

Rules and Regulations

Federal Register

Vol. 66, No. 181

Tuesday, September 18, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076-AE 19

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Temporary final rule and request for comments.

SUMMARY: The Bureau of Indian Affairs (BIA) is amending its regulations to add the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony (Western Region, Nevada) to the listing of Courts of Indian Offenses. This amendment will establish a Court of Indian Offenses for a period not to exceed one year. It is necessary to establish a Court of Indian Offenses with jurisdiction over the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony in order to protect lives and property.

DATES: This rule is effective on September 18, 2001 and expires on September 18, 2002. Comments must be received on or before November 19, 2001.

ADDRESSES: Send comments on this rule to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street NW., MS 4660, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sharlot Johnson, Tribal Government Officer, Western Regional Office, Bureau of Indian Affairs, 400 N. Fifth Street, Phoenix, Arizona, 85004, at (602) 379-6786 [sharlotjohnson@bia.gov]; 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 [ralphgonzales@bia.gov].

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 Sawyer, 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. The Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony's reservation is held by the Federal Government in trust for the Tribe's benefit which establishes federal Indian criminal jurisdiction over the Paiute-Shoshone Tribe of the Fallon Reservation and Colony to wit:

In general—The land described in this subsection is the tract of land, located in the city and county of Churchill, Nevada, upon which the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony is located and more particularly described as all that certain real property, the SE $\frac{1}{4}$ of Section 8, the S $\frac{1}{2}$ of Sections 9 & 10 and Sections 15, 16, 17, 20, 21, & 22 Township 19 North, Range 30 East, MDB&M, Nevada containing 4,640 acres in accordance with Department Order dated April 20, 1907. N $\frac{1}{2}$ Section 9, N $\frac{1}{2}$ of Section 10, SE $\frac{1}{4}$ Section 3 & NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20 Township 19 North, Range 30 East, MDB&M, Nevada containing 840 acres more or less pursuant to Department Order dated November 21, 1917. Pursuant to PL 95-337 dated August 4, 1978, the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ & SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, NW $\frac{1}{4}$ Section 2, N $\frac{1}{2}$ & SW $\frac{1}{4}$ Section 3, all section 4, N $\frac{1}{2}$ & SW $\frac{1}{4}$ Section 8, S $\frac{1}{2}$ Section 33, S $\frac{1}{2}$ Section 34, W $\frac{1}{2}$ SE $\frac{1}{4}$ & SW $\frac{1}{4}$ Section 35, Township 19 North, Range 30 East, MDB&M, Nevada, containing 2,700 acres more or less. SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, Township 19 North, Range 29 East, MDB&M, Nevada pursuant to Department Order dated August 13, 1917, containing 40 acres more or less. S12NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, Township 19 North, Range 29 East, MDB&M, Nevada withdrawn on March 4, 1958 in aid of legislation, containing 20 acres more or less.

The following described property (37.38 acres) was purchased by the Fallon Tribe pursuant to Public Law 101-618 and taken into trust on October 29, 1997, by the Phoenix Area Director:

Commencing at the south quarter corner of Section 30, Township 19 North, Range 29 East, MDB&M, thence North 02°09' West a distance of 95.1 feet to the East boundary of the Southern Pacific right-of-way spur track; thence North 00°19' West along said East Boundary a distance of 209 feet to the Northwest corner of a parcel described in deed to Standard Oil Company as found

recorded in Book 12 of Deeds, page 193 of Churchill County Records, Fallon, Nevada; thence North 00°19' West along said railroad boundary a distance of 416 feet to the beginning of a curve on the East boundary; thence Northeasterly along said curve concave to the Southeast a distance of 992 feet to the South boundary of the main tract right-of-way; thence East along the South boundary of said Southern Pacific Railroad right-of-way a distance of 2113 feet to the East line of said Section 30; thence South along the East line of said Section 30 a distance of 1257 feet to the North Boundary of U.S. Highway #50; thence West along the North boundary of said Highway a distance of 2521 feet to the Southeast corner of a parcel described in deed to above said Standard Oil Company; thence North along East boundary of said parcel a distance of 264 feet to the Northeast corner of said parcel; then West a distance of 165 feet to the true point of beginning. Excepting therefrom the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 30, Township 19 North, Range 29 East, MDB&M.

