

these bone particle size limitations represent good manufacturing practices and reflect processes that are in control and protect finished product quality. Because bone particles are extremely small in MSM and MSP, they would not be considered to be a safety hazard.

Products containing bone fragments larger than 0.8 inches (20 mm) are of regulatory concern to FSIS, and the Agency will consider regulatory action, as appropriate, to protect consumers. There are currently no regulations that specifically address the limiting of bone particle size for boneless meat and poultry products deboned by hand, or for meat produced by an advanced mechanical method that does not involve crushing or grinding the bones (59 FR 62551, December 6, 1994). Safety determinations about boneless product produced by these methods are made on an ad hoc basis, based on the criteria recommended by the Board. Companies producing boneless meat and poultry products deboned by hand or produced by advanced mechanical separation generally employ manufacturing practices that keep the size of bone particles well below the 0.8-inch (20-mm) level considered to be a potential safety hazard by the Board.

FSIS's proposed rule, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems," (60 FR 6774, February 3, 1995) proposes requiring meat and poultry processors to establish HACCP systems of preventive controls to ensure the safety of foods they produce. This would include the addressing of potential physical hazards in meat and poultry products, such as bone particles, in HACCP plans. The proposed HACCP system would place an affirmative duty on companies to establish procedures to prevent bone particles of foreign material from presenting a safety hazard in boneless meat and poultry products.

FSIS invites comments on whether additional regulatory action is needed, beyond that provided by FSIS in its regulations, regarding bone particle size and foreign material, such as glass, metal, or plastic, in boneless meat and poultry products deboned by hand, produced by advanced mechanical separation, or by other procedural means not identified in current meat and poultry regulations.

Done at Washington, DC, on: June 27, 1996.
Michael R. Taylor,
Acting Under Secretary for Food Safety.
[FR Doc. 96-17001 Filed 7-03-96; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076-AD76

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing to amend its regulations governing Courts of Indian Offenses to clarify the authority of the Assistant Secretary for Indian Affairs to establish the courts, the jurisdiction of the courts, their relationship to tribal governments and the Department of the Interior, and to provide those courts with an updated code of laws.

DATES: Comments must be received on or before October 3, 1996.

ADDRESSES: Comments are to be mailed to Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS 2611-MIB, Washington, DC 20240; or, hand delivered to Room 4603 at the same address.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Bureau of Indian Affairs (202) 208-3463.

SUPPLEMENTARY INFORMATION:

Background

The comments received in response to a prior proposed rule published on October 24, 1985, and published as a final rule on October 21, 1993, included suggestions for the inclusion of new provisions in the Law and Order Code (Code). Because the inclusion of the suggested provisions in the final rule would have constituted new matter adopted without opportunity for general public comment, a separate rule is now proposed for those provisions to be added to the Code.

This proposed rule (1) provides for the establishment of courts when tribal justice systems are not functioning, (2) changes the method of listing Indian reservations to which the Code applies, (3) clarifies the provision on jurisdictional limitations which excludes from jurisdiction under this part Federal employees acting within the scope of their employment, (4) adds provisions for drug abuse, abuse of psychotoxic substances, child abuse, prostitution, and family violence, and (5) increases the maximum penalties for various offenses in the Code.

The increased penalties are proposed in response to the law enforcement

provisions of the Anti-Drug Abuse Act of 1986, amending the sentencing limitations of the Indian Civil Rights Act, 25 U.S.C. 1302. Indian may courts to impose maximum fines up to \$5,000 and sentences of imprisonment up to one year.

