

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 11****RIN 1076-AE33****Law and Order on Indian Reservations****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Final rule and request for comments.**SUMMARY:** This document adds the Santa Fe Indian School Property (Southwest Region, New Mexico) to the listing of Courts of Indian Offenses to establish a judicial forum for the administration of justice within the property.**DATES:** This rule is effective on July 8, 2002. Submit comments by September 3, 2002.**ADDRESSES:** Send comments on this rule to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS Room 4660-MIB, Washington, DC 20240.**FOR FURTHER INFORMATION CONTACT:** Iris A. Drew, Tribal Government Officer, Southwest Regional Office, Bureau of Indian Affairs, 615 First Street, NW., Albuquerque, New Mexico 87125-6467, at (505) 346-7592; or Ralph Gonzales, Branch of Judicial Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., MS 4660 Washington, DC 20240, at (202) 208-4401.**SUPPLEMENTARY INFORMATION:** The authority to issue this rule 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 authorizes appropriations for "Indian judges." See *Tillett v. Hodel*, 730 F.Supp. 381 (W.D. Okla. 1990), *aff'd* 931 F.2d 636 (10th Cir. 1991 *United States v. Clapox*, 13 Sawy. 349, 35 F. 575 (D.Ore. 1888). This rule is published in exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs.

On May 3, 2001, the Bureau of Indian Affairs published a temporary rule (66 FR 22118) amending its regulations contained in 25 CFR part 11 to add the Santa Fe Indian School (SFIS) Property (Southwest Region New Mexico) to the list of Courts of Indian Offenses. This amendment established a Court of Indian Offenses for a period not to exceed one year. The purpose of establishing a Court of Indian Offenses at SFIS was to protect the lives, persons, and property of people residing at and attending or visiting the school and hospital, until the nineteen Pueblos

establish a tribal court or otherwise request a CFR Court to exercise criminal jurisdiction. The SFIS property is held in trust by the Federal Government for the benefit of the nineteen Pueblos and a consensus is required to establish a tribal court that will represent all the Pueblos. The nineteen Pueblos could not reach a consensus within this initial time frame even though meetings were held with the Pueblos in an attempt to identify a sponsoring Pueblo to assume the lead in establishing a tribal court at SFIS and develop appropriate criminal codes. It does not appear likely that in the immediate future the nineteen Pueblos will reach this consensus; therefore, it is necessary for the amendment to part 11 that places the SFIS on the list of CFR Courts to become a permanent listing. The jurisdiction of this CFR Court will remain the same as published in the **Federal Register** on May 3, 2001 at 66 FR 22118. The Pueblos, however, will work in conjunction with the Southwest Regional Office to establish a tribal court to exercise jurisdiction at SFIS at which time the Pueblos may request the Secretary to remove the SFIS as a CFR Court.

**Determination To Publish a Direct Final Rule Effective Immediately**

In accordance with the requirements of the Administrative Procedure Act (5 U.S.C. 553(B)), we have determined that publishing a proposed rule would be impractical because of the potential harm that could result from the lack of a court with jurisdiction over the Santa Fe Indian School and Hospital. We are therefore publishing this change as a final rule with request for comments.

BIA has determined it appropriate to make the rule effective immediately by waiving the requirement of publication 30 days in advance of the effective date found at 5 U.S.C. 553(d). This is because of the critical need to expedite establishment of this court to fill the void in law enforcement at the Santa Fe Indian School and Indian Hospital, and the imminent increase in visitors to the grounds in question. It is in the public interest and in the interest of the Pueblos not to delay implementation of this amendment. Accordingly, this final rule is effective immediately.

We invite comments on any aspect of this rule and we will revise the rule if comments warrant. Send comments on this rule to the address in the **ADDRESSES** section.

**Regulatory Planning and Review (Executive Order 12866)**

In accordance with the criteria in Executive Order 12866, this rule is not

a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The establishment of this Court of Indian Offenses is estimated to cost less than \$200,000 annually to operate. The cost associated with the operation of this Court will be shared among the Office of Indian Education, the Bureau of Indian Affairs, and the Indian Health Service.

