

## Costs of Compliance

There are about 608 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 169 airplanes of U.S. registry. The proposed replacement would take about 42 work hours per airplane, at an average labor rate of \$80 per work hour. Required parts would cost about \$1,756 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$864,604, or \$5,116 per airplane.

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**Boeing:** Docket No. FAA-2007-0344; Directorate Identifier 2007-NM-149-AD.

### Comments Due Date

- (a) The FAA must receive comments on this AD action by February 4, 2008.

### Affected ADs

- (b) None.

### Applicability

- (c) This AD applies to Boeing Model 767-200 and -300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767-28A0064, Revision 2, dated October 27, 2005.

### Unsafe Condition

- (d) This AD results from operator inspections of the Fuel Quantity Indicating System (FQIS) wire bundles that revealed corrosion at the connections between the ground wire and shield of each of the four FQIS wire bundles. We are issuing this AD to prevent this corrosion, which could reduce system protection of the lightning shield and result in loss of the electrical grounding between the lightning shield and the airplane structure. This condition, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

### Compliance

- (e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

### Replacement

- (f) Within 36 months after the effective date of this AD: Replace the wire segments of the four FQIS wire bundles with new, improved wire segments, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767-28A0064, Revision 2, dated October 27, 2005.

### Credit for Actions Done Using Previous Service Information

- (g) Actions accomplished before the effective date of this AD in accordance with

Boeing Alert Service Bulletin 767-28A0064, Revision 1, dated February 21, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

## Alternative Methods of Compliance (AMOCs)

- (h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

- (2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on December 10, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7-24531 Filed 12-18-07; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### 25 CFR Part 11

### RIN 1076-AE67

### Law and Order on Indian Reservations

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Indian Affairs proposes to amend its regulations governing the Courts of Indian Offenses (otherwise known as CFR Courts). This amendment will clarify the authority of the Assistant Secretary—Indian Affairs to establish the courts, the jurisdiction of the courts, its relationship to tribal governments and the Department of the Interior, and to provide those courts with an updated code of laws.

**DATES:** Comments must be received on or before January 18, 2008.

**ADDRESSES:** You may submit comments, identified by the number 1076-AE67, by any of the following methods:

- *Federal rulemaking portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Joseph Little, Office of Justice Services, Bureau of Indian Affairs, 1001 Indian School Road, NW.; Albuquerque, NM 87104.

**FOR FURTHER INFORMATION CONTACT:** Joseph Little (505) 563-3833.

**SUPPLEMENTARY INFORMATION:** The authority to issue this amendment is

vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9, and 25 U.S.C. 13 which authorize appropriations for "Indian judges." This rule is published in the exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

### Background

#### *This proposed amendment:*

(1) Provides for the establishment of courts when tribal justice systems do not exist;

(2) Updates the listing of Indian reservations to which the Code applies;

(3) Clarifies the provision on jurisdictional limitations, which excludes from jurisdiction under this part Federal or state employees acting within the scope of their employment;

(4) Adds provisions for drug abuse, abuse of psychotoxic substances, child abuse, prostitution, and family violence; and

(5) Increases the maximum penalties for various offenses in the Code.

The increased penalties are proposed in response to the law enforcement provisions of the Anti-Drug Abuse Act of 1986, amending the sentencing limitations of the Indian Civil Rights Act, 25 U.S.C. 1302. Tribal courts may impose maximum fines up to \$5,000 and sentences of imprisonment up to one year.