Inclusion in § 11.100, Listing of Courts of Indian Offenses, does not defeat the inherent sovereignty of a tribe to establish tribal courts and exercise jurisdiction under tribal law. *Tillett v. Lujan*, 931 F.2d 636, 640 (10th Cir. 1991) (C.F.R. courts "retain some characteristics of an agency of the federal government" but they "also function as tribal courts"); *Combrink v. Allen*, 20 Indian L. Rep. 6029, 6030 (Ct. Ind. App., Tonkawa, Mar. 5, 1993) (C.F.R. court is a "federally administered tribal court"); *Ponca Tribal Election Board v. Snake*, 17 Indian L. Rep. 6085, 6088 (Ct. Ind. App., Ponca, Nov. 10, 1988) ("The Courts of Indian Offenses act as tribal courts since they are exercising the sovereign authority of the tribe for which the court sits."). Such exercise of inherent sovereignty and the establishment of tribal courts shall comply with the requirements set forth in 25 CFR § 11.100(c).

A clarifying sentence has been added to the jurisdictional limitations section to express unambiguously that Federal and state employees acting within the scope of their employment are not subject to the jurisdiction of Courts of Indian Offenses.

The new offenses are abuse of psychotoxic chemical solvents and dangerous drug offense. They are also proposed in response to the Anti-Drug Abuse Act, and are intended to enhance the ability of law enforcement agencies on Indian reservations to prevent and penalize the traffic of illegal narcotics and the misuse of dangerous substances. The two sections were suggested by the Anadarko Area Law Enforcement Office of the Bureau of Indian Affairs. No specific exception for peyote is included because peyote for religious use by the Native American Church is excluded from prosecution under the referenced federal statute.

Prostitution was inadvertently omitted from the revision of the Law and Order Code and is, therefore, included here. The crime is a continuation of the provision contained in 25 CFR Part 11 which has been in force for many years, with the addition of the crime of pandering which is intended to facilitate the prosecution of persons procuring for prostitutes.

Child abuse and neglect has been added as a separate criminal offense. Its inclusion was inspired by the Draft

Child/Family Protection Code developed by the National Indian Justice Center for the Bureau of Indian Affairs. Although there is some overlapping of these offenses and the sexual assault provisions of the revised Law and Order Code, the abuse provision is much broader and will give prosecutors more flexibility in protecting children from abuse. The mandatory reporting provision was added to conform with the Bureau's administrative reporting requirements.

The family violence subpart establishes a new procedure for acts of family violence. This approach to family violence reflects the decision set forth in *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984). Thurman filed an action against the city alleging a violation of equal protection for the city's failure to provide the same type of protection to persons in a family relationship as it provides to other abused persons. The court, finding that Thurman had a cause of action under the equal protection clause, held that the city had an affirmative duty to treat family partners as it would other abused persons. The knowledge that arrests deter subsequent family violence has resulted in all states passing some type of special legislation for acts of family violence. Forty-eight states have warrantless arrest provisions and many have special protective orders. This subpart is drawn from those statutes. Although much of this subpart is procedural, we have not included it in the procedures sections. Because the procedure is complicated, comprehensive and applicable to only one general situation, we concluded that it deserved its own subpart under Part 11.

The proposed rule will not require additional staffing for these courts. It is not anticipated that this revision will have a significant effect on the annual caseload of these courts because it does not enlarge their jurisdiction. Prosecutors must routinely use their discretion in balancing their workloads with the time and prosecutorial resources available. Likewise, in sentencing convicted defendants, judges are acutely aware of the constraints imposed by limited jail space.

Courts of Indian Offenses are funded in their entirety by the Federal Government and do not receive additional funding from tribal governments. Because we do not foresee any economic effect on Courts of Indian Offenses as a result of these amendments, there will be no requirement of additional outlays by the Federal Government or the tribes affected by the proposed amendments.

Certification and Evaluation

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."

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

Executive Order 12988

The Department has determined that this proposed rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

The Department has determined that this proposed rule does not have "significant" takings implications. The proposed rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this proposed rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

Drafting Information

The primary authors of this document are Neil R. McDonald, Office of the Solicitor, Division of Indian Affairs, and Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

For the reasons set out in the preamble, Part 11 of Chapter 1 of Title 25 of the Code of Federal Regulations is proposed to be amended 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.