(b) This rule will not create inconsistencies with other agencies' actions. The Department of the Interior through the Bureau of Indian Affairs has the sole responsibility and authority to establish Courts of Indian Offenses on Indian reservations.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The establishment of this Court of Indian Offenses will not affect any program rights of the nineteen Pueblos. Its primary function will be to administer justice for misdemeanor offenses within the Santa Fe Indian School grounds. The court's jurisdiction will be limited to criminal offense provided in 25 CFR part 11.

(d) This rule will not raise novel legal or policy issues. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States v. Clapox*, 35 F. 575 (D.Ore. 1888).

**Regulatory Flexibility Act**

The Department of the Interior, BIA, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required.

Accordingly, a Small Entity Compliance Guide is not required. The amendment to 25 CFR part 11.100(a) will establish a Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical

area at Santa Fe, New Mexico. Accordingly, there will be no impact on any small entities in New Mexico.

#### **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) Does not have an annual effect on the economy of \$100 million or more. The establishment of this Court of Indian Offenses is estimated to cost less than \$200,000 annually to operate. The cost associated with the operation of this Court will be shared among the Office of Indian Education, the Bureau of Indian Affairs, and the Indian Health Service.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This is a Court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Santa Fe Indian School, New Mexico and will not have any cost or price impact on any other entities in the geographical region.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This is a Court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Santa Fe Indian School, New Mexico, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### **Unfunded Mandates Reform Act**

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The establishment of this Court of Indian Offenses will not have jurisdiction to affect any rights of the small governments. Its primary function will be to administer justice for misdemeanor offenses within the Santa Fe Indian School grounds. Its jurisdiction will be limited to criminal offense provided in 25 CFR part 11.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year; *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

#### **Takings Implication Assessment (Executive Order 12630)**

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The amendment to 25 CFR 11.100(a) will establish a Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area at Santa Fe, New Mexico. Accordingly, there will be no jurisdictional basis for to adversely affect any property interest because the court's jurisdiction is solely personal jurisdiction over Indians.

#### **Federalism (Executive Order 13132)**

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States v. Clapox*, 35 F. 575 (D.Ore. 1888).

#### **Civil Justice Reform (Executive Order 12988)**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States v. Clapox*, 35 F. 575 (D.Ore. 1888). Part 11 also requires the establishment of an appeals court; hence the judicial system defined in Executive Order 12988 will not normally be involved in this judicial process.

#### **Paperwork Reduction Act**

This regulation does not require an information collection under the Paperwork Reduction Act. The information collection is not covered by an existing OMB approval. An OMB

form 83-I has not been prepared and has not been approved by the Office of Policy Analysis. No information is being collected as a result of this Court exercising its limited criminal misdemeanor jurisdiction over Indians within the exterior boundaries of the Santa Fe Indian School, New Mexico.

#### **National Environmental Policy Act**

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The establishment of this Court of Indian Offenses conveys personal jurisdiction over the criminal misdemeanor actions of Indians with the exterior boundaries of the Santa Fe Indian School and does not have any impact of the environment.

#### **Government-to-Government Relationship With Tribes**

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. The amendment to 25 CFR 11.100(a) does not apply to any of the 562 federally recognized tribes, except the nineteen Pueblos in New Mexico that have requested the establishment of the provisional Court of Indian Offenses until such time as they establish a tribal court to provide for a law and order code and judicial system to deal with law and order on the trust land at Santa Fe Indian School. The Department of the Interior, in establishing this provisional court, is fulfilling its trust responsibility and complying with the unique government-to-government relationship that exists between the Federal Government and Indian tribes.

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

Courts, Indians-Law, Law enforcement, Penalties.

For the reasons stated in the preamble, we are amending part 11, chapter I of title 25 of the Code of Federal Regulations, as set forth below.

#### **PART 11—LAW AND ORDER ON INDIAN RESERVATIONS**

1. The authority citation for part 11 continues to read as follows:

**Authority:** R.S. 463; 25 U.S.C. 2, 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

2. Section 11.100 is amended by adding new paragraph (a)(14) to read as follows:

**§ 11.100 Listing of Courts of Indian Offenses.**

(a) \* \* \*

(14) Sante Fe Indian School Property, including the Santa Fe Indian Health Hospital (land in trust for the 19 Pueblos of New Mexico).

