Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E.

Cost-sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Review Process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts office. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for cooperative agreement awards resides with USIA's contracting officer.

Review Criteria: Technically eligible applications will be reviewed competitively according to the following criteria:

1. Overall quality.

A. The content, significance, definition, and academic rigor of the proposed program (including the follow-on tour) and its appropriateness to program objectives.

B. Evidence of careful planning.

C. The degree to which the content is representative of current expert knowledge in the field and is consistent with the requirements of the Bureau's legislative charter, meeting the highest professional qualitative standards of achievement.

2. Institutional capacity. Adequacy of proposed resources, including faculty, library and other research facilities; housing availability, and other institutional support important to a collegial setting, should be adequate to achieve the program goals.

3. Experience of professionals and staff assigned to the program with foreign educators; institution's track record with international exchange programs.

4. Evaluation and follow-up.

A. Adequacy of plan for evaluation at the conclusion of the program by the institute by the grantee institution.

B. Adequacy of the provisions made for "multiplier effect," i.e. contact with non-faculty Americans and future follow-up and networking between grantees and appropriate U.S. scholarly organizations and institutions.

5. Evidence of strong on-site administrative and managerial capabilities (with specific discussion of how managerial and administrative-logistical arrangements will be undertaken).

6. Availability of local and state resources for the orientation, institute and follow-on tour.

7. Cost-effectiveness. The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. In-kind contributions should be considered.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedure.

Notification: All applicants will be notified of the results of the review process on or about March 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: October 14, 1993.

Barry Fulton,

Acting Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–25806 Filed 10–20–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 202
Thursday, October 21, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 52138, Wednesday, October 6, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 P.M. (Eastern Time) Tuesday, October 19, 1993.

CHANGE IN THE MEETING:

Closed Session

The closed portion of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: October 19, 1993.

Frances M. Hart,

Executive Office, Executive Secretariat.

[FR Doc. 93–26090 Filed 10–19–93; 2:30 am]

BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:08 a.m. on Tuesday, October 19, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the probable failure of an insured depository institution; (2) matters relating to the Corporation's corporate activities; and (3) a personnel matter.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: October 19, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–26103 Filed 10–19–93; 3:25 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NUMBER: 93–25398.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 21, 1993, 10:00 a.m., Meeting Open to the Public.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA: Briefing on REGO.

DATE AND TIME: Tuesday, October 26, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, October 27, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This oral hearing will be open to the public.

MATTERS BEFORE THE COMMISSION: Federal Funding of Presidential Nominating Conventions (11 C.F.R. Parts 107, 114, and 9008).

DATE AND TIME: Thursday, October 28, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1993–19: Charles F.C. Ruff on behalf of Friends of John Glenn.

Revised Final Ex Parte Communications Rules, with Statement of Basis and Purpose (continued from meeting of September 16, 1993).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–26101 Filed 10–19–93; 3:24 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATES: 9:00 a.m., Wednesday, October 27, 1993.

PLACE: Board Room Second Floor, Federal Housing Finance Board 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. FHLBank System Reports
   A. Monthly Financial Report
   B. Monthly Membership Report
   C. Third Quarter 1993 CIP Report
   D. Quarterly Office of Finance Report
2. Amendment of Affordable Housing Program and Community Support Requirements Regulations
3. Publication of the methodology to be used by the Finance Board in determining compliance with the Private Sector Adjustment Factor (PSAF) Pricing Requirements
4. Approval of three State Housing Finance Agencies as Eligible Nonmember Mortgagee Borrowers

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the September Board Minutes
2. Key Issues to be Addressed in Revisions to AHP Regulations
3. FHLBank Presidents' Compensation Plan - 1994 salary ranges, grade designations and merit increase guidelines
4. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(6) and (9)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–26021 Filed 10–19–93; 12:02 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—October 27, 1993.

PLACE: Hearing Room One—800 North Capital St., NW., Washington, DC 20573-0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED:

Portion Open to the public:

1. Docket No. 92-31—*Service Contracts*—Consideration of Comments on Proposed Rule.

2. Docket No. 93-10—*Amendments to Rules Governing Rate Proceedings in the Domestic Offshore Trades*—Consideration of Comments on Proposed Rule.

Portion Closed to the public:

1. Docket No. 91-27—*American President Lines, Ltd. v. Cyprus Mines Corporation and Cyprus Minerals Company;* and

Docket No. 92-01—*American President Lines, Ltd. v. Cyprus Cooper Company and Cyprus Mineral Company*—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 93-26100 Filed 10-19-93; 2:55 pm]

BILLING CODE 6730-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 18, 1993.

A closed meeting will be held on Wednesday, October 20, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, October 20, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Regulatory matter regarding financial institutions.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272-2300.

Dated: October 15, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-26039 Filed 10-19-93; 8:45 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 58, No. 202
Thursday, October 21, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

Correction

In notice document 93-21597 appearing on page 47139 in the issue of Tuesday, September 7, 1993, in the second column, in the table, the MM Docket No. "93-421" should read "93-241".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-4210-04; N-57773]

Realty Action: Exchange of Public Lands in Clark County, Nevada

Correction

In notice document 93-22015, beginning on page 47472 in the issue of Thursday, September 9, 1993 make the following correction:

On page 47473, in the first column, in the third paragraph, in the sixth line, "for" should read "from".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32359]

Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Co.; Exemption

Correction

In notice document 93-25086 appearing on page 52977 in the issue of Wednesday, October 13, 1993, the docket number should read as set forth above.

BILLING CODE 1505-01-D

Thursday
October 21, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 11
Law and Order on Indian Reservations; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN: 1076–AA01

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is revising its regulations governing Courts of Indian Offenses to provide those courts with a complete and updated code of laws, and to clarify the jurisdiction of those courts and their relationship to tribal governments and the Department of the Interior.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Bureau of Indian Affairs, 1849 C St., NW., Mail Stop 2611–MIB, Washington, DC 20240–4001, telephone number (202) 208–4400.

SUPPLEMENTARY INFORMATION: This rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Proposed regulations were published in the **Federal Register** on October 24, 1985 (50 FR 43235). The period of public comment closed on December 23, 1985. Numerous comments were received and reviewed. As a result, some changes were made as discussed in detail below.

Background and Need for Changes to Existing Regulations

Courts of Indian Offenses are established by the Department of the Interior in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction, but where the tribe has not established a tribal court to exercise that jurisdiction.

Although the rules of these courts are established and the judges appointed by the BIA, the regulations provide for substantial participation by tribal governments in their operation. For instance, the appointment and removal of judges is subject to tribal council action, and judges and tribal councils may supplement or supersede provisions in the regulations by adopting their own ordinances subject to the approval of the BIA.

While the United States Supreme Court has treated these courts as exercising tribal authority, *Williams* v. *Lee*, 358 U.S. 217, 222–223 (1959), it has expressly reserved the question of the extent to which these courts are to be regarded as Federal instrumentalities. *United States* v. *Wheeler*, 435 U.S. 313, 327 n.26 (1978). The Department of the Interior must, however, define for administrative purposes the effect of the decisions of Courts of Indian Offenses on its own decision-making process. Accordingly, the new rules provide that decisions of Courts of Indian Offenses will be given the same weight in decision-making by the Department of the Interior that is accorded to decisions by tribal courts (courts established by purely tribal action).

To further implement that concept, the rule explicitly states that decisions of a Court of Indian Offenses are appealable only to the appellate division of the Court of Indian Offenses, and that appellate division decisions are not subject to administrative appeals within the Department of the Interior. Additionally, jurisdiction over federal and state officials is limited to the jurisdiction a tribal court would have over such officials.

The term "Indian country" is used instead of "reservation" in describing the jurisdiction of Courts of Indian Offenses for consistency with federal jurisdictional statutes.

The present regulations contain a very incomplete criminal code that does not cover many areas of the law that are usually covered in the laws of the state where the reservation is located. The present regulations also contain very sketchy provisions on criminal and civil procedure. The regulations do provide, however, for the local tribal government to enact ordinances that will be enforced in, but apply only to, the tribe's Indian country. Many tribes have taken advantage of this provision to supplement the existing regulations extensively.

These new regulations update the sections on criminal offenses, and essentially create new sections on criminal procedure, domestic relations, probate proceedings, appellate proceedings, and juvenile proceedings.

The criminal procedure sections are largely derived from the draft model code which was prepared pursuant to Title III of the 1968 Civil Rights Act, 82 Stat. 73, 77–78 (codified at 25 U.S.C. 1311–1312). THe sections on criminal offenses are derived to a large extent from the Model Penal Code of the American Law Institute which has stimulated revision and codification of the substantive criminal law of the United States and of numerous states which have drawn upon the Model Code in their code revisions. However, some sections of the Model Code have been modified, and some eliminated totally according to the needs and particular circumstances of Courts of Indian Offenses. The sections on criminal offenses are divided into six important areas of penal law: (1) Offenses involving injury or danger to the person such as assault, reckless endangering, threats, false imprisonment and criminal coercion; (2) sexual offenses; (3) the major offenses against property including reckless burning, criminal mischief, theft, forgery, and fraudulent practices; (4) offenses against the family such as endangering child welfare, and persistent non-support; (5) offenses against public administration including bribery, corrupt influence, perjury and other falsification; (6) offenses against public order such as disorderly conduct, riot, harassment, carrying concealed weapons, and others. In addition, it is provided that violations of duly enacted tribal ordinances are punishable as provided for in the ordinance.

Crimes under this part have been divided in three groups: Misdemeanors, petty misdemeanors, and violations. Felonies that are covered by the Major Crimes Act are excluded in order to avoid the possibility that someone who has committed a serious offense may be immunized from federal prosecution because of the prohibition against double jeopardy by a prosecution in a Court of Indian Offenses where the maximum penalty is limited by the Indian Civil Rights Act, 25 U.S.C. 1302(7).

The sections on gambling and game violations have been deleted because these violations are covered by § 11.449, violation of an approved tribal ordinance.

Sections on civil actions remain essentially unchanged from the proposal. However, § 11.503 provides for the applicability of the Federal Rules of Civil Procedure to Courts of Indian Offenses.

The sections on domestic relations have been expanded to provide better guidance to the courts in dealing with such matters. These sections are derived from the Uniform Marriage and Divorce Act, with minor modifications. Similarly, sections on probate proceedings have also been expanded. Sections on appellate proceedings have been expanded to provide basic appeal procedures which do not exist under the present code.

New sections creating a children's court have also been developed. These sections are divided into three parts: A general section dealing with definitions, personnel, and jurisdiction; sections dealing with juvenile offender procedure; and sections dealing with minor-in-need-of-care procedure. These sections are based on the Model Children's Code that was developed by the American Indian Law Center in Albuquerque, New Mexico. These sections supplant 25 CFR 11.36 which is inadequate to address the role of the courts in dealing with juvenile problems.

Sections 11.6C, 11.7C, 11.20C, 11.22C, 11.24C, 11.26C, 11.29C, 11.31C, 11.32C, 11.34C, 11.36C, 11.50C, 11.60C, 11.63C, 11.64C, and 11.75C have been removed because the Crow Tribe has converted their Court of Indian Offense into a tribal court. For similar reasons, §§ 11.50ME, 11.55ME, 11.70ME, and §§ 11.88ME–11.98ME pertaining to the Menominee Tribe are also deleted. In addition, §§ 11.76H to 11.87H are deleted because these regulations pertain to the Hopi Tribe and should be enforced in the Hopi Tribal Court.

The Omaha Tribe is deleted from the listing of Courts of Indian Offenses under § 11.100(a) because it has converted their Court of Indian Offenses into a tribal court.

As is presently the case, courts will be established or abolished through the Federal rulemaking procedure by adding or deleting the name of a tribe from the list. The BIA will continue to assist tribes with Courts of Indian Offenses to develop their own codes and convert to tribal courts. It is the BIA's policy to encourage the replacement of Courts of Indian Offenses with tribal courts.

A new section has been added to make it clear that changes in the regulations do not affect criminal or civil liability for actions that occurred prior to the effective date of the change.

This final rule is not made effective until 30 days after its publication in the Federal Register.

Clarifications

The final rule includes various clarifications to the proposed rule which have been made principally in response to recommendations of commentators. Many of the clarifications address specific recommendations that certain text be revised to remove unclear or confusing language as noted in specific comments. With a few exceptions, these clarifications have not been individually discussed below, as the reasons for the clarifications become self-evident simply by comparing the text of the clarified rule with the corresponding proposed rule text. Certain clarifications have also been made to make the text consistent with the text of various substantive changes which are discussed below.

Analysis of Comments and Changes Made to Proposed Regulations

Section 11.100 Listing of Courts of Indian Offenses

Several comments questioned why the Osage Tribe was excluded from the list of tribes within the jurisdiction of the Court of Indian Offenses for tribes located in the former Oklahoma Territory. The Osage Tribe is not included because there has been no determination that a Court of Indian Offenses should be established to serve that tribe, nor has the Osage Tribal Council requested that a Court of Indian Offenses be set up to serve the Tribe.

Several comments suggested that § 11.100(a)(18) be amended to list those Oklahoma tribes which are served by the intertribal Court of Indian Offenses located there. This recommendation was adopted.

One comment recommended deletion of Secretarial approval of tribal ordinances under § 11.100(e). This recommendation was not adopted because Courts of Indian Offenses are Federal instrumentalities, and as such, the laws they enforce cannot be inconsistent with Federal law. Secretarial approval of tribal ordinances under § 11.100(e) is necessary to ensure such compliance.

Section 11.102 Criminal Jurisdiction; Limitation of Actions

Pursuant to a comment, this section was amended by adding a new subsection (b) to provide that a criminal prosecution is barred unless it is instituted by the filing of a complaint within five years of the commission of the offense. The five-year limitation period is similar in length to those found in federal statutes of limitations applicable to the prosecution of federal offenses. This section has been retitled to reflect this modification.

Section 11.103 Civil Jurisdiction; Limitation of Actions

As with the criminal jurisdiction section, this section has been amended to include a three-year limitation period within which to file a civil action. This limitation period is similar in length to those found in numerous state statutes of limitations applicable in civil actions. This section has been retitled accordingly.

