

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 20

RIN 1076-AD95

Financial Assistance and Social Services Programs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (Bureau) is proposing to revise the existing Financial Assistance and Social Services Program regulations to incorporate rules for Burial Assistance, Child Assistance, Disaster Assistance, Emergency Assistance, General Assistance, Services to Children, Elderly and Families, and Tribal Welfare Reform. All other sections are revised and renumbered to conform to existing programmatic and budgetary statutes and conditions. Also, these regulations have been rewritten in Plain English as required by E.O. 12866. In keeping with the intent of Plain English, we added more subparts for easier use in reference.

DATES: Comments must be received by July 6, 1999.

ADDRESSES: Mail comments to Division of Social Services, Bureau of Indian Affairs, 1849 C Street, NW, MS-4660-MIB, Washington, DC 20240 or hand deliver them to room 4660 at the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Blair, Chief, Division of Social Services, Bureau of Indian Affairs at telephone (202) 208-2479.

SUPPLEMENTARY INFORMATION: We last revised the financial assistance and social services regulations in 25 CFR Part 20 in 1985. Since that time, a number of important changes have occurred that are not reflected in the existing regulations. These actions

present an opportunity to review the current priorities and policies contained in the regulations and propose changes that conform to existing conditions. We've considered the following factors in proposing changes in the current regulations:

- The primary purpose of the amendments is to provide clear, concise regulations that will improve program implementation;
- Congress has enacted a cap on the level of financial assistance funding;
- Existing financial assistance and social services regulations do not provide for the development of tribal welfare reform/redesign plans in accordance with tribal desires and existing law;
- Given fluctuations in financial assistance caseloads and emergencies, it has been difficult to plan and refine the existing service delivery framework;
- The Department of Health and Human Services (HHS) has made a policy decision to allow Temporary Assistance for Needy Families (TANF) payments to be included as one of the grants under Pub. L. 102-477;
- Pub. L. 104-193 Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) reduced funding level authorizations and requires General Assistance (GA) payments to be equal to the level of state TANF payments; and
- The Indian Child Protection and Family Violence Prevention Act and the Adoption and Safe Families Act have established new standards in child welfare, and the regulations need revision to incorporate and consolidate additional child protection and permanency planning requirements.

The continued focus and use of the financial assistance and social services program needs to be on the reservation and other areas where the Indian Community resides and where other government entities do not provide reasonably comparable and available services. The Bureau continues to support the policy that Indian people living away from their reservation are eligible and should receive financial assistance and social services from local state, county, and city resources on the same basis as non-Indians. For the purposes of simplifying the locations where we will provide the financial assistance and social services program, we use the term "service area" in these

regulations and tell you how to get a service area if one does not yet exist.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Tribes have been operating this financial assistance program for thirty years and the amount of funding is dependent upon the local economy in terms of unemployment and extent of need for funds. Approximately 400 tribes receive some form of financial assistance yearly and the amount of funds varies according to caseload increases and decreases.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule affects a number of Indian Communities throughout the nation but the impact is not adverse because the financial assistance programs have been in operation for many years and this regulation does not increase cases and expenditures over prior year totals because it is dependent upon the extent of need.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more. The financial assistance funds are

divided up between 400 Indian communities based upon need.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule provides guidance for a welfare benefit program and will not affect payment levels of eligible clients nor cause increases or decreases in existing caseloads or total expenditures.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This program is a welfare benefit program and does not affect local enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612 this rule does not have significant Federalism effects. A Federalism assessment is not required.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. An OMB Form 83-I has been reviewed by the Department and sent to OMB for approval.

The Paperwork Reduction Act submission is BIA Financial Assistance and Social Services Program, form number OMB 1076-0017. The Bureau has reviewed the information needed and reduced the amount of information

being collected. The information collection takes 15 minutes for 200,000 respondents for a burden of 50,000 hours. The information collection will be used to make decisions within the framework of the financial assistance program, such as determining eligibility, ensuring uniformity of services, and maintaining current records for audit purposes. The information collection is required to obtain or retain a benefit. Information covered by the Privacy Act will be kept confidential as required by regulation. Please note that an agency may not collect or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Paperwork Reduction Act submission began as a separate issue in order to allow the tribes to continue working with the family assistance programs while the rule was being revised. The notice of reinstatement for this information collection was published in the **Federal Register** for a 60 day notice period, and recently for a 30 day period (63 FR 30771 of December 21, 1998 and 63 FR 70414 of March 31, 1999 respectively). The **Federal Register** Notices specifically requested comments concerning:

1. Whether the collection of information is necessary for the proper performance of the functions of the Bureau including whether the information will have practical utility;

2. The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and,

4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

OMB received the request for clearance of this information collection March 31, 1999. You may send any comments about the collection to the Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs—Office of Management and Budget, 725 17th Street NW, Washington, DC 20503. OMB has up to 60 days to decide if the information collection will be approved; however, your comments will receive maximum consideration if they are received within the first 30 days.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the

quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, **§ 20.300 What are the basic eligibility criteria?**) (5) Is the description of the proposed rule in the "supplementary information" section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

List of Subjects in 25 CFR Part 20

Administrative practice and procedures, Child welfare, Indians-Social welfare, Public assistance programs.

For the reasons set out in the preamble, Part 20 of Title 25, Subchapter D, Chapter I of the Code of Federal Regulations is proposed to be amended as set forth below:

SUBCHAPTER D—HUMAN SERVICES

PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAMS

Subpart A—Definitions, Purpose and Policy Sec.

20.100 What definitions clarify the meaning of the provisions of this part?

20.101 What is the purpose of this part?

20.102 What is the Bureau's policy in providing financial assistance and social services under this part?

20.103 Have the information collection requirements in this part been approved by the Office of Management and Budget?

Subpart B—Welfare Reform

- 20.200 What contact will the Bureau maintain with state, tribal, county, local, and other Federal agency programs?
- 20.201 How does the Bureau designate service area and what information is required?
- 20.202 What does financial assistance include?
- 20.203 What is a tribal redesign plan?
- 20.204 Can a tribe incorporate assistance from other sources into a tribal redesign plan?
- 20.205 Must all tribes develop a tribal redesign plan?
- 20.206 Can tribes change eligibility criteria or levels of payments for General Assistance?
- 20.207 Must a tribe get approval for a tribal redesign plan?
- 20.208 Can a tribe use savings from a tribal redesign plan to meet other priorities of the tribe?
- 20.209 What if the tribal redesign plan leads to increased costs?
- 20.210 Can a tribe operating under a tribal redesign plan go back to operating under this part?
- 20.211 Can eligibility criteria or payments for Burial Assistance, Child Assistance, and Disaster Assistance change?

Subpart C—Direct Assistance

- 20.300 What are the basic eligibility criteria?
- 20.301 What is the goal of General Assistance?
- 20.302 Are Indian applicants required to seek assistance through TANF?
- 20.303 When is an applicant eligible for General Assistance?
- 20.304 When will the Bureau review eligibility for General Assistance?
- 20.305 What does redetermination involve?
- 20.306 What is the payment standard for General Assistance?
- 20.307 What resources does the Bureau consider when determining need?
- 20.308 What does earned income include?
- 20.309 What does unearned income include?
- 20.310 What recurring income must be prorated?
- 20.311 What deducted amounts will be disregarded from the gross amount of earned income?
- 20.312 What amounts will be disregarded from income or other resources?
- 20.313 How will the Bureau compute financial assistance payments?
- 20.314 What is the policy on employment?
- 20.315 When is the employment policy not applicable?
- 20.316 What must a person covered by the employment policy do?
- 20.317 How will the ineligibility period be implemented?
- 20.318 What case management responsibilities does the social services worker have?
- 20.319 What responsibilities does the general assistance recipient have?
- 20.320 What is TWEP?
- 20.321 Does TWEP allow incentive payment?

