

(8) *State* refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) *United States* when used in a geographical sense means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

#### §404.1020 [Amended]

■ 7. In section 404.1020, paragraph (a)(3) is amended by adding “the Commonwealth of the Northern Mariana Islands,” after “Guam,”.

■ 8. Section 404.1022 is amended by revising the section heading, and paragraphs (a) and (c) to read as follows:

#### § 404.1022 American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands.

(a) *Work in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands.* Work in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands for a private employer is covered as employment the same as in the 50 States. Work done by a resident of the Republic of the Philippines working in Guam on a temporary basis as a nonimmigrant alien admitted to Guam under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act is excluded from coverage regardless of the employer.

\* \* \* \* \*

(c) *Work for Guam, the Commonwealth of the Northern Mariana Islands, or a political subdivision or wholly owned instrumentality of Guam or the Commonwealth of the Northern Mariana Islands.* Work as an officer or employee (including a member of the legislature) of the government of Guam, or the Commonwealth of the Northern Mariana Islands, their political subdivisions, or any wholly owned instrumentality of any one or more of these, is excluded from coverage as employment. However, the exclusion does not apply to employees classified as temporary or intermittent unless the work—

(1) Covered by a retirement system established by a law of Guam or the Commonwealth of the Northern Mariana Islands;

(2) Done by an elected official;

(3) Done by a member of the legislature; or

(4) Done in a hospital or penal institution by a patient or inmate of the hospital or penal institution.

\* \* \* \* \*

■ 9. Section 404.1071 is amended by revising paragraph (a) to read as follows:

#### § 404.1071 Ministers and members of religious orders.

(a) If you are a duly ordained, commissioned, or licensed minister of a church, or a member of a religious order who has not taken a vow of poverty, the services you perform in the exercise of your ministry or in the exercise of duties required by the order (§ 404.1023(c) and (e)) are a trade or business unless you filed for and were granted an exemption from coverage under section 1402(e) of the Code, and you did not revoke such exemption in accordance with the Social Security Amendments of 1977, section 1704(b) of the Tax Reform Act of 1986, or section 403 of the Ticket to Work and Work Incentives Improvement Act of 1999. An exemption cannot be granted if you filed a valid waiver certificate under the provisions of section 1402(e) that apply to taxable years ending before 1968.

\* \* \* \* \*

#### § 404.1093 [Amended]

■ 10. Section 404.1093 is amended by adding “the Commonwealth of the Northern Mariana Islands,” after “Guam,”.

#### § 404.1096 [Amended]

■ 11. Section 404.1096 is amended in paragraph (d) by adding “, the Commonwealth of the Northern Mariana Islands,” after “Guam”.

#### Subpart M—[Amended]

■ 12. The authority citation for subpart M of part 404 is revised to read as follows:

**Authority:** Secs. 205, 210, 218, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 410, 418, and 902(a)(5)); sec. 12110, Pub. L. 99–272, 100 Stat. 287 (42 U.S.C. 418 note); sec. 9002, Pub. L. 99–509, 100 Stat. 1970.

#### § 404.1200 [Amended]

■ 13. Section 404.1200 is amended in paragraph (b) by adding “the Commonwealth of the Northern Mariana Islands,” after “Guam,”.

#### § 404.1202 [Amended]

■ 14. In section 404.1202(b), the definition of “State” is amended by adding “, the Commonwealth of the Northern Mariana Islands,” after “Guam”.

[FR Doc. 04–19118 Filed 8–19–04; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 11

RIN 1076–AE53

#### Law and Order on Indian Reservations

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

**ACTION:** Final rule and request for comments.

**SUMMARY:** This document adds the Albuquerque Indian School property (Southwest Region, New Mexico) to the existing Santa Fe Indian School property listing of Courts of Indian Offenses. This will establish a judicial forum for the administration of justice within the property.

**DATES:** This rule is effective on August 20, 2004. Comments must be received on or before October 19, 2004.

**ADDRESSES:** You may submit comments, identified by the number 1076-AE53 by any of the following methods:

- *Federal rulemaking portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 208–5113.

- *Mail:* Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS 320–SIB, Washington, DC 20240.

- *Hand delivery:* Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS 320–SIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Iris A. Drew, Tribal Government Officer, Southwest Regional Office, Bureau of Indian Affairs, P.O. Box 26567, 1001 Indian School Road NW., Albuquerque, New Mexico 87125–6567, at (505) 563–3530; or Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue NW., MS 320–SIB, Washington, DC 20240, at (202) 513–7629.

**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 *Tillet v. Hodel*, 730 F. Supp., 381 (W.D. Okla. 1990), *aff’d* 931 F.2d 636 (10th Cir. 1991), *United States v. Clapox*, 35 F. 575 (D. Ore. 1888). This rule is published in the exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.1.