Subpart A—Application; Jurisdiction

2. Section 11.100 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 11.100 Where are Courts of Indian Offenses established?

(a) Unless indicated otherwise in this title, the regulations in this part apply to the Indian country (as defined in 18 U.S.C. 1151) occupied by the following tribes:

- (1) Red Lake Band of Chippewa Indians (Minnesota).
- (2) Confederated Tribes of the Goshute Reservation (Nevada).
- (3) Lovelock Paiute Tribe (Nevada).
- (4) Te-Moak Band of Western Shoshone Indians (Nevada).
- (5) Yomba Shoshone Tribe (Nevada).
- (6) Kootenai Tribe (Idaho).
- (7) Shoalwater Bay Tribe (Washington).
- (8) Eastern Band of Cherokee Indians (North Carolina).
- (9) For the following tribes located in the former Oklahoma Territory (Oklahoma):
 - (i) Absentee Shawnee Tribe of Indians of Oklahoma
 - (ii) Apache Tribe of Oklahoma
 - (iii) Caddo Tribe of Oklahoma
 - (iv) Cheyenne-Arapaho Tribe of Oklahoma
 - (v) Citizen Band of Potawatomi Indians of Oklahoma

(vi) Comanche Tribe of Oklahoma (Except Comanche Children's Court)

(vii) Delaware Tribe of Western Oklahoma

(viii) Fort Sill Apache Tribe of Oklahoma

(ix) Iowa Tribe of Oklahoma

(x) Kaw Tribe of Oklahoma

(xi) Kickapoo Tribe of Oklahoma

(xii) Kiowa Tribe of Oklahoma

(xiii) Otoe-Missouria Tribe of Oklahoma

(xiv) Pawnee Tribe of Oklahoma

(xv) Ponca Tribe of Oklahoma

(xvi) Tonkawa Tribe of Oklahoma

(xvii) Wichita and Affiliated Tribes of Oklahoma.

(10) Hoopa Valley Tribe, Yurok Tribe, and Coast Indian Community of California (California Jurisdiction limited to special fishing regulations).

(11) Louisiana Area (includes Coushatta and other tribes in the State of Louisiana which occupy Indian country and which accept the application of this part);

Provided that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the Federal Register.

(12) For the following tribes located in the former Indian Territory (Oklahoma):

(i) Chickasaw Nation

(ii) Choctaw Nation

(iii) Thlopthlocco Tribal Town

(iv) Seminole Nation

(v) Eastern Shawnee Tribe

(vi) Miami Tribe

(vii) Modoc Tribe

(viii) Ottawa Tribe

(ix) Peoria Tribe

(x) Quapaw Tribe

(xi) Wyandotte Tribe

(xii) Seneca-Cayuga Tribe

(xiii) Osage Tribe.

(13) Ute Mountain Ute Tribe (Colorado).

(b) The purpose of the regulations in this part is 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 or where tribal justice systems are not functioning.

(c) The regulations in this part continue to apply to tribes listed in § 11.100(a) until a law and order code which includes the establishment of a court system has been adopted by the tribe in accordance with its constitution and by-laws or other governing documents has become effective, and the Assistant Secretary—Indian Affairs or his or her designee has received a

valid tribal enactment identifying the future effective date of the code's implementation. The effective date of the code's implementation must allow 60 days for publication of the amendment to § 11.100(a) which provides public notice of the change. The tribally established future effective date will also be published as the effective date of the change.

3. The headings of the following sections are revised to read as follows:

Section	Old heading	New heading
11.101	Prospective application of regulations.	When are these regulations effective?
11.102	Criminal jurisdiction; limitation of actions.	What is the criminal jurisdiction of the Court of Indian Offenses?
11.103	Civil jurisdiction; limitation of actions.	What is the civil jurisdiction of the Court of Indian Offenses?

4. Section 11.104 is amended by revising paragraphs (a) through (d) to read as follows:

§ 11.104 What are the jurisdictional limitations of the Court of Indian Offenses?

