

federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–46–AD.

Applicability: Model A300–600 and Model A310 series airplanes, on which Airbus Modification 10156 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that dust accumulation in the ducts does not reduce the effectiveness of the smoke detection system to detect smoke and,

consequently, lead to undetected smoke or fire in the lavatory of the airplane; accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, perform an operational and functional test to verify if the smoke detection system can detect smoke within 60 seconds, in accordance with Airbus All Operators Telex AOT 26–16, dated September 12, 1995.

(1) If smoke is detected within 60 seconds, no further action is required by this AD.

(2) If smoke is not detected within 60 seconds, prior to further flight, clean the installation/duct in accordance with the AOT. Prior to further flight after accomplishment of the cleaning, repeat the operational and functional test required by paragraph (a) of this AD.

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to Airbus Industrie Customer Services, Attention Engineering Support, AI/SE–E23, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 24, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19316 Filed 7–29–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 92

RIN 1076–AD15

Indian Tribal Justice Support

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to establish regulations as mandated by the Indian Tribal Justice Act. The Indian Tribal Justice Act requires the Secretary of the Interior to establish a base funding formula for the distribution of appropriations. The BIA will use this rule to determine the funding levels to be awarded to eligible Indian tribes for use in establishing or enhancing traditional or contemporary justice systems.

DATES: Comments must be received on or before September 30, 1996.

ADDRESSES: Mail comments to Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW, Mail Stop 4603–MIB, Washington, DC 20240; or, hand deliver them to Room 4603 at the above address. Comments will be available for inspection at this address from 9 a.m. to 4 p.m., Monday through Friday beginning approximately 2 weeks after publication of this document in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs at telephone (202) 208–3463.

SUPPLEMENTARY INFORMATION: The Indian Tribal Justice Act (ITJA) was enacted on December 3, 1993. Section 103 of the ITJA requires the BIA to develop a Base Support Funding Formula in consultation with Indian tribes, 25 U.S.C. 3613(c). The BIA will use the Base Support Funding Formula to distribute annual appropriations under Section 201 of the ITJA, 25 U.S.C. 3621.

A Base Funding Support Formula was drafted by Carey Vicenti, former Special Assistant to the Director of the Office of Tribal Services and presented to a group representing the geographical areas served by the BIA, tribal courts, traditional courts, tribal judicial conferences, Indian court clerks, Indian court judges, tribes, national support organizations, and other justice systems, September 21–23, 1994, in Reno, Nevada, at the National Judicial College. The purpose of the September 1994

meeting was to discuss the Base Support Funding Formula and the survey of tribal justice systems.

This same funding formula was presented at the BIA Office of Tribal Services' National Tribal Consultation in Albuquerque, New Mexico, June 20-22, 1995. Following an explanation of the formula by Judge William S. Christian, San Ildefonso Pueblo Tribal Court, lengthy discussion and modification, it was accepted by consultation participants. This publication includes changes made in response to recommendations received during and after the June 1995 National Tribal Consultation and the considerable work done by Judge Christian.

The proposed formula must be approved and published as a final rule before any appropriated base support funding may be made available to

Indian tribes. The structure of the formula balances the interests of smaller tribes and tribes with larger populations, larger land holdings, and greater demographic features.