Section 11.100, Listing of Courts of Indian Offenses, does not defeat the inherent sovereignty of a tribe to establish tribal courts and exercise jurisdiction under tribal law. *Tillett v. Lujan*, 931 F.2d 636, 640 (10th Cir. 1991) (CFR courts "retain some characteristics of an agency of the federal government" but they "also function as tribal courts"); *Combrink v. Allen*, 20 Indian L. Rep. 6029, 6030 (Ct. Ind. App., Tonkawa, Mar. 5, 1993) (CFR court is a "federally administered tribal court"); *Ponca Tribal Election Board v. Snake*, 17 Indian L. Rep. 6085, 6088 (Ct. Ind. App., Ponca, Nov. 10, 1988) ("The Courts of Indian Offenses act as tribal courts since they are exercising the sovereign authority of the tribe for which the court sits.") A clarifying sentence has been added to the jurisdictional limitations section to express unambiguously that Federal or state employees acting within the scope of their employment are not subject to the jurisdiction of Courts of Indian Offenses.

The new offenses are abuse of psychotoxic chemical solvents and a dangerous drug offense. They are also proposed to enhance the ability of law enforcement agencies on Indian

reservations to prevent and penalize the possession, use and/or distribution of illegal controlled substances.

Prostitution was inadvertently omitted from a prior revision of the Law and Order Code and is, therefore, included here. The crime is a continuation of the provision contained in 25 CFR part 11 which has been in force for many years, with the addition of the crime of solicitation which is intended to facilitate the prosecution of persons soliciting for prostitutes.

Child abuse and neglect has been added as a separate criminal offense. Although there is some overlapping of these offenses and the sexual assault provisions of the revised Law and Order Code, the abuse provision is much broader and will give prosecutors more flexibility in protecting children from abuse. The family violence subpart establishes a new procedure for acts of family violence. This approach to family violence reflects the decision set forth in *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984). Thurman filed an action against the City alleging a violation of equal protection for the City's failure to provide the same type of protection to persons in a family relationship as it provides to other abused persons. The court, finding that Thurman had a cause of action under the equal protection clause, held that the City had an affirmative duty to treat family partners as it would other abused persons. The knowledge that arrests deter subsequent family violence has resulted in all states passing some type of special legislation for acts of family violence. Forty-eight states have warrant-less arrest provisions and many have special protective orders. This subpart is drawn from those statutes.

The proposed amendment will not require additional staffing for these courts. It is not anticipated that this revision will have a significant effect on the annual caseload of these courts because it does not enlarge their jurisdiction. Prosecutors must routinely use their discretion in balancing their workloads with the time and prosecutorial resources available. Likewise, in sentencing convicted defendants, judges are acutely aware of the constraints imposed by limited jail space. Because we do not foresee any economic effect on Courts of Indian Offenses as a result of these amendments, there will be no requirement of additional outlays by the Federal Government or the tribes affected by the proposed amendments.

These amendments affect a very small segment of the population and a well-defined group within the Indian community. Because consultation has

taken place with this identified group and by being substantively involved in the development of these amendments, the Bureau of Indian Affairs is publishing this rule with a 30-day comment period. Further, a 30-day comment period is necessary because these amendments must be published and become effective as soon as possible to address the chronic abuse of controlled substances in Indian country, in particular methamphetamine.

### Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The establishment of an average Court of Indian Offenses is estimated to cost less than \$200,000 annually to operate. The cost associated with the operation of this court will be with the Bureau of Indian Affairs.

(b) This rule will not create inconsistencies with other agencies' actions. The Department of the Interior through the Bureau of Indian Affairs has the sole responsibility and authority to establish Courts of Indian Offenses on Indian reservations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The establishment of Court of Indian Offenses will not affect any program rights of any Indian tribe. Its primary function will be to administer justice for misdemeanor offenses within Indian country. The court's criminal jurisdiction will be limited to criminal offenses provided in 25 CFR part 11 and the Law and Order Code of Indian tribes as applicable.

(d) This rule will not raise novel legal or policy issues. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in

(e) the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United*

*States v. Clapox*, 35 F. 575 (D. Ore. 1888).

### Regulatory Flexibility Act

The Department of the Interior, Bureau of Indian Affairs, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The amendment to 25 CFR 11.100(a) updates the list of Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area of Indian country. Accordingly, there will be no impact on any small entities.