In addition, several comments recommended that this section be amended to permit Courts of Indian Offenses to acquire jurisdiction over lawsuits by Indian plaintiffs against non-Indian defendants absent stipulation by the parties. This recommendation has not been adopted. Although tribal court jurisdiction over non-Indians has been upheld by the U.S. Supreme Court under certain conditions, Courts of Indian offenses are not the equivalent of tribal courts, and the Federal Government is not disposed to unnecessarily expand the jurisdiction of its Courts of Indian Offenses.

Indian tribes served by Courts of Indian Offenses are authorized to create their own tribal court systems should they desire to assume additional jurisdiction.

Section 11.104 Jurisdictional Limitations

Several comments objected to the provision prohibiting Courts of Indian Offenses from adjudicating tribal government disputes absent a tribal council resolution or ordinance conferring such jurisdiction. They argue that these courts should be regarded as part of the tribal government and that resolution of such disputes by these courts is preferable to resolution by the BIA.

It is clear, however, that Courts of Indian Offenses are part of the Federal Government. *United States* v. *Red Lake Band of Chippewa Indians*, 827 F.2d 380, 383 (8th Cir. 1987), *cert. denied*, 108 S. Ct. 1109 (1988). Their involvement, without the consent of the tribal government, in tribal government disputes, is an unwarranted interference in tribal affairs. Unless the tribal government requests it, Court of Indian Offenses should not become a competing forum for those matters.

Although the BIA must occasionally decide who speaks for the tribe in order to carry out its responsibilities, it gives great weight to conclusions of the appropriate tribal forum when it does so. The use of the Court of Indian Offenses as such a forum would not affect the degree of involvement of other parts of the BIA in such matters.

One comment objected to the use of the term "tribal resolution" in §§ 11.104 (b) and (e) and recommended substituting the term "tribal ordinance". These provisions have been modified to provide tribes the option to choose between the two instruments.

Section 11.201 Appointment of Magistrates

Several comments objected to the role of the Assistant Secretary—Indian Affairs in appointing magistrates under § 11.201(a), or to his or her approval of judicial qualifications under § 11.201(e), and recommended only a tribal role in such decisions. These recommendations were not adopted because Courts of Indian Offenses are Federal instrumentalities and not tribal bodies.

Federal supervision is therefore mandatory.

Section 11.202 Removal of Magistrates

One comment objected to the role of the Assistant Secretary—Indian Affairs in removing magistrates, and recommended that the decision to remove a magistrate be left to the tribe or tribes affected. For the reasons stated above under § 11.201, this recommendation has not been adopted.

Section 11.203 Court Clerks

One comment suggested including a new subsection to provide for the disposition of moneys received on judgments. This recommendation has been adopted and incorporated as § 11.203(c).

Section 11.205 Standards Governing Appearance of Attorneys and Lay Counselors

Two comments objected to § 11.205(a) because it appears to conflict with a provision of the Indian Civil Rights Act (ICRA). Courts of Indian Offenses, however, are Federal instrumentalities and are bound not only by the ICRA, but by the requirements of the United States Constitution as well.

Section 11.206 Court Records

Two comments recommended adding a provision giving the magistrate discretion to seal certain court records. This recommendation has been adopted.

Section 11.207 Cooperation by Bureau of Indian Affairs Employees

In response to a comment, this section was expanded to provide for specific BIA assistance in the preparation and presentation of facts.

Section 11.300 Complaints

Some comments suggested that the signature of a complaining witness should not be required on a complaint, and that prosecutors should be allowed to file complaints independently. These recommendations were not adopted because it is felt that personal knowledge of the wrongful act must be a prerequisite to the filing of a complaint.

Section 11.301 Arrests

Several comments objected to § 11.301(b)(3) because it grants too much authority to an arresting officer, and is a rule that is not applicable to misdemeanors in most jurisdictions. This recommendation has been adopted and the subsection has been deleted.

Section 11.303 Notification of Rights at Time of Arrest

Several comments took exception to the requirement of notification of rights at the time of arrest, and suggested that a more appropriate time for such notification was prior to custodial interrogation. This recommendation has been adopted and the title of the section changed accordingly.

Section 11.308 Commitments

Several comments recommended amending this section to increase the time for detention from the proposed 36 hours which was deemed unnecessarily short. This recommendation has been adopted and the time limit has been increased to 72 hours.

Section 11.311 Subpoenas

Two comments recommended that the clerk of court also be permitted to sign subpoenas, as is the case in most court systems. This recommendation was adopted. In addition, a comment recommended modifying § 11.311(d) to set a definite age for a person with whom a subpoena may be left to make it unnecessary for police officers to ascertain what is a "suitable age". This recommendation has also been adopted and the age limit has been set at 18 years of age or older.

Section 11.312 Witness Fees

Pursuant to a comment, this section was amended to reflect that only subpoenaed fact witnesses are covered under § 11.312(a).

Section 11.313 Trial Procedure

Several comments objected to § 11.313(b) on the grounds that rules of evidence are necessary. This recommendation has been adopted, and the subsection amended to provide that Federal Rules of Evidence shall be applicable in Courts of Indian Offenses except insofar as such rules are superseded by order of the court or by the existence of inconsistent tribal rules of evidence.

Section 11.314 Jury Trials

Several comments objected to the requirement in § 11.314(d) that verdicts must be unanimous, citing the difficulty to obtain such verdicts. These comments merit consideration. However, in *Burch* v. *Louisiana*, 441 U.S. 130 (1979), the Supreme Court held that conviction by a non-unanimous six-person jury in a state criminal trial for a non-petty offense violates the rights of an accused to trial by jury guaranteed by the Sixth and Fourteenth Amendments. Although jury trials in Courts of Indian Offenses for offenses with potential punishment of up to six months in jail are conducted, they cannot be compared to jury trials in state courts for non-petty offenses. However, the rationale of the Burch decision may still be applicable here because the IRCA requires jury trials for all offenses where imprisonment is sought. To resolve this problem, this section has been modified to provide for an eight-person jury, six of whom must concur to render a verdict.

One comment recommended the alternative use of an advisory jury composed of reservation elders. This recommendation has not been adopted because it is felt that the use of such juries depends on tribal custom and may be implemented by individual tribes through specific tribal ordinances.

Section 11.315 Sentencing

One comment recommended clarification of this section to make it clear that a criminal defendant may be sentence and/or fined for each offense for the violation of multiple offenses of the same section of the Code of Criminal Offenses. This recommendation has not been adopted because it is quite clear that such sentencing is permissible under the regulation.

Section 11.316 Probation

Two comments recommended increasing the potential probation period to one year for all crimes as a deterrent to criminal activity. This recommendation has been adopted.

Section 11.318 Extradition

One comment recommended that Courts of Indian Offenses only honor extradition requests of jurisdictions that honor theirs. This recommendation has not been adopted because it is too inflexible.

Section 11.400 Assault

One comment recommended defining the term "physical menace" to avoid proof problems. This recommendation has not been adopted because that term has been defined by case law.

Section 11.406 Criminal Coercion

One comment recommended deletion of proposed § 11.406(a)(3) because it is vague and over broad. This recommendation has been adopted.

Section 11.407 Sexual Assault

One comment recommended modification of § 11.407(b) to recognize the varied contexts within which sexual abuse may occur. This recommendation has been adopted and the subsection modified by expanding the definition of sexual contact.

Section 11.408 Indecent Exposure

One comment noted that it is difficult for a prosecutor to prove motivation and recommended deletion of the motivation clause under this section. This recommendation has been adopted.

Section 11.424 Neglect of Children

Pursuant to a comment, this section has been modified and retitled to include a new subsection on compulsory school attendance which was omitted from the proposed rule through oversight. The present regulations do contain such a provision.

Section 11.445 Driving Violations

Several comments asked that this provision be modified to provide that the offense of driving while intoxicated be included independently of the offense of reckless driving. This suggestion has been adopted.

In addition, numerous comments noted the absence of a traffic code and recommended that one be included in these regulations. This section has been redrafted to provide for the applicability of state traffic laws in the absence of a tribal traffic code. The section's title has been modified accordingly.

Section 11.450 Maximum Fines and Sentences of Imprisonment

Since the publication of the proposed rule, the ICRA, 25 U.S.C. 1302(7) has been amended by Pub. L. 99–570, Title IV, section 4217, Oct. 27, 1986, 100 Stat. 3207–146, increasing penalty and punishment for any one offense from a term of six months or a fine of $500.00 to a term of one year and a fine of $5,000.00. The rule was not modified to reflect the increased penalty and punishment authorized under the ICRA.

Section 11.502 Cost in Civil Actions

One comment noted that the provision authorizing the court to require a complainant to place a deposit with the clerk of the court to cover costs may restrict access to the courts by those with legitimate claims. This recommendation has not been adopted because the provision is not mandatory and affords the court flexibility to control the filing of frivolous complaints.

Section 11.504 Applicable Rules of Evidence

Pursuant to comments similar to those offered under § 11.313, this section has been amended to provide for the general applicability of the Federal Rules of Evidence.

Section 11.600 Marriages

One comment suggested increasing the time for recording traditional marriages with the clerk of the court. This recommendation has been adopted and § 11.600(b)(2) has been modified to increase the recordation time to thirty days.

One comment noted that tribal law should be referenced under § 11.600(c)(6) since some tribes may have their own health laws on the subject. This recommendation has been adopted.

One comment requested the inclusion of a form for marriage license applications. This recommendation has been adopted.

Section 11.603 Invalid or Prohibited Marriages

Two comments objected to this section on the grounds that it may contravene tribal customs or represent an attempt to legislate morality. This recommendation has not been adopted because Indian tribes are authorized to adopt tribal ordinances superseding these regulations if a conflict exists.

One comment noted that in *Israel* v. *Allen*, 577 P.2d 762 (1978), the Colorado Supreme Court struck down as unconstitutional a Colorado statute prohibiting marriages between adoptive brothers and sisters. Section 11.603(a)(3) has been amended to comply with this decision.

Section 11.606 Dissolution Proceedings

One comment objected to the need to verify the petition or response, and recommended instead that one party should be required to appear and testify as to the prima facie case for divorce even if the other party defaults. This recommendation has not been adopted because it is felt that verification secures the accountability of the petitioners or parties.

Section 11.608 Final Decree; Disposition of Property; Maintenance; Child Support; Custody

Pursuant to a comment, § 11.600(b)(1) has been amended to clarify that Courts of Indian Offenses do not have the authority to divide trust assets.

One comment recommended more comprehensive child support procedures to include wage withholding, reciprocal enforcement of child support orders, and collection of past-due support from Federal tax refunds. This recommendation has been adopted.

Section 11.609 Determination of Paternity and Support

Pursuant to a comment, this section has been modified to include a new subsection conferring standing to bring an action under this section to any person or agency who has provided support or assistance to a minor.

Section 11.803 Record on Appeal

The deadline for the clerk's certification of the record has been extended to 20 days pursuant to a comment that the proposed five-day period was unrealistically short.

Subpart G Probate Proceedings

One comment noted that the proposed regulations under this subpart were too restrictive and may infringe on some tribal customs of descent and distribution. This comment has not been adopted because the regulations defer to tribal customs in the area of descent and distribution.

Section 11.900 Definitions

Several comments recommended shortening the two-year period under the definition of the word "abandon" to one year because of permanency concerns. This recommendation has been adopted.

Several comments recommended including a definition of either "status offense" or "status offender", and amending the definition of "minor-in-need-of-care" to include a minor who has been committing status offenses. This recommendation has been adopted.

Section 11.904 Guardian Ad Litem

One comment suggested amending this section to provide for the appointment of a guardian ad litem where the parent, guardian, or custodian has been accused of abusing or neglecting the child. This recommendation has been adopted.

Section 11.906 Rights of Parties

One comment suggested amending this provision to require the court to appoint counsel for the minor where there is a potential conflict of interest between the minor and his or her parents, guardian, or custodian. This recommendation has been adopted because the legal interests of the child often do not coincide with those of the parents.

Section 11.907 Transfer to Court of Indian Offenses

One comment complained of the relative short deadline in § 11.907(b)(1) in which to hold a transfer hearing to determine whether to transfer a case to the Court of Indian Offenses, as well as other deadlines under this subpart, on the grounds that unrealistic or unnecessarily short deadlines are not in the interest of either the court or the minor. This recommendation has been adopted, and the following modifications were made to certain deadlines under this subpart: (1) The ten-day deadline in § 11.907(b)(1) has been extended to 30 days; (2) the ten-day deadline in § 11.1008 has been extended to 15 days; (3) the ten-day deadline in § 11.1011(a) has been extended to 15 days; (4) the ten-day deadline in § 11.1108(a) has been extended to 15 days; (5) the ten-day deadline in § 11.1111(a) has been extended to 15 days; and (6) the five-day deadline in § 11.1114(c) has been extended to 15 days.

Section 11.1000 Complaint

Pursuant to a comment, this section has been amended to permit the presenting officer to also file a complaint. Section 11.1100 has been similarly amended.

Section 11.1004 Detention and Shelter Care

Several comments recommended deleting the requirement that detention facilities be located on the reservation because of a potential lack of such facilities on some reservations. This recommendation has been adopted.

One comment recommended a clarification of what is "adequate supervision" under § 11.1004(b). This recommendation has been adopted and the term defined to mean that routine inspection of the room where the minor is housed is conducted every 30 minutes to assure his or her safety and welfare. A similar provisions was inserted under § 11.1104(b).

Section 11.1005 Preliminary Inquiry

One comment objected to the 24-hour deadline for preliminary inquiries in § 11.1005(a) as being too short. This recommendation has not been adopted because it is unreasonable to hold minors in detention without a prompt preliminary inquiry.

Section 11.1009 Summons

One comment suggested deleting the provision in § 11.1009(d) permitting delivery of a summons by publication to protect the child's privacy rights. This recommendation has been adopted. For the same reasons, the same provision has been deleted from § 11.1109 and § 11.1113(e)(4).

Section 11.1012 Dispositional Alternatives

One comment suggested that restitution by the minor be allowed as a dispositional alternative. This recommendation has been adopted.

Section 11.1104 Shelter Care

One comment objected to the provision in § 11.1104(b) permitting minors-in-need-of-care to be detained in the same facility as juvenile offenders. Although commendable, this recommendation is not adopted because of the relative shortage of such facilities on or near Indian reservations.