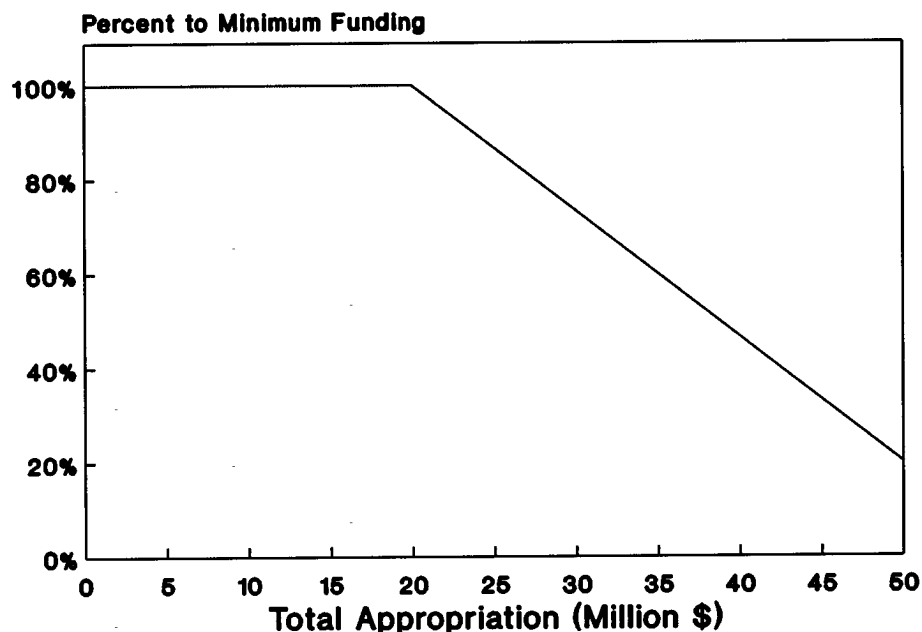
Base support funding is the sum of the Minimum Funding and Factor-based Funding, if any, available to a tribe. Minimum Funding provides a flexible mechanism to fund small tribes, without regard to characteristics such as isolation, type of justice systems or stage of development, caseload, or other demographic information (see § 92.16). Every tribe that applies for base support funding will receive Minimum Funding calculated according to § 92.17. In any year that the appropriation is \$20 million or less, the entire amount will be set aside for Minimum Funding. When appropriations are greater than \$20 million, the amount set aside for equal distribution among the requesting

tribes will decrease until it represents 20 percent of the full appropriation authorization of \$50 million, 25 U.S.C. 3621(b); this is calculated according to the algebraic formula in § 92.17 which provides a sliding proportion which changes as appropriations rise and fall. The proposed minimum funding formula for total appropriations greater than \$20 million that is described in § 92.17(b) was derived by the algebraic derivation of the line illustrated in the graph below. This line is defined as the straight line that passes through two points: 100 percent minimum funding when the total appropriated base support funding is \$20 million, and 20 percent minimum funding when the total appropriated base support funding is \$50 million. This information was used to derive the following formula:

$$Y = 1.533333 - 0.026667X$$

BILLING CODE 4310-02-P

Basis for the Minimum Funding Formula



BILLING CODE 4310-02-C

In this formula, Y is the proportion of the total appropriated base support funding that is allocated for minimum funding, and X is the total appropriated base support funding in millions of dollars. Y is calculated as 1.53333 minus the product of 0.026667 and X. When the total appropriated base support funding is greater than \$20 million, the allocation of minimum funding for each eligible tribe is calculated in § 92.17(b) by dividing the product of Y and X by the number of eligible tribes.

Tribes documenting the factors listed in § 92.18 will also receive factor based funding when the appropriation is greater than \$20 million. Under such circumstances, the factor-based points for each eligible tribe will be scored by BIA from the information which tribes submitted; the sum of factor-based points for all eligible tribes will be tallied. The remainder of the appropriation not required for Minimum Funding will be divided by the sum of the factor-based points to determine the value of each. Each tribe will then (when the appropriation is greater than \$20 million) receive total base support funding according to (1) the number of factor-based points it has scored multiplied by the value per point, plus (2) a share of the Minimum Funding as divided equally among all tribes.

Example A. Congress appropriates \$10 million for base support funding of

tribal justice systems. 250 tribes apply for Minimum Funding; 240 tribes also apply for Factor-based Funding, with a total number of factor based points of 12,000.

\$10 million is below the threshold level of \$20 million for Factor-based Funding, therefore, no Factor-based Funding would be available. The 250 tribes would each receive Minimum Funding in the amount of $1/250$ of \$10 million, or \$40,000.

Example B. Congress appropriates \$30 million for base support funding of tribal justice systems. 300 tribes apply for Minimum funding; 290 tribes also apply for Factor-based Funding, with a total number of factor-based points of 22,230.

The amount appropriated exceeds the threshold level of \$20 million for Factor-based Funding.

First, the amount of Minimum Funding is calculated using the formula, Y equals $1.533333 - 0.026667X$. Y is the proportion of the appropriation to be allocated for Minimum Funding and X is the total appropriation expressed in millions of dollars

$[1.533333 - 0.026667(30) = 0.73]$ In this and in the following examples, intermediate calculations are not rounded; however, displayed results are shown rounded to only two decimal places. Seventy-three percent (73%) of the appropriation is allocated for Minimum funding and each tribe would receive: $.73(\$30,000,000)/300 = \$73,332.30$.

The remainder of the appropriation is allocated to the 290 tribes which applied for Factor-based Funding according to their part of the cumulative 22,230 points: 100 percent minus 73 percent times \$30,000,000 divided by 22,230 points = \$359.88 per factor-based point.