- 20.322 Who is eligible to receive a TWEP incentive payment?
- 20.323 Will the local TWEP be required to have written program procedures?
- 20.324 When can the Bureau provide Burial Assistance?
- 20.325 What is the process for making application for Burial Assistance for eligible Indians?
- 20.326 When are the related transportation expenses covered by Burial Assistance?
- 20.327 When can the Bureau provide Disaster Assistance?
- 20.328 How can a tribe apply for Disaster Assistance?
- 20.329 When can the Bureau provide Emergency Assistance payments?
- 20.330 What is the payment standard for Emergency Assistance?

Subpart D—Services to Children, Elderly, and Families

- 20.400 For whom should Services to Children, Elderly, and Families be provided?
- 20.401 What services are included under Services to Children, Elderly, and Families Services?

Subpart E—Child Assistance

- 20.500 What are the eligibility criteria for Child Assistance?
- 20.501 What are the rates of payment for foster care?
- 20.502 Can Child Assistance funds be used for placement of Indian children in treatment centers?
- 20.503 Can Child Assistance funds be used for Indian adoption subsidies or subsidized guardianships?
- 20.504 What eligibility requirements must be met for an Indian adoption subsidy or subsidized guardianship?
- 20.505 What is the payment standard for adoption and guardianship?
- 20.506 Can homemaker services be provided with Child Assistance?
- 20.507 What services are provided jointly with the Child Assistance Program?
- 20.508 What information is required in the foster care case file?
- 20.509 What are the requirements for foster care?
- 20.510 How is the court involved in foster care placements?
- 20.511 Should permanency plans be developed?
- 20.512 Can the Bureau/tribal contractors make Indian adoptive placements?
- 20.513 Should Interstate Compacts be used for the placement of children?
- 20.514 What assistance can the courts request from social services on behalf of children?
- 20.515 What is required for case management?
- 20.516 How are child abuse and neglect cases to be handled?

Subpart F—Administrative Procedures

- 620.600 How is an application for financial assistance or social services made?
- 20.601 From whom is eligibility information collected?
- 20.602 How is an application approved or denied?
- 20.603 How is an applicant or recipient notified that benefits or services are denied?
- 20.604 How is an incorrect payment adjusted or recovered?
- 20.605 What happens when applicants or recipients knowingly and willfully provide false, fictitious, or fraudulent information?

Subpart G—Hearings and Appeals

- 20.700 Can an applicant or recipient appeal the decision of a Bureau official?
- 20.701 Does an applicant or recipient receive financial assistance while an appeal is pending?
- 20.702 When is an appeal hearing scheduled?
- 20.703 What must the written notice of hearing include?
- 20.704 Who conducts the hearing or appeal from a Bureau decision or action and what is the process?
- 20.705 Can an applicant or recipient appeal a tribal decision?

Authority: 25 U.S.C. 13; Pub. L. 102-477, 106 Stat. 2302; Pub. L. 104-193, 110 Stat. 2105; Pub. L. 105-83, 111 Stat. 1543.

Subpart A—Definitions, Purpose and Policy**§ 20.100 What definitions clarify the meaning of the provisions of this part?**

Appeal means a written request for correction of an action or decision of a specific program decision by a Bureau official (§ 20.700) or a tribal official (§ 20.705).

Applicant means an Indian individual or person by or on whose behalf an application for financial assistance and/or social services has been made under this part.

Application means the written process through which a request is made for financial assistance or social services.

Area Director means the Bureau official in charge of an Area Office.

Assistant Secretary means the Assistant Secretary—Indian Affairs.

Authorized representative means a parent or other caretaker relative, conservator, legal guardian, foster parent, attorney, paralegal acting under the supervision of an attorney, friend or other spokesperson duly authorized and acting on behalf or representing the applicant or recipient.

Bureau means the Bureau of Indian Affairs of the United States Department of the Interior.

Bureau Standard of Assistance means payment standards established by the Assistant Secretary—Indian Affairs for burial, disaster, emergency, and adoption and guardianship subsidy. In accordance with Pub. L. 104–193, the Bureau standard of assistance for general assistance is the state rate for TANF in the state where the applicant lives. Child Assistance and foster care rates are in accordance with Title IV of the Social Security Act (49 Stat. 620) and Pub. L. 104–193.

Burial assistance means a financial assistance payment made on behalf of an indigent eligible Indian person who meets the eligibility criteria to provide minimum burial expenses according to Bureau payment standards established by the Assistant Secretary—Indian Affairs.

Case means all individuals in the household.

Case management means the activity of a social services worker in assessing client and family problem(s), case planning, coordinating and linking services for clients, monitoring service provisions and client progress, advocacy, tracking and evaluating services provided, such as evaluation of child's treatment being concurrent with parent's treatment, and provision of aftercare service. Activities may also include resource development and providing other direct services such as accountability of funds, data collection, reporting requirements, and documenting activities in the case file.

Case plan means a signed written plan with time limited goals which is developed and signed by the service recipient and social services worker. The case plan will include documentation of referral and ineligibility for other services. The plan must incorporate the steps needed to assist individuals and families to resolve social, economic, psychological, interpersonal, and/or other problems, to achieve self-sufficiency and independence. All plans for children in foster care must include a time specific goal of the return of the child to the home or initiation of a guardianship/adoption.

Child means an Indian person under the age of 18 or such other age of majority as may be established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence, except that no person who has been emancipated by marriage will be deemed a child.

Child assistance means financial assistance provided on behalf of an Indian child, or an Indian under age 18, who is not eligible for any other state or

Federal assistance as documented in the case file and who requires placement in a foster home or specialized non-medical care facility, in accordance with standards of payments established by the state in which they reside pursuant to the foster care program under Title IV of the Social Security Act (49 Stat. 620), or has special needs as specified in § 20.100 (pp).

Designated representative means an official of the Bureau who is designated by a Superintendent to hold a hearing as prescribed in §§ 20.700 through 20.705 and who has had no prior involvement in the proposed decision under § 20.602 and whose hearing decision under §§ 20.700 through 20.705 will have the same force and effect as if rendered by the Superintendent.

Disaster means a situation where a Tribal Community is adversely effected by a natural disaster or other forces which pose a threat to life, safety, or health as specified in §§ 20.327 and 20.328.

Emergency means a situation where an individual or family's home and personal possessions are either destroyed or damaged through forces beyond their control as specified in § 20.329.

Employable means an eligible Indian person who is physically and mentally able to obtain employment, and who is not exempt from seeking employment in accordance with the criteria specified in § 20.315.

Essential needs means shelter, food, clothing and utilities, as included in the standard of assistance in the state where the eligible applicant lives.

Extended family means persons related by blood, marriage or as defined by Indian custom.

Family assessment means a social services evaluation of a family's abilities and resources to provide the necessary care and supervision for the child(ren), and individuals within the family's current living situation and is included in the case file.

Foster care services means those social services provided when an Indian child lives away from the family home.

General Assistance means a secondary or residual source of financial assistance payments to eligible Indian individuals for essential needs as provided and pursuant to §§ 20.300 through 20.319.

Head of household means the persons in the household with whom the household members live and who makes application for benefits.

Homemaker services means those non-medical services purchased or contracted for individuals who are not

eligible for any other programs such as Medicaid/Medicare as documented in the case file. These individuals must be under the supervision of a social services agency which is administered by a person trained in such skills as child care and home management to prevent out-of-home placement.

