



[4337-15-P]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

[201A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076-AF46

List of Courts of Indian Offenses; Future Publication of Updates

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises 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: This rule takes effect on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (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 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.

On July 23, 2019, BIA published a proposed rule to 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. 84 FR 35355. During the public comment period, BIA received one comment which suggested requirements related to Tribal courts, which are not relevant to this rulemaking. Therefore, BIA made no changes to the proposed rule.

This final rule allows enables 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 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 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. Determination to Issue an Final Rule with Immediate Effective Date

We are publishing this final rule with an immediate effective date, as allowed under 5 U.S.C. 553(d)(3). 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.

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, amends 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: December 4, 2019.

Tara Sweeney,

Assistant Secretary – Indian Affairs.

[FR Doc. 2019-27997 Filed: 1/6/2020 8:45 am; Publication Date: 1/7/2020]