

(2) 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 person intends to use the solvent in violation of this section.

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

(c) As used in this section, "psychotoxic chemical solvent" means any glue, gasoline, paint, hair spray, Lysol, or other substance containing one or more of the following chemical compounds:

- (1) Acetone and acetate;
- (2) Benzene;
- (3) Butyl-alcohol;
- (4) Methyl ethyl;
- (6) Peptone;
- (7) Pentachlorophenol;
- (8) Petroleum ether; or

(9) Any other chemical substance the inhalation of whose fumes or vapors can cause intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system.

(d) The statement listing the contents of a substance packaged in a container by the manufacturer or producer thereof is rebuttable proof of the contents of the substance without further expert testimony if it reasonably appears that the substance in the container is the same substance placed therein by the manufacturer or producer.

(e) Abuse of psychotoxic chemical solvents, as defined in this section, is punishable as a petty misdemeanor, and the court may order any person using psychotoxic chemical solvents as described in paragraph (a) of this section to be committed to a facility for treatment for up to 6 months.

(f) Psychotoxic chemical solvents kept or used in violation of this section are declared contraband. Upon proof of a violation, these solvents must be forfeited to the Federal government by order of the court, following public notice and an opportunity for any person claiming an interest in the solvents to be heard.

[73 FR 39861, July 11, 2008]

#### § 11.452 Possession of a controlled substance.

(a) It is unlawful for a person to knowingly or intentionally possess any controlled substance listed in 21 CFR Part 1308, as amended, unless:

(1) The Controlled Substances Act or Drug Enforcement Agency regulations specifically authorizes possession of the substance;

(2) The substance or preparation is excluded or exempted by 21 CFR 1308.21 through 1308.35, as amended; or

(3) The provisions of 42 U.S.C. 1996a (regarding traditional Indian religious use of peyote) apply.

(b) Violations of paragraph (a) of this section are punishable as a misdemeanor.

(c) Any controlled substance involved in violation of this section is declared to be contraband. Upon proof of a violation of this section, the controlled substance must be forfeited to the Federal Government by order of the court, after public notice and an opportunity for any person claiming an interest in the substance to be heard.

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

[73 FR 39861, July 11, 2008]

#### § 11.453 Prostitution or solicitation.

A person who commits prostitution or solicitation 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.

[73 FR 39861, July 11, 2008]

#### § 11.454 Domestic violence.

(a) A person who commits domestic violence by inflicting physical harm, bodily injury, or sexual assault, or inflicting the fear of imminent physical harm, bodily injury, or sexual assault on a family member, is guilty of a misdemeanor.

## § 11.500

(b) For purposes of this section, a family member is any of the following:

- (1) A spouse;
- (2) A former spouse;
- (3) A person related by blood;
- (4) A person related by existing or prior marriage;
- (5) A person who resides or resided with the defendant;
- (6) A person with whom the defendant has a child in common; or
- (7) A person with whom the defendant is or was in a dating or intimate relationship.

[73 FR 39861, July 11, 2008]

### Subpart E—Civil Actions

#### § 11.500 Law applicable to civil actions.

(a) In all civil cases, the Magistrate of a Court of Indian Offenses shall have discretion to apply:

- (1) Any laws of the United States that may be applicable;
- (2) Any authorized regulations contained in the Code of Federal Regulations; and
- (3) Any laws or customs of the tribe occupying the area of Indian country over which the court has jurisdiction that are not prohibited by Federal laws.

(b) The delineation in paragraph (a) of this section does not establish a hierarchy relative to the applicability of specific law in specific cases.

(c) Where any doubt arises as to the customs of the tribe, the court may request the advice of counselors familiar with those customs.

(d) Any matters that are not covered by the laws or customs of the tribe, or by applicable Federal laws and regulations, may be decided by the Court of Indian Offenses according to the laws of the State in which the matter in dispute lies.

[73 FR 39862, July 11, 2008]

#### § 11.501 Judgments in civil actions.

(a) In all civil cases, judgment shall consist of an order of the court awarding damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party, includ-

## 25 CFR Ch. I (4–1–10 Edition)

ing injunctive relief and declaratory judgments.

(b) Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he or she has suffered.

(c) Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the tribe.

(d) Where the injury was inflicted as a result of accident, or where both the complainant and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he or she has suffered.

(e) No judgment shall be given on any suit unless the defendant has actually received notice of such suit and ample opportunity to appear in court in his or her defense.

#### § 11.502 Costs in civil actions.

(a) The court may assess the accruing costs of the case against the party or parties against whom judgment is given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible and the fees of jurors in those cases where a jury trial is had, and any further incidental expenses connected with the procedure before the court as the court may direct.

(b) In all civil suits the complainant may be required to deposit with the clerk of the court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

#### § 11.503 Applicable civil procedure.

The procedure to be followed in civil cases shall be the Federal Rules of Civil Procedure applicable to United States district courts, except insofar as such procedures are superseded by order of the Court of Indian Offenses or by the existence of inconsistent tribal rules of procedure.

#### § 11.504 Applicable rules of evidence.

Courts of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are