Household means persons living together who may or may not be related to the "head of household."

Indian means any person who is a member of any of those tribes listed in the **Federal Register** pursuant to 25 CFR part 83, as recognized by and receiving services from the Bureau of Indian Affairs.

Indian court means Indian tribal court or court of Indian offenses.

Indian tribe means an Indian or Alaskan Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Pub. L. 103–454, 108 Stat. 4791.

Individual Self-sufficiency Plan (ISP) means a plan designed to meet the goal of employment through specific action steps and is incorporated within the case plan. The plan is jointly developed and signed by the general assistance recipient and social services worker.

Need means the deficit after consideration of income and other resources necessary to meet the cost of essential need items and special need items as defined by the Bureau standard of assistance for the state in which the applicant or recipient resides.

Non-medical care means financial assistance for room and board services for individuals in non-medical care facilities. These individuals must not be eligible for SSI or any other Federal or state programs and this information must be documented in the case file.

Permanency plan means the documentation in a case plan which provides for permanent living alternatives for the child(ren) in foster care who are not eligible for any other Federal or state program. Permanency plans are developed in accordance with tribal, cultural, and tribal/state legal standards when the parent or guardian is unable to resolve the issues that require out of home placement of the child(ren).

Protective services means those services necessary to protect an individual who is the victim of an alleged and/or substantiated abuse or neglect incident. In coordination with law enforcement and tribal courts, this may include placement of the individual out of the home to assure the safety of the individual while the allegations are being investigated. Social workers will not remove individuals

from their homes without a court order except in life or death situations. Protective services can also include provision of social services in the home, the coordination and referral to other programs/services and the involvement of Child Protection and/or Multi-Disciplinary Teams.

Public assistance means those programs of financial assistance provided by state, tribal, county, local and Federal organizations including programs under Title IV of the Social Security Act (49 Stat. 620), as amended, and (Pub. L. 104-193).

Recipient is an individual or person who has been determined as eligible through documentation in the case file and is receiving financial assistance or social services under this part.

Recurring income means any cash or in kind payment, earned or unearned, received on a monthly, quarterly, semiannual, or annual basis.

Resources means income and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by Federal statute. Liquid assets are those properties in the form of cash or other financial instruments which can be converted to cash, such as savings or checking accounts, promissory notes, mortgages and similar properties, and retirements and annuities.

Secretary means the Secretary of the Interior.

Service area means:

- (1) Reservations; and/or
- (2) Areas adjacent or adjoining reservations; and/or
- (3) Allotments outside the reservations; and/or
- (4) Areas defined as reservations or service areas by statute; and/or
- (5) Other defined areas designated by the Assistant Secretary—Indian Affairs pursuant to this part.

Services to children, elderly and families means social services, including protective services, not including money payments, provided through the social work skills of casework, group work or community development to assist in solving social problems involving children, elderly and families.

Special needs means a financial assistance payment made to or on behalf of individuals who have extenuating, non-medical circumstances which warrant a one-time annual financial assistance payment when other resources are not available and the circumstances are documented in the case files.

Subsidized guardianship means a payment of a monthly subsidy, not to

exceed two years, for the child(ren) in long-term, court approved guardianship placements. The children must not be eligible for any other Federal or state program and this must be documented in the case file.

Substitute care means the provision of foster care or any in-home, out of home, or relative placement of the child(ren) by someone other than a parent.

Superintendent means the Bureau official in charge of an Agency Office.

Supplemental Security Income (SSI) means those programs of assistance provided under Title XVI of the Social Security Act (49 Stat. 620), as amended.

Temporary Assistance for Needy Families (TANF) means one of the programs of financial assistance provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (PRWORA).

Tribal governing body means the federally recognized governing body of an Indian tribe.

Tribal redesign plan means a tribally designed method for changing general assistance eligibility and/or payment levels in accordance with appropriation language so as to reduce dependence on general assistance as specified in §§ 20.203 through 20.211.

Tribal Work Experience Program (TWEP) means a program operated by tribal contract/grant or self-governance annual funding agreement, which provides eligible participants with work experience and training that promotes and preserves work habits and develops work skills aimed toward self-sufficiency. The Bureau payment standard is established by the Assistant Secretary—Indian Affairs.

Unemployable means a person who meets the criteria specified in § 20.315.

§ 20.101 What is the purpose of this part?

The regulations in this part govern the provision of Child Assistance, General Assistance, and Services to Children, Elderly and Families to eligible Indians.

§ 20.102 What is the Bureau's policy in providing financial assistance and social services under this part?

(a) The Bureau can provide assistance under this part to eligible Indians when financial assistance or social services are either not available or not provided by State, tribal, county, local and other Federal agencies.

(b) Bureau social services programs will not be used to supplement or supplant other programs.

(c) Bureau financial assistance and social services are subject to annual Congressional appropriations.

§ 20.103 Have the information collection requirements in this part been approved by the Office of Management and Budget?

The information collection requirements contained in §§ 20.300, 20.400, and 20.500 have been submitted for clearance to the Office of Management and Budget under 44 U.S.C. 35d *et seq.* The notice of reinstatement for this information collection was published in the **Federal Register** on March 31, 1999.

Subpart B—Welfare Reform

§ 20.200 What contact will the Bureau maintain with State, tribal, county, local, and other Federal agency programs?

We will coordinate all financial assistance and social services programs with State, tribal, county, local and other Federal agency programs to ensure that the financial assistance and social services program avoids duplication of assistance.

§ 20.201 How does the Bureau designate a service area and what information is required?

(a) The geographic boundaries of reservations for those tribes having reservations defines their service area.

(b) The Assistant Secretary—Indian Affairs can designate service areas for financial assistance or social services to:

- (1) Tribes having no reservations;
- (2) Tribes having no areas adjacent or adjoining reservations;
- (3) Tribes having no allotments outside the reservations;
- (4) Tribes having no areas defined as reservations or service areas by statute; or

(5) Tribes having no other defined areas designated by the Assistant Secretary—Indian Affairs.

(c) If you are a tribe requesting service area designation you must submit a resolution that certifies that:

(1) Tribal members and their Indian family members residing within the service area are socially, culturally, and economically affiliated with your tribe and service area.

(2) The proposed service area will not include counties or parts thereof that have reasonably available comparable services.

(d) You must provide documentation showing that:

(1) The area is administratively feasible (that is, it can allow us to provide an adequate level of services to the Indian people residing in the area);

(2) The area is near the Indian

Community;

(3) No duplication of services exists; and

(4) All eligible Indians will be served.

(e) You must send documentation to the Area Director who will certify its

accuracy and make recommendations to the Assistant Secretary—Indian Affairs. The Assistant Secretary—Indian Affairs can make a determination to approve and publish notice of the designation of service area and the Indians to be served in the **Federal Register**.

§ 20.202 What does financial assistance include?

The following types of assistance are included in financial assistance:

- (a) Burial Assistance for indigent burials;
- (b) Child Assistance for children in foster home care, children in need of adoption or guardianship, children in need of residential care, and children with special needs;
- (c) Disaster Assistance in cases where the Federal Emergency Management Agency (FEMA) or the Red Cross do not provide assistance.
- (d) Emergency Assistance for essential needs to prevent hardship caused by burnout, flooding of homes, or other life threatening situations that may cause loss or damage of personal possessions; and
- (e) General Assistance for basic essential needs.

§ 20.203 What is a tribal redesign plan?

(a) A tribal redesign plan allows a tribe to:

- (1) Change eligibility for general assistance in the service area; or
- (2) Change the amount of general assistance payments for individuals within the service area.