Section 11.1108 Date of Hearing

Pursuant to a comment, this provision has been modified to permit the refiling of a petition to protect the interest of the child.

Section 11.1112 Dispositional Alternatives

One comment recommended that only the presenting officer be permitted to recommend that termination proceedings be initiated, and that the magistrate should not be allowed to make such a recommendation and then proceed to determine it. This recommendation has been adopted and proposed § 11.1112(a)(6) has been deleted.

One comment urged that this section be modified to emphasize that efforts must be made to permit a minor to return or remain in his or her home. This recommendation has been adopted and the section modified accordingly.

One comment recommended adding a new subsection to provide for a permanency hearing within 18 months of the original placement. This recommendation has also been adopted.

Section 11.1114 Termination

One comment recommended a modification to this section to emphasize that reasonable efforts must be made to prevent removal of the minor from his or her home. This recommendation has been adopted.

One comment suggested that it should not be the function of the magistrate to review the petition until the parties have had an opportunity to be heard. This recommendation has been adopted and proposed § 11.1114(c) was deleted. The lettering of the subsections have been changed accordingly.

One comment objected to excusing the parents from testifying. The suggestion that parents should be forced to testify has not been adopted because the right against self-incrimination is not limited to criminal proceedings.

One comment noted that adoption procedures should be included in these regulations. Although this section provides that the Court of Indian Offenses must follow tribal adoption procedures, this section has been amended to provide that in the absence of such tribal procedures, state adoption procedures shall apply.

Evaluation and Certification

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. The intended effect of this rule is to update the sections under 25 CFR part 11 to provide Courts of Indian Offenses with a more complete set of rules. The proposed revision will not require additional staffing for these courts. It is not anticipated that this revision will have any effect on the annual caseload of these courts because it does not enlarge their jurisdiction, but mandates procedural guarantees. While it is true that some criminal provisions such as issuance of bad checks and defrauding secured creditors have been added, others, such as giving venereal disease to another and illicit cohabitation have been deleted, so that the net effect on caseload is going to be negligible. Courts of Indian Offenses are funded in their entirety by the Federal Government and do not receive additional funding from tribal governments. Because we do not foresee any economic effect on Courts of Indian Offenses as a result of this revision, there will be no requirement of additional outlays by the Federal Government or the tribes affected by the proposed revision.

The Department of the Interior has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

In accordance with Executive Order 12630, the Department has determined that this final rule does not have significant takings implications.

The Department has also determined that this final rule does not have significant federalism effects.

The information collection requirements contained in § 11.600 and § 11.606 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1076–0094. The information is being collected to obtain a marriage license (§ 11.600) and a divorce decree (§ 11.606) from the

Courts of Indian Offenses, and will be used by the courts to issue a marriage license or divorce decree. Response to this request is required to obtain a benefit.

Public reporting for this information collection is estimated to average .25 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 336–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs (Project 1076–0094), Office of Management and Budget, Washington, DC 20502.

Drafting Information

The primary author of this document is George T. Skibine, Office of the Solicitor, Division of Indian Affairs, Department of the Interior.

List of Subjects in

25 CFR Part 11

Courts, Indians—law, law enforcement and penalties.

25 CFR Part 12

Indians, Law enforcement, Police, and detention programs.

For the reasons given in the preamble, title 25, chapter I of the Code of Federal Regulations is amended as set forth below.

§§ 11.301–11.306 [Redesignation as 12.100–12.105 in New Part 12]

1. Part 11 is amended by redesignating §§ 11.301 through 11.306 as §§ 12.100 through 12.105 of a new Part 12, The Indian Police.

2. Part 11 is revised to read as follows:

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

Subpart A—Application; Jurisdiction

Sec.

Subpart B—Courts of Indian Offenses; Personnel; Administration

Subpart C—Criminal Procedure

Subpart D—Criminal Offenses

Subpart E—Civil Actions

Subpart F—Domestic Relations

Subpart G—Probate Proceedings

Subpart H—Appellate Proceedings

Subpart I—Children's Court

Subpart J—Juvenile Offender Procedure

Subpart K—Minor-in-need-of-care Procedure

Authority: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

Subpart A—Application; Jurisdiction

§ 11.100 Listing of Courts of Indian Offenses.

(a) Except as otherwise provided in this title, the regulations under this part are applicable to the Indian country (as defined in 18 U.S.C. 1151) occupied by the following tribes:

(1) Flandreau Santee Sioux Tribe (South Dakota).

(2) Yankton Sioux Tribe (South Dakota).

(3) Shoshone and Arapahoe Tribes of the Wind River Reservation (Wyoming).

(4) Bois Forte Band of the Minnesota Chippewa Tribe (Minnesota).

(5) Red Lake Band of Chippewa Indians (Minnesota).

(6) Cocopah Tribe (Arizona).

(7) Kaibab Band of Paiute Indians (Arizona).

(8) Paiute Shoshone Tribe of the Fallon Reservation and Colony (Nevada).

(9) Confederated Tribes of the Goshute Reservation (Nevada).

(10) Lovelock Paiute Tribe (Nevada).

(11) Te-Moak Band of Western Shoshone Indians (Nevada).

(12) Yomba Shoshone Tribe (Nevada).

(13) Duckwater Shoshone Tribe (Nevada).

(14) Kootenai Tribe (Idaho).

(15) Shoalwater Bay Tribe (Washington).

(16) Eastern Band of Cherokee Indians (North Carolina).

(17) Mississippi Band of Choctaw Indians (Mississippi).

(18) For the following tribes located in the former Oklahoma Territory (Oklahoma):

Absentee Shawnee Tribe of Indians of Oklahoma
Apache Tribe of Oklahoma
Caddo Tribe of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Citizen Band of Potawatomi Indians of Oklahoma
Comanche Tribe of Oklahoma (except Comanche Children's Court)
Delaware Tribe of Western Oklahoma
Fort Sill Apache Tribe of Oklahoma
Kaw Tribe of Oklahoma
Iowa Tribe of Oklahoma
Kickapoo Tribe of Oklahoma
Kiowa Tribe of Oklahoma
Otoe-Missouria Tribe of Oklahoma
Pawnee Tribe of Oklahoma
Tonkawa Tribe of Oklahoma
Wichita and Affiliated Tribes of Oklahoma

(19) Hoopa Valley Tribe, Yurok Tribe, and Coast Indian Community of California (California) (Jurisdiction limited to special fishing regulations).

(20) Louisiana Area (Includes Coushatta and other tribes in the State of Louisiana which occupy Indian country and which accept the application of this part; *Provided* that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the **Federal Register**).

(b) It is the purpose of the regulations in this part to provide adequate machinery for the administration of justice for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction.

(c) The regulations in this part shall continue to apply to tribes listed under § 11.100(a) until a law and order code which includes the establishment of a court system has been adopted by the tribe in accordance with its constitution and by-laws or other governing documents, has become effective, and the Assistant Secretary—Indian Affairs or his or her designee has received a valid tribal enactment identifying the effective date of the code's implementation, and the name of the tribe has been deleted from the listing of Courts of Indian Offenses under § 11.100(a).

(d) For the purposes of the enforcement of the regulations in this part, an Indian is defined as a person who is a member of an Indian tribe which is recognized by the Federal Government as eligible for services from the BIA, and any other individual who is an "Indian" for purposes of 18 U.S.C. 1152–1153.

(e) The governing body of each tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction may enact ordinances which, when approved by the Assistant Secretary—Indian Affairs or his or her designee, shall be enforceable in the Court of Indian Offenses having jurisdiction over the Indian country occupied by that tribe, and shall supersede any conflicting regulation in this part.

(f) Each Court of Indian Offenses shall apply the customs of the tribe occupying the Indian country over which it has jurisdiction to the extent that they are consistent with the regulations of this part.

§ 11.101 Prospective application of regulations.

Civil and criminal causes of actions arising prior to the effective date of these regulations shall not abate but shall be determined in accordance with the regulations in effect at the time the cause arose.

§ 11.102 Criminal jurisdiction; limitation of actions.

(a) Except as otherwise provided in this title, each Court of Indian Offenses shall have jurisdiction over any action by an Indian (hereafter referred to as person) that is made a criminal offense under this part and that occurred within the Indian country subject to the court's jurisdiction.

(b) No person shall be prosecuted, tried or punished for any offense unless the complaint is filed within five years after such offense shall have been committed.

§ 11.103 Civil jurisdiction; limitation of actions.

(a) Except as otherwise provided in this title, each Court of Indian Offenses shall have jurisdiction over any civil action arising within the territorial jurisdiction of the court in which the defendant is an Indian, and of all other suits between Indians and non-Indians which are brought before the court by stipulation of the parties.

(b) Any civil action commenced in a Court of Indian Offenses shall be barred unless the complaint is filed within three years after the right of action first accrues.

§ 11.104 Jurisdictional limitations.

(a) No Court of Indian Offenses may exercise any jurisdiction over a Federal or state official that it could not exercise if it were a tribal court.

(b) Unless otherwise provided by a resolution or ordinance of the tribal governing body of the tribe occupying the Indian country over which a Court of Indian country over which a Court of Indian Offenses has jurisdiction, no Court of Indian Offenses may adjudicate an election dispute or take jurisdiction over a suit against the tribe or adjudicate any internal tribal government dispute.

(c) The decision of the BIA on who is a tribal official is binding in a Court of Indian Offenses.

(d) The Department of the Interior will accord the same weight to decisions of a Court of Indian Offenses that it accords to decisions of a tribal court.

(e) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

Subpart B—Courts of Indian Offenses; Personnel; Administration

§ 11.200 Composition of court.

(a) Each court shall be composed of a trial division and an appellate division.

(b) A chief magistrate will be appointed for each court who will, in addition to other judicial duties, be responsible for the administration of the court and the supervision of all court personnel.

(c) Appeals shall be heard by a panel of three magistrates who were not involved in the trial of the case.

(d) Decisions of the appellate division are final and are not subject to administrative appeals within the Department of the Interior.

§ 11.201 Appointment of magistrates.

(a) Each magistrate shall be appointed by the Assistant Secretary—Indian Affairs or his or her designee subject to confirmation by a majority vote of the tribal governing body of the tribe occupying the Indian country over which the court has jurisdiction, or, in the case of multi-tribal courts, confirmation by a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses.

(b) Each magistrate shall hold office for a period of four years, unless sooner removed for cause or by reason of the abolition of the office, but is eligible for reappointment.

(c) No person is eligible to serve as a magistrate of a Court of Indian Offenses who has ever been convicted of a felony or, within one year of the date of service or application, of a misdemeanor.

(d) No magistrate shall be qualified to act as such wherein he or she has any direct conflicting interest, real or apparent.

(e) A tribal governing body may set forth such other qualifications for magistrates of the Court of Indian Offenses as it deems appropriate, subject to the approval of the Assistant Secretary—Indian Affairs, or his or her designee.

(f) A tribal governing body may also recommend requirements for the training of magistrates of the Court of Indian Offenses to the Assistant Secretary—Indian Affairs.

§ 11.202 Removal of magistrates.

Any magistrate of a Court of Indian Offenses may be suspended, dismissed or removed by the Assistant Secretary—Indian Affairs, or his or her designee, for cause, upon the written recommendation of the tribal governing body, and, in the case of multi-tribal courts, upon the recommendation of a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses, or pursuant to his or her own discretion.

§ 11.203 Court clerks.

(a) Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the chief magistrate shall appoint a clerk of court for the Court of Indian Offenses within his or her jurisdiction, subject to the superintendent's approval.

(b) The clerk shall render assistance to the court, to local law enforcement officers and to individual members of the tribe in the drafting of complaints, subpoenas, warrants, commitments, and other documents incidental to the functions of the court. The clerk shall also attend and keep a record of all proceedings of the court and manage all monies received by the court.

(c) The clerk of court shall forward any monies received on judgments due to the person, agency, or corporation to which entitled, within 30 days unless directed otherwise by a magistrate of the Court of Indian Offenses.

§ 11.204 Prosecutors.

Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the superintendent shall appoint a prosecutor for each Court of Indian Offenses within his or her jurisdiction.

§ 11.205 Standards governing appearance of attorneys and lay counselors.

(a) No defendant in a criminal proceeding shall be denied the right to counsel.

(b) The chief magistrate shall prescribe in writing standards governing the admission and practice in the Court of Indian Offenses of professional attorneys and lay counselors.

§ 11.206 Court records.

(a) Each Court of Indian Offenses shall keep a record of all proceedings of the court containing the title of the case, the names of the parties, the complaint, all pleadings, the names and addresses of all witnesses, the date of any hearing or trial, the name of any magistrate conducting such hearing or trial, the findings of the court or jury, the judgment and any other information the court determines is important to the case.

(b) The record in each case shall be available for inspection by the parties to the case.

(c) Except for cases in which a juvenile is a party or the subject of a proceeding, and for cases whose records have been sealed by the court, all case records shall be available for inspection by the public.

(d) Such court records are part of the records of the BIA agency having jurisdiction over the Indian country where the Court of Indian Offenses is located and shall be protected in accordance with 44 U.S.C. 3102.

§ 11.207 Cooperation by Bureau of Indian Affairs Employees.

(a) No employee of the BIA may obstruct, interfere with, or control the functions of any Court of Indian Offenses, or influence such functions in any manner except as permitted by Federal statutes or the regulations in this part or in response to a request for advice or information from the court.

(b) Employees of the BIA shall assist the court, upon its request, in the preparation and presentation of facts in the case and in the proper treatment of individual offenders.

§ 11.208 Payment of judgments from individual Indian money accounts.

(a) Any Court of Indian Offenses may make application to the superintendent who administers the individual Indian money account of a defendant who has failed to satisfy a money judgment from the court to obtain payment of the judgment from funds in the defendant's account. The court shall certify the record of the case to the superintendent. If the superintendent so directs, the disbursing agent shall pay over to the injured party the amount of the judgment or such lesser amount as may be specified by the superintendent.

(b) A judgment of a Court of Indian Offenses shall be considered a lawful debt in all proceedings held by the Department of the Interior or by a Court of Indian Offenses to distribute decedents' estates.