A tribe requesting Base Support Funding or Minimum Funding would receive \$73,332.30. If the same tribe also submitted a request for Factor-based Funding and scored 82 factor points, the tribe would receive: $\$73,332.20 + 82(\$359.88) = \$102,842.09$.

It is useful to note the effects that this formula will have on the funding that tribes will receive if appropriations vary from year to year. It appears that as appropriation levels go from low to the fully authorized level, the funding of large tribes will generally rise; the funding levels of small tribes may not rise and may decrease. The results shown in the next example use the same basic situation as described in Example B. Also, while requesting tribe L scores 82 factor points, requesting tribe S scores 8 factor points. The appropriations are for several different levels as though they occurred in successive years.

Example C. 300 tribes apply for Minimum Funding; 290 tribes also apply for Factor-based Funding, with a total number of factor-based points of 22,230. Requesting tribe L is eligible for Minimum Funding and is scored for 82 factor-based points; requesting tribe S is

also eligible for Minimum Funding and is scored for 8 factor-based points.

FY appropriation (\$ million)	Minimum funding (percent)	Total funding to tribe L in dollars	Total Funding to tribe S in dollars
13	100	43,333	43,333
19	100	63,333	63,333
21	97	70,199	68,335
30	73	102,843	76,211
40	47	140,915	69,898
50	20	180,882	47,726

Base Support Funding will be made available to each federally recognized tribe that submits a timely application. Tribes must request Base Support Funding through their respective area offices within 20 days of the beginning of each Federal fiscal year. Tribes not making a timely request will be excluded from funding for that fiscal year. Postmarks will govern timeliness and hand-carried materials will not be accepted.

This formula addresses only the "Base Support Funding Formula" requirements of Section 103 of the ITJA, 25 U.S.C. 3613. This rule does not include the authorization and distribution of funds for the Office of Tribal Justice Support, survey of tribal judicial systems, or tribal judicial conferences (see 25 U.S.C. 3611, 3612, 3614 and 3621). Regulations will be prepared, if necessary, at a later date. The tribal self-governance, or "compacting," aspects of those Sections will be considered then.

The Department of the Interior (Department) requested that the Bureau of Indian Affairs solicit comments to the following:

(1) Should the threshold that triggers the use of factor-based funding be lowered to less than \$20 million? If so, should a percentage of annual appropriations (for example 30%) or a fixed amount (for example \$5 million) of annual appropriations be distributed equally among applicant tribes?

The Department is concerned that no funds have been appropriated for the Indian Tribal Justice Act and the Administration forecasts a decrease in future Department of the Interior budgets, not an increase. In light of budget projections which indicate it will be difficult to secure funding for new initiatives such as tribal justice support, the Department questions whether any appropriation would be large enough to reach the \$20 million threshold for allocating factor-based funding (see § 92.13(a)(2)). Funds would then be distributed equally among applicant tribes, without consideration

of factors such as population, case load, complexity of cases, etc.

(2) Should the formula be revised so that no tribe would receive a reduced amount as appropriations increase? Factor-based funding is a sliding proportion of each appropriation (see § 92.17). Under the current formula, smaller tribes will receive reduced funding when appropriations reach \$31 million (see examples B and C above). The Department recommends that tribes consider a formula that distributes a portion of each appropriation equally among all tribes and the remainder above a specific threshold be distributed based on factor-based points. For example: if the threshold is \$15 million and \$25 million is appropriated, \$15 million would be distributed equally and the remaining \$10 million would be distributed based on factor-based points.

Evaluation and Certification

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Public Participation Statement

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 12778

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This proposed rule is a significant regulatory action under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

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.). This proposed rule will determine the funding levels to be awarded to tribes for the purposes of creating new or enhancing and improving existing tribal court systems. In the event a tribe elects to receive funding, there are likely to be improvements in the exercise of civil jurisdiction by tribes. This improvement

may increase the rate of civil collections by private economic enterprises operating on or near Indian reservations. In addition, there may be an increase in the number of civil claims made against private economic enterprises.

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.

Paperwork Reduction Act of 1995

Sections 92.16 and 92.19 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of the Interior has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Indian tribes and tribal organizations are eligible for funds to develop, enhance, and continue the operation of tribal justice systems and traditional tribal justice systems. The information to be collected includes: Assurances to meet certain statutory requirements; a supporting tribal resolution; and specific information regarding the tribe and its tribal justice system.

