement and adoption of a child, conveyed to the department by phone, mail, fax, electronic mail, or in person; or
- (3) The request by the child's Tribe or tribe in which the child is eligible for enrollment to the department on behalf of a relative or tribal member who the Tribe has confirmed is requesting immediate placement and adoption of a child.

(Eff. am 4/15/2015 Register 214)

Authority: AS 47.05.065 AS 47.10.080 AS 47.10.088
AS 47.14.010

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Health and Social Services: Office of Children's Services
2. General subject of regulation: Petition of Adoption of children in state custody
3. Citation of regulation (may be grouped): 7 AAC 54.600
4. Department of Law file number, if any: N/A emergency regulation

5. Reason for the proposed action:
 - Compliance with federal law or action (identify): _____
 - Compliance with new or changed state statute
 - Compliance with Federal or state court decision (identify) _____
 - Development of program standards
 - Other (identify): _____

6. Appropriation/Allocation: N/A

7. Estimated annual costs in the aggregate to comply with the proposed action to:
 - Private Persons: N/A
 - Other State Agencies: N/A
 - Municipalities: N/A

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY _____	Subsequent Years
Operating Cost	\$ _____	\$ _____
Capital Cost	\$ _____	\$ _____
1002 Federal receipts	\$ _____	\$ _____
1003 General fund match	\$ _____	\$ _____
1004 General fund	\$ _____	\$ _____
1005 General fund/ program	\$ _____	\$ _____
1037 General fund/ mental health	\$ _____	\$ _____
Other	\$ _____	\$ _____

9. The name of the contact person for the regulations:
 - Name: Tracy Spartz Campbell
 - Title: Deputy Director
 - Address: PO Box 110630
Juneau, AK 99811-0630

Telephone: (907) 465-4894

E-mail address Tracy.spartz-campbell@alaska.gov

10. The origin of the proposed action:

- Staff of state agency
- Federal government
- General public
- Petition for regulation change
- Other (identify) _____

11. Date: 4/15/2015

Prepared by: *Tracy Spartz Campbell*
[signature]

Name (printed): TRACY SPARTZ CAMPBELL

Title (printed): DEPUTY DIRECTOR

Telephone: (907) 465-4894