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## 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:** Final rule.

**SUMMARY:** This final rule amends the Bureau of Indian Affairs regulation governing the Courts of Indian Offenses (otherwise known as CFR Courts) and the Law and Order Code. CFR Courts administer justice where Indian tribes retain exclusive jurisdiction over Indians but where tribal courts have not been established to exercise that jurisdiction. This final rule updates the list of Indian tribes for which Courts of Indian Offenses are established and for which the law and order provisions of the regulations apply. This final rule also clarifies jurisdictional limitations; adds offenses for drug abuse, abuse of psychotoxic substances, child abuse, prostitution, and family violence; and increases maximum penalties for various offenses.

**DATES:** This rule is effective on August 11, 2008.

**FOR FURTHER INFORMATION CONTACT:**

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#### I. Background

This final rule amends 25 CFR part 11, the Bureau of Indian Affairs regulation governing the Courts of Indian Offenses (otherwise known as CFR Courts) and the Law and Order Code. CFR Courts administer justice where Indian tribes retain exclusive jurisdiction over Indians but where tribal courts have not been established to exercise that jurisdiction. Part 11 applies only to those tribes occupying the Indian country over which a Court of Indian Offense has jurisdiction. At any time, these tribes may adopt their own tribal court systems to replace the CFR courts by following the steps in 25 CFR 11.100(c) (which has not been affected by this final rule).

The final rule updates the list of CFR courts. The final rule also addresses the need for additional offenses, which has become apparent as drug abuse and family violence have increasingly plagued Indian country, and the need for increased maximum penalty amounts. The final rule also makes several editorial changes to comply with the Plain Language Initiative, for example, by changing headings to question form. The Bureau of Indian Affairs published proposed revisions to 25 CFR part 11 on December 19, 2007 (72 FR 71835).

#### II. Statutory Authority

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.

#### III. Discussion of Comments Received on Proposed Rule

Three tribes submitted written statements during the 30-day comment period. One tribe submitted comments after expiration of the comment period; the Bureau entered these comments into the administrative record but, in accordance with Departmental policy, did not substantially rely on them in developing the final rule. Timely comments were submitted by: The Comanche Nation of Oklahoma; The Chickasaw Nation of Oklahoma; and the Gaming Commission of the Cheyenne and Arapaho Tribes of Oklahoma. The following discussion summarizes significant comments by these three tribes and the Bureau's responses.

##### A. Civil Jurisdiction

Several tribes objected to the changes in section 11.116 which they claimed created ambiguity concerning the courts' jurisdiction in civil matters. The first concern was the proposed rule's change from providing jurisdiction in cases in which "the defendant is an Indian" to cases in which "the claimant is an Indian." The Bureau agrees that the current rule's language providing jurisdiction in those cases in which the defendant is an Indian should be retained. As such, section 11.116(a)(1) of the final rule reads: "The defendant is an Indian."

The second concern was the ambiguity as to jurisdiction over claims against non-Indian defendants and counter-defendants. In particular, one commenter stated that the proposed rule provision allowing jurisdiction only by stipulation of the parties unnecessarily diminished civil jurisdiction of the CFR Court. The Bureau agrees. Section 11.116 (a)(2) will be changed to read: "Other claims, including counterclaims, provided that at least one party is an Indian." This language complies with Supreme Court rulings on tribal jurisdiction.

##### B. Appointment of Magistrates

Two tribes objected to changes in section 11.201(a) that call for "consultation" with the tribe or tribes before appointing a magistrate rather than seeking "confirmation by a majority vote of the tribal governing body." The Bureau has considered this

comment and is tabling this change. The final rule therefore does not include the proposed change to "consultation," but instead retains current regulatory language requiring confirmation.

#### C. Jury Panel

One tribe stated that changing section 11.414(c) to increase the jury panel from 8 to 12 residents may result in an undue hardship for courts serving rural or sparsely populated areas. The Bureau agrees. The Indian Civil Rights Act of 1968 (25 U.S.C. 1302) requires jury trials of not less than six (6) persons. The Bureau has determined that this is a reasonable standard for a court functioning in Indian country. Therefore, section 11.314 9(c) of the final rule reads, "[a] jury must consist of not less than 6 residents of the vicinity in which the trial is held, selected from a list of eligible jurors \* \* \*"

#### D. List of Courts of Indian Offenses

The Comanche Nation specifically objected to section 11.100 deleting "(except Comanche Children's Court)." The Bureau did not intend to interfere with the operation of the Comanche Children's Court, and has re-inserted that language into the final rule.

#### E. Thirty-Day Comment Period

One tribe asserted that the thirty-day comment period was not sufficient and should be extended. The Bureau considered this request for extension and determined that the thirty-day comment period was sufficient. In making this determination, the Bureau considered the limited number of changes proposed, the limited number of potentially affected tribes, and the potential effect on those tribes. The Bureau also considered the fact that it received only one objection to the length of the comment period, and that the tribe that objected to the length of the comment period nevertheless provided comments on the proposed changes contained in the proposed rule.