§ 11.209 Disposition of fines.

All money fines imposed for the commission of an offense shall be in the nature of an assessment for the payment of designated court expenses. The fines assessed shall be paid over by the clerk of the court to the disbursing agent of the reservation for deposit as a "special deposit, court funds" to the disbursing agent's official credit in the Treasury of the United States. The disbursing agent shall withdraw such funds, in accordance with existing regulations, upon order of the clerk of the court signed by a judge of the court for the payment of specified expenses. The disbursing agent and the clerk of the court shall keep an account of all such deposits and withdrawals available for public inspection.

Subpart C—Criminal Procedure

§ 11.300 Complaints.

(a) A complaint is a written statement of the essential facts charging that a named individual(s) has committed a particular offense. All criminal prosecutions shall be initiated by a complaint filed with the court by a law enforcement officer and sworn to by a person having personal knowledge of the offense.

(b) Complaints shall contain:

(1) The signature of the complaining witness, or witnesses, sworn before a magistrate, a court clerk, a prosecutor, or any law enforcement officer.

(2) A written statement by the complaining witness or witnesses having personal knowledge of the violation, describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained.

(3) The name or description of the person alleged to have committed the offense.

(4) A description of the offense charged and the section of the code allegedly violated.

(c) Complaints must be submitted without unnecessary delay by a law enforcement officer to the prosecutor and, if he or she approves, to a judge to determine whether an arrest warrant or summons should be issued.

(d) When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

§ 11.301 Arrests.

(a) Arrest is the taking of a person into police custody in order that he or she may be held to answer for a criminal offense.

(b) No law enforcement officer shall arrest any person for a criminal offense except when:

(1) The officer shall have a warrant signed by a magistrate commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(2) The offense shall occur in the presence of the arresting officer; or

(3) The officer shall have probable cause to believe that the person arrested has committed an offense.

§ 11.302 Arrest warrants.

(a) Each magistrate of a Court of Indian Offenses shall have the authority to issue warrants to apprehend any person the magistrate has probable cause to believe has committed a criminal offense in violation of the regulations under this part based on a written complaint filed with the court by a law enforcement officer and bearing the signature of the complainant.

(b) The arrest warrant shall contain the following information:

(1) Name or description and address, if known, of the person to be arrested.

(2) Date of issuance of the warrant.

(3) Description of the offense charged.

(4) Signature of the issuing magistrate.

(c) Such warrants may be served only by a BIA or tribal police officer or other officer commissioned to enforce the regulations of this part.

§ 11.303 Notification of rights prior to custodial interrogation.

Prior to custodial interrogation, the suspect shall be advised of the following rights:

(a) That he or she has the right to remain silent.

(b) That any statements made by him or her may be used against him or her in court.

(c) That he or she has the right to obtain counsel and, if indigent, to have counsel appointed for him/her.

§ 11.304 Summons in lieu of warrant.

(a) When otherwise authorized to arrest a suspect, a law enforcement officer or a magistrate may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court of Indian Offenses at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.

(c) The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his or her arrest shall be issued.

(d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his or her usual residence or place of business with any person 18 years of age or older who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall file with the record of the case a form indicating when the summons was served.

§ 11.305 Search warrants.

(a) Each magistrate of a Court of Indian Offenses shall have the authority to issue a warrant for the search of premises and for the seizure of physical evidence of a criminal violation under the regulations of this part located within the Indian country over which the court has jurisdiction.

(b) No warrant for search or seizure may be issued unless it is based on a written and signed statement establishing, to the satisfaction of the magistrate, that probable cause exists to believe that the search will lead to discovery of evidence of a criminal violation under the regulations of this part.

(c) No warrant for search or seizure shall be valid unless it contains the name or description of the person, vehicle, or premises to be searched, describes the evidence to be seized, and bears the signature of the magistrate who issued it.

(d) Warrants may be executed only by a BIA or tribal police officer or other official commissioned to enforce the regulations under this part. The executing officer shall return the warrant to the Court of Indian Offenses within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall be void.

§ 11.306 Search without a warrant.

No law enforcement officer shall conduct any search without a valid warrant except:

(a) Incident to making a lawful arrest; or

(b) With the voluntary consent of the person being searched; or

(c) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed.

§ 11.307 Disposition of seized property.

(a) The officer serving and executing a warrant shall make an inventory of all seized property, and a copy of such inventory shall be left with every person from whom property is seized.

(b) A hearing shall be held by the Court of Indian Offenses to determine the disposition of all seized property. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless such property is contraband or is to be used as evidence in a pending case. Property seized as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court of Indian Offenses.

§ 11.308 Commitments.

No person may be detained, jailed or imprisoned under the regulations of this part for longer than 48 hours unless the Court of Indian Offenses issues a commitment bearing the signature of a magistrate. A temporary commitment shall be issued for each person held before trial. A final commitment shall be issued for each person sentenced to jail after trial.

§ 11.309 Arraignments.

(a) Arraignment is the bringing of an accused before the court, informing him or her of his or her rights and of the charge(s) against him or her, receiving the plea, and setting conditions of pretrial release as appropriate in accordance with this part.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of court.

(c) Before an accused is required to plead to any criminal charges the magistrate shall:

(1) Read the complaint to the accused and determine that he or she understands it and the section(s) of this part that he or she is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he or she has the right to remain silent, to be tried by a jury if the offense charged is punishable by imprisonment, to be represented by counsel (which shall be paid for by the government if the accused is indigent) and that the arraignment will be postponed should he or she desire to consult with counsel.

(d) The magistrate shall call upon the defendant to plead to the charge:

(1) If the accused pleads "not guilty" to the charge, the magistrate shall then inform the accused of the trial date and set conditions for release prior to trial.

(2) If the accused pleads "guilty" to the charge, the magistrate shall accept the plea only if he or she is satisfied that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights waived by the plea. The magistrate may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he or she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the court prior to sentencing.

(3) If the accused refuses to plead, the judge shall enter a plea of "not guilty" on his or her behalf.

(3) The court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice would be served by doing so.

§ 11.310 Bail.

(a) Each person charged with a criminal offense under this part shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

(1) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times;

(2) Release to the custody of a designated person or organization agreeing to assure the accused's appearance;

(3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release;

(4) Release after deposit of a bond or other sufficient collateral in an amount specified by the magistrate or a bail schedule;

(5) Release after execution of a bail agreement by two responsible members of the community; or

(6) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

(b) Any law enforcement officer authorized to do so by the court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the court.

(c) A convicted person may be released from custody pending appeal on such conditions as the magistrate determines will reasonably assure the appearance of the accused unless the magistrate determines that release of the accused is likely to pose a danger to the community, the accused, or any other person.

(d) The Court of Indian Offenses may revoke its release of the defendant and order him or her committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

§ 11.311 Subpoenas.

(a) Upon request of any party, the court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The clerk of the court may act on behalf of the court and issue subpoenas which have been signed either by the clerk of the court or by a magistrate of the Court of Indian Offenses and which are to be served within Indian country over which the Court of Indian Offenses has jurisdiction.

(b) A subpoena shall bear the signature of the chief magistrate of the Court of Indian Offenses, and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(c) A subpoena may be served at any place but any subpoena to be served outside of the Indian country over which the Court of Indian Offenses has jurisdiction shall be issued personally by a magistrate of the Court of Indian Offenses.

(d) A subpoena may be served by any law enforcement officer or other person appointed by the court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence or business with any person 18 years of age or older who also resides or works there.

(e) Proof of service of the subpoena shall be filed with the clerk of the court by noting on the back of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

(f) In the absence of a justification satisfactory to the court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his or her arrest.

§ 11.312 Witness fees.

(a) Each fact witness answering a subpoena is entitled to a fee of not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1) and any of its subsequent revisions, plus actual cost of travel. Each fact witness testifying at a hearing shall receive pay for a full day (eight hours) plus travel allowance.

(b) The Court of Indian Offenses may order any party calling a witness to testify without a subpoena to compensate the witness for actual traveling and living expenses incurred in testifying.

(c) If the Court of Indian Offenses finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the court for expenditures incurred under this section, and such order may constitute a judgment upon which execution may levy.

§ 11.313 Trial procedure.

(a) The time and place of court sessions, and all other details of judicial procedure shall be set out in rules of court approved by the chief magistrate of the Court of Indian Offenses.

(b) Courts of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are superseded by order of the court or by the existence of inconsistent tribal rules of evidence.

§ 11.314 Jury trials.

(a) In any criminal case punishable by a sentence of six months in jail and in any criminal case in which the prosecutor informs the court before the case comes to trial that a jail sentence will be sought, the defendant has a right, upon demand, to a jury trial. If the prosecutor informs the court that no prison sentence will be sought, the court may not impose a prison sentence for the offense.

(b) A jury shall consist of eight Indian residents of the vicinity in which trial is held, selected from a list of eligible jurors prepared each year by the court. An eligible juror shall be at least 18 years of age, shall not have been convicted of a felony, and shall not otherwise be unqualified according to standards established by the Court of Indian Offenses under its general rulemaking authority. Any party may challenge without cause not more than three members of the jury panel so chosen.

(c) The magistrate shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of the law.

(d) The jury shall deliberate in secret and return a verdict of guilty or not guilty. Six out of the eight jurors must concur to render a verdict.

(e) Each juror who serves on a jury is entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1), and any of its subsequent revisions, plus mileage not to exceed the maximum rate per mile established by the Federal Government of jurors and witnesses. Each juror shall receive pay for a full day (eight hours) for any portion of a day served, plus travel allowance.

§ 11.315 Sentencing.

(a) Any person who has been convicted in a Court of Indian Offenses of a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than six months.

(2) A money fine in an amount not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than five hundred dollars ($500).

(3) Labor for the benefit of the tribe.

(4) Rehabilitative measures.

(b) In addition to or in lieu of the penalties provided in paragraph (a) of this section, the court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.

(c) If, solely because of indigence, a convicted offender is unable to pay forthwith a money fine assessed under any applicable section, the court shall allow him or her a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments to the clerk of the court at specified intervals until the entire sum is paid. If the offender defaults on such payments the court may find him or her in contempt of court and imprison him or her accordingly.

§ 11.316 Probation.

(a) Where a sentence of imprisonment has been imposed on a convicted offender, the Court of Indian Offenses may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the court, provided that the period of probation shall not exceed one year.

(b) Any person who violates the terms of his or her probation may be required by the court to serve the sentence originally imposed or such part of it as the court may determine to be suitable giving consideration to all the circumstances, provided that such revocation of probation shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.317 Parole.

(a) Any person sentenced by the court of detention or labor shall be eligible for parole at such time and under such reasonable conditions as set by the Court of Indian Offenses.

(b) Any person who violates the conditions of his or her parole may be required by the court to serve the whole original sentence, provided that such revocation or parole shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.318 Extradition.

Any Court of Indian Offenses may order delivery to the proper state, tribal or BIA law enforcement authorities of any person found within the jurisdiction of the court, who is charged with an offense in another jurisdiction. Prior to delivery to the proper officials, the accused shall be accorded a right to contest the propriety of the court's order in a hearing before the court.

Subpart D—Criminal Offenses

§ 11.400 Assault.

(a) A person is guilty of assault if he or she:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon; or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

(b) Assault is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

§ 11.401 Recklessly endangering another person.

A person commits a misdemeanor if he or she recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall be presumed where a person knowingly points a fireman at or in the direction of another person, whether or not the actor believed the firearm to be loaded.

§ 11.402 Terroristic threats.

A person is guilty of a misdemeanor if he or she threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly or facility of public transportation, or otherwise to cause serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience.

§ 11.403 Unlawful restraint.

A person commits a misdemeanor if he or she knowingly:

(a) Restrains another unlawfully in circumstances exposing him or her to risk of serious bodily injury; or

(b) Holds another in a condition of involuntary servitude.

§ 11.404 False imprisonment.

A person commits a misdemeanor if he or she knowingly restrains another unlawfully so as to interfere substantially with his or her liberty.

§ 11.405 Interference with custody.

(a) *Custody of children.* A person commits a misdemeanor if he or she knowingly or recklessly takes or entices any child under the age of 18 from the custody of his or her parent, guardian or other lawful custodian, when he or she has no privilege to do so.

(b) *Custody of committed person.* A person is guilty of a misdemeanor if he or she knowingly or recklessly takes or entices any committed person away from lawful custody when he or she does not have the privilege to do so. *Committed person* means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

§ 11.406 Criminal coercion.

(a) A person is guilty of criminal coercion if, with purpose to unlawfully restrict another's feedom of action to his or her detriment, he or she threatens to:

(1) Commit any criminal offense; or

(2) Accuse anyone of a criminal offense; or

(3) Take or withhold action as an official, or cause an official to take or withhold action.

(b) Criminal coercion is classified as a misdemeanor.

§ 11.407 Sexual assault.

(a) A person who has sexual contact with another person not his or her spouse, or causes such other person to have sexual contact with him or her, is guilty of sexual assualt as a misdemeanor, if:

(1) He or she knows that the conduct is offensive to the other person; or

(2) He or she knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature or his or her conduct; or

(3) He or she knows that the other person is unaware that a sexual act is being committed; or

(4) The other person is less than ten years old; or

(5) He or she has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(6) The other person is less than 16 years old and the actor is at least four years older than the other person; or

(7) The other person is less than 21 years old and the actor is his or her guardian or otherwise responsible for general supervision of his or her welfare; or

(8) The other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him or her.

(b) Sexual contact is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, or for the purpose of abusing, humiliating, harassing, or degrading the victim.

§ 11.408 Indecent exposure.

A person commits a misdemeanor if he or she exposes his or her genitals under circumstances in which he or she knows his or her conduct is likely to cause affront or alarm.

§ 11.409 Reckless burning or exploding.

A person commits a misdemeanor if he or she purposely starts a fire or causes an explosion, whether on his or her property or another's, and thereby recklessly:

(a) Places another person in danger of death or bodily injury; or

(b) Places a building or occupied structure of another in danger of damage or destruction.

§ 11.410 Criminal mischief.

(a) A person is guilty of criminal mischief if he or she:

(1) Damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means; or

(2) Purposely or recklessly tampers with tangible property of another so as to endanger person or property; or

(3) Purposely or recklessly causes another to suffer pecuniary loss by deception or threat.