### Small Business Regulatory Enforcement Fairness Act

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 establishment of an average Court of Indian Offenses is estimated to cost less than \$200,000 per court to operate annually. The cost associated with the operation of these courts will be with the Bureau of Indian Affairs.

(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 is a court established primarily for the administration of misdemeanor justice for Indians located within the boundaries of Indian country and will not have any cost or price impact on any other entities in the geographical region.

(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. These are courts established primarily for the administration of misdemeanor justice for Indians located within the boundaries of Indian country, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

### Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. The establishment of a Court

of Indian Offenses will not have jurisdiction to affect any rights of the small governments. Its primary function will be to administer justice for misdemeanor offenses within the boundaries of Indian country. Its jurisdiction will be limited to criminal offenses provided in 25 CFR part 11.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year; i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

### Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implication. A takings implication assessment is not required. The amendments to 25 CFR part 11 will establish Courts of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area of Indian country.

### Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for “Indian judges.” The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States v. Clapox*, 35 F. 575 (D. Ore. 1888).

### Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order. The Solicitor analyzed and upheld the Department of the Interior’s authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for “Indian judges.” The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States v. Clapox*, 35 F. 575 (D. Ore. 1888). Part 11 also requires the establishment of an appeals court; hence, the judicial system defined in

Executive Order 12988 will not normally be involved in this judicial process.

### Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. The amendment to 25 CFR part 11 does not automatically apply to all of the 561 federally recognized tribes, except when it is determined that the administration of justice has failed on an Indian reservation and that the establishment of the provisional Court of Indian Offenses is necessary until that tribe establishes a tribal court to provide for a law and order code and judicial system to deal with law and order within the exterior boundaries of its Indian reservation. The Department of the Interior establishes a provisional court, to fulfill its trust responsibility towards tribal governments and complies with the unique government-to-government relationship that exists between the Federal Government and Indian tribes.

### Paperwork Reduction Act

This amendment to the regulation does not require information collection under the Paperwork Reduction Act.

### National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The establishment of a Court of Indian Offenses conveys personal jurisdiction over the criminal misdemeanor actions of Indians with the exterior boundaries of Indian country.

### Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–544).

### Effects on the Energy Supply (Executive Order 13211)

This rule does not have a significant effect on the nation’s energy supply, distribution, or use as defined by Executive Order 13211.

### Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain

language. This means that each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments as instructed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the specific sections that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

#### List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

Dated: August 29, 2007.

Carl J. Artman,

*Assistant Secretary—Indian Affairs.*

**Editorial Note:** The Office of the Federal Register received this document on December 7, 2007.

For the reasons set out in the preamble, the Bureau of Indian Affairs proposes to amend Part 11 of Chapter I of Title 25 of the Code of Federal Regulations as set forth below.

### PART 11—COURTS OF INDIAN OFFENSES AND LAW AND ORDER CODE

1. The authority citation for 25 CFR part 11 continues to read as follows:

**Authority:** 5 U.S.C. 301; R.S. 463; 25 U.S.C. 2; R.S. 465; 25 U.S.C. 9; 42 Stat. 208; 25 U.S.C. 13; 38 Stat. 586; 25 U.S.C. 200.

2. Revise Subpart A to read as follows:

#### Subpart A—Application; Jurisdiction

Sec.

11.100 Where are Courts of Indian Offenses established?

11.102 What is the purpose of this part?

11.104 When does this part apply?

11.106 Who is an Indian for purposes of this part?

11.108 How are tribal ordinances affected by this part?

11.110 How are tribal customs affected by this part?

11.112 Reserved.

11.114 What is the criminal jurisdiction of the Court of Indian Offenses?

11.116 What is the civil jurisdiction of a Court of Indian Offenses?

11.118 What are the jurisdictional limitations of the Court of Indian Offenses?

#### § 11.100 Where are Courts of Indian Offenses established?

(a) Unless indicated otherwise in this title, these Courts of Indian Offenses are established and the regulations in this part apply to the Indian country (as defined in 18 U.S.C. 1151 and by Federal court precedent) occupied by the following tribes:

(1) Te-Moak Band of Western Shoshone Indians (Nevada);

(2) Ute Mountain Ute Tribe (Colorado);

(3) Tribes located in the former Oklahoma Territory (Oklahoma) that are listed in paragraph (b) of this section;

(4) Tribes located in the former Indian Territory (Oklahoma) that are listed in paragraph (c) of this section;

(5) Winnemucca Indian Tribe; and

(6) Santa Fe Indian School Property, including the Santa Fe Indian Health Hospital, and the Albuquerque Indian School Property (land held in trust for the 19 Pueblos of New Mexico).

(b) This part applies to the following tribes located in the former Oklahoma Territory (Oklahoma):

(1) Apache Tribe of Oklahoma;

(2) Caddo Nation of Oklahoma;

(3) Comanche Nation;

(4) Delaware Nation;

(5) Fort Sill Apache Tribe of Oklahoma;

(6) Kiowa Tribe of Oklahoma;

(7) Otoe-Missouria Tribe of Oklahoma; and

(8) Wichita and Affiliated Tribes of Oklahoma.

(c) This part applies to the following tribes located in the former Indian Territory (Oklahoma):

(1) Choctaw Nation;

(2) Seminole Nation;

(3) Eastern Shawnee Tribe;

(4) Miami Tribe;

(5) Modoc Tribe;

(6) Ottawa Tribe;

(7) Peoria Tribe;

(8) Quapaw Tribe; and

(9) Wyandotte Nation.

#### § 11.102 What is the purpose of this part?

It is the purpose of the regulations in this part to provide adequate machinery

for the administration of justice for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction.

#### § 11.104 When does this part apply?

(a) The regulations in this part continue to apply to each tribe listed in § 11.100(a) until either:

(1) BIA and the tribe enter into a contract or compact for the tribe to provide judicial services; or

(2) The tribe has put into effect a law and order code meeting the requirements of paragraph (b) of this section that establishes a court system.

(b) When a tribe adopts a legal code and establishes a judicial system, the tribe must notify the Assistant Secretary—Indian Affairs or his or her designee.

(1) The law and order code must be adopted by the tribe in accordance with its constitution and by-laws or other governing documents.

(2) The effective date for the code's implementation is contingent upon publication in the **Federal Register** of the amendment to § 11.100(a) that provides public notice of the change and removes the tribe from the list in paragraph (a) of this section.

#### § 11.106 Who is an Indian for purposes of this part?

For the purposes of the enforcement of the regulations in this part, an Indian is defined as a person who is a member of an Indian tribe which is recognized by the Federal Government as eligible for services for the BIA, and any other individual who is an "Indian" for the purposes of 18 U.S.C. 1152–1153.

#### § 11.108 How are tribal ordinances affected by this part?

The governing body of each tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction may enact ordinances which, when approved by the Assistant Secretary—Indian Affairs or his or her designee, shall be enforceable in the Court of Indian Offenses having jurisdiction over the Indian country occupied by that tribe, and shall supersede any conflicting regulation in this part.

#### § 11.110 How are tribal customs affected by this part?

Each Court of Indian Offenses shall apply the customs of the tribe occupying the Indian country over which it has jurisdiction to the extent that they are consistent with the regulations of this part.

**§ 11.112 Reserved.****§ 11.114 What is the criminal jurisdiction of the Court of Indian Offenses?**

(a) Except as otherwise provided in this title, each Court of Indian Offenses shall have jurisdiction over any action by an Indian (hereafter referred to as person) that is made a criminal offense under this part and that occurred within the Indian country subject to the court's jurisdiction.

(b) No person shall be prosecuted, tried or punished for any offense unless the complaint is filed within five years after such offense shall have been committed.