(a) No Court of Indian Offenses may exercise any jurisdiction over a Federal or state official that it could not exercise if it were a tribal court. The jurisdiction of Courts of Indian Offenses shall not extend to Federal or state employees acting within the scope of their employment.

(b) Unless otherwise provided by a resolution or ordinance of the tribal governing body of the tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction, no Court of Indian Offenses may adjudicate an election dispute or take jurisdiction over a suit against the tribe or adjudicate any internal tribal government dispute.

(c) 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, must be given great weight by the Bureau of Indian Affairs in deciding who is a tribal official.

(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

5. Section 11.200 is amended by revising the heading and paragraph (c) to read as follows:

§ 11.200 What is the composition of the Court of Indian Offenses?

* * * * *

(c) Appeals shall be heard by a magistrate who was not involved in the trial of the case.

* * * * *

6. Section 11.201 is amended by revising the heading and paragraph (a) to read as follows:

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

(a) Each magistrate shall be appointed by the Assistant Secretary—Indian Affairs or his or her designee subject to confirmation by a majority vote of the tribal governing body of the tribe occupying the Indian country over which the court has jurisdiction. In the case of multi-tribal courts, the appointment of the magistrate is subject to confirmation by a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses. Only the Assistant Secretary—Indian Affairs may grant a waiver of this paragraph when discord precludes confirmation, and appoint a magistrate for a term not to exceed one year.

* * * * *

7. The headings of the following sections are revised to read as follows:

Section	Old heading	New heading
11.202	Removal of magistrates.	How is a magistrate of the Court of Indian Offenses removed?
11.203	Court clerks	How are the clerks of the Court of Indian Offenses appointed and what are their duties?
11.205	Standard governing appearance of attorneys and lay counselors.	Are there standards for the appearance of attorneys and lay counselors?
11.206	Court records	Is the Court of Indian Offenses a court of record?
11.207	Cooperation of Bureau of Indian Affairs employees.	What are the responsibilities of Bureau of Indian Affairs employees?

Section	Old heading	New heading
11.208	Payment of judgments from individual Indian money accounts.	May Individual Indian Money accounts be used for payment of judgments?
11.209	Disposition of fines.	How does the Court of Indian Offenses dispose of fines?

Subpart C—Criminal Procedure

8. Section 11.315 is amended by revising 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 not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than one year.

(2) A money fine in an amount not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than five thousand dollars (\$5,000).

* * * * *

Subpart D—Criminal Offenses

9. Section 11.450 is amended by revising paragraph (a) to read as follows:

§ 11.450 Maximum fines and sentences of imprisonment.

(a) A person convicted of an offense under the regulations in this part may be sentenced as follows:

(1) If the offense is a misdemeanor, to a term of imprisonment not to exceed one year or to a fine not to exceed five thousand dollars (\$5,000), or both;

(2) If the offense is a petty misdemeanor, to a term of imprisonment not to exceed six months, and to a fine not to exceed five hundred dollars (\$500), or both;

(3) If the offense is a violation, to a term of imprisonment not to exceed three months or to a fine not to exceed two hundred fifty dollars (\$250), or both.

* * * * *

10. Sections 11.451 through 11.455 are added to read as follows:

§ 11.451 Abuse of psychotoxic chemical solvents.

(a) It shall be unlawful purposely to smell or inhale the fumes of any psychotoxic chemical solvent, or to possess, purchase, or attempt to possess or purchase any psychotoxic chemical

solvent, with the intention of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system; or to 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 intends to use the solvent in violation of this section.

(b) This section shall not apply to the inhalation of anesthesia for medical or dental purposes.

(c) As used in this section, "psychotoxic chemical solvent" includes any glue, gasoline, paint, hair spray, lysol, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, methyl ethyl, peptone, pentachlorophenol, petroleum ether, or other chemical substances capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement of listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substances without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

(d) Abuse of psychotoxic chemical solvents, as defined in this section, shall be punishable as a petty misdemeanor, and the court may order any person using psychotoxic chemical solvents for inhalation to be committed to a facility for treatment for a term not to exceed six months.