(b) Criminal mischief is a misdemeanor if the actor purposely causes pecuniary loss in excess of $100, or a petty misdemeanor if he or she purposely or recklessly causes precuniary loss in excess of $25. Otherwise, criminal mischief is a violation.

§ 11.411 Criminal trespass.

(a) A person commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or surreptitiously remains in any building or occupied structure. An offense under this subsection is a misdemeanor if it is committed in a dwelling at night. Otherwise it is a petty misdemeanor.

(b) A person commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

(1) Actual communication to the actor; or

(2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) Fencing or other enclosure manifestly designed to exclude intruders.

(c) An offense under this section constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person. Otherwise it is a violation.

§ 11.412 Theft.

A person who, without permission of the owner, shall take, shoplift, possess or exercise unlawful control over movable property not his or her own or under his or her control with the purpose to deprive the owner thereof or who unlawfully transfers immovable property of another or any interest therein with the purpose to benefit himself or herself or another not entitled thereto shall be guilty of theft, a misdemeanor.

§ 11.413 Receiving stolen property.

A person is guilty of receiving stolen property, a misdemeanor, if he or she purposely receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner. *Receiving* means acquiring possession, control or title, or lending on the security of the property.

§ 11.414 Embezzlement.

A person who shall, having lawful custody of property not his or her own, appropriate the same to his or her own use, with intent to deprive the owner thereof, shall be guilty of embezzlement, a misdemeanor.

§ 11.415 Fraud.

A person who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures obtain any money or other property, shall be guilty of fraud, a misdemeanor.

§ 11.416 Forgery.

(a) A person is guilty of forgery, a misdemeanor, if, with purpose to defraud or injure anyone, or with knowledge that he or she is facilitating fraud or injury to be perpetrated by anyone, he or she:

(1) Alters, makes, completes, authenticates, issues or transfers any writing of another without his or her authority; or

(2) Utters any writing which he or she knows to be forged in a manner above specified.

(b) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

§ 11.417 Extortion.

A person who shall willfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any moneys, goods, property, or anything else of any value, shall be guilty of extortion, a misdemeanor.

§ 11.418 Misbranding.

A person who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person, shall be guilty of a misdemeanor.

§ 11.419 Unauthorized use of automobiles and other vehicles.

A person commits a misdemeanor if he or she operates another person's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner. It is an affirmative defense to prosecution under this section that the actor reasonably believed that the owner would have consented to the operation had he or she known of it.

§ 11.420 Tampering with records.

A person commits a misdemeanor if, knowing that he or she has no privilege to do so, he or she falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

§ 11.421 Bad checks.

(a) A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a misdemeanor.

(b) For the purposes of this section, an issuer is presumed to know that the check or order would not be paid, if:

(1) The issuer had no account with the drawee at the time the check or order was issued; or

(2) Payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal.

§ 11.422 Unauthorized use of credit cards.

(a) A person commits a misdemeanor if he or she uses a credit card for the purpose of obtaining property or services with knowledge that:

(1) The card is stolen or forged; or

(2) The card has been revoked or cancelled; or

(3) For any other reason his or her use of the card is unauthorized by the issuer.

(b) *Credit card* means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

§ 11.423 Defrauding secured creditors.

A person commits a misdemeanor if he or she destroys, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to hinder that interest.

§ 11.424 Neglect of children.

(a) A parent, guardian, or other person supervising the welfare of a child under 18 commits a misdemeanor if he or she knowingly endangers the child's welfare by violating a duty of care, protection or support.

(b) A parent, guardian, or other person supervising the welfare of a child under 18 commits a violation if he or she neglects or refuses to send the child to school.

§ 11.425 Persistent non-support.

A person commits a misdemeanor if he or she persistently fails to provide support which he or she can provide and which he or she knows he or she is legally obliged to provide to a spouse, child or other dependent.

§ 11.426 Bribery.

(a) A person is guilty of bribery, a misdemeanor, if he or she offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(3) Any benefit as consideration for a violation of a known legal duty as a public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

§ 11.427 Threats and other improper influence in official and political matters.

(a) A person commits a misdemeanor if he or she:

(1) Threatens unlawful harm to any person with purpose to influence his or her decision, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(3) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

§ 11.428 Retaliation for past official action.

A person commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public servant.

§ 11.429 Perjury.

A person is guilty of perjury, a misdemeanor, if in any official proceeding he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true.

(a) No person shall be guilty of an offense under this section if he or she retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(b) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

§ 11.430 False alarms.

A person who knowingly causes a false alarm of fire or other emergency to be transmitted to, or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property commits a misdemeanor.

§ 11.431 False reports.

(a) A person who knowingly gives false information to any law enforcement officer with the purpose to implicate another commits a misdemeanor.

(b) A person commits a petty misdemeanor if he or she:

(1) Reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(2) Pretends to furnish such authorities with information relating to an offense or incident when he or she knows he or she has no information relating to such offense or incident.

§ 11.432 Impersonating a public servant.

A person commits a misdemeanor if he or she falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his or her prejudice.

§ 11.433 Disobedience to lawful order of court.

A person who willfully disobeys any order, subpoena, summons, warrant or command duly issued, made or given by any Court of Indian Offenses or any officer thereof is guilty of a misdemeanor.

§ 11.434 Resisting arrest.

A person commits a misdemeanor if, for the purpose of preventing a public servant from effecting a lawful arrest or discharging any other duty, he or she creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

§ 11.435 Obstructing justice.

A person commits a misdemeanor if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for a crime, he or she harbors or conceals the other, provides a weapon, transportation, disguise or other means of escape, warns the other of impending discovery, or volunteers false information to a law enforcement officer.

§ 11.436 Escape.

A person is guilty of the offense of escape, a misdemeanor, if he or she unlawfully removes himself or herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period.

§ 11.437 Bail jumping.

A person set at liberty by court order, with or without bail, upon condition that he or she will subsequently appear at a specified time or place, commits a misdemeanor if, without lawful excuse, he or she fails to appear at that time and place.

§ 11.438 Flight to avoid prosecution or judicial process.

A person who shall absent himself or herself from the Indian country over which the Court of Indian Offenses exercises jurisdiction for the purpose of avoiding arrest, prosecution or other judicial process shall be guilty of a misdemeanor.

§ 11.439 Witness tampering.

(a) A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he or she attempts to induce or otherwise cause a witness or informant to:

(1) Testify or inform falsely; or

(2) Withhold any testimony, information, document or thing; or

(3) Elude legal process summoning him or her to supply evidence; or

(4) Absent himself or herself from any proceeding or investigation to which he or she has been legally summoned.

(b) A person commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything lawfully done in the capacity of witness or informant.

§ 11.440 Tampering with or fabricating physical evidence.

A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he or she:

(a) Alters, destroys, conceals, or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) Makes, presents or uses any record, document or thing knowing it to be false and with the purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

§ 11.441 Disorderly conduct.

(a) A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm or recklessly creating a risk thereof, he or she:

(1) Engages in fighting or threatening, or in violent or tumultuous behavior;

(2) Makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(3) Creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

(b) *Public* means affecting or likely to affect persons in a place to which the public has access; among the places included are highways, schools, prisons, apartments, places of business or amusement, or any neighborhood.

(c) An offense under this section is a petty misdemeanor if the actor's purpose is to cause substantial harm or serious inconvenience, or if he or she persists in disorderly conduct after reasonable warning or request to desist. Otherwise, disorderly conduct is a violation.

§ 11.442 Riot; failure to disperse.

(a) A person is guilty of riot, a misdemeanor, if he or she participates with two or more others in a course of disorderly conduct:

(1) With purpose to commit or facilitate the commission of a felony or misdemeanor; or

(2) With purpose to prevent or coerce official action; or

(3) When the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

(b) Where three or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, a law enforcement officer may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor.

§ 11.443 Harassment.

A person commits a petty misdemeanor if, with purpose to harass another, he or she:

(a) Makes a telephone call without purpose or legitimate communication; or

(b) Insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or

(c) Makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or

(d) Subjects another to an offensive touching; or

(e) Engages in any other course of alarming conduct serving no legitimate purpose.

§ 11.444 Carrying concealed weapons.

A person who goes about in public places armed with a dangerous weapon concealed upon his or her person is guilty of a misdemeanor unless he or she has a permit to do so signed by a magistrate of the Court of Indian Offenses.

§ 11.445 Driving violations.

(a) A person who shall operate any vehicle in a manner dangerous to the public safety is guilty of reckless driving, a petty misdemeanor, unless it is committed while under the influence of alcohol, in which case it is a misdemeanor.

(b) A person who shall drive, operate or be in physical control of any motor vehicle when his or her alcohol concentration is 0.10 or more shall be guilty of driving while intoxicated, a misdemeanor.

(c) Any person who drives, operates, or is in physical control of a motor vehicle within the Indian country under the jurisdiction of a Court of Indian Offenses consents to a chemical test of his or her blood, breath, or urine for the purpose of determining the presence of alcohol, to be administered at the direction of a law enforcement officer. The test may be required when the officer has reasonable cause to believe that a person is driving while intoxicated, and the person has either been lawfully placed under arrest for a violation of this section, or has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death.

(d) In the absence of an applicable tribal traffic code, the provisions of state traffic laws applicable in the state where a Court of Indian Offenses is located shall apply to the operation of motor vehicles within the Indian country under the jurisdiction of the Court of Indian Offenses with the exception that any person found guilty of violating such laws shall, in lieu of the penalties provided under state law, be sentenced according to the standards found in § 11.450 depending on the nature of the traffic code violation, and may be deprived of the right to operate any motor vehicle for a period not to exceed 6 months.

§ 11.446 Cruelty to animals.

A person commits a misdemeanor if he or she purposely or recklessly:

(a) Subjects any animal in his or her custody to cruel neglect; or

(b) Subjects any animal to cruel mistreatment; or

(c) Kills or injures any animal belonging to another without legal privilege or consent of the owner.

(d) Causes one animal to fight with another.

§ 11.447 Maintaining a public nuisance.

A person who permits his or her property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his or her neighbors, is guilty of a violation.

§ 11.448 Abuse of office.

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor if, knowing that his or her conduct is illegal, he or she:

(a) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(b) Denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

§ 11.449 Violation of an approved tribal ordinance.

A person who violates the terms of any tribal ordinance duly enacted by the governing body of the tribe occupying the Indian country under the jurisdiction of the Court of Indian Offenses and approved by the Assistant Secretary—Indian Affairs or his or her designee, is guilty of an offense and upon conviction thereof shall be sentenced as provided in the ordinance.

§ 11.450 Maximum fines and sentences of imprisonment.

(a) A person convicted of an offense under this code may be sentenced as follows:

(1) If the offense is a misdemeanor, to a term of imprisonment not to exceed six months or to a fine not to exceed $500.00, or both;

(2) If the offense is a petty misdemeanor, to a term of imprisonment not to exceed three months or to a fine not to exceed $250.00, or both;

(3) If the offense is a violation, to a term of imprisonment not to exceed one month or to a fine not to exceed $100.00, or both;

(b) The fines listed above may be imposed in addition to any amounts ordered paid as restitution.

Subpart E—Civil Actions

§ 11.500 Law applicable to civil actions.

(a) In all civil cases the Court of Indian Offenses shall apply any laws of the United States that may be applicable, any authorized regulations of the Interior Department, and any ordinances or customs of the tribe occupying the area of Indian country over which the court has jurisdiction, not prohibited by Federal laws.

(b) Where any doubt arises as to the customs and usages of the tribe the court may request the advice of counselors familiar with these customs and usages.

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

§ 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, including 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 superseded by order of the Court of Indian Offenses, or by the existence of inconsistent tribal rules of evidence.

Supart F—Domestic Relations

§ 11.600 Marriages.

(a) A magistrate of the Court of Indian Offenses shall have the authority to perform marriages.

(b) A valid marriage shall be constituted by:

(1) The issuance of a marriage license by the Court of Indian Offenses and by execution of a consent to marriage by both parties to the marriage and recorded with the clerk of the court; or

(2) The recording of a tribal custom marriage with the Court of Indian Offenses within 30 days of the tribal custom marriage ceremony by the signing by both parties of a marriage register maintained by the clerk of the court.

(c) A marriage license application shall include the following information:

(1) Name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship; and

(5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located.

§ 11.601 Marriage licenses.

A marriage license shall be issued by the clerk of the court in the absence of any showing that the proposed marriage would be invalid under any provision of this part or tribal custom, and upon written application of an unmarried male and unmarried female, both of whom must be eighteen (18) years or older. If either party to the marriage is under the age of eighteen (18), that party must have the written consent of parent or his or her legal guardian.

§ 11.602 Solemnization.

(a) In the event a judge, clergyman, tribal official or anyone authorized to do so solemnizes a marriage, he or she shall file with the clerk of the court certification thereof within thirty (30) days of the solemnization.

(b) Upon receipt of the marriage certificate, the clerk of the court shall register the marriage.

§ 11.603 Invalid or prohibited marriages.

(a) The following marriages are prohibited:

(1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(2) A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood;

(3) A marriage between an aunt and a nephew or between an uncle and a niece, whether the relationship is by the half or the whole blood, except as to marriages permitted by established tribal custom;

(4) A marriage prohibited by custom and usage of the tribe.

(b) Children born of a prohibited marriage are legitimate.

§ 11.604 Declaration of invalidity.

(a) The Court of Indian Offenses shall enter a decree declaring the invalidity of a marriage entered into under the following circumstances:

(1) A party lacked capacity to consent to the marriage, either because of mental incapacity or infirmity or by the influence of alcohol, drugs, or other incapacitating substances; or

(2) A party was induced to enter into a marriage by fraud or duress; or

(3) A party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into, the other party did not know of the incapacity; or

(4) The marriage is prohibited under § 11.603.

(b) A declaration of invalidity may be sought by either party to the marriage or by the legal representative of the party who lacked capacity to consent.

§ 11.605 Dissolution.