**§ 11.116 What is the civil jurisdiction of a Court of Indian Offenses?**

(a) Except as otherwise provided in this title, each Court of Indian Offenses has jurisdiction over any civil action arising within the territorial jurisdiction of the court in which:

(1) The claimant is an Indian; or

(2) Claims between Indian claimant or counter-claimants and non-Indian defendants or counter-defendants are brought before the court by stipulation of the parties.

(b) Any civil action commenced in a Court of Indian Offenses shall be barred unless the complaint is filed within three years after the right of action first accrues.

**§ 11.118 What are the jurisdictional limitations of the Court of Indian Offenses?**

(a) A Court of Indian Offenses may exercise over a Federal or State official only the same jurisdiction that it could exercise if it were a tribal court. The jurisdiction of Courts of Indian Offenses does not extend to Federal or State employees acting within the scope of their employment.

(b) A Court of Indian Offenses may not adjudicate an election dispute, take jurisdiction over a suit against a tribe, or adjudicate any internal tribal government dispute, unless the relevant tribal governing body passes a resolution, ordinance, or referendum granting the court jurisdiction.

(c) In deciding who is a tribal official, BIA will give deference to a decision of the Court of Indian Offenses, acting as a tribal forum by resolution or ordinance of a tribal governing body under paragraph (b) of this section.

(d) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

**Subpart B—Courts of Indian Offenses; Personnel; Administration**

3. In § 11.200, revise the section heading and paragraph (c) to read as follows:

**§ 11.200 What is the composition of the Court of Indian Offenses?**

\* \* \* \* \*

(c) Appeals must be heard by a panel of magistrates who were not involved at the tribal/trial level.

\* \* \* \* \*

4. In § 11.201, revise the section heading and paragraph (a) to read as follows:

**§ 11.201 How are magistrates for the Court of Indian Offenses appointed?**

(a) The Assistant Secretary—Indian Affairs or his or her designee will appoint each magistrate after consultation with the tribe or tribes as required.

\* \* \* \* \*

5. In § 11.202, revise the section heading to read as follows:

**§ 11.202 How is a magistrate of the Court of Indian Offenses removed?**

\* \* \* \* \*

6. In § 11.203, revise the section heading to read as follows:

**§ 11.203 How are the clerks of the Court of Indian Offenses appointed and what are their duties?**

\* \* \* \* \*

7. In § 11.205, revise the section heading to read as follows:

**§ 11.205 Are there standards for the appearance of attorneys and lay counselors?**

\* \* \* \* \*

8. In § 11.206, revise the section heading to read as follows:

**§ 11.206 Is the Court of Indian Offenses a court of record?**

\* \* \* \* \*

9. In § 11.207, revise the section heading to read as follows:

**§ 11.207 What are the responsibilities of Bureau of Indian Affairs employees?**

\* \* \* \* \*

10. In § 11.208, revise the section heading to read as follows:

**§ 11.208 May Individual Indian Money accounts be used for payment of judgments?**

\* \* \* \* \*

11. In § 11.209, revise the section heading to read as follows:

**§ 11.209 How does the Court of Indian Offenses dispose of fines?**

\* \* \* \* \*

**Subpart C—Criminal Procedure**

12. In § 11.314, redesignate paragraphs (c) through (e) as paragraphs (d) through (f), revise paragraphs (a) and (b), and add a new paragraph (c), to read as follows:

**§ 11.314 Jury trials.**

(a) A defendant has a right, upon demand, to a jury trial in any criminal case:

(1) That is punishable by a maximum sentence of one year incarceration; or

(2) In which the prosecutor informs the court before the case comes to trial that a jail sentence will be sought.

(b) If the prosecutor informs the court that no sentence of incarceration will be sought, the court may not impose a sentence of incarceration for the offense.

(c) A jury must consist of 12 residents of the vicinity in which trial is held, selected from a list of eligible jurors prepared each year by the court.

