



[4337-15-P]

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 11**

**[192A2100DD/AAKC001030/A0A501010.999900 253G]**

**RIN 1076-AF46**

**List of Courts of Indian Offenses; Future Publication of Updates**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise one section of our regulations to provide that the current list of areas in Indian Country with Courts of Indian Offenses (also known as CFR Courts) will be published and updated in the Federal Register and on the Bureau of Indian Affairs (BIA) website. Currently, that section of the Code of Federal Regulations, itself, lists the areas in Indian Country with CFR Courts, requiring a rulemaking each time a court is added or deleted. Allowing for publication in the Federal Register, in lieu of a rulemaking, will better keep Tribal members and the public updated on the current status of the Courts of Indian Offenses.

**DATES:** Comments are due by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** You may send comments, identified by RIN number 1076-AF46 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.
- Email: [consultation@bia.gov](mailto:consultation@bia.gov). Include RIN number 1076-AF46 in the subject line of the message.

- Mail or Hand-Delivery/Courier: Office of Regulatory Affairs & Collaborative Action – Indian Affairs (RACA), U.S. Department of the Interior, 1849 C Street, NW, Mail Stop 4660, Washington, DC 20240.

Instructions: All submissions received must include the Regulatory Information Number (RIN) for this rulemaking (RIN 1076-AF46). All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

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

**SUPPLEMENTARY INFORMATION:** Generally, Courts of Indian Offenses operate 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 fully exercise that jurisdiction. The Code of Federal Regulations, at 25 CFR 11.100, currently lists each Tribe for which Courts of Indian Offenses have been established.

On occasion, a Court of Indian Offenses is established or re-established or, alternatively, a Court of Indian Offenses ceases operation because BIA and a Tribe enter into a contract or compact for the Tribe to provide judicial services or the Tribe establishes a court system that meets regulatory requirements. Each time one of these changes occurs, the list of Courts of Indian Offenses must be updated for public transparency. Because the list of Courts of Indian Offenses is directly in § 11.100, a rulemaking is required to change the list. During the time it takes to conduct a rulemaking, the list in the Code of Federal Regulations is not accurate.

To allow for more agile responses to status changes, this proposed rule would remove the list of CFR Courts from the regulations and instead require the BIA to publish the current list and any updates to the current list in the Federal Register and on its website. This proposed rule

would enable BIA to keep the list of CFR Courts updated and accurate, improving transparency for Tribal members and the public who wish to know what areas in Indian Country have CFR Courts established. The proposed rule also revises § 11.104 to clarify that the list would no longer be published directly in § 11.100, but rather would be published in accordance with the directions in § 11.100 to publish in the Federal Register and on the BIA website.

#### **A. Regulatory Planning and Review (E.O. 12866)**

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. 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. E.O. 13771: Reducing Regulation and Controlling Regulatory Costs**

This action is not an E.O. 13771 regulatory action because this rule is not significant under Executive Order 12866.

#### **C. Regulatory Flexibility Act**

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements and would not impose any economic effects on small governmental entities.

#### **D. 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) Will 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) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

#### **E. 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.

#### **F. Takings (E.O. 12630)**

This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

#### **G. Federalism (E.O. 13132)**

Under the criteria in section 1 of E.O. 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.

#### **H. Civil Justice Reform (E.O. 12988)**

This rule complies with the requirements of E.O. 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.

#### **I. Consultation with Indian Tribes (E.O. 13175)**

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 and under the criteria in E.O. 13175 and have determined there are no substantial direct effects on Federally recognized Indian Tribes that will result from this rulemaking because BIA consults on an individual basis with each Tribe for which there is a change in the status of their CFR Court.

#### **J. Paperwork Reduction Act**

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. There is no information collection requiring OMB approval

associated with this proposed rule. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number.

#### **K. 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 this is an administrative and procedural regulation. (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.

#### **L. Effects on the Energy Supply (E.O. 13211)**

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

#### **M. 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:

- a. Be logically organized;
- b. Use the active voice to address readers directly;
- c. Use 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 are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

#### **N. 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.

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

Courts, Indians-law.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend 25 CFR part 11 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. Revise § 11.100 to read as follows:

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

(a) A list of the areas in Indian Country where Courts of Indian Offenses are established is available on the Bureau of Indian Affairs website (www.bia.gov) and is published periodically in the Federal Register.

(b) The Director, Bureau of Indian Affairs, will maintain on the Bureau of Indian Affairs website (www.bia.gov) an updated list of the areas in Indian Country where Courts of Indian Offenses are established and, upon any change to the list, will publish notice of the change in the Federal Register with an updated complete list.

3. Revise § 11.104(a) introductory text to read as follows:

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

(a) The regulations in this part continue to apply to each area in Indian Country listed in accordance with §11.100 until either:

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Dated: June 25, 2019

**Tara Sweeney,**

*Assistant Secretary – Indian Affairs.*

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