(b) If you develop a tribal redesign plan it must:

- (1) Treat all persons in the same situation equally; and
- (2) Not result in additional expenses for the Bureau.

§ 20.204 Can a tribe incorporate assistance from other sources into a tribal redesign plan?

Yes. A tribe may incorporate an HHS-approved TANF tribal welfare plan and associated funding into a Pub. L. 102–477 grant, a Pub. L. 103–413 self-governance annual funding agreement, or a tribal redesign plan.

§ 20.205 Must all tribes submit a tribal redesign plan?

No. You must submit a tribal redesign plan under § 20.206 only if you want to change the way that the General Assistance program operates in your service area.

§ 20.206 Can tribes change eligibility criteria or levels of payments for General Assistance?

Yes. If you have a redesign plan you can administer General Assistance

programs under a Pub. L. 93–638 self-determination contract, a Pub. L. 102–477 grant, or a Pub. L. 103–413 self-governance annual funding agreement by changing eligibility criteria or levels of payment for General Assistance. A Bureau servicing office can administer a tribal redesign plan as requested by a tribal resolution.

§ 20.207 Must a tribe get approval for a tribal redesign plan?

(a) If you have a Pub. L. 93–638 contract or receive direct services from us, you must obtain approval from the Area Director or a Bureau servicing office before developing a redesign plan. You must submit your redesign plan for approval at least three months before the effective date in accordance with Pub. L. 93–638 as amended and part 900.

(b) If you operate with a self-governance annual funding agreement or Pub. L. 102–477 grant you must ask the appropriate Area Director to make a recommendation for approval of the redesign. The Assistant Secretary—Indian Affairs will consider the Area Director's recommendation for approval before making a final decision.

§ 20.208 Can a tribe use savings from a tribal redesign plan to meet other priorities of the tribe?

Yes. You may use savings from a redesign to meet other priorities.

§ 20.209 What if the tribal redesign plan leads to increased costs?

The tribe must meet any increase in costs to the General Assistance program that result solely from tribally increased payment levels due to a redesign plan.

§ 20.210 Can a tribe operating under a tribal redesign plan go back to operating under this part?

Yes. A tribe operating under a tribal redesign plan can choose to return to operation of the program as provided in §§ 20.300 through 20.323.

§ 20.211 Can eligibility criteria or payments for Burial Assistance, Child Assistance, and Disaster Assistance change?

No. Neither the Bureau nor a tribe may change eligibility criteria or levels of payment for Burial Assistance, Child Assistance, Disaster Assistance, and Emergency Assistance awarded in Pub. L. 93–638 contracts, Pub. L. 102–477 grants, Pub. L. 103–413 self-governance annual funding agreements.

Subpart C—Direct Assistance

§ 20.300 What are the basic eligibility criteria?

To meet basic eligibility criteria for assistance or services under this part the applicant must:

- (a) Be a member of an Indian tribe or be a one-fourth degree or more blood quantum descendant of a member of any Indian tribe; and
- (b) Not have sufficient resources to meet the essential need items defined by the Bureau standard of assistance; and
- (c) Reside in the service area as defined in § 20.100; and
- (d) Meet the additional eligibility criteria for each of the specific programs of financial assistance or social services in §§ 20.301 through 20.516.

§ 20.301 What is the goal of General Assistance?

The goal of the General Assistance program is to increase self-sufficiency. Each General Assistance recipient must work with the social services worker to develop and sign an Individual Self-Sufficiency Plan (ISP). The plan must outline the specific steps the individual will take to increase independence by meeting the goal of employment.

§ 20.302 Are Indian applicants required to seek assistance through TANF?

Yes. All Indian applicants with dependent children are required to apply for TANF and follow TANF regulations.

§ 20.303 When is an applicant eligible for General Assistance?

To be eligible for General Assistance an applicant must:

- (a) Meet the criteria contained in § 20.300;
- (b) Not have sufficient resources to meet the essential need items defined by the Bureau standard of assistance; and
- (c) Apply concurrently for financial assistance from other State, tribal, county, local, or other Federal agency programs for which he/she is eligible;
- (d) Not receive TANF, Supplemental Security Income (SSI), or benefits from other state or Federal entitlement programs; and
- (e) Develop with a social services worker and sign an employment strategy to meet the goal of employment through specific action steps including job readiness and job search activities.

§ 20.304 When will the Bureau review eligibility for General Assistance?

The Bureau will review eligibility for General Assistance:

- (a) Whenever there is an indication of a change in status which can affect a recipient's eligibility or amount of

assistance. Recipients are required to immediately inform the social services office of any such changes;

(b) Not less than every 3 months for individuals who are not exempt from seeking or accepting employment in accordance with § 20.315 or the ISP; and

(c) Not less than every 6 months for all recipients.

§ 20.305 What does redetermination involve?

(a) Redetermination assesses the need for continued financial assistance as outlined in § 20.304. It includes:

- (1) A home visit;
- (2) An estimate of income, living circumstances, household composition for the month(s) for which financial assistance is to be provided; and
- (3) Appropriate revisions to the case plan.

(b) The social services worker will make a decision as to whether the recipient will continue to receive general assistance based on paragraph (a) of this section.

§ 20.306 What is the payment standard for General Assistance?

(a) Under Pub. L. 104–193, the Bureau must use the same TANF payment standard (and any associated rateable reduction) that exists in the State or service area where the applicant or recipient resides. This payment standard is the amount from which the Bureau subtracts net income and resources to determine General Assistance eligibility and payment levels;

(b) If the State does not have a standard for an adult, we will use either the difference between the standard for a child and the standard for a household of two, or one-half of the standard for a household of two, whichever is greater; and

(c) If the State does not have a TANF program, we will use the AFDC payment standard which was in effect on September 30, 1995, in the State where the applicant or recipient resides.

§ 20.307 What resources does the Bureau consider when determining need?

When the Bureau determines General Assistance eligibility and payment levels, we consider income and other resources as specified in §§ 20.308 and 20.309.

(a) All earned or unearned income must be calculated as income in the month it is received and as a resource thereafter, except that certain income obtained from the sale of real or personal property may be exempt as provided in § 20.309.

(b) Resources are considered to be available when they are liquidated and

when the applicant or recipient has a legal interest in the liquidated sum, as defined in § 20.100.

§ 20.308 What does earned income include?

Earned income is cash or any in-kind payment earned in the form of wages, salary, commissions, or profit, from activities by an employee or self-employed individual. Earned income include:

- (a) Any one-time payment to an individual for activities which were sustained over a period of time (for example, the sale of farm crops, livestock, artwork, crafts and beading); and
- (b) With regard to self-employment, total profit from a business enterprise (i.e., gross receipts less expenses incurred in producing the goods or services). Business expenses do not include depreciation, personal business and entertainment expenses, personal transportation, capital equipment purchases, or principal payments on loans for capital assets or durable goods.

§ 20.309 What does unearned income include?

Unearned income includes, but is not limited to:

- (a) Income from interest; oil and gas and other mineral royalties; gaming income per capita distributions; rental property; cash contributions, such as child support and alimony; gaming winnings; retirement;
- (b) Annuities, veteran's disability, unemployment benefits, and Federal and State tax refunds;
- (c) Per capita payments not excluded by Federal statute;
- (d) Income from sale of trust land and real or personal property that is set aside for reinvestment in trust land or a primary residence, but has not been reinvested in trust land or a primary residence at the end of one year from the date the income was received;
- (e) In-kind contributions providing shelter at no cost to the individual or household, this must equal the amount for shelter included in the State standard, or 25 percent of the State standard, whichever is less; and
- (f) Financial assistance provided by a State, tribal, county, local, or other Federal agency.