(a) The Court of Indian Offenses shall enter a decree of dissolution of marriage if:

(1) The court finds that the marriage is irretrievably broken, if the finding is supported by evidence that (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding, or (ii) there is serious marital discord adversely affecting the attitude of one or both of the parties towards the marriage;

(2) The court finds that either party, at the time the action was commenced, was domiciled within the Indian country under the jurisdiction of the court, and that the domicile has been maintained for 90 days next preceding the making of the findings; and

(3) To the extent it has jurisdiction to do so, the court has considered, approved, or provided for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or has provided for a separate later hearing to complete these matters.

(b) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the Court of Indian Offenses shall grant the decree in that form unless the other party objects.

§ 11.606 Dissolution proceedings.

(a) Either or both parties to the marriage may initiate dissolution proceedings.

(b) If a proceeding is commenced by one of the parties, the other party shall be served in the manner provided by the applicable rule of civil procedure and within thirty days after the date of service may file a verified response.

(c) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(1) The age, occupation, and length of residence within the Indian country

under the jurisdiction of the court of each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met and that the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

§ 11.607 Temporary orders and temporary injunctions.

(a) In a proceeding for dissolution of marriage or for legal separation, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(b) As a part of a motion for temporary maintenance or support or by an independent motion accompanied by an affidavit, either party may request the Court of Indian Offenses to issue a temporary injunction for any of the following relief:

(1) Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(2) Enjoining a party from molesting or disturbing the peace of the other party or of any child;

(3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(4) Enjoining a party from removing a child from the jurisdiction of the court; and

(5) Providing other injunctive relief proper in the circumstances.

(c) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(d) A response may be filed within 20 days after service of notice of a motion or at the time specified in the temporary restraining order.

(e) On the basis of the showing made, the Court of Indian Offenses may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper under the circumstances.

(f) A temporary order or temporary injunction:

(1) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in a proceeding;

(2) May be revoked or modified before the final decree as deemed necessary by the court;

(3) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

§ 11.608 Final decree; disposition of property; maintenance; child support; custody.

(a) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal.

(b) The Court of Indian Offenses shall have the power to impose judgment as follows in dissolution or separation proceedings:

(1) Apportion or assign between the parties the non-trust property and non-trust assets belonging to either or both and whenever acquired, and whether the title thereto is in the name of the husband or wife or both;

(2) Grant a maintenance order for either spouse in amounts and for periods of time the court deems just;

(3) Order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his or her support, without regard to marital misconduct, after considering all relevant factors. In addition:

(i) When a support order is issued by a Court of Indian Offenses, the order may provide that a portion of an absent parent's wages be withheld to comply with the order on the earliest of the following dates: When an amount equal to one month's support becomes overdue; when the absent parent requests withholding; or at such time as the Court of Indian Offenses selects. The amount to be withheld may include an amount to be applied toward liquidation of any overdue support.

(ii) If the Court of Indian Offenses finds that an absent parent who has been ordered to pay child support is now residing within the jurisdiction of another Court of Indian Offenses, an Indian tribal court, or a state court, it shall petition such court for reciprocal enforcement and provide it with a copy of the support order.

(iii) If the Court of Indian Offenses receives a petition from another Court of Indian Offenses, an Indian tribal court or a state court, it shall take necessary steps to determine paternity, establish an order for child support, register a foreign child support order or enforce orders as requested in the petition.

(iv) The Court of Indian Offenses shall assist a state in the enforcement and collection of past-due support from Federal tax refunds of absent parents living within the Indian country over which the court has jurisdiction.

(v) Any person or agency who has provided support or assistance to a child under 18 years of age shall be a proper person to bring an action under this section and to recover judgment in an amount equal to such past-paid support or assistance, including costs of bringing the action.

(4) Make child custody determinations in accordance with the best interest of the child.

(5) Restore the maiden name of the wife.

§ 11.609 Determination of paternity and support.

The Court of Indian Offenses shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Court of Indian Offenses or by the Department of the Interior.

§ 11.610 Appointment of guardians.

The court shall have the jurisdiction to appoint or remove legal guardians for minors and for persons who are incapable of managing their own affairs under terms and conditions to be prescribed by the court.

§ 11.611 Change of name.

The Court of Indian Offenses shall have the authority to change the name of any person upon petition of such person or upon the petition of the parents of any minor, if at least one parent is Indian. Any order issued by the court for a change of name shall be kept as a permanent record and copies shall be filed with the agency superintendent, the governing body of the tribe occupying the Indian country under the jurisdiction of the court, and any appropriate agency of the State in which the court is located.

Subpart G—Probate Proceedings

§ 11.700 Probate jurisdiction.

The Court of Indian Offenses shall have jurisdiction to administer in probate the estate of a deceased Indian who, at the time of his or her death, was domiciled or owned real or personal property situated within the Indian country under the jurisdiction of the court to the extent that such estate consists of property which does not come within the jurisdiction of the Secretary of the Interior.

§ 11.701 Duty to present will for probate.

Any custodian of a will shall deliver the same to the Court of Indian Offenses within 30 days after receipt of information that the maker thereof is deceased. Any custodian who fails to do so shall be liable for damages sustained by any person injured thereby.

§ 11.702 Proving and admitting will.

(a) Upon initiating the probate of an estate, the will of the decedent shall be filed with the court. Such will may be proven and admitted to probate by filing an affidavit of an attesting witness which identifies such will as being the will which the decedent executed and declared to be his or her last will. If the evidence of none of the attesting witnesses is available, the court may allow proof of the will by testimony that the signature of the testator is genuine.

(b) At any time within 90 days after a will has been admitted to probate, any person having an interest in the decedent's estate may contest the validity of such will. In the event of such contest, a hearing shall be held to determine the validity of such will.

(c) Upon considering all relevant information concerning the will, the Court of Indian Offenses shall enter an order affirming the admission of such will to probate, or rejecting such will and ordering that the probate of the decedent's estate proceed as if the decedent had died intestate.

§ 11.703 Petition and order to probate estate.

(a) Any person having an interest in the administration of an estate which is subject to the jurisdiction of the court may file a written petition with the court requesting that such estate be administered in probate.

(b) The Court of Indian Offenses shall enter an order directing that the estate be probated upon finding that the decedent was an Indian who, at the time of his or her death, was domiciled or owned real or personal property situated within the Indian country under the jurisdiction of the court other than trust or other restricted property, that the decedent left an estate subject to the jurisdiction of the court, and that it is necessary to probate such estate.

§ 11.704 Appointment and duties of executor or administrator.

(a) Upon ordering the estate to be probated, the court shall appoint an administrator to administer the estate of the decedent. The person nominated by the decedent's will, if any, to be the executor of the estate shall be so appointed, provided such person is willing to serve in such capacity.

(b) The executor or administrator appointed by the court shall have the following duties and powers during the administration of the estate and until discharged by the court:

(1) To send by certified mail true copies of the order to probate the estate and the will of the decedent admitted to probate by such order, if any, to each heir, devisee and legatee of the decedent, at their last known address, to the governing body of the tribe or tribes occupying the Indian country over which the court has jurisdiction, and to the agency superintendent;

(2) To preserve and protect the decedent's property within the estate and the heirs, so far as is possible;

(3) To investigate promptly all claims against the decedent's estate and determine their validity;

(4) To cause a written inventory of all the decedent's property within the estate to be prepared promptly with each article or item being separately set forth and cause such property to be exhibited to and appraised by an appraiser, and the inventory and appraisal thereof to be filed with the court;

(5) To give promptly all persons entitled thereto such notice as is required under these proceedings;

(6) To account for all property within the estate which may come into his or her possession or control, and to maintain accurate records of all income received and disbursements made during the course of the administration.

§ 11.705 Removal of executor or administrator.

The Court of Indian Offenses may order the executor or administrator to show cause why he or she should not be discharged, and may discharge the executor or administrator for failure, neglect or improper performance of his or her duties.

§ 11.706 Appointment and duties of appraiser.

(a) Upon ordering an estate to be probated, the court shall appoint a disinterested and competent person as an appraiser to appraise all of the decedent's real and personal property within the estate.

(b) It shall be the duty of the appraiser to appraise separately the true cash value of each article or item of property within the estate, including debts due the decedent, and to indicate the appraised value of each such article or item of property set forth in the inventory of the estate and to certify such appraisal by subscribing his or her name to the inventory and appraisal.

§ 11.707 Claims against estate.

(a) Creditors of the estate or those having a claim against the decedent shall file their claim with the clerk of the court or with the executor or administrator within 60 days from official notice of the appointment of the executor or administrator published locally in the press or posting of signs at the tribal and agency offices, giving appropriate notice for the filing of claims.

(b) The executor or administrator shall examine all claims within 90 days of his or her appointment and notify the claimant whether his or her claim is accepted or rejected. If the claimant is notified of rejection, he or she may request a hearing before the court by filing a petition requesting such hearing within 30 days following the notice of rejection.

§ 11.708 Sale of property.

After filing the inventory and appraisal, the executor or administrator may petition the court for authority to sell personal property of the estate for purposes of paying the expenses of last illness and burial expenses, expenses of administration, claims, if any, against the estate, and for the purpose of distribution. If, in the court's judgment, such sale is in the best interest of the estate, the court shall order such sale and prescribe the terms upon which the property shall be sold.

§ 11.709 Final account.

(a) When the affairs of an estate have been fully administered, the executor or administrator shall file a final account with the court, verified by his or her oath. Such final account shall affirmatively set forth:

(1) That all claims against the estate have been paid, except as shown, and that the estate has adequate unexpended and unappropriated funds to fully pay such remaining claims;

(2) The amount of money received and expended by him or her, from whom received and to whom paid, referring to the vouchers for each of such payments;

(3) That there is nothing further to be done in the administration of the estate except as shown in the final account;

(4) The remaining assets of the estate, including unexpended and unappropriated money, at the time of filing the final account;

(5) The proposed determination of heirs and indicate the names, ages, addresses and relationship to the decedent of each distributee and the proposed distributive share and value thereof each heir, devisee or legatee is to receive; and

(6) A petition that the court set a date for conducting a hearing to approve the final account, to determine the heirs, devisees and legatees of the decedent and the distributive share each distributee is to receive.

§ 11.710 Determination of the court.

At the time set for hearing upon the final account, the Court of Indian Offenses shall proceed to examine all evidence relating to the distribution of the decedent's estate, and consider objections to the final account which may have been filed by any heir, devisee, legatee, or other person having an interest in the distribution of the estate. Upon conclusion of the hearing, the court shall enter an order:

(a) Providing for payment of approved claims;

(b) Determining the decedent's heirs, devisees and legatees, indicating the names, ages and addresses of each, and the distributive share of the remaining estate which each distributee is to receive; and

(c) Directing the administrator or executor to distribute such distributive share to those entitled thereto.

§ 11.711 Descent and distribution.

(a) The court shall distribute the estate according to the terms of the will of the decedent which has been admitted to probate.

(b) If the decedent died intestate or having left a will which has been rejected by the court, the estate shall be distributed as follows:

(1) According to the laws and customs of the tribe if such laws and customs are proved; or

(2) According to state law absent the existence of tribal laws or customs.

(c) If no person takes under the above subsections, the estate shall escheat to the tribe.

§ 11.712 Closing estate.

(a) Upon finding that the estate has been fully administered and is in a condition to be closed, the court shall enter an order closing the estate and discharging the executor or administrator.

(b) If an order closing the estate has not been entered by the end of nine months following appointment of executor or administrator, the executor or administrator shall file a written report with the court stating the reasons why the estate has not been closed.

§ 11.713 Small estates.

An estate having an appraised value which does not exceed $2,000.00 and which is to be inherited by a surviving spouse and/or minor children of the deceased may, upon petition of the executor or administrator, and a hearing before the court, be distributed without administration to those entitled thereto, upon which the estate shall be closed.

Subpart H—Appellate Proceedings

§ 11.800 Jurisdiction of appellate division.

The jurisdiction of the appellate division shall extend to all appeals from final orders and judgments of the trial division, by any party except the prosecution in a criminal case where there has been a jury verdict. The appellate division shall review all issues of law presented to it which arose in the case, but shall not reverse the trial division decision unless the legal error committed affected a substantial right of a party or the outcome of the case.

§ 11.801 Procedure on appeal.

(a) An appeal must be taken within 15 days from the judgment appealed from by filing a written notice of appeal with the clerk of the court.

(b) The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment, or part thereof appealed from, and shall contain a short statement of reasons for the appeal. The clerk of the court shall mail a copy of the notice of appeal to all parties other than parties taking the appeal.

(c) In civil cases, other parties shall have 15 days to respond to the notice of appeal.

(d) In civil cases, the appellant may request the trial division to stay the judgment pending action on the notice of appeal, and, if the appeal is allowed, either party may request the trial division to grant or stay an injunction pending appeal. The trial division may condition a stay or injunction pending appeal on the depositing of cash or bond sufficient to cover damages awarded by the court together with interest.

§ 11.802 Judgment against surety.

Any surety to a bond submits himself or herself to the jurisdiction of the Court of Indian Offenses, and irrevocably appoints the clerk of the court as his or her agent upon whom any papers affecting his or her liability on the bond may be served.

§ 11.803 Record on appeal.

Within 20 days after a notice of appeal is filed, the clerk of court shall certify and file with the appellate division the record of the case.

§ 11.804 Briefs and memoranda.

(a) Within 30 days after the notice of appeal is filed, the appellant may file a written brief in support of his or her appeal. An original and one copy for each appellee shall be filed with the clerk of court who shall mail one copy by registered or certified mail to each appellee.

(b) The appellee shall have 30 days after receipt of the appellant's brief within which to file an answer brief. An original and one copy for each appellant shall be filed with the clerk of the court who shall mail one copy, by registered or certified mail, to each appellant.

§ 11.805 Oral argument.

The appellate division shall assign all criminal cases for oral argument. The court may in its discretion assign civil cases for oral argument or may dispose of civil cases on the briefs without argument.

§ 11.806 Rules of court.

The chief magistrate of the appellate division shall prescribe all necessary rules concerning the operation of the appellate division and the time and place of meeting of the court.

Supart I—Children's Court

§ 11.900 Definitions.

For purposes of sections pertaining to the children's court:

(a) *Abandon* means the leaving of a minor without communication or failing to support a minor for a period of one year or more with no indication of the parents' willingness to assume a parental role.

