



(4337-15)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

[178A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076-AF33

Addition of the Wind River Indian Reservation to the List of Courts of Indian Offenses

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes a Court of Indian Offenses (also known as CFR Court) for the Wind River Indian Reservation until the agency can promulgate a final rule that considers comments received.

DATES: This interim final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Submit comments by [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- Federal rulemaking portal www.regulations.gov. The rule is listed under the agency name “Bureau of Indian Affairs.”
- Mail, Hand Delivery, or Courier: Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 3642, Washington, DC 20240.
- We cannot ensure that comments received after the close of the comment period

(see DATES) will be included in the docket for this rulemaking and considered.

Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Director,
Office of Regulatory Affairs & Collaborative Action – Indian Affairs, (202) 273-4680;
elizabeth.appel@bia.gov.

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I. Summary of Rule

Courts of Indian Offenses operate in those areas of Indian country where tribes retain jurisdiction over Indians exclusive of State jurisdiction, but where tribal courts have not been established to fully exercise that jurisdiction. The Eastern Shoshone Tribe and the Northern Arapaho Tribe have a joint interest in the Wind River Indian Reservation, however the current tribal court operating on the reservation, the Shoshone & Arapaho Tribal Court, is currently operating without the support of both tribes, and with such limited resources, that it may cease operations without notice. To ensure the continued administration of justice on the Reservation,

the BIA is taking steps to ensure that judicial services will continue to be provided if the Shoshone & Arapaho Tribal Court ceases operations. Therefore, this rule revises a section of 25 CFR part 11 to add the Wind River Indian Reservation in Wyoming to the list of areas in Indian Country with established Courts of Indian Offenses (also known as CFR Courts). This rule inserts the Wind River Indian Reservation into a new paragraph (d) in 25 CFR 11.100.

Adding this reservation will allow for BIA to constitute a Court of Indian Offenses that can provide for the administration of justice until such time as the Northern Arapaho and Eastern Shoshone Tribes put into effect a court system that meets regulatory requirements and is capable of serving the entire reservation.

II. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order also directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This rule 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.) because the rule makes adjustments for inflation.

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;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;
- (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.

D. 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 (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175 and Departmental policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy under the criteria in Executive Order 13175 and have consulted with the affected tribes.

- (a) Tribal Summary Impact Statement: Prior to issuing this regulation the Department of the Interior and its Agencies, Bureaus, and Offices have communicated with the Eastern Shoshone Tribe and the Northern Arapaho Tribe repeatedly since 2015 regarding public safety concerns for the residents of the Wind River Indian Reservation. Following the withdrawal of the Northern Arapaho Tribe from the Joint Business Committee, the Shoshone and Arapaho Tribal Court has continued to operate, although with limited resources and without the express

support of both tribes. Although the Department has continued to discuss this situation with both tribes while allowing the joint Shoshone and Arapaho Tribal Court to use funds previously contracted to it, those funds expired on September 30, 2016, and the tribes have not been able to agree on the continued operation of the Shoshone and Arapaho Tribal Court.

The Shoshone and Arapaho Tribal Court is exercising some jurisdiction, however, it has no dedicated funding, no right to remain in its current physical location, and may cease or suspend operations at any time. To ensure there is not a lapse in public safety, if the Shoshone and Arapaho Tribal Court ceases or suspends operations, it will be necessary to establish a Court of Indian Offenses until such time as the Eastern Shoshone Tribe and the Northern Arapaho Tribe can agree on the operation and funding of a court system which is capable of serving the entire population of the Wind River Indian Reservation. Furthermore the Eastern Shoshone Business Committee has requested the Department to establish and operate a Court of Indian Offenses for the Wind River Indian Reservation.

To effectuate the immediate establishment and operation of the Court of Indian Offenses on the Wind River Reservation in the event that the Shoshone & Arapaho Tribal Court ceases or suspends operations, the Wind River Indian Reservation is hereby added to the list of jurisdictions served by the Courts of Indian Offenses.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. 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 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature (for further information, see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed 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 sections or

paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

M. 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 review, we cannot guarantee that we will be able to do so.

N. Determination to Issue an Interim Final Rule with Immediate Effective Date

We are publishing this interim final rule with a request for comment without prior notice and comment, as allowed under 5 U.S.C. 553(b). Under section 553(b) we find that there is good cause to effectuate this rule without prior notice, and comments are unnecessary and would be contrary to the public interest. This rule is necessary to ensure that a court is immediately available to administer justice on land within the Wind River Indian Reservation. If the Tribal Court were to cease or suspend operations, this would affect, among others, child and adult protection, and supervised Individual Indian Money account clients (vulnerable individuals). Accordingly, a gap in the provision of judicial services on the Reservation would harm the tribes and their members.

As allowed under 5 U.S.C. 553(d)(3), the effective date of this rule is the date of publication in the Federal Register. Good cause for an immediate effective date exists because the delay in publishing this rule would inhibit access to justice for tribal members and likely obstruct speedy trial rights for members of those tribes coming under the jurisdiction of the CFR court. We are requesting comments on this interim final rule. We will review any comments

received and, by a future publication in the Federal Register, address any comments received.

List of Subjects in 25 CFR Part 11

Courts, Indians-law.

For the reason stated in the preamble the Department of the interior, Bureau of Indian Affairs amends part 11 in title 25 of the Code of Federal Regulations as follows:

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

1. The authority for 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.

Subpart A – Application; Jurisdiction

2. In § 11.100, add paragraph (d) to read as follows:

§ 11.100 Where are Courts of Indian Offenses established?

* * * * *

(d) This part applies to the Indian country (as defined in 18 U.S.C. 1151 and by Federal precedent) within the exterior boundaries of the Wind River Reservation in Wyoming.

Dated: October 17, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary — Indian Affairs.

[FR Doc. 2016-26039 Filed: 10/26/2016 8:45 am; Publication Date: 10/27/2016]