§ 20.310 What recurring income must be prorated?

The following recurring income is prorated:

- (a) Recurring income received by individuals over a 12-month period for less than a full year's employment (for example, income earned by teachers who are not employed for a full year);

(b) Income received by individuals employed on a contractual basis over the term of a contract; and

(c) Intermittent income received quarterly, semiannually, or yearly over the period covered by the income.

§ 20.311 What deducted amounts will be disregarded from the gross amount of earned income?

(a) The social services worker will disregard the following amounts from the earned income:

- (1) Other Federal, State, and local taxes;
- (2) Social Security (FICA);
- (3) Health insurance;
- (4) Work related expenses, including reasonable transportation costs;
- (5) Child care costs, except where the other parent in the home is not working or is not disabled; and
- (6) The cost of special clothing, tools, and equipment directly related to the individual's employment.

(b) For self-employed individuals, the social services worker will deduct the costs of conducting business and all of the amounts in paragraph (a) of this section.

§ 20.312 What amounts will be disregarded from income or other resources?

The social services worker will disregard the following amounts from income, or other resources:

- (a) The first \$2,000 of liquid resources annually available to the household;
- (b) Any home produce from a garden, livestock, and poultry used by the applicant or recipient and his/her household for their consumption; and
- (c) Resources specifically excluded by Federal statute.

§ 20.313 How will the Bureau compute financial assistance payments?

(a) The social services worker will compute financial assistance payments by:

- (1) Calculating the difference between the Bureau standard of assistance and all resources calculated under §§ 20.307 through 20.310;
- (2) Applying the rateable reduction or maximum payment level used by the State where the applicant lives;
- (3) Deducting an amount for shelter (see paragraph (b) of this section for details on how to calculate a shelter amount); and
- (4) Rounding the result down to the next lowest dollar.

(b) The social services worker must calculate a shelter amount for purposes of paragraph (a)(3) of this section. To calculate the shelter amount:

- (1) The shelter amount must not exceed the amount for shelter in the State TANF standard;

(2) If the State TANF does not specify an amount for shelter, the social services worker must calculate the amount as 25 percent of the total State TANF payment; and

(3) If there is more than one household in a dwelling, the social services worker must prorate the actual shelter cost among the households receiving General Assistance; this amount cannot exceed the amount in the standard for individuals in similar circumstances. The head of each household is responsible for his/her portion of the documented shelter cost.

(c) The social services worker must not provide General Assistance payments for any period before the date of the application for assistance.

§ 20.314 What is the policy on employment?

(a) An applicant or recipient must:

(1) Actively seek employment, including the use of available State, tribal, county, local or Bureau-funded employment services;

(2) Make satisfactory progress in an ISP; and

(3) Accept local and seasonable employment when it is available.

(b) A head of household who does not comply with this section will not be eligible for General Assistance for a period of at least 60 days but not more than 90 days. This action must be documented in the case file.

§ 20.315 When is the employment policy not applicable?

The employment policy in § 20.314 does not apply to the persons shown in the following table.

The employment policy in § 20.314 does not apply to * * *	if * * *	and * * *
(a) Anyone younger than 16.		
(b) A full-time student under the age of 19	he/she is attending an elementary or secondary school or a vocational or technical school equivalent to a secondary school. he/she is making satisfactory progress	he/she is making satisfactory progress.
(c) A person enrolled at least half-time in a program of study under Section 5404 of Pub. L. 100-297.		he/she was an active General Assistance recipient for a minimum of 3 months before determination/redetermination of eligibility.
(d) A person suffering from a temporary medical injury or illness.	it is documented in the case plan that the illness or injury is serious enough to temporarily prevent employment.	
(e) An incapacitated person who has not yet received Supplemental Security Income (SSI) assistance.	a physician, psychologist, or social services worker certifies that a physical or mental impairment (either by itself, or in conjunction with age) prevents the individual from being employed.	the assessment is documented in the case plan.
(f) A caretaker who is responsible for a person in the home who has a physical or mental impairment.	a physician or certified psychologist verifies the condition.	the case plan documents that: the condition requires the caretaker to be home on a virtually continuous basis; and there is no other appropriate household member available.
(g) A parent or other individual who does not have access to child care.	he/she personally provides full-time care to a child under the age of six.	
(h) A person for whom employment is not accessible.	there is a minimum commuting time of one hour each way.	

§ 20.316 What must a person covered by the employment policy do?

(a) If you are covered by the employment policy in § 20.314, you must seek employment and provide evidence of your monthly efforts to obtain employment in accordance with your ISP.

(b) If you do not seek and accept available local and seasonal employment, or you quit a job without good cause, you cannot receive General Assistance for a period of at least 60 days but not more than 90 days after you refuse or quit a job.

§ 20.317 How will the ineligibility period be implemented?

(a) If you refuse or quit a job, your ineligibility period will continue until you seek and accept appropriate available local and seasonal employment and fulfill your obligations already agreed to in the ISP.

(b) The Bureau will reduce your suspension period by 30 days when you

show that you have sought local and seasonal employment in accordance with the ISP; and

(c) Your eligibility suspension will affect only you. The Bureau will not apply it to other eligible members of the household.

§ 20.318 What case management responsibilities does the social services worker have?

In working with each recipient, you, the social services worker must:

(a) Assess the general employability of the recipient;

(b) Assist the recipient in the development of the ISP;

(c) Sign the ISP;

(d) Help the recipient identify the service(s) needed to meet the goals identified in their ISP;

(e) Monitor and supervise recipient participation in work related training and other employment assistance programs; and

(f) Document activities in the case file.

§ 20.319 What responsibilities does the general assistance recipient have?

In working with the social services worker, you the recipient must:

(a) Participate with the social services worker in developing an ISP and sign the ISP;

(b) Perform successfully in the work related activities, community service, training and/or other employment assistance programs developed in the ISP;

(c) Participate successfully in treatment and counseling services identified in the ISP;

(d) Participate in evaluations of job readiness and or any other testing required for employment purposes; and

(e) Demonstrate that you are actively seeking employment by providing the social services worker with evidence of job search activities as required in the ISP.

§ 20.320 What is TWEP?

TWEP is a program that provides work experience and job skills to enhance potential job placement for the general assistance recipient. TWEP programs can be incorporated within Pub. L. 93-638 self-determination contracts, Pub. L. 102-477 grants, and Pub. L. 103-413 self-governance annual funding agreements at the request of the tribe.

§ 20.321 Does TWEP allow an incentive payment?

Yes. Incentive payments to participants are separate and will not be considered as wages or work related expenses, but as grant assistance payments under §§ 20.320 through 20.323. Incentive payments will not exceed the Bureau maximum payment standard established by the Assistant Secretary—Indian Affairs. The payment standard will be reviewed periodically to determine if revision is necessary.

§ 20.322 Who is eligible to receive a TWEP incentive payment?

(a) Consistent with the ISP, in situations where the participation is mandatory and the recognized head of the family unit is certified as unemployable, an alternate member of the assistance group, such as the spouse or another adult, will be designated as available for the TWEP incentive payment.

(b) Where there are multiple family units in one household, one member of each family unit will be eligible to receive the TWEP incentive payment.

§ 20.323 Will the local TWEP be required to have written program procedures?

Yes. The local TWEP must have specific written program procedures that cover hours of work, acceptable reasons for granting leave from work, evaluation criteria and monitoring plans and ISP's for participants. Work readiness progress must be documented in each ISP.