All information is to be collected annually from each applicant. The annual reporting and recordkeeping burden for this collection of information is estimated to average 50 hours for each response for 554 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and review collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 27,700 hours.

Organizations and individuals desiring to submit comments on the information collection requirement

should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the U.S. Department of the Interior.

The Department considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to the OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Bureau of Indian Affairs on the proposed regulations.

Drafting Information

The primary author of this document was Carey N. Vicenti, the former Special Assistant to the Director of the Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 92

Indians—courts, Indians—law.

For the reasons given in the preamble, part 92 of Title 25, chapter I of the Code of Federal Regulations is proposed to be added as set forth below.

PART 92—INDIAN TRIBAL JUSTICE SUPPORT

Subpart A—Policy and Definitions

Sec.

92.1 Policy.

92.2 Definitions.

92.3 Information Collection.

92.4–92.9 [Reserved].

Subpart B—Base Support Funding Formula for Indian Tribal Justice Systems

92.10 What is the purpose of the base support funding formula for Indian tribal justice systems?

92.11 What is base support funding?

92.12 How may tribes use base supporting?

92.13 How is base support funding distributed?

92.14 Under what authority is base support funding distributed?

92.15 Who is eligible to receive base support funding?

92.16 How does a tribe, tribal organization or tribal consortium apply for minimum funding?

92.17 How is minimum funding calculated?

92.18 How does a tribe, tribal organization or tribal consortium apply for factor-based funding?

92.19 How is factor-based funding calculated?

92.20–92.100 [Reserved]

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 200, 3601, et seq.

Subpart A—Policy and Definitions

§ 92.1 Policy.

Tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments. The Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes to establish their own form of government, including tribal justice systems.

§ 92.2 Definitions.

Base support means the Federal funds appropriated under the Indian Tribal Justice Act that are available for Indian Tribal Justice Support under 25 CFR part 92.

Base support funding formula means the formula for the base support of a tribal justice system consisting of the sum of a Minimum Funding and Factor-based Funding.

Bureau means Bureau of Indian Affairs.

Closing date means the date advertised in the Federal Register as the final date for the submission of an Indian Tribal Justice Act (ITJA) funding request.

Courts of Indian Offenses means the courts established pursuant to 25 CFR part 11.

Factor-based Funding means a level of funding established on the weight of specified information and facts.

Indian country means all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and all Indian

allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian reservation means any Federally established Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or lands held by incorporated Native groups, regional corporations, or village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

Indian tribe means any Indian tribe, band, nation, pueblo or other organized group or community, including any Alaska Native entity, which administers justice under its inherent authority or the authority of the United States and which is recognized as eligible for the special programs and services provided by the United States to Indian tribes because of their status as Indians.

Minimum Funding means a level of funding established by a formula as the minimum entitlement of a requesting tribe.

Must is used in place of shall and indicates a mandatory or imperative act or requirement.

Office of Tribal Justice Support means the office established within the Bureau of Indian Affairs.

Secretary means the Secretary of the Interior.

Traditional justice system means the traditional judicial or dispute resolution practices of the tribe.

Tribal organization means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such a governing body or which is democratically elected by the adult members of the Indian community to be served by the organization and which includes the maximum participation of Indians in all phases of its activities provided that where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, each tribe must approve before a contract or grant awarded.

Tribal justice system means the entire judicial branch, and employees thereof, of an Indian tribe, including (but not limited to) traditional methods and forums for dispute resolution, lower courts, appellate courts (including intertribal appellate courts), alternative dispute resolution systems, and circuit rider systems, established by inherent tribal authority whether or not they constitute a court of record.

Tribal official, means an elected official or any other official designated

under tribal law to request ITJA funding.

§ 92.3 Information collection.

The information collection requirement contained in §§ 92.16 and 19.19 will be approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number _____. The information is collected when tribes apply for base support funding for Indian tribal justice systems.

§§ 92.4–92.9 [Reserved]

Subpart B—Base Support Funding Formula for Indian Tribal Justice Systems

§ 92.10 What is the purpose of the base support funding formula for Indian tribal justice systems?

The purpose of the formula described in this section is to provide an allocation mechanism for funding to Indian tribes and tribal organizations for the development, enhancement, and continuing operation of tribal justice systems.

§ 92.11 What is base support funding?

Base support funding consists of Federal funds appropriated under the Indian Tribal Justice Act for tribal justice systems, 25 U.S.C. 3613. The total available for Indian tribal justice systems is subdivided into minimum funding and factor-based funding.