A provisional Court of Indian Offenses must be established for the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony to protect the lives, persons, and property of people residing at or visiting the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony, until the Secretary determines that enforcement of the criminal offenses contained in Part 11 of the Code of Federal Regulations is no longer justified. This court will function for a period not to exceed one year. Judges of the Court of Indian Offenses will be authorized to exercise all the authority provided under 25 CFR part 11 and the Indian Law Enforcement Reform Act, 25 U.S.C. 2803(2) (1998). This final rule is intended to establish a provisional Court of Indian Offenses.

Determination To Issue a Final Rule

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply because of the good cause exception under 5 U.S.C. 553(b)(3)(B), which allows the agency to suspend the notice and public procedure when the agency finds for good cause that those requirements are impractical, unnecessary and contrary to the public interest. This amendment will establish a provisional Court of Indian Offenses for the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony. If this provisional court is not established, there is a potential risk to public safety

and a further risk of exposure of the Federal Government to a lawsuit for failure to execute diligently its trust responsibility and provide adequate judicial services for law enforcement on trust land. Delaying this rule to solicit public comment through the proposed rulemaking process would thus be contrary to the public interest.

Determination To Make Rule Effective Immediately

We are making the rule effective on the date of publication in the **Federal Register** as allowed under the good cause exception in 5 U.S.C. 553(d)(3). Delaying the effective date of this rule is unnecessary and contrary to the public interest because there is a critical need to expedite establishment of this Court of Indian Offenses. The Bureau of Indian Affairs Law Enforcement Services has reassumed the Law Enforcement Program from the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony, and a CFR Court is necessary as a judicial forum within the reservation for the adjudication of criminal cases. For these reasons, an immediate effective date is in the public interest and in the interest of the Tribe. Accordingly, this amendment is issued as a final rule 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 with the Bureau of Indian Affairs.

(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 Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony. Its primary function will be to administer justice for misdemeanor offenses within the Tribe's reservation and colony. The court's jurisdiction will be exercised as 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 11.100(a) will establish a Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area at Fallon, Nevada. Accordingly, there will be no impact on any small entities.

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 with the Bureau of Indian Affairs.

(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 Secretarial court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation

and Colony 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 United States-based enterprises to compete with foreign-based enterprises. This is a Secretarial court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony, Fallon, Nevada, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of United States-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 Fallon Indian Reservation and Colony. Its jurisdiction will be limited to criminal offenses 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, this rule does not have significant takings implications. A takings implication assessment 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 Fallon, Nevada on a temporary basis. Accordingly, there will be no jurisdictional basis for the CFR Court to affect adversely any property interest because the court's jurisdiction is limited to personal jurisdiction over Indians.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this 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 this 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 does not involve 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 the CFR court exercising its limited criminal misdemeanor jurisdiction over Indians within the exterior boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony.

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 on a temporary basis conveys personal jurisdiction over the criminal misdemeanor actions of

Indians within the exterior boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony and does not have any impact on the environment.

Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," 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 558 federally recognized tribes, except the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony. The provisional Court of Indian Offenses is established until the Secretary determines that enforcement of the criminal offenses contained in Part 11 of the Code of Federal Regulations is no longer justified. 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. This amendment is effective from September 18, 2001 to September 18, 2002.

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)(15) to read as follows:

§ 11.100 Listing of Courts of Indian Offenses.

(a) * * *

(15) Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony (land in trust for the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony).

* * * * *

Dated: September 5, 2001.
Neal A. McCaleb,
Assistant Secretary—Indian Affairs.
 [FR Doc. 01-23198 Filed 9-17-01; 8:45 am]
 BILLING CODE 4310-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 103-0044; FRL-7051-4]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on May 11, 2001 and concern affirmative defenses for excess emissions from sources regulated under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on October 18, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

- Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.
- Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.
- Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, Permits Office (AIR-3), U.S. Environmental Protection Agency, Region IX, (415) 744-1252.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On May 11, 2001 (66 FR 24074), EPA proposed to approve the following rules into the Arizona SIP: R18-2-310, Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown; and R18-2-310.01, Reporting Requirements.