§ 20.324 When can the Bureau provide Burial Assistance?

In the absence of other resources, the Bureau can provide Burial Assistance for eligible indigent Indians meeting the requirements prescribed in § 20.300.

§ 20.325 What is the process for making application for Burial Assistance for eligible Indians?

(a) The application is made on behalf of the deceased who is considered the applicant. Determination of eligibility is based on the income and resources available to him/her in accordance with § 20.100(mm). This includes but is not limited to SSI, veterans death benefits,

social security, and Individual Indian Money (IIM) accounts. Determination of need will be accomplished on a case by case basis using the Bureau payment standard.

(b) Requests and applications for Burial Assistance must be submitted within 30 days following death.

(c) Applications are subject to eligibility determinations in accordance with criteria specified at § 20.300.

(d) The approved payment standard will not exceed the Bureau maximum burial payment standard which will be established by the Assistant Secretary—Indian Affairs 60 days after this rule is published in final. The payment standard will be reviewed periodically to determine if revision is necessary.

§ 20.326 When are the related transportation expenses covered by Burial Assistance?

Transportation costs directly associated with burials are normally a part of the established burial rate. In those instances where an additional transportation charge is added to the burial rate because of extenuating circumstances, the social services worker can pay the added charge. However, the social services worker will ensure that these charges are reasonable, equitable, and apply to burials for eligible indigent individuals who are socially, culturally, and economically affiliated with their tribes and who have not resided out of the service area for a period of time exceeding six consecutive months and this must be documented in the case plan.

§ 20.327 When can the Bureau provide Disaster Assistance?

Disaster assistance is immediate and or short term relief from a disaster and can be provided to a tribal community when services are not provided by FEMA or Red Cross in accordance to § 20.328.

§ 20.328 How can a tribe apply for Disaster Assistance?

(a) The tribe affected by the disaster is considered the applicant and must submit the following to the Area Director through the local Superintendent:

- (1) A tribal resolution requesting disaster assistance; and
- (2) A copy of county, state, or Presidential declaration of disaster; and
- (3) The projected extent of need in the service area not covered by other Federal funding sources.

(b) The Area Director must forward the above tribal documents and his/her recommendation to the Assistant Secretary—Indian Affairs for final

decision on whether disaster assistance will be provided and to what extent.

§ 20.329 When can the Bureau provide Emergency Assistance payments?

Emergency Assistance payments can be provided to individuals or families who suffer from a burn out, flood, or other destruction of their home and loss or damage to personal possessions and will be limited to essential needs and other non-medical necessities.

§ 20.330 What is the payment standard for Emergency Assistance?

The approved payment standard will not exceed the Bureau's maximum Emergency Assistance payment standard which will be established by the Assistant Secretary—Indian Affairs 60 days after this rule is published in final. The payment standard will be reviewed periodically to determine if revision is necessary.

Subpart D—Services to Children, Elderly, and Families**§ 20.400 For whom should Services to Children, Elderly, and Families be provided?**

Services to Children, Elderly, and Families will be provided for Indians meeting the requirements prescribed in § 20.300 who request such services or on whose behalf such services are requested.

§ 20.401 What services are included under Services to Children, Elderly and Families?

Services to Children, Elderly, and Families can include, but are not limited to, the following:

(a) Assistance in solving problems related to family functioning, interpersonal relationships, economic opportunity, money management, and referral to the appropriate resource for problems related to illness, physical or mental handicaps, drug abuse, alcoholism, and violation of law.

(b) Protective services are provided when children or adults are deprived temporarily or permanently of needed supervision by responsible adults, or are neglected, exploited, or need services when they are mentally or physically handicapped or otherwise disabled. Protective services for children and associated case management data have been developed for protective services, and will continue to be consolidated for nationwide reporting as per Pub. L. 101-630 and Pub. L. 99-570. Such services can include, but are not limited to, the following:

(1) Response to requests from members of the community on behalf of children or adults alleged to need protective services. Coordination with

Law Enforcement and/or courts must be completed prior to removal of individuals except in life or death situations.

(2) Family and child services, including referrals for homemaker and day care services for children; and

(3) Services to Indian courts, which can include, but are not limited to, the following:

(i) Investigation of and reports concerning allegations of child abuse and neglect, abandonment, and conditions such as mentally or physically handicapped or otherwise disabled individual which can require referrals;

(ii) Provision of social information related to the disposition of a case, including recommendation of alternative resources for treatment; and

(iii) Provision of placement services by the court order prior to and after adjudication.

(4) Community services which are services involving other groups, agencies, and facilities in the community can include, but are not limited to:

(i) Responses to community needs for evaluating social conditions affecting the well-being of its citizens;

(ii) Treatment of the identified conditions that are within the competence of social services; and

(iii) Maintenance of liaison with other community agencies for the purpose of identifying available services for assistance in solving the social problems of individuals, families, and children and facilitating the use of available community services by Indian persons who need them.

(5) Documentation of all activities and services in case files.

Subpart E—Child Assistance

§ 20.500 What are the eligibility criteria for Child Assistance?

An Indian child meeting the requirements established in § 20.300 can be considered eligible for child assistance or services under this part, *provided*, that:

(a) The child's legally responsible parent, custodian/guardian, or Indian court having jurisdiction requests such assistance, in writing, and indicates they are unable to provide necessary care and guidance for the child, or to provide for the child's special needs in his/her own home. A documented family assessment is required to determine whether parent(s)/custodian/guardian(s) are able to care for their child(ren);

(b) Relative caregivers must apply for and be denied TANF payments or other

financial assistance. The child is not receiving and is not eligible to receive TANF or other assistance and is not included in such payments involving other caregivers. An otherwise eligible child can receive Child Assistance upon application for and pending initial receipt of TANF or other financial assistance;

(c) The child resides in an area where comparable Child Assistance and services are not available or are not being provided to all residents on the same basis from a state, tribal, county, local, and Federal agencies; and

(d) All income accruing to children, except income exempted by Federal statute and income earned by the child, will be considered as a resource which must be used to meet the cost of out of home care authorized and arranged by the social services providers.

(e) All Bureau and Tribal Agencies must work on developing partnerships with state and local governments to increase accessibility to funding sources and develop IV-E agreements/contracts.

§ 20.501 What are the rates of payment for foster care?

The state foster care rate in the state in which the Indian child resides is the foster care payment level, as provided by Title IV of the Social Security Act (49 Stat. 620).

§ 20.502 Can Child Assistance funds be used for placement of Indian children in treatment centers?

Child Assistance funds must be used as a last resort for placements of Indian children in specialized non-medical care facilities licensed by tribe or state. These services may be purchased or contracted under the supervision of the social services programs for children for whom the resources are not available from the state, tribal, county, local, and Federal agencies. The payment will only consist of room and board. Other services that may be needed, including mental health, education, and physical therapy must be assumed by the respective agency responsible for the provision of the service. Prior to placement a written agreement must be signed between the various funding sources to identify the services that will be paid by each source and will require approval of the Area Director.

§ 20.503 Can Child Assistance funds be used for Indian adoption subsidies or subsidized guardianships?

Yes, Child Assistance funds can be authorized to provide either adoption or guardianship subsidies for a period not to exceed two years for each child involved. The funds must be used to assist in the adoption or guardianship of

a child currently in foster care. All other available resources must be considered and documented in the case file. Prior to authorizing a subsidy, approval of the Area Director is required.

§ 20.504 What eligibility requirements must be met for an Indian adoption subsidy or subsidized guardianship?