On January 29, 1993, the United States of America (“Grantor”), by the

Secretary of the Interior acting pursuant to 25 U.S.C. 2202 and 465 and the regulation at 25 CFR 151.3(a)(2) and (3), for the purpose of placing the real property described below (the "property") in trust for the equal benefit of the Indian Pueblos of New Mexico (the "Pueblos") as tenants in common, and in consideration of the reconveyance of the property by the Pueblos to the Grantor, and other valuable consideration, conveyed, transferred and quitclaim to itself in trust jointly for the equal benefit of the following Pueblos:

Pueblo of Acoma  
 Pueblo of Cochiti  
 Pueblo of Isleta  
 Pueblo of Jemez  
 Pueblo of Laguna  
 Pueblo of Nambe  
 Pueblo of San Felipe  
 Pueblo of Sandia  
 Pueblo of San Ildefonso  
 Pueblo of Santa Ana  
 Pueblo of San Juan  
 Pueblo of Santa Clara  
 Pueblo of Santo Domingo  
 Pueblo of Taos  
 Pueblo of Tesuque  
 Pueblo of Zia  
 Pueblo of Zuni

All of its right, title and interest in and to the following real estate: A tract of land containing 44.201 acres, situated within the east half (E $\frac{1}{2}$ ), Section 7 and the west half (W $\frac{1}{2}$ ), Section 8, T.10 N., R.3 E., New Mexico Principal Meridian, Bernalillo County, State of New Mexico, subject to all existing reservations and recorded at the Land Titles and Records Office, Albuquerque, New Mexico, as Document No. 050-001-93.

On May 24, 1994, 1.9592 acres was transferred to the 19 Pueblos and includes the tract of land being the original Old Indian School boundary, that portion of the Indian Health Service situation within the east half (E $\frac{1}{2}$ ), Section 7, T.10 N., R.3 E., New Mexico Principal Meridian, Bernalillo County, New Mexico, subject to all existing reservations and recorded at the Land Titles and Records Office, Albuquerque, New Mexico, as Document No. 050-001-97.

Trust status of the Albuquerque Indian School property has been in litigation since 1993. The December 2002 Federal district court decision in *Neighbors for Rational Development v. Gale Norton, Secretary of the Interior*, CIV. 99-0059 (D.N.M.), upheld the validity of the trust transfer to the Pueblos. Pursuant to the Master Plan for Development and Environmental review based thereon, the Albuquerque Indian School property will be used primarily

for office buildings and economic development activities for the 19 Pueblos. The Joint Powers Agreement implemented between the city of Albuquerque and the 19 Pueblos provides generally for city services on the property and clarifies jurisdiction for non-Indians. The jurisdiction of this court shall provide for protection of lives, persons, and property of people working on the property, economic development projects and visitors to the Albuquerque Indian School location until the local Pueblos establish a tribal court of their own.

Both the Albuquerque Indian School and the Santa Fe Indian School properties are held in trust by the Federal Government for the benefit of the 19 Pueblos and a consensus is required to establish a tribal court that will represent all the Pueblos. The 19 Pueblos have not been able to 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 for the Albuquerque Indian School property. It does not appear likely that in the immediate future the 19 Pueblos will reach this consensus; therefore, it is necessary for the amendment to part 11 that places the Albuquerque Indian School property on the list of CFR Courts, as an addition to the Santa Fe Indian School property, to become a permanent listing. The jurisdiction of this CFR Court will remain the same as that published in the **Federal Register** on July 2, 2002, at 67 FR 44353, for the Santa Fe Indian School property, including the Indian Health Hospital, and now with the addition of the Albuquerque Indian School property. The Pueblos, however, will work in conjunction with the Southwest Regional Office to establish a tribal court to exercise jurisdiction at the Santa Fe Indian School property and the Albuquerque Indian School property at which time the Pueblos may request the Secretary to remove the Santa Fe Indian School and Albuquerque Indian School as a CFR Court.

Judges of the Court of Indian Offenses shall be authorized to exercise all authority provided under 25 CFR part 11, including: Subpart D—Criminal Offenses; Subpart H—Appellate Proceedings; Subpart J—Juvenile Offender Procedure; issuance of arrest and search warrants pursuant to 25 CFR 11.302 and 11.305 and section 4(2)(A) of the Indian Law Enforcement Reform Act, Public Law 101-379, 104 Stat. 473 (August 18, 1990). Officials of the Bureau of Indian Affairs have already set up the permanent Court of Indian

Offenses pursuant to 25 CFR 11.100(a) for the Southwest Region to address a similar law enforcement need at the Santa Fe Indian School property. This final rule will not authorize judges to exercise the following authority under 25 CFR part 11: Subpart E—Civil Actions; Subpart F—Domestic Relations; Subpart G—Probate Proceedings; Subpart I—Children's Court; and Subpart K—Minor-in-Need-of-Care Procedure.