(e) Such psychotoxic chemical solvents kept or used in violation of this section are hereby declared to be contraband and upon proof of a violation, following public notice and an opportunity for any person claiming an interest therein to be heard, shall be forfeited to the government by order of the court.

§ 11.452 Dangerous drug offense.

(a) It shall be unlawful, except as authorized and controlled by Federal law, to manufacture, distribute, possess with intent to distribute, dispense, create, possess, or cultivate a controlled or a counterfeit substance; or to obtain or acquire possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; or to knowingly or intentionally use any communication facility in committing any of the above prohibited acts.

(b) Controlled or counterfeit substances shall consist of the substances listed in 21 U.S.C. 812, and any other chemical substance, natural or artificial, defined as a controlled or dangerous substance, the possession, sale, distribution, or use of which is prohibited by Federal law.

(c) Each of the unlawful acts listed in paragraph (a) of this section shall be punishable as a misdemeanor. Upon conviction under this section for sales distribution, possession with the intent to distribute, manufacture with intent to sell, or cultivation with intent to distribute, banishment may also be imposed for a term not to exceed ten years.

(d) Any substance handled in violation of this section is deemed and declared to be contraband and upon proof of such a violation, after public notice and an opportunity for any person claiming an interest in the substance to be heard, shall be forfeited to the government by order of the court.

(e) Any personal property used to transport, conceal, manufacture, cultivate, or distribute the controlled dangerous substance in violation of this section shall be subject to forfeiture to the government by order of the court upon proof of such use, following public notice and opportunity for any person claiming an interest in the property to be heard.

§ 11.453 Prostitution.

A person who commits prostitution or pandering 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 Child abuse and neglect.

(a) A person commits a misdemeanor if he or she inflicts abuse or neglect on a child. Child abuse or neglect includes:

(1) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or is dead and such condition or death is not justifiably explained, or where the history given concerning such condition or death or circumstances indicate that such condition or death may not be the product of an accidental occurrence;

(2) Any case in which a child is subjected to sexual assault or molestation, sexual exploitation, or prostitution;

(3) Any case in which circumstances indicate that a child's health or welfare is harmed or threatened by negligent treatment or maltreatment by a person; and/or,

(4) Any case in which a child is in need of services because of the failure of the child's parent(s), legal guardian(s), or custodian(s) to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take.

(b) For purposes of this section, "child" means any individual who is not married and has not attained 18 years of age.

§ 11.455 Persons required to report child abuse and neglect.

(a) Any person having reasonable cause to know or suspect that a child was abused or neglected in Indian country shall report the incident. Any person shall also report any actions which would reasonably result in abuse or neglect.

(b) Any person who fails to report an instance of child abuse or neglect in Indian country of which he or she has knowledge or of which he or she should reasonably have knowledge is guilty of a misdemeanor. Any person who inhibits the making of a report is guilty of a misdemeanor.

(c) Any person making a report in good faith shall be immune from criminal and civil liability.

11. A new Subpart L is added to read as follows:

Subpart L—Child Protection and Family Violence Procedures

Sec.

11.1200 Child protection procedures.

11.1201 Family violence procedures.

Subpart L—Child Protection and Family Violence Procedures

§ 11.1200 Child protection procedures.

As required by the Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3203, the following child protection procedures are established.

(a) *Reporting child abuse and neglect.* Oral reports of child abuse and neglect in Indian country must be made immediately to the local child protective services or local law enforcement.

(b) *Federal Bureau of Investigation.* If the report involves an Indian child or the person alleged to have abused or neglected the child is an Indian and the preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency (if other than the Federal Bureau of Investigation) must immediately report the incident to the Federal Bureau of Investigation.