§ 92.12 How may tribes use base support funding?

Base support funding may be used for:

- (a) The planning, development, enhancement and operation of tribal justice systems; for the employment of judicial personnel;
- (b) Training and continuing education for tribal judicial personnel;
- (c) The acquisition, development and maintenance of legal research capacities;
- (d) For the development, revision, and publication of tribal codes, rules of practice, rules of procedure, and standards of judicial performance and conduct;
- (e) The development and operation of records management systems; for the construction or renovation of facilities for tribal justice systems;
- (f) The cost of membership and travel expenses for participation in national and regional organizations of tribal justice systems and other professional organizations; and
- (g) The development and operation of innovative and culturally relevant programs, such as alternative dispute

resolution, victims services, probation and diversion programs, juvenile services, multidisciplinary investigations of child abuse, traditional tribal judicial practices, traditional tribal justice systems, and traditional tribal methods of dispute resolution.

§ 92.13 How is base support funding distributed?

(a) Funds will be distributed, subject to the availability of appropriations.

(1) Minimum funding is available to each Indian tribe. In any year that the appropriation is \$20 million or less, the entire amount will be set aside for minimum funding and distributed equally. As appropriations increase above \$20 million to the full authorization level of \$50 million, the amount set aside for minimum funding will decrease proportionately to no less than 20 percent or \$10 million.

(2) Factor-based funding is calculated when appropriations for base funding exceed \$20 million. After all requesting tribes have been allocated minimum funding, the remaining sum is then divided by the cumulative total of factor points and distributed to the tribes according to the factor points each has scored.

(b) Base support funding (the sum of minimum funding and factor-based funding) is not subject to tribal priority allocations.

(c) Tribes may supplement base support funding with funds received from any other source including the Bureau or any other Federal agency and are not subject to this part.

§ 92.14 Under what authority is base support funding distributed?

The Secretary may enter into agreements with Indian tribes, tribal organizations, or tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act, as amended (25 U.S.C. 450 *et seq.*) for the development, enhancement, and continuing operation of tribal justice systems and traditional tribal judicial practices by Indian tribal governments.

§ 92.15 Who is eligible to receive base support funding?

Federally recognized Indian tribes, tribal organizations, or tribal consortia that submit timely applications.

§ 92.16 How does a tribe, tribal organization or tribal consortium apply for minimum funding?

(a) Each tribe, including self-governance tribes, tribal organization or tribal consortium must submit a written request for minimum support funding to the Bureau official responsible for

negotiating its annual agreement or Indian Self-Determination and Education Assistance Act agreement. Requests must be received within 30 days of the beginning of each Federal fiscal year. Postmarks will govern timeliness and hand-carried materials will not be accepted. Tribes, tribal organizations or tribal consortia not making a timely request will be excluded from funding for that fiscal year.

(b) In addition to the contracting, grant and funding agreement requirements of the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450 *et seq.*, all requests for base support funding must include a current supporting tribal resolution(s), or such other written expression(s) as tribal laws or practice require.

§ 92.17 How is minimum funding calculated?

(a) In any fiscal year in which the total appropriated for base support funding is \$20 million or less, the total appropriation will be divided equally among the tribes submitting a timely request.

(b) In any fiscal year in which the total appropriated for base support funding is greater than \$20 million, the minimum funding for each tribe submitting a timely request will be determined by the following process.

(1) The proportion of the total appropriation to be allocated for minimum funding will be calculated by applying the following formula:

$$Y = 1.533333 - 0.026667X$$

Y is the proportion of the total appropriated base support funding that is allocated for minimum funding. X is the total appropriated base support funding in millions of dollars.

(2) The minimum funding for each tribe will then be calculated by applying the following formula:

$$M = YX + N$$

M is the minimum funding in millions of dollars for each tribe submitting a timely application. N is the total number of tribes submitting a timely application.

§ 92.18 How does a tribe, tribal organization or tribal consortium apply for factor-based funding?

To be eligible for factor-based funding, the applicant's request for funding must include the information required in §§ 92.16 and 92.19.

§ 92.19 How is factor-based funding calculated?

The Bureau official responsible for negotiating the annual Indian Self-Determination and Education

Assistance Act agreement (responsible Bureau official) will score each request for factor-based funding. The responsible Bureau official will submit documented scores for each requesting tribe to the Office of Tribal Justice Support. All documented scores will be totaled for one national sum. The national sum will be divided into the factor-based funding set aside to obtain a dollar-per-point figure. The responsible Bureau official will calculate the factor-based funding for each tribe making a timely request.