The eligibility requirements that must be met for an Indian adoption subsidy or subsidized guardianship are as follows:

(a) The child(ren) must be under the age of 18 (with regards to special circumstances as defined by tribal standards);

(b) The child(ren) must have been in foster care prior to the adoption or guardianship placement with payment, care, supervision, and responsibilities placed with the social services program;

(c) The adoption placement or guardianship meets the special needs of the child(ren) as indicated in the home study;

(d) The social services worker has provided permanency planning services;

(e) Adoption or guardianship has been clearly shown to be in the best interest of the child(ren);

(f) All other resources for adoption or long-term guardianship placement have been explored; and

(g) The child(ren)'s adoption or guardianship placement could not be completed without Bureau/tribal financial assistance.

§ 20.505 What is the payment standard for adoption and guardianship?

The approved payment standard will not exceed the Bureau's maximum adoption and guardianship payment standard which will be established by the Assistant Secretary—Indian Affairs 60 days after this rule is published in final. The payment standard will be reviewed periodically to determine if revision is necessary.

§ 20.506 Can homemaker services be provided with Child Assistance?

When other resources such as Medicaid are not available, homemaker services can be purchased or contracted and provided under the supervision of the social services program, e.g., for a severely handicapped child whose care places undue stress on the family and for whom resources are unavailable from the state, tribal, county, local, and other Federal agencies. Homemaking services can be purchased on a short-term basis not to exceed three months. While housekeeping services are one portion of this service, homemaker services must focus on training household members in such skills as

child care and home management. Homemaker services provide for:

(a) Child(ren) who, otherwise, would need foster care placement or who would benefit from supportive (protective) supervision;

(b) Severely handicapped or special needs child(ren) whose care places undue stress on the family; or

(c) Child(ren) whose care would benefit from specialized training and supportive services provided to family members.

§ 20.507 What services are provided jointly with the Child Assistance Program?

(a) Social services provided for children in their own home aimed at strengthening the family's ability to provide for and nurture their child(ren). These supportive services can include, social work-case management, counseling for parents and children, group work, day care, and homemaker services, when necessary;

(b) Protection of Indian children from abuse and neglect in coordination with law enforcement and courts;

(c) Foster care or care other than in the parental home. When temporary placement out of the home is necessary, a written case plan must be established within 30 days of placement and reviewed within 60 days of placement or as outlined in tribally established standards. The case plan must contain a written agreement signed among the various funding sources to identify the services that will be paid by each source in those instances where the child requires services outside the authority of the Child Assistance program.

§ 20.508 What information is required in the foster care case file?

At a minimum the following information is required:

(a) Tribal enrollment verification in accordance with § 20.100;

(b) A written case plan must be established within 30 days of placement, which includes the need for and expected length of placement;

(c) Information on the child(ren)'s health status and school records, including medications and immunization records;

(d) Parental consents for emergency medical care, school, and transportation;

(e) A signed plan for payment, including financial responsibility of parents and use of other appropriate resources;

(f) A copy of the certification/license of the foster home;

(g) A current photo of the child(ren);

(h) A copy of the social security card, birth certificate, Medicaid card and current court order;

(i) A placement beyond 30 days will require action by a court of competent jurisdiction, or in accordance with tribal codes and standards authorized by a court of competent jurisdiction. All placements require documentation of the need for protection of the child(ren) involved;

(j) Involuntary placements must be in accordance with Tribal Codes and authorized by a court of competent jurisdiction. A family assessment must be completed by a social services worker within 30 days of placement;

(k) All placements require at a minimum one home visit per month by the social services worker with the child(ren), documented in the file; and

(l) A list of all prior placements, including the names of the foster parents and dates of placements.

§ 20.509 What are the requirements for foster care?

The social services worker will select substitute care, which meets the physical, behavioral, and emotional needs of the child(ren) who require such care, which is intended to be short-term in nature. The following requirements must be met and documented in a case plan:

(a) All foster homes must be certified/licensed by the tribe or other recognized authority, as appropriate. Foster care placements must be made through a court of competent jurisdiction to ensure Federal background checks are completed as required by Pub. L. 101-630, and training (optional for relative placements) will be provided to the foster family;

(b) Relative placements must have on file an approved current home study;

(c) The social services worker must discuss with foster parents or caretakers, the child(ren)'s special needs, including disabilities, and provide counseling or referral to available resources;

(d) Any child(ren) requiring medical, substance abuse, and/or behavioral (mental) health services will be referred to appropriate health-services agencies for assessment and provision of services;

(e) Provision must be made for all necessary costs of care, which includes clothing, incidentals, and personal allowance, in accordance with established state standards of payments;

(f) A foster family agreement will be developed establishing roles and responsibilities of the biological parents, foster parents, placing agency, the terms of payment of care and the need for adherence to the established case plan. The agreement will be signed and dated by the parties involved;

(g) Any reports of suspected child abuse/neglect in a foster home must be reported immediately to law enforcement and protective services in accordance with tribal standards and reporting requirements pursuant to Pub. L. 101-630. If necessary, protective services will be provided in collaboration with other service providers;

(h) The social services worker will complete a yearly assessment of each tribal or state certified/licensed foster home as to how the home has fulfilled its function relative to the needs of the child(ren) placed in the home;

(i) An off-reservation family home or institution under contract must meet the licensing standards of the state in which it is located or tribally established certifying/licensing standards; and

(j) The social services agency must make efforts to secure child support for child(ren) in foster care, through a court of competent jurisdiction.

§ 20.510 How is the court involved in foster care placements?

The court retains custody of child(ren) in placement and the care and supervision must be given to the appropriate social services agency. Even though the court can issue any court order consistent with tribal law, the courts do not have the authority to require expenditure of Federal funds to pay for specifically prescribed or restrictive services or out-of-home placements of children. Case plans must be reviewed with the appropriate court at least every six months and a permanency hearing held within twelve months after a child enters foster care or according to established tribal standards. These standards can be established in the tribal code and can be in accordance with available funding source requirements.

§ 20.511 Should permanency plans be developed?

Permanency planning must be considered for child(ren) whose parents have not made reasonable efforts to meet case plan goals or have not had any contact with the child(ren) in foster care or substitute placement and must be developed six months after initial placement of the child. Every effort will be made to preserve the family and/or reunify the children with the family and relatives when developing permanency plans.

§ 20.512 Can the Bureau/tribal contractors make Indian adoptive placements?

The Bureau is not an authorized adoption agency, and staff must not arrange adoptive placements. However, long term permanency planning can

involve the Bureau social services workers cooperating with Tribal Courts to provide adoption subsidy. Tribal contractors will provide adoption services, as authorized by the tribal courts in accordance with tribal codes/law.

§ 20.513 Should Interstate Compacts be used for the placement of children?

Interstate compact agreements must be used whenever possible for foster care, adoption and guardianship to assure the availability of the funding resources and services from the originating placement source.

§ 20.514 What assistance can the courts request from social services on behalf of children?

The courts can request the following:

- (a) Investigations of law enforcement reports of child abuse and neglect;

- (b) Assessment of the need for out of home placement of the child(ren); and

- (c) Provision of court-related services following adjudication, such as monitoring, foster care, or pre/post placement services.

§ 20.515 What is required for case management?

Social Services staff are required to document regular contact with children and families in accordance with specific program requirements. The social services agency is responsible for implementation of quality case management; this requires the supervisor's review of case plans every 90 days.

§ 20.516 How are child abuse and neglect cases to be handled?

Reported child abuse and neglect cases must be handled in accordance with the Indian Child Protection and Family Violence Prevention Act of 1990, Pub. L. 101-630, 25 CFR Part 63, Federal and/or state laws where applicable, and tribal codes which protect Indian children and victims of domestic violence. Child Protection Teams must be developed in accordance to Pub. L. 99-570. Those cases referred by the state will be handled according to the Indian Child Welfare Act, Pub. L. 95-608, and 25 CFR Part 23.