(1) An eligible juror must:

(i) Be at least 18 years of age;

(ii) Not have been convicted of a felony; and

(iii) Be otherwise qualified according to standards established by the Court of Indian Offenses under its general rulemaking authority.

(2) Any party may challenge without cause a maximum of three members of the jury panel chosen under this section.

\* \* \* \* \*

13. In § 11.315, revise paragraph (a) to read as follows:

**§ 11.315 Sentencing.**

(a) Any person who has been convicted in a Court of Indian Offenses of a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period up to the maximum permitted by the section defining the offense, but in no case for longer than one year; and

(2) A fine in an amount up to the maximum permitted by the section defining the offense, but in no case greater than \$5,000.

\* \* \* \* \*

**Subpart D—Criminal Offenses**

14. Revise § 11.450 to read as follows:

**§ 11.450 Maximum fines and sentences of imprisonment.**

A person convicted of an offense under the regulations in this part may be sentenced as follows:

Type of offense	Maximum allowable sentence
(a) Misdemeanor ..	Up to 1 year in prison, or a fine of up to \$5,000, or both.
(b) Petty misdemeanor.	Up to 6 months in prison, or a fine of up to \$2,500, or both.
(c) Violation .....	Up to 3 months in prison, or a fine of up to \$1,000, or both.

15. Add new §§ 11.451 through 11.454 to read as follows:

**§ 11.451 Abuse of psychotoxic chemical solvents.**

(a) It is unlawful to:

(1) Intentionally smell or inhale the fumes of any psychotoxic chemical solvent or possess, purchase, or attempt to possess or purchase any psychotoxic chemical solvent, for the purpose of causing intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system; or

(2) Sell, give away, dispense, or distribute, or offer to sell, give away, dispense, or distribute, any psychotoxic chemical solvent knowing or believing that the purchaser or another person intends to use the solvent in violation of this section.

(b) This section does not apply to inhalation of anesthesia for medical or dental purposes.

(c) As used in this section, “psychotoxic chemical solvent” means any glue, gasoline, paint, hair spray, Lysol, or other substance containing one or more of the following chemical compounds:

- (1) Acetone and acetate;
- (2) Benzene;
- (3) Butyl-alcohol;
- (4) Methyl ethyl;
- (6) Peptone;
- (7) Pentachlorophenol;
- (8) Petroleum ether; or
- (9) Any other chemical substance the inhalation of whose fumes or vapors can cause intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system.

(d) The statement listing the contents of a substance packaged in a container by the manufacturer or producer thereof is rebuttable proof of the contents of the substance without further expert testimony if it reasonably appears that the substance in the container is the same substance placed therein by the manufacturer or producer.

(e) Abuse of psychotoxic chemical solvents, as defined in this section, is punishable as a petty misdemeanor, and the court may order any person using psychotoxic chemical solvents as described in paragraph (a) of this

section to be committed to a facility for treatment for up to 6 months.

(f) Psychotoxic chemical solvents kept or used in violation of this section are declared contraband and upon proof of a violation must be forfeited to the Federal government by order of the court, following public notice and an opportunity for any person claiming an interest therein to be heard.

**§ 11.452 Possession of a Controlled Substance.**

(a) It is unlawful for a person to knowingly or intentionally possess any controlled substance listed in 21 CFR Part 1308, as amended, unless:

(1) The Controlled Substances Act or Drug Enforcement Agency regulations specifically authorize possession of the substance;

(2) The substance or preparation is excluded or exempted by 21 CFR 1308.21 through 1308.35, as amended; or

(3) The provisions of 42 U.S.C. 1996a (regarding traditional Indian religious use of peyote) apply.

(b) Violations of paragraph (a) of this section are punishable as a misdemeanor.

(c) Any controlled substance involved in violation of this section is declared to be contraband. Upon proof of a violation of this section, the controlled substance must be forfeited to the Federal Government by order of the court, after public notice and an opportunity for any person claiming an interest in the substance to be heard.

