



(4337-15)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

[189A2100DD/AAKC001030/A0A501010.999900]

Court of Indian Offenses Serving the Wind River Indian Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Waiver of certain regulations.

SUMMARY: This document accompanies the final rule establishing a Court of Indian Offenses (also known as a CFR Court) for the Wind River Indian Reservation published today and waives the application of certain regulations for the Court of Indian Offenses serving the Wind River Indian Reservation.

DATES: This waiver is applicable on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

SUPPLEMENTARY INFORMATION: Generally, 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 an equal joint interest in the Wind River Indian Reservation. However, since October of 2016, the former Shoshone &

Arapaho Tribal Court has operated only with the support of the Northern Arapaho Tribe. The Bureau of Indian Affairs (BIA) is taking the next step to provide all residents on the Wind River Indian Reservation with comprehensive judicial services, and ensure the permanent administration of justice and public safety.

Therefore, the Secretary has determined, in his discretion under 5 U.S.C. 301, 25 U.S.C. 2 and 9, that it is necessary to waive 25 CFR 11.104(a), (b) and 11.201(a), (e), and (f), as well as a portion of 25 CFR 11.108, as applied to the Wind River Indian Reservation. This waiver will ensure that a BIA Court of Indian Offenses can effectively operate and serve all of the residents of the Wind River Indian Reservation.

The Secretary has determined that, for the Wind River Reservation, it is necessary to waive 25 CFR 11.201(a), (e), and (f) — requirements that a magistrate must be confirmed by a tribal governing body, or, in the case of multi-tribal courts, confirmation by a majority of the tribal governing bodies; and requirements regarding training or other qualifications for CFR Court Magistrates — to ensure that the Bureau has the ability to hire and staff the Court with qualified employees efficiently.

Additionally, 25 CFR 11.104, which provides that the regulations in part 11 continue to apply until either: (1) the BIA and the tribe enter into a contract or compact for the tribe to provide judicial services; or (2) [t]he tribe has put into effect a law-and-order code that establishes a court system, is waived in part as applied to the Wind River Indian Reservation. Due to the shared nature of the Wind River Indian Reservation, the practical consequences of separate courts with overlapping jurisdiction will be further confusion about the authority of each court and exponentially increase the difficulty of maintaining law and order on the Reservation. While the Tribes are free to operate judicial systems independently, the Department will not

acknowledge or enforce acts of those judicial systems entered after the publication of this waiver, with the exception that the Department will acknowledge any emergency restraining or protective issued by the Northern Arapaho Court within ten (10) days of the publication of this waiver, until such time as both tribes jointly petition under 25 CFR 11.104.

Finally, 25 CFR 11.108 is waived to the extent necessary for the Court of Indian Offenses for the Wind River Indian Reservation to enforce Titles II, III, V, VII, VIII, IX, Title XI Chapters 3 and 4, Title XII Chapter 2, Titles XIV, and XVI of the Shoshone and Arapaho Law and Order Code as it existed on October 1, 2016. To the extent that the Shoshone and Arapaho Law and Order Code, as written, requires an action of the Joint Business Committee as a predicate for a criminal offense or the regulation of an action, e.g. the determination of the hunting season, that authority is hereby vested in the BIA Superintendent of the Wind River Agency.

The authority for publication of this document is: 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.

Dated: December 5, 2017

John Tahsuda,

Principal Deputy Assistant Secretary - Indian Affairs

Exercising the Authority of the Assistant Secretary – Indian Affairs.

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