The establishment of this court is based upon the need for a code to be established for law enforcement staff operating on the Albuquerque Indian School property.

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

In accordance with the requirement 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 Albuquerque Indian School property. We are therefore publishing this change as a final rule with request for comments.

The Bureau of Indian Affairs 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 Albuquerque Indian School property, and the imminent increase in visitors to the grounds in question. It is in the public interest and 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 property to an existing 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 born by the Bureau of Indian Affairs and the Pueblos.

(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 effect 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 19 Pueblos. Its primary function will be to administer justice for misdemeanor offenses within the Albuquerque Indian School property. 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, Bureau of Indian Affairs, 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 the addition of the Albuquerque Indian School at Albuquerque, New Mexico, to the existing Court of Indian Offenses with limited criminal jurisdiction over Indians within a limited geographical area at Albuquerque, 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 born by 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 Court will administer misdemeanor justice for Indians located within the boundaries of the Albuquerque Indian School property, Albuquerque, 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. This Court will administer misdemeanor justice for Indians located within the boundaries of the Albuquerque Indian School, Albuquerque, 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 Albuquerque Indian School grounds. 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, 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 an addition of the Albuquerque Indian School property, Albuquerque, New Mexico, with limited criminal jurisdiction over Indians within a limited geographical area to the existing Santa Fe, New Mexico Court of

Indian Offenses. Accordingly, there will be no jurisdictional basis 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 section 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 existence on, or its limited criminal misdemeanor jurisdiction over Indians within the exterior boundaries of the Albuquerque Indian School property, Albuquerque, 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 additional inclusion of the exterior boundaries of the Albuquerque Indian School and does not have any impact on the environment.

**Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)**

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and determined the federally recognized Indian tribes are not affected by this rule, except for the 19 Pueblos in New Mexico. The Court of Indian Offenses will remain in existence until such time as they establish a tribal court to provide for a law and order code and a judicial system to deal with law and order on the additional trust land at the Albuquerque Indian School in accordance with 25 CFR 11.100(c). The establishment of this court is consistent with the Department's trust responsibility and 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 set out in the preamble, part 11 of title 25 of the Code of the Federal Regulations is amended 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. Interpret or apply section 1, 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

■ 2. In § 11.100, paragraph (a)(14) is revised to read as follows:

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

(a) \* \* \*

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

\* \* \* \* \*

Dated: August 4, 2004.

**David W. Anderson,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 04–19113 Filed 8–19–04; 8:45 am]

BILLING CODE 4310–4J–P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 48 and 602**

[TD 9145]

RIN 1545–BD29

**Entry of Taxable Fuel**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations that were published in the **Federal Register** on July 30, 2004 (69 FR 45587), relating to the tax on the entry of taxable fuel into the United States.

**DATES:** This correction will be effective September 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Celia Gabrysh (202) 622–3130 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

The final and temporary regulations that are the subject of this correction are under section 4081 of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations (TD 9145), contain an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

■ Accordingly, the publication of TD 9145, which was the subject of FR Doc. 04–17449, is corrected as follows:

■ On page 45587, column 2, in the preamble under the caption **DATES** last line of the paragraph, the language

“48.4081–3T(c)(ii) and (iv).” is corrected to read “48.4081–3T(c)(2)(ii) and (iv).”

**LaNita Van Dyke,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 04–19163 Filed 8–19–04; 8:45 am]

BILLING CODE 4830–01–P

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 199**

RIN 0720–AA78

**TRICARE; Individual Case Management Program; Program for Persons With Disabilities; Extended Benefits for Disabled Family Members of Active Duty Service Members; Custodial Care**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final Rule; correction.

**SUMMARY:** On Wednesday, July 28, 2004, the Department of Defense published a final rule (69 FR 44942). This rule is published to correct the previous version published. The Department is publishing this final rule to implement requirements enacted by Congress in section 701(g) of the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02) which terminates the Individual Case Management Program. This rule also implements section 701(b) of the NDAA–02 which provides additional benefits for certain eligible active duty dependents by amending the TRICARE regulations governing the Program for Persons with Disabilities. The Program for Persons with Disabilities is now called the Extended Care Health Option. Other administrative amendments are included to clarify specific policies that relate to the Extended Care Health Option, custodial care, and to update related definitions.

**DATES:** This rule is effective September 20, 2004. Provisions that must be implemented by contracts are applicable upon direction of the Director, TRICARE Management Activity, or designee; but in no case earlier than September 20, 2004.

**ADDRESSES:** TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011.

**FOR FURTHER INFORMATION CONTACT:** Michael Kottyan, Medical Benefits and Reimbursement Systems, TRICARE