(b) *Adult* means a person eighteen (18) years or older.

(c) *Counsel* means an attorney admitted to the bar of a state or the District of Columbia or a lay advocate admitted to practice before the Court of Indian Offenses.

(d) *Custodian* means one who has physical custody of a minor and who is providing food, shelter and supervision to the minor.

(e) *Custody* means the power to control the day-to-day activities of the minor.

(f) *Delinquent Act* means an act which, if committed by an adult, would be designated a crime under this part or under an ordinance of the tribe.

(g) *Detention* means the placement of a minor in a physically restrictive facility.

(h) *Guardian* means a person other than the minor's parent who is by law responsible for the care of the minor.

(i) *Guardian ad Litem* means a person appointed by the court to represent the minor's interests before the court.

(j) *Juvenile Offender* means a person who commits a delinquent act prior to his or her eighteenth birthday.

(k) *Minor* means:

(1) A person under 18 years of age,

(2) A person 18 years of age or older concerning whom proceedings are commenced in the children's court prior to his or her eighteenth birthday, or

(3) A person 18 years of age or older who is under the continuing jurisdiction of the children's court.

(l) *Minor-in-need-of-care* means a minor who:

(1) Has no parent or guardian available and willing to take care of him or her;

(2) Is unwilling to allow his or her parent or guardian to take care of him or her;

(3) Has suffered or is likely to suffer a physical or emotional injury, inflicted by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or emotional health;

(4) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his or her parent, guardian or custodian;

(5) Has been sexually abused;

(6) Has been committing delinquent acts as a result of parental pressure, guidance or approval; or,

(7) Has been committing status offenses.

(m) *Status offense* means an offense which, if committed by an adult, would not be designated a crime under this part or under an ordinance of the tribe.

§ 11.901 The children's court established.

When conducting proceedings under §§ 11.900–11.1114 of this part, the Court of Indian Offenses shall be known as the "Children's Court".

§ 11.902 Non-criminal proceedings.

No adjudication upon the status of any minor in the jurisdiction of the children's court shall be deemed criminal or be deemed a conviction of a crime, unless the children's court refers the matter to the Court of Indian Offenses. Neither the disposition nor evidence given before the children's court shall be admissible as evidence against the child in any proceeding in another court.

§ 11.903 Presenting officer.

(a) The agency superintendent and the chief magistrate of the children's court shall jointly appoint a presenting officer to carry out the duties and responsibilities set forth under §§ 11.900–11.1114 of this part. The presenting officer's qualifications shall be the same as the qualifications for the official who acts as prosecutor for the Court of Indian Offenses. The presenting officer may be the same person who acts as prosecutor in the Court of Indian Offenses.

(b) The presenting officer shall represent the tribe in all proceedings under §§ 11.900–11.1114 of this part.

§ 11.904 Guardian ad litem.

The children's court, under any proceeding authorized by this part, shall appoint, for the purposes of the proceeding, a guardian ad litem for a minor, where the court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship, or where the parent, guardian, or custodian has been accused of abusing or neglecting the minor.

§ 11.905 Jurisdiction.

The children's court has exclusive, original jurisdiction of the following proceedings:

(a) Proceedings in which a minor who resides in a community for which the court is established is alleged to be a juvenile offender, unless the children's court transfers jurisdiction to the Court of Indian Offenses pursuant to § 11.907 of this part.

(b) Proceedings in which a minor who resides in a community for which the court is established is alleged to be a minor-in-need-of-care.

§ 11.906 Rights of parties.

(a) In all hearings and proceedings under §§ 11.900–11.1114 of this part the following rights will be observed unless modified by the particular section describing a hearing or proceeding:

(1) Notice of the hearing or proceeding shall be given the minor, his or her parents, guardian or custodian and their counsel. The notice shall be delivered by certified mail. The notice shall contain:

(i) The name of the court;

(ii) The title of the proceeding; and

(iii) The date, time and place of the proceeding.

(b) The children's court magistrate shall inform the minor and his or her parents, guardian or custodian of their right to retain counsel, and, in juvenile delinquency proceedings, shall tell them: "You have a right to have a lawyer or other person represent you at this proceeding. If you cannot afford to hire counsel, the court will appoint counsel for you."

(c) If the children's court magistrate believes there is a potential conflict of interest between the minor and his or her parents, guardian, or custodian with respect to legal representation, the court shall appoint another person to act as counsel for the minor.

(d) The minor need not be a witness against, nor otherwise incriminate, himself or herself.

(e) The children's court shall give the minor, and the minor's parent, guardian or custodian the opportunity to introduce evidence, to be heard on their own behalf and to examine witnesses.

§ 11.907 Transfer to Court of Indian Offenses.

(a) The presenting officer or the minor may file a petition requesting the children's court to transfer the minor to the Court of Indian Offenses if the minor is 14 years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult.

(b) The children's court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to the Court of Indian Offenses.

(1) The transfer hearing shall be held no more than 30 days after the petition is filed.

(2) Written notice of the transfer hearing shall be given to the minor and the minor's parents, guardian or custodian at least 72 hours prior to the hearing.

(c) All the rights listed in § 11.906 shall be afforded the parties at the transfer hearing.

(d) The following factors shall be considered when determining whether to transfer jurisdiction of the minor to the Court of Indian Offenses:

(1) The nature and seriousness of the offense with which the minor is charged.

(2) The nature and condition of the minor, as evidenced by his or her age; mental and physical condition; past record of offenses; and responses to past children's court efforts at rehabilitation.

(e) The children's court may transfer jurisdiction of the minor to the Court of Indian Offenses if the children's court finds clear and convincing evidence that both of the following circumstances exist:

(1) There are no reasonable prospects for rehabilitating the minor through resources available to the children's court; and

(2) The offense allegedly committed by the minor evidences a pattern of

conduct which constitutes a substantial danger to the public.

(f) When a minor is transferred to the Court of Indian Offenses, the children's court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

§ 11.908 Court records.

(a) A record of all hearings under §§ 11.900–11.1114 of this part shall be made and preserved.

(b) All children's court records shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by order of the children's court.

§ 11.909 Law enforcement records.

(a) Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults.

(b) All law enforcement records and files shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by order of the children's court.

§ 11.910 Expungement.

When a minor who has been the subject of any proceeding before the children's court attains his or her twenty-first birthday, the children's court magistrate shall order the court records and the law enforcement records pertaining to the minor to be destroyed, except for adoption records which shall not be destroyed under any circumstances.

§ 11.911 Appeal.

(a) For purposes of appeal, a record of the proceedings shall be made available to the minor and parents, guardian or custodian. Costs of obtaining the record shall be paid by the party seeking the appeal.

(b) Any party to a children's court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the children's court within 30 days of the final order of disposition.

(c) No decree or disposition of a hearing shall be stayed by such appeal.

(d) All appeals shall be conducted in accordance with this part.

§ 11.912 Contempt of court.

Any willful disobedience or interference with any order of the children's court constitutes contempt of court which may be punished in accordance with this part.

Subpart J—Juvenile Offender Procedure

§ 11.1000 Complaint.

A complaint must be filed by a law enforcement officer or by the presenting officer and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed by the complaining witness, and shall contain:

(a) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings;

(b) A citation to the section(s) of this part which the minor is alleged to have violated;

(c) The name, age, and address of the minor who is the subject of the complaint, if known; and

(d) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

§ 11.1001 Warrant.

The children's court may issue a warrant directing that a minor be taken into custody if the court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint.

§ 11.1002 Custody.

A minor may be taken into custody by a law enforcement officer if:

(a) The officer observes the minor committing a delinquent act; or

(b) The officer has reasonable grounds to believe a delinquent act has been committed that would be a crime if committed by an adult, and that the minor has committed the delinquent act; or

(c) A warrant pursuant to § 11.1001 has been issued for the minor.

§ 11.1003 Law enforcement officer's duties.

A law enforcement officer who takes a minor into custody pursuant to § 11.1002 of this part shall:

(a) Give the following warnings to any minor taken into custody prior to any questioning:

(1) The minor has a right to remain silent;

(2) Anything the minor says can be used against the minor in court;

(3) The minor has the right to the presence of counsel during questioning; and

(4) If he or she cannot afford counsel, the court will appoint one.

(b) Release the minor to the minor's parent, guardian, or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care or detention is necessary.

(c) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is made by the court.

§ 11.1004 Detention and shelter care.

(a) A minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

(1) A foster care facility approved by the tribe;

(2) A detention home approved by the tribe; or

(3) A private family home approved by the tribe.

(b) A minor who is 16 years of age or older may be detained in a jail facility used for the detention of adults only if:

(1) A facility in paragraph (a) of this section is not available or would not assure adequate supervision of the minor;

(2) The minor is housed in a separate room from the detained adults; and

(3) Routine inspection of the room where the minor is housed is conducted every 30 minutes to assure his or her safety and welfare.

§ 11.1005 Preliminary inquiry.

(a) If a minor is placed in detention or shelter care, the children's court shall conduct a preliminary inquiry within 24 hours for the purpose of determining:

(1) Whether probable cause exist to believe the minor committed the alleged delinquent act; and

(2) Whether continued detention or shelter care is necessary pending further proceedings.

(b) If a minor has been released to the parents, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.

(c) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify and to obtain the presence of the parents, guardian, or custodian. If it appears that further efforts are likely to produce the parents, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to obtain the presence of parents, guardian or custodian.

(d) All the rights listed in § 11.906 shall be afforded the parties in a preliminary inquiry.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

(2) The need for detention or shelter care.

(f) If the children's court finds that probable cause exists to believe the minor performed the delinquent act, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing unless:

(1) The act is serious enough to warrant continued detention or shelter care;

(2) There is reasonable cause to believe the minor will run away and be unavailable for further proceedings; or

(3) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release a minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parent, guardian, or custodian of the minor consents to the release. If the minor is ten years of age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon a finding that probable cause exists to believe that the minor has committed the alleged delinquent act and that there is need for detention or shelter care, the minor's detention or shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

§ 11.1006 Investigation by the presenting officer.

(a) The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to his or her parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

(1) Determine that no further action be taken;

(2) Begin transfer proceedings to the Court of Indian Offenses pursuant to § 11.907 of this part; or

(3) File a petition pursuant to § 11.1007 of this part to initiate further proceedings. The petition shall be filed within 48 hours of the preliminary inquiry if the minor is in detention or shelter care. If the minor has been previously released to his or her parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten days of the preliminary inquiry.

§ 11.1007 Petition.

(a) Proceedings under §§ 11.1000–11.1014 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and in the interests of the minor. The petition shall state:

(1) The name, birth date, and residence of the minor;

(2) The names and residences of the minor's parents, guardian or custodian;

(3) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings;

(4) A citation to the section(s) of this part which the minor is alleged to have violated; and

(5) If the minor is in detention or shelter care, the time the minor was taken into custody.

§ 11.1008 Date of hearing.

Upon receipt of the petition, the children's court shall set a date for the hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within 15 days after filing of the petition, the petition shall be dismissed and cannot be filed again, unless;

(a) The hearing is continued upon motion of the minor; or

(b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

§ 11.1009 Summons.

(a) At least five working days prior to the adjudicatory hearing, the children's court shall issue summons to:

(1) The minor;

(2) The minor's parents, guardian or custodian; and

(3) Any person the children's court or the minor believes necessary for the adjudication of the hearing.

(b) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

§ 11.1010 Adjudicatory hearing.

(a) The children's court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the minor. The hearing shall be private and closed.

(b) All the rights listed in § 11.906 shall be afforded the parties at the adjudicatory hearing. The notice requirements of § 11.906(a) are met by a summons issued pursuant to § 11.1009.

(c) If the minor admits the allegations of the petition, the children's court shall proceed to the dispositional stage only if the children's court finds that:

(1) The minor fully understands his or her rights as set forth in § 11.906 of this part and fully understands the potential consequences of admitting the allegations;

(2) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for children's court action; and

(3) The minor has not, in the purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

(d) The children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(e) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the children's court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

(f) A finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.

§ 11.1011 Dispositional hearing.

(a) A dispositional hearing shall take place not more than 15 days after the adjudicatory hearing.

(b) At the dispositional hearing, the children's court shall hear evidence on the question of proper disposition.

(c) All the rights listed in § 11.906 shall be afforded the parties in the dispositional hearing.

(d) At the dispositional hearing, the children's court shall consider any predisposition report, physician's report or social study it may have ordered and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The children's court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.

(e) The dispositional order constitutes a final order for purposes of appeal.

§ 11.1012 Dispositional alternatives.

(a) If a minor has been adjudged a juvenile offender, the children's court may make the following disposition:

(1) Place the minor on probation subject to conditions set by the children's court;

(2) Place the minor in an agency or institution designated by the children's court; or

(3) Order restitution to the aggrieved party.

(b) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months of the minor's eighteenth birthday or after the minor had reached 18 years of age, in which case the disposition may not continue for more than six months.

(c) The dispositional order is to be reviewed at the children's court discretion, but at least once every six months.

§ 11.1013 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of a change of circumstances.

(b) The children's court may modify a dispositional order at any time upon the motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.906 shall be afforded the parties in the hearing to review the dispositional order. The notice required by paragraph (a) of § 11.906 shall be given at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.1011 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

§ 11.1014 Medical examination.

The children's court may order a medical examination for a minor who is alleged to be a juvenile offender.

Subpart K—Minor-In-Need-of-Care Procedure

§ 11.1100 Complaint.

A complaint must be filed by a law enforcement officer or by the presenting officer and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed by the complaining witness and shall contain:

(a) A citation to the specific section of this part which gives the children's court jurisdiction of the proceedings;

(b) The name, age and address of the minor who is the subject of the complaint, if known; and

(c) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

§ 11.1101 Warrant.

The children's court may issue a warrant, directing that a minor be taken into custody if the children's court finds there is probable cause to believe the minor is a minor-in-need-of-care.

§ 11.1102 Custody.

A minor may be taken into custody by a law enforcement officer if:

(a) The officer has reasonable grounds to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his or her surroundings and that removal is necessary; or

(b) A warrant pursuant to § 11.1101 of this part has been issued for the minor.

§ 11.1103 Law enforcement officer's duties.