Subpart F—Administrative Procedures

§ 20.600 How is an application for financial assistance or social services made?

(a) Written or oral applications by or on behalf of any individual or group will be accepted for financial assistance or social services. Referrals will be accepted from relatives, interested individuals, social services agencies, law enforcement agencies, courts and others.

(b) All applications must be in written form to the Superintendent or his/her designated representative.

§ 20.601 From whom is eligibility information collected?

(a) Each applicant is the primary source of information used to determine eligibility and need. If it is necessary to secure information such as medical records, from other sources, the applicant must authorize the release of information.

(b) Recipients must accurately report any changes in circumstances which may affect their eligibility or the amount of financial assistance they receive. Recipients must report changes in circumstance within 30 days.

§ 20.602 How is an application approved or denied?

(a) Each application must be approved if the applicant meets the eligibility criteria in §§ 20.301 through 20.516 for the type of assistance requested. Financial assistance will be made back to the date of application.

(b) An application must be denied if the applicant does not meet the eligibility criteria set forth in §§ 20.301 through 20.516.

(c) Action to approve or deny an application must be made within 30 days of the date of the application. If action cannot be taken within 30 days, the applicant must be notified in writing of the reasons why the decision cannot be made. The local social services worker must issue written notice of the approval or denial of each application within 45 days of the date of the application.

§ 20.603 How is an applicant or recipient notified that benefits or services are denied?

(a) Written notice of the denial of benefits or services must be mailed or hand delivered to the applicant or recipient. Any action that increases, decreases, suspends, or terminates financial assistance requires written notice to the applicant or recipient 20 days in advance of the effective date. The notice must clearly and completely advise the applicant or recipient of the legal right to contest any adverse decision under §§ 20.600 through 20.605. The notice must:

- (1) State the action taken, the effective date, and the reason(s) for the decision;

- (2) Inform the applicant or recipient of the right to request a hearing if dissatisfied with the decision;

- (3) Advise the applicant or recipient of the right to be represented by an authorized representative at no expense to the Bureau;

(4) Include the address of the local Superintendent or his/her designated representative to whom the request for a hearing must be submitted; and

(5) Advise the applicant or recipient that failure to request a hearing within 20 days of the date of the notice will cause the decision to become final and subject to appeal under Part 2 of 25 CFR.

(b) Upon receipt of the timely appeal, the financial assistance will remain unchanged and will continue to be provided, pending the issuance of a written decision by the Superintendent or his/her designated representative.

§ 20.604 How is an incorrect payment adjusted or recovered?

(a) When an incorrect payment of financial assistance has been made to an individual or family, a proper adjustment or recovery is required.

(b) The proper adjustment or recovery is based upon individual need as appropriate to the circumstances that resulted in an incorrect payment.

(c) Prior to adjustment or recovery, the recipient will be notified of the proposal to correct the payment and given an informal opportunity to resolve the matter.

(d) If an informal resolution cannot be attained, the recipient must be given a written notice of decision.

(e) If a hearing is requested, the hearing will be conducted in accordance with the procedures under §§ 20.700 through 20.705.

§ 20.605 What happens when applicants or recipients knowingly and willfully provide false, fictitious, or fraudulent information?

Applicants or recipients who knowingly and willfully provide false fictitious, or fraudulent information are subject to prosecution under 18 U.S.C. 1001, which carries a fine of not more than \$10,000 or imprisonment for not more than five years, or both. The social services worker will prepare a written report detailing the action considered to be fraud and submit the report to the Superintendent or his/her designated representative for appropriate investigative action.

Subpart G—Hearings and Appeals

§ 20.700 Can an applicant or recipient appeal the decision of a Bureau official?

Yes. Any applicant or recipient who is dissatisfied with a Bureau decision concerning eligibility or receipt of financial assistance under this part can request a hearing before the Superintendent or his/her designated representative. The request for a hearing must be made within 20 days of the date of the written notice of the decision as

stated in § 20.603. The Superintendent or his/her designated representative can extend the 20 day period if good cause is shown and documented in the record.

§ 20.701 Does an applicant or recipient receive financial assistance while an appeal is pending?

Yes. Financial assistance will be continued or reinstated to insure there is no break in financial assistance until such time as the Superintendent or his/her designated representative renders a decision. The Superintendent or his/her designated representative can adjust payments or recover overpayments to conform with his/her decision.

§ 20.702 When is an appeal hearing scheduled?

The Superintendent or his/her designated representative must set a date for the hearing within 10 days of the date of request for a hearing and give written notice to the applicant or recipient.

§ 20.703 What must the written notice of hearing include?

The written notice of hearing must include:

- (a) The date, time and location of the hearing;
- (b) A statement of the facts and issues giving rise to the appeal;
- (c) The applicant's or recipient's right to be heard in person, or to be represented by an authorized representative at no expense to the Bureau;
- (d) The applicant or recipient's right to present both oral and written evidence during the hearing;
- (e) The applicant's or recipient's right to confront and cross-examine witnesses at the hearing;
- (f) The applicant's or recipient's right of one continuance of not more than 10 days with respect to the date of hearing; and
- (g) The applicant's or recipient's right to examine and copy, at a reasonable time before the hearing, his/her case record as it relates to the proposed action being contested.

§ 20.704 Who conducts the hearing or appeal of a Bureau decision or action and what is the process?

(a) The Superintendent or his/her designated representative conducts the hearing in an informal but orderly manner, records the hearing, and provides the applicant or recipient with a transcript of the hearing upon request.

(b) The Superintendent or his/her designated representative must render a written decision within 10 days of the completion of the hearing. The written decision must include:

(1) A written statement covering the evidence relied upon and reasons for the decision, and

(2) The applicant's or recipient's right to appeal the Superintendent or his/her designated representative's decision pursuant to Part 2 of 25 CFR and request Bureau assistance in preparation of the appeal.

§ 20.705 Can an applicant or recipient appeal a tribal decision?

Yes. The applicant or recipient must pursue the appeal process applicable to the Pub. L. 93-638 contract, Pub. L. 102-477 grant, or Pub. L. 103-413 self-governance annual funding agreement. If no appeal process exists, then the applicant or recipient must pursue the appeal through the appropriate tribal forum.

Dated: April 30, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99-11334 Filed 5-5-99; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 874]

RIN 1512-AA07

Applegate Valley Viticultural Area (99R-112P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing to establish a viticultural area within the State of Oregon to be known as "Applegate Valley." The proposed viticultural area is within Jackson and Josephine Counties and entirely within the existing Rogue Valley viticultural area as described in 27 CFR 9.132. Mr. Barnard E. Smith, President, The Academy of Wine of Oregon Inc., submitted the petition. Mr. Smith believes that "Applegate Valley" is a widely known name for the petitioned area, that the area is well defined, and that the area is distinguished from other areas by its soil and climate.

DATES: Send your comments on or before July 6, 1999.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221

(Attn: Notice No. 874). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC., 20226.

FOR FURTHER INFORMATION CONTACT: Jackie White, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington DC., 20226, (202) 927-8145.

SUPPLEMENTARY INFORMATION:

1. Background on Viticultural Areas

What is ATF's Authority To Establish a Viticultural Area?

ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR Part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added 27 CFR Part 9, American Viticultural Areas, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What is the Definition of an American Viticultural Area?

An American viticultural area is a delimited grape-growing region distinguishable by geographic features. The viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;