#### F. Compliance With Executive Order 13175

One tribe asserted that the proposed rule violated Executive Order 13175 because the rule affects tribes that use CFR Courts as their tribal courts. The Bureau examined whether the revisions would have substantial direct effects on one or more Indian tribes and determined that they would not. The Bureau focused on those tribes occupying the Indian country over which a Court of Indian Offense has jurisdiction, in examining whether the proposed changes would have

substantial direct effects. The Bureau examined each regulatory change for its effects on these tribes and found that, generally, the regulatory changes were merely updates, which would not substantially affect caseloads, require additional outlays, or otherwise substantially and directly affect these tribes. The Bureau also examined the relationship between the Federal Government and these tribes and the distribution of power between the Federal Government and these tribes, and determined that there was no substantial direct effect. Finally, the proposed and final rules have no effect on the ability of tribes subject to part 11 (i.e., occupying the Indian country over which a Court of Indian Offense has jurisdiction) to enact and obtain Secretarial approval of enforceable ordinances.

### IV. Procedural Requirements

#### A. 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 the statutes placing supervision of 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).

#### B. 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 part 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.

#### C. 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.

#### D. 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.

#### E. 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.

#### F. 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 judiciary 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).

#### G. 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 judiciary 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.

#### H. 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 federally recognized tribes; part 11 applies only when 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 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.

#### I. Paperwork Reduction Act

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

#### J. 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.

#### K. Information 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).

#### L. 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.

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

Courts, Indians—law, Law enforcement, Penalties.

Dated: May 10, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

■ For the reasons set out in the preamble, the Bureau of Indian Affairs amends 25 CFR part 11 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 the heading of part 11 to read as set forth above.

■ 3. 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?

#### Subpart A—Application; Jurisdiction

##### § 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 (except Comanche Children's Court);
- (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 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 that establishes a court system and that meets the requirements of paragraph (b) of this section.

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

**§ 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 from 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:

- (a) Are enforceable in the Court of Indian Offenses having jurisdiction over the Indian country occupied by that tribe; and
- (b) 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 has 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 may be prosecuted, tried or punished for any offense unless the complaint is filed within 5 years after the offense is 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 defendant is an Indian; or
- (2) Other claims, provided at least one party is an Indian.

(b) Any civil action commenced in a Court of Indian Offenses is barred unless the complaint is filed within 3 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**

■ 3A. 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 to read as follows:

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

\* \* \* \* \*

■ 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 not less than six 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. Upon proof of a violation, these solvents must be forfeited to the Federal government by order of the court, following public

notice and an opportunity for any person claiming an interest in the solvents 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 authorizes 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 a controlled substance in violation of this section is subject to forfeiture to the Federal Government by order of the court upon proof of this 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;
- (6) A person with whom the defendant has a child in common; or
- (7) A person with whom the defendant is or was in a dating or intimate relationship.

■ 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.

(b) The delineation in paragraph (a) of this section does not establish a hierarchy relative to the applicability of specific law in specific cases.

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

(d) 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.
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**Subpart L—Child Protection and Domestic Violence Procedures**

**§ 11.1200 Definitions.**

For purposes of this subpart:  
*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;
- (6) A person with whom the defendant has a child in common; or
- (7) A person with whom the defendant is or was in a dating or intimate relationship.

*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 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 the person who is found to have committed an act of domestic violence not to 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 order the parties 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;

(b) The clerk of the court must send a copy to a law enforcement agency with jurisdiction over the area in which the court is located;

(c) 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; and

(d) 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.

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## **DEPARTMENT OF JUSTICE**

### **Bureau of Prisons**

#### **28 CFR Part 524**

[BOP-1141-F]

RIN 1120-AB39

#### **Intensive Confinement Center Program**

**AGENCY:** Federal Bureau of Prisons.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Prisons (Bureau) removes current rules on the intensive confinement center program (ICC). The ICC is a specialized program for non-violent offenders combining features of a military boot camp with traditional Bureau correctional values. The Bureau will no longer be offering the ICC program (also known as Shock Incarceration or Boot Camp) to inmates as a program option. This decision was made as part of an overall strategy to eliminate programs that do not reduce recidivism.

**DATES:** This rule is effective on August 11, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

**SUPPLEMENTARY INFORMATION:** Through this rulemaking, the Bureau seeks to be clear to inmates and the public regarding the termination of the ICC program. A proposed rule on this subject was published in the **Federal Register** on November 2, 2006 (71 FR 64504). We received three comments. The issues raised by the commenters are addressed below.

One commenter, a former inmate, recounted his positive experience in an ICC program in a Bureau facility, and suggested that such positive experiences should be sufficient to continue the ICC program.

Although this inmate is to be commended for taking full advantage of the opportunities offered through the ICC program, we note that it is unfortunate that his experience was not repeated often enough to justify the extra costs implicated in the ICC program. As we stated in the preamble to the proposed rule, despite anecdotal successes, research has found no significant difference in recidivism rates between inmates who complete boot camp programs and similar offenders who serve their sentences in traditional institutions.

Moreover, the costs associated with maintaining the federal boot camp programs exceed the costs of operating ordinary minimum security camps, as a result of (1) the staff resources necessary to maintain the intensive core programming that make up the "shock incarceration" or "intensive confinement" experience, and (2) the high costs of housing offenders for extended periods of time in Community Corrections Centers, where the per capita costs are higher than those of housing offenders in minimum security camps.

While there are some cost savings due to the early release of offenders who successfully complete the program, these savings are minimal compared to the additional costs of operating the program, which create a net increased cost to the agency of more than \$1 million per year.

The remaining two commenters expressed the idea that "Congress clearly intends for the BOP to run a shock incarceration program; BOP merely has the discretion to decide which inmates it places therein. No logical reading of section 4046 implies that the discretionary 'may' in