(c) *Child protection report.* Within 36 hours, a written report must be prepared by the receiving agency. The report must include:

(1) The name, address, age, and sex of the child that is the subject of the report;

(2) The grade and the school in which the child is currently enrolled;

(3) The name and address of the child's parents or other persons responsible for the child's care;

(4) The name and address of the alleged offender;

(5) The name and address of the person who made the report to the agency;

(6) A brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse; and,

(7) Any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse.

(d) *Investigation.* Any local law enforcement agency or local child protective services agency that receives a report alleging abuse or neglect described in § 11.454 must immediately initiate an investigation of such allegation and take appropriate steps to secure the safety and well-being of the child or children involved.

(e) *Investigative report.* Upon completion of the investigation of any report of alleged abuse that is made to a local law enforcement agency or local child protective services agency, such agency must prepare a final written report on such allegation.

(f) *Confidentiality.* The identity of any person making a report under this section must not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of the Indian tribe, state or Federal Government who needs to know the information in the performance of the employee's duties.

(g) *Complaint.* A complaint must be filed by a law enforcement officer.

§ 11.1201 Family violence procedures.

(a) *Warrantless arrest.* A law enforcement officer shall arrest a person and take that person into custody without a warrant when the officer has probable cause to believe that the person has committed a family violence act such as intentional or negligent infliction of bodily injury; unreasonable confinement; intimidation; cruel punishment resulting in physical harm, pain or mental anguish; any sexual contact intended to sexually gratify the person making the contact and which is without consent or obtained by intimidation or fraud; intentional infliction of threats, humiliation or

intimidation; unauthorized or improper use of funds, property or other resources; or criminal trespass upon a spouse, former spouse, family member, present or former household member, or co-parent.

(b) *Definition of co-parent.* For purposes of this subpart "co-parent" means persons who have a child in common regardless of whether they have been married or have lived together at any time. For purposes of this subpart "family member" includes grandparents, aunts, uncles and cousins who are present or former household members.

(c) *Liability.* No law enforcement officer shall be held criminally or civilly liable for making an arrest pursuant to this subpart, provided he or she acts reasonably and in good faith.

(d) *Petition for order of protection.* A victim of a family violence act may petition the court under this subpart for an order of protection.

(1) The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts describing the act of family violence.

(2) No petitioner is required to file for annulment, separation, or divorce as a prerequisite to obtaining an order of protection. However, the petition shall state whether any other family action is pending between the petitioner and the respondent.

(3) Standard simplified petition forms with instructions for completion shall be available to petitioners not represented by counsel. Law enforcement agencies shall keep such forms and make them available upon request to victims of family violence.

(e) *Emergency order of protection.* Upon the filing of a petition for order of protection:

(1) The court may immediately grant an ex parte emergency order of protection if there is clear and convincing evidence from the specific facts shown by the affidavit or by the petition that a family violence act has occurred;

(2) The court shall cause the emergency order of protection together with notice of hearing to be served immediately on the person alleged to have committed a family violence act; and,

(3) The court shall hold a hearing on the question of continuing the order within ten days of granting the emergency order of protection; or

(4) If an ex parte order is not granted, the court shall serve notice to appear upon both parties and hold a hearing on the petition for order of protection within seventy-two hours after the filing of the petition; if notice of hearing

cannot be served within seventy-two hours, a temporary order of protection may be issued;

(5) If notice of hearing cannot be served within 10 days, the temporary order of protection shall be automatically extended for ten days; and,

(6) If after the 10-day extension notice to appear cannot be served, the temporary order of protection shall expire.

(f) *Order of protection.* Following a hearing and finding that a family violence act occurred, the court may enter an order of protection that specifically describes in clear language, understandable to the person who committed the family violence act, the behavior the court has ordered he or she do or refrain from doing. In any order of protection, the court:

(1) May order the person who committed the family violence act to refrain from acts or threats of violence against the petitioner or any other household member.