(d) Any personal property used to transport, conceal, manufacture, cultivate, or distribute the controlled substance in violation of this section is subject to forfeiture to the Federal Government by order of the court upon proof of such use, following public notice and opportunity for any person claiming an interest in the property to be heard.

**§ 11.453 Prostitution or Solicitation.**

A person who commits prostitution or solicitation or who knowingly keeps, maintains, rents, or leases, any house, room, tent, or other place for the purpose of prostitution is guilty of a misdemeanor.

**§ 11.454 Domestic violence.**

(a) A person who commits domestic violence by inflicting physical harm, bodily injury, or sexual assault, or inflicting the fear of imminent physical harm, bodily injury, or sexual assault on a family member is guilty of a misdemeanor.

(b) For purposes of this section, a family member is any of the following:

- (1) A spouse;
- (2) A former spouse;
- (3) A person related by blood;
- (4) A person related by existing or prior marriage;
- (5) A person who resides or resided with the defendant; or
- (6) A person with whom the defendant has a child in common.

16. Revise § 11.500 to read as follows.

**§ 11.500 Law applicable to civil actions.**

(a) In all civil cases, the Magistrate of a Court of Indian Offenses shall have discretion to apply:

(1) Any laws of the United States that may be applicable;

(2) Any authorized regulations contained in the Code of Federal Regulations; and

(3) Any laws or customs of the tribe occupying the area of Indian country over which the court has jurisdiction that are not prohibited by Federal laws.

This delineation does not establish a hierarchy relative to the applicability of specific law in specific cases.

(b) Where any doubt arises as to the customs of the tribe, the court may request the advice of counselors familiar with those customs.

(c) Any matters that are not covered by the laws or customs of the tribe, or by applicable Federal laws and regulations, may be decided by the Court of Indian Offenses according to the laws of the State in which the matter in dispute lies.

17. Add a new Subpart L to read as follows:

**Subpart L—Child Protection and Domestic Violence Procedures**

Sec.

11.1200 Definitions.

11.1202 How to petition for an order of protection.

11.1204 Obtaining an emergency order of protection.

11.1206 Obtaining a regular (non-emergency) order of protection.

11.1208 Service of the protection order.

11.1210 Duration and renewal of a regular protection order.

11.1212 Consequences of disobedience or interference.

11.1214 Relationship of this part to other remedies.

**§ 11.1200 Definitions.**

*Domestic violence* means to inflict physical harm, bodily injury, or sexual assault, or the fear of imminent physical harm, bodily injury, or sexual assault on a family member.

*Family member* means any of the following:

- (1) A spouse;
- (2) A former spouse;
- (3) A person related by blood;

(4) A person related by existing or prior marriage;

(5) A person who resides or resided with the defendant; or

(6) A person with whom the defendant has a child in common.

*Parent* means persons who have a child in common, regardless of whether they have been married or have lived together at any time.

**§ 11.1202 How to petition for an order of protection.**

A victim of a domestic violence, or the parent, guardian of a victim, or a concerned adult may petition the court under this subpart for an order of protection.

(a) The petition must be made under oath or accompanied by a sworn affidavit setting out specific facts describing the act of domestic violence.

(b) The petitioner is not required to file for annulment, separation, or divorce in order to obtain an order of protection. However, the petition should state whether any legal action is pending between the petitioner and the respondent.

(c) The Court may develop simplified petition forms with instructions for completion and make them available to petitioners not represented by counsel. Law enforcement agencies may keep the forms on hand and make them available upon request to victims of domestic violence.

**§ 11.1204 Obtaining an emergency order of protection.**

(a) When a victim files a petition for an order of protection under § 11.202(a), the court may immediately grant an ex parte emergency order of protection if the petition clearly shows that an act of domestic violence has occurred. The order must meet the content requirements of § 11.206 (a) and (b).