\* \* \* \* \*

Dated: June 24, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

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**BILLING CODE 4310-4J-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 170

**RIN 1076-AE28**

#### Distribution of Fiscal Year 2002 Indian Reservation Roads Funds

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

**ACTION:** Final rule.

**SUMMARY:** We are issuing a final rule requiring that we distribute the remaining 25 percent of fiscal year 2002 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. We are using the Federal Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting states. Up to \$35,000 per tribe is available under this distribution until August 15, 2002, for administrative capacity building and other eligible transportation activities upon receipt, review, and approval of self-determination contracts and self-governance agreements, where applicable, and receipt of tribal requests by direct services tribes for BIA regions to perform these functions for them.

**EFFECTIVE DATE:** July 8, 2002 through September 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS-4058-MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202-208-4359 (phone) or 202-208-4696 (fax).

**SUPPLEMENTARY INFORMATION:**

### Background

*Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (FHWA) Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA-21) Negotiated Rulemaking Process?*

The background information on the IRR program, the relative need formula, the FHWA Price Trends Report, and the TEA-21 Negotiated Rulemaking process is detailed in the **Federal Register** notice dated February 15, 2000 (65 FR 7431).

*Why Are You Publishing This Final Rule?*

We are publishing this final rule only for the distribution of the remaining 25 percent of fiscal year 2002 IRR funds. This rule sets no precedent for the final rule to be published as required by Section 1115 of TEA-21. On January 10, 2002, we published a temporary rule distributing 75 percent of fiscal year 2002 IRR funds (67 FR 1290).

*Where Can I Find Information on the Distribution of 75 Percent of Fiscal Year 2002 IRR Funds?*

You can find this information in the **Federal Register** notice dated January 10, 2002 (67 FR 1290).

*What Comments Did You Receive on the Temporary Rule for Distribution of 25 Percent of Fiscal Year 2002 IRR Program Funds?*

In the 30-day comment period after publication of the temporary rule distributing 75 percent of fiscal year 2002 IRR program funds, we received comments from 2 commenters.

**Comment:** Two commenters disagreed with reserving \$19.53 million for administrative capacity building. The commenters stated that providing such funds decreased the amount of IRR Program funds they would receive and that 2 percent planning funds already available were adequate for administrative capacity building.

**Response:** The tribal caucus recommendation was to reserve funds for administrative capacity building for fiscal year 2002 in the same manner as fiscal year 2001. The Assistant Secretary—Indian Affairs considered this tribal caucus recommendation to allow all tribes to participate in the IRR program, as an acceptable funding method for fiscal year 2001 and again proposed it only for fiscal year 2002 in the temporary rule. This rule sets no precedent for the final rule to be

published as required by Section 1115 of TEA-21.

*Does This Rule Include the Reserved Funds for Administrative Capacity Building?*

Yes. The remaining 25 percent of fiscal year IRR program funds distributed under this rule includes the \$19.53 million reserved for administrative capacity building and other eligible transportation activities. These funds will be distributed until August 15, 2002, based on approved self-determination contracts or applicable self-governance agreements or requests by direct services tribes to the appropriate BIA region for BIA to perform administrative capacity building for them. After August 15, 2002, any undistributed funds reserved for administrative capacity building will be distributed to the appropriate BIA regions using the relative need formula.

*How Will the Secretary Distribute the Remaining 25 Percent of Fiscal Year 2002 IRR Program Funds?*

Upon publication of this rule, the Secretary will distribute the remaining 25 percent (approximately \$61.9 million) of fiscal year 2002 IRR program funds based on the current relative need formula used in fiscal years 2000, 2001 and in the first distribution in fiscal year 2002. From this 25 percent the Secretary is reserving \$19.53 million to distribute for administrative capacity building by the process described in the January 10, 2002, temporary rule. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process.

### Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this rule is not an economically significant regulatory action because it will not have an annual effect of more than \$100 million on the economy. The total amount available for distribution of fiscal year 2002 IRR program funds is approximately \$226 million and we are distributing approximately \$61.9 million under this rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2002 IRR program funds does not require tribal governments and tribal