(2) May order that the person who committed the family violence act be removed from the home of the petitioner;

(3) May 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 a family violence act to provide temporary suitable alternative housing for the petitioner and other household members to whom the respondent owes a legal obligation of support;

(4) May 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) May order that the person who committed a family violence act not initiate contact with the petitioner;

(6) May 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 to account to the court for all such transferring, encumbrances, and expenditures made after the order is served or communicated;

(7) May 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;

(8) Shall 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;

(9) Shall indicate whether the order of protection supersedes or alters prior orders pertaining to family matters between the parties;

(10) Shall not affect the title to any property or allow the petitioner to transfer, conceal, encumber, or otherwise dispose of respondent's property or the joint property of the parties.

(g) *Review hearing.* Either party may request a review hearing to amend or vacate the order of protection.

(h) *Service of the protection order.* An order of protection granted under this subpart shall be filed with the clerk of the court and a copy shall be sent by the clerk of the court to the law enforcement agency with the jurisdiction over the areas of Indian Country in which the court is located. The order shall be personally served upon the respondent, unless the respondent or his or her attorney was present at the time the order was issued. If the court finds the petitioner unable to pay court costs, the order shall be served without cost to the petitioner.

(i) *Duration of order of protection.* An order of protection granted by the court shall be effective for a fixed period of time not to exceed three months. The order may be extended for good cause upon motion of the petitioner for an additional period of time not to exceed three months.

(j) *Contempt of court.* 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.

(k) *Remedies.* The remedies provided in this subpart are in addition to the other civil or criminal remedies available to the petitioner.

(l) *Emergency assistance.* The court shall require the local law enforcement agency to give notice of the availability of emergency assistance. Notice shall include telling all victims of family violence where a shelter or other services are available in the community and giving all victims immediate notice of their legal rights and remedies. The notice must also include furnishing all victims of family violence a copy of the following statement:

IF YOU ARE A VICTIM OF FAMILY VIOLENCE, you can ask the prosecutor to file a criminal complaint. You also have the right to go to court and file a petition requesting an order of protection from family violence. The order may include the following:

(1) an order restraining the person who has committed a family violence act from further acts of family violence;

(2) an order directing the person who has committed a family violence act to leave your household;

(3) an order preventing the person who has committed a family violence act from entering your residence, school, business, or place of employment;

(4) an order awarding you custody of or the other parent visitation with a minor child or children;

(5) an order directing the person who has committed a family violence act to pay support to you and the minor children if the person who has committed an act of family violence has a legal obligation to do so;

(6) an order directing the person who has committed a family violence act to account for your funds or property or to pay restitution for damages resulting from the wrongdoing;

(7) an order directing the appropriate human services agency to deliver protective services and provide the least restrictive alternatives for services, care, treatment, or placement.

Dated: June 6, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96-16039 Filed 7-3-96; 8:45 am]

BILLING CODE 4310-02-P

25 CFR Part 12

RIN 1076-AD56

Indian Country Law Enforcement

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed Rule.

SUMMARY: The Bureau of Indian Affairs is proposing to establish standards for Bureau of Indian Affairs (BIA) and tribal law enforcement programs receiving Federal funding or performing duties using a cross commission. These regulations will insure that law enforcement, crime prevention and recidivism reduction programs are implemented and maintained in a constitutionally sound manner and comply with the Indian Law Enforcement Reform Act of 1990, Pub. L. 101-379 (25 U.S.C. 2801 *et seq.*).

DATES: Comments must be received on or before September 3, 1996.

Comments will be available for inspection at the address below from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately July 19, 1996.

ADDRESSES: Mail comments to Theodore R. Quasula, Director of Law Enforcement Services, Bureau of Indian Affairs, 1849 C Street, NW, Mail Stop 4443, Washington, D.C., 20240; OR, hand deliver them to Room 4443 at the above address.

FOR FURTHER INFORMATION CONTACT: Theodore R. Quasula, Director of Law