(b) If the court does not immediately grant an emergency order of protection under paragraph (a) of this section, the court must either:

(1) Within 72 hours after the victim files a petition, serve notice to appear upon both parties and hold a hearing on the petition for order of protection; or

(2) If a notice of hearing cannot be served within 72 hours, issue an emergency order of protection.

(c) If the court issues an ex parte emergency order of protection under paragraph (a) of this section, it must within 10 days hold a hearing on the question of continuing the order. If notice of hearing cannot be served within 10 days:

(1) The emergency order of protection is automatically extended for 10 days; and

(2) If after the 10-day extension, notice to appear cannot be served, the emergency order of protection expires.

(d) If the court issues an ex parte emergency order of protection under paragraph (b)(2) of this section, it must cause the order to be served on the person alleged to have committed a family violence act and seek to hold a hearing as soon as possible. If a hearing cannot be held within 10 days, the petitioner may ask the court to renew the emergency protection order.

**§ 11.1206 Obtaining a regular (non-emergency) order of protection.**

Following a hearing and finding that an act of domestic violence occurred, the court may issue an order of protection. The order must meet the requirements of paragraph (a) of this section and may meet the requirements of paragraph (b) of this section. Either party may request a review hearing to amend or vacate the order of protection.

(a) The order of protection must do all of the following:

(1) Specifically describe in clear language the behavior the court has ordered he or she do or refrain from doing;

(2) Give notice that violation of any provision of the order of protection constitutes contempt of court and may result in a fine or imprisonment, or both; and

(3) Indicate whether the order of protection supersedes or alters prior orders pertaining to matters between the parties.

(b) The order of protection may do any of the following:

(1) Order the person who committed the act of domestic violence to refrain from acts or threats of violence against the petitioner or any other family member;

(2) Order that the person who committed the act of domestic violence be removed from the home of the petitioner;

(3) Grant sole possession of the residence or household to the petitioner during the period the order of protection is effective, or order the person who has committed an act of domestic violence to provide temporary suitable alternative housing for the petitioner and other family members to whom the respondent owes a legal obligation of support;

(4) Award temporary custody of any children involved when appropriate and provide for visitation rights, child support, and temporary support for the petitioner on a basis which gives primary consideration to the safety of the petitioner and other household members;

(5) Order that the person who is found to have committed an act of domestic violence to not initiate contact with the petitioner;

(6) Restrain the parties from transferring, concealing, encumbering, or otherwise disposing of one another's property or the joint property of the parties except in the usual course of business or for the necessities of life; and to account to the court for all such transferring, encumbrances, and expenditures made after the order is served or communicated; and

(7) Order other injunctive relief as the court deems necessary for the protection of the petitioner including orders to law enforcement agencies as provided by this subpart.

**§ 11.1208 Service of the protection order.**

When an order of protection is granted under this subpart:

(a) The petitioner must file it with the clerk of the court and a copy will be sent by the clerk of the court to a law enforcement agency with jurisdiction over the area in which the court is located.

(b) The order must be personally served upon the respondent, unless the respondent or his or her attorney was present at the time the order was issued.

(c) If the court finds the petitioner unable to pay court costs, the order will be served without cost to the petitioner.

**§ 11.1210 Duration and renewal of a regular protection order.**

An order of protection granted by the court:

(a) Is effective for a fixed period of time, which is up to a maximum of 6 months; and

(b) May be extended for good cause upon motion of the petitioner for an additional period of up to 6 months each time a petition is presented. A petitioner may request as many extensions as necessary provided that the court determines that good cause exists.

**§ 11.1212 Consequences of disobedience or interference.**

Any willful disobedience or interference with any court order constitutes contempt of court which may result in a fine or imprisonment, or both, in accordance with this part.

**§ 11.1214 Relationship of this subpart to other remedies.**

The remedies provided in this subpart are in addition to the other civil or criminal remedies available to the petitioner.

[FR Doc. E7-24043 Filed 12-18-07; 8:45 am]

BILLING CODE 4310-4J-P