(a) Factors and the points assigned to each factor.

(1) Population to be served (up to 32 points).

(i) Tribal enrollment. The number of persons enrolled with the tribe:

For populations	Points
Up to 1,000	2
1,001 to 3,000	4
3,001 to 12,000	7
12,001 to 30,000	10
30,001 to 100,000	15
100,001 and higher	20

(ii) Reservation Population. The number of transients and persons residing within the geographic area served by the tribe at the close of the prior Federal fiscal year.

For populations	Points
Up to 3,000	2
3,001 to 12,000	4
12,001 to 30,000	5
30,001 to 50,000	8
50,001 to 100,000	10
100,001 and higher	12

(2) Territory (up to 17 Points).

(i) Number of acres classified as Indian Reservation.

Acreage	Points
Up to 1,000	1
1,000 to 10,000	3
10,000 to 100,000	5
100,001 and higher	6

(ii) Number of acres defined as Indian Country.

Acreage	Points
Up to 1,000	1
1,000 to 10,000	3
10,000 to 100,000	4
100,001 and higher	5

(iii) Geographic isolation. The distance in miles from the seat of tribal government to the nearest commercial and governmental center with a population of 50,000 or more.

Miles	Points
Up to 100	0
100 to 200	4
201 and higher	6

(4) Jurisdiction (up to 10 Points). The extent to which an Indian tribe exercises subject matter jurisdiction over various areas available to it under notions of Federal Indian and Tribal law, including but not limited to:

(i) Exercise of misdemeanor criminal jurisdiction over tribal members and non-member Indians (3 Points).

(ii) Exercise of jurisdiction beyond the exterior boundaries of the reservation, such as regulation of the conduct of tribal members, Indian Child Welfare Act (1 Point).

(iii) Exercise of jurisdiction to protect, conserve, and assure the quality, quantity, or access to natural resources (1 Point).

(iv) Exercise of jurisdiction over familial matters, such as marriage and dissolution, support and custody, child abuse and dependency, juvenile matters, guardianship and involuntary commitment of adults (2 Points).

(v) Exercise of jurisdiction over roadways, vehicles, and traffic within the exterior boundaries of the reservation (1 Point).

(vi) Exercise of appellate review of trial level decision-making (2 Points).

(5) Caseload (up to 10 Points). The number of cases heard in the preceding Federal fiscal year. The higher of the actual caseload or the presumptive caseload will be calculated.

Number of annual cases	Points
Up to 100	2
100 to 3,000	4
3,001 to 5,000	6
5,001 to 10,000	8
10,001 and higher	10

(i) *Actual Caseload*. The actual caseload shall consist of the number of cases heard and decided at the trial and appellate level, or brought before traditional justice systems.

(ii) *Presumptive Caseload*. In lieu of an actual caseload, a tribe may estimate a rate of 1 case for every 5 reservation residents.

(6) Complexity of Cases (up to 3 Points). Judicial review of, at least, 3 civil cases involving complex legal issues, as defined and documented by the tribe.

(7) Probation Services and Diversion Programs (up to 3 Points). The provision of probation services and diversion programs.

(8) Facilities (up to 5 Points). A tribe without an existing facility which is

fully or in large part dedicated to the court function will receive 5 points.

(9) Renovation (up to 4 Points). The cost of renovating an existing structure. More than 50% of the facility must be dedicated to judicial activities; the age of the facility will be calculated.

Age	Points
0-5 years	0
5-10 years	1
10-15 years	2
16 years or older	4

(10) Start-up costs (up to 10 Points). A tribe that has no tribal justice system will receive 10 points.

(11) Economy (up to 6 Points). Measures the percentage of the population to be served that is unemployed and/or below the applicable state poverty level.

Percentage	Points
0-8	0
8-15	4
16 or higher	6

(b) The tribe will receive the applicable point(s) for each demonstrated factor.

(c) After all requesting tribes have been allocated Minimum Funding, the remaining sum will be divided by the cumulative total of points. The resulting figure is the funding amount attributed to each point (dollar-per-point).

(d) Factor-based Funding is calculated by multiplying the tribe's score by the dollar-per-point.

§§ 92.20-92.100 [Reserved].

Dated: June 17, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL-095-FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois regulatory program (hereinafter the "Illinois program") under the Surface