Upon taking a minor into custody the officer shall:

(a) Release the minor to the minor's parents, guardian or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care is necessary.

(b) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care is made by the children's court.

§ 11.1104 Shelter care.

(a) A minor alleged to be a minor-in-need-of-care may be detained, pending a court hearing, in the following places:

(1) A foster care facility authorized under tribal or state law to provide foster care, group care or protective residence;

(2) A private family home approved by the tribe; or

(3) A shelter care facility operated by a licensed child welfare services agency and approved by the tribe.

(b) A minor alleged to be a minor-in-need-of care may not be detained in a jail or other facility used for the detention of adults. If such minor is detained in a facility used for the detention of juvenile offenders, he or she must be detained in a room separate from juvenile offenders, and routine inspection of the room where the minor is detained must be conducted every 30 minutes to assure his or her safety and welfare.

§ 11.1105 Preliminary inquiry.

(a) If a minor is placed in shelter care, the children's court shall conduct a preliminary inquiry with 24 hours for the purpose of determining:

(1) Whether probable cause exists to believe the minor is a minor-in-need-of care; and

(2) Whether continued shelter care is necessary pending further proceedings.

(b) If a minor has been released to the parents, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of-care.

(c) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify and obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to obtain the presence of the parents, guardian or custodian.

(d) All the rights listed in § 11.906 of this part shall be afforded the parties in the minor-in-need-of care preliminary inquiry except that the court is not required to appoint counsel if the parties cannot afford one. Notice of the inquiry shall be given to the minor, and his or her parents, guardian or custodian and their counsel as soon as the time for the inquiry has been established.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

(2) The need for shelter care.

(f) If the children's court finds that probable cause exists to believe the minor is a minor-in-need-of-care, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing, unless:

(1) There is reasonable cause to believe that the minor will run away and be unavailable for further proceedings;

(2) There is reasonable cause to believe that the minor is in immediate danger from parents, guardian or

custodian and that removal from them is necessary; or

(3) There is a reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release the minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parents, guardian or custodian of the minor consent to the release. If the minor is ten years to age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon finding that probable cause exists to believe that the minor is a minor-in-need-of-care and that there is a need for shelter care, the minor's shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

§ 11.1106 Investigation by the presenting officer.

The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to the parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

(a) Determine that no further action be taken; or

(b) File a petition pursuant to § 11.1107 of this part in the children's court to initiate further proceedings. The petition shall be filed within 48 hours of the preliminary inquiry if the minor is in shelter care. If the minor has been previously released to the parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten days of the preliminary inquiry.

§ 11.1107 Petition.

Proceedings under §§ 11.1100–11.1114 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and the interests of the minor. The petition shall state:

(a) The name, birth date, and residence of the minor;

(b) The names and residences of the minor's parents, guardian or custodian;

(c) A citation to the specific section of this part which gives the children's court jurisdiction of the proceedings; and

(d) If the minor is in shelter care, the place of shelter care and the time he or she was taken into custody.

§ 11.1108 Date of hearing.

Upon receipt of the minor-in-need-of-care petition, the children's court shall set a date for the hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within 15 days after the filing of the petition, it shall be dismissed unless;

(a) The hearing is continued upon motion of the minor; or

(b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

§ 11.1109 Summons.

(a) At least five working days prior to the adjudicatory hearing for a minor-in-need-of-care, the children's court shall issue summons to:

(1) The minor;

(2) The minor's parents, guardian or custodian; and

(3) Any person the children's court or the minor believes necessary for the proper adjudication of the hearing.

(b) The summons shall contain the name of the court; the title of the proceedings, and the date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

§ 11.1110 Minor-in-need-of-care adjudicatory hearing.

(a) The children's court shall conduct the adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of-care. The hearing shall be private and closed.

(b) All the rights listed in § 11.906 of this part shall be afforded the parties in the adjudicatory hearing, except that the court may not appoint counsel if the parties cannot afford one. The notice requirements of § 11.906(a) are met by a summons issued pursuant to § 11.1109.

(c) The children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(d) If the circumstances of the petition are sustained by clear and convincing evidence, the children's court shall find the minor to be a minor-in-need-of-care and proceed to the dispositional hearing.

(e) A finding that a minor is a minor-in-need-of-care constitutes a final order for purposes of appeal.

§ 11.1111 Minor-in-need-of-care dispositional hearing.

(a) No later than 15 days after the adjudicatory hearing, a dispositional hearing shall take place to hear evidence on the question of proper disposition.

(b) All the rights listed in § 11.906 of this part shall be afforded the parties in the dispositional hearing except the right to free court-appointed counsel. Notice of the hearing shall be given to the parties at least 48 hours before the hearing.

(c) At the dispositional hearing the children's court shall consider any predisposition report or other study it may have ordered and afford the parties an opportunity to controvert the factual contents and conclusions of the reports. The children's court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.

(d) The dispositional order constitutes a final order for purposes of appeal.

§ 11.1112 Dispositional alternatives.

(a) If a minor has been adjudged a minor-in-need-of-care, the children's court may:

(1) Permit the minor to remain with his or her parents, guardian or custodian subject to such limitations and conditions as the court may prescribe; or, if reasonable efforts to have the minor return or remain in his or her own home are unsuccessful, the children's court may make whichever of the following dispositions is in the best interest of the minor;

(2) Place the minor with a relative within the boundaries of the reservation subject to such limitations and conditions as the court may prescribe;

(3) Place the minor in a foster home within the boundaries of the reservation which has been approved by the tribe subject to such limitations and conditions as the court may prescribe;

(4) Place the minor in shelter care facilities designated by the court;

(5) Place the minor in a foster home or a relative's home outside the boundaries of the reservation subject to such limitations and conditions as the court may prescribe; or

(6) Recommend that termination proceedings begin.

(b) Whenever a minor is placed in a home or facility located outside the boundaries of the reservation, the court may require the party receiving custody of the minor to sign an agreement that the minor will be returned to the court upon order of the court.

(c) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months of the minor's eighteenth birthday, in which case the disposition may not continue for more than six months.

(d) The dispositional orders are to be reviewed at the children's court discretion, but at least once every six months to determine the continuing need for and appropriateness of placement, to determine the extent of progress made, and to assess the probability of the minor's return to his or her home.

(e) A permanency planning hearing must be held within 18 months after the original placement and every six months thereafter to determine the future status of the minor except when the minor is returned to his or her home and court supervision ceases.

§ 11.1113 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of a change of circumstances.

(b) The children's court may modify a dispositional order at any time upon motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section to review the dispositional order.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.906 of this part shall be afforded the parties in the review of the disposition hearing except the right to free court-appointed counsel. Notice of the hearing shall be given the parties at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.1111 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

§ 11.1114 Termination.

(a) Parental rights to a child may be terminated by the children's court according to the procedures in this section.

(b) Proceedings to terminate parental rights shall be instituted by a petition filed by the presenting officer on behalf of the tribe or by the parents or guardian of the child. The petition shall state:

(1) The name, birth date, and residence of the minor;

(2) The names and residences of the minor's parents, guardian or custodian;

(3) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody; and

(4) The reasons for the petition.

(c) Upon receipt of the petition, the children's court shall set a date for the termination hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. The hearing may be continued:

(1) On motion of the minor's parents, guardian or custodian; or

(2) Upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

(d) Summons:

(1) At least five working days prior to the termination hearing, the children's court shall issue summons to the minor, the minor's parents, guardian or custodian, and any other person the court or the minor's parents, guardian or custodian believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(3) A copy of the petition shall be attached to the summons.

(4) The summons shall be delivered personally by a law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

(e) The children's court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

(1) All the rights listed in § 11.906 shall be afforded the parties in the termination hearing except the right to a free court-appointed counsel. The minor's parents may not be compelled to be witnesses against, nor otherwise incriminate themselves.

(2) The children's court shall hear testimony concerning the circumstances that gave rise to the petition, and the need for termination of parental rights.

(3) The children's court may terminate parental rights if, following efforts to prevent or eliminate the need to remove the minor, it finds such efforts to have been unsuccessful, and it finds beyond a reasonable doubt that:

(i) The child has been abandoned;

(ii) The minor has suffered physical injuries, willfully and repeatedly inflicted by his or her parent(s) which cause or create a substantial risk of death, disfigurement, or impairment of bodily functions;

(iii) The parent(s) has subjected the minor to willful and repeated acts of sexual abuse;

(iv) The minor has suffered serious emotional or mental harm due to the act of the parent(s); or

(v) The voluntary written consent of both parents has been acknowledged before the court.

(f) Dispositional alternatives:

(1) If parental rights to a child are terminated, the children's court shall place the minor in a foster care or shelter care facility which has been approved by the tribe, and follow the adoption procedures of the tribe, or, in their absence, the adoption procedures of the state within which it is located.

(2) If parental rights to a child are not terminated, the children's court shall make a disposition according to § 11.1112 of this part.

(g) The termination order constitutes a final order for purposes of appeal.

(h) No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any tribe or the minor's degree of blood quantum of any tribe.

§ 11.1115 Information collection.

(a) The information collection requirements contained in § 11.600 and § 11.606 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1076–0094. The information is being collected to obtain a marriage license (§ 11.600) and a divorce decree (§ 11.606) from the Courts of Indian Offenses, and will be used by the courts to issue a marriage license or divorce decree. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average .25 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection

Clearance Officer, Room 336–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076–0094], Office of Management and Budget, Washington, DC 20502.

3. A new part 12, The Indian Police, is added, containing newly redesignated §§ 12.100 through 12.105. The table of contents and authority for the new part 12 are as follows:

PART 12—THE INDIAN POLICE

Authority: 25 U.S.C. 2, 13.

Woodrow W. Hopper, Jr.,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 93–25714 Filed 10–20–93; 8:45 am]

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federal register

Thursday
October 21, 1993

Part III

Department of Education

Educational Media Research, Production, Distribution, and Training Program; Notices

DEPARTMENT OF EDUCATION

Educational Media Research, Production, Distribution, and Training Program

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal year 1994.

SUMMARY: The Secretary announces funding priorities for fiscal year 1994 under the Educational Media Research, Production, Distribution, and Training Program. The Secretary takes this action to focus Federal financial assistance on those areas of greatest need. These priorities are intended to ensure the continued availability of closed-captioned television sports programming, expand on the number and types of video-described projects, include research on video description and research on captioning technology as a language development tool, continue the video captioning process, and explore the future direction of captioned media programs.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ernest E. Hairston, U.S. Department of Education, 400 Maryland Avenue SW., room 4629, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9172. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169; or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains seven priorities under the Educational Media Research, Production, Distribution, and Training Program authorized under part F of the Individuals with Disabilities Education Act (IDEA). The purposes of the program are to promote the general welfare of deaf and hard of hearing individuals and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

One priority in this notice provides cooperative agreements to ensure the continued availability of closed-captioned sports programming. In addition, other priorities will expand on the number and types of video-described projects to include (1) broadcast and cable video description, (2) described home videos, and (3) research on video description. These priorities will also provide (1) research on captioning technology as a language development tool and (2) a symposium to explore the future directions of captioned media programs.

An additional priority in this notice provides for a cooperative agreement to assist in the provision of video captioning services such as obtaining, screening, evaluating, and captioning educational videos and related media.

These priorities support the National Education Goals by assisting those with disabilities in meeting Goal 1, school readiness, and Goal 5, adult literacy.

On June 23, 1993 the Secretary published a notice of proposed priorities in the **Federal Register** (58 FR 34168).

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this program is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, twenty-one parties submitted comments. An analysis of the comments and of changes in the priorities since publication of the notice of the proposed priorities follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

General

Comment: Two commenters urged the Secretary to make more than one award under the various priorities in order to continue to generate private sector support or to increase competition.

Discussion: In announcing priorities, the Secretary does not generally establish numbers of awards unless it is critical to the activities included under the priority.

Changes: The specified number of projects has been dropped from priorities two and three, thereby allowing for the possibility of more than one award.

Comment: Three commenters recommended a priority for captioned videos, and one suggested deleting the priority for described videos.

Discussion: The Secretary recognizes the importance of captioned videos, and supports it under activities described in Priority 7. The Secretary also recognizes the importance of video description for persons with visual impairments and the need for continued support of this activity which is not currently supported through other sources.

Changes: None.

Comment: Four commenters indicated an interest in support for closed-captioning of basic cable television programming.

Discussion: The Secretary recognizes the importance of access to programs shown on local stations, national commercial and public broadcast networks, as well as syndicated and cable programs shown nationally. In making awards the Secretary will continue to support the closed-captioning of basic cable television programming under activities such as Priority 1 of this notice as well as under several current awards.

Changes: None.

Comment: One commenter proposed a cooperative agreement for a series of deaf theatre arts festivals to share the wealth of talent, skill, and theatrical productions developed by grantees under the program during the past two years.

Discussion: The Secretary agrees that there is a need to systematically and broadly disseminate the rich cultural experiences being developed by the grantees. Although the priorities in this notice do not address this issue, consideration may be given to it or a similar vehicle for sharing experiences in future years.

Changes: None.

Comment: One commenter proposed a priority to support the videotape productions of original cultural programs by and for deaf and hard of hearing individuals. The priority would provide seed money to develop the productions. The dissemination of the videotapes would provide a wider audience of consumers access to quality cultural arts programming.

The commenter also proposed a priority to provide support for the development of videotape materials that deal with issues in mental and physical health affecting deaf and hard of hearing individuals. Videotapes would make use of innovative approaches to portray deaf and hard of hearing persons dealing with these issues and identifying possible solutions.

Discussion: The Secretary agrees that there is merit in producing a varied set of videotapes geared toward deaf and hard of hearing individuals, as well as those with other disabilities. However, the activities described in these final priorities are of even greater importance if individuals with disabilities are to have continued access to existing media.

Changes: None.

Absolute Priority 1—Closed-Captioned Sports Programs

Comment: One commenter requested that the Secretary add to this priority specific language giving preference to continued captioning of sports programs currently captioned as well as language to indicate inclusion of specific types of cable programming (i.e., basic, premium, and pay-per-view).

Discussion: The Secretary is not inclined to give preference to currently captioned sports programs because programs that have been previously captioned may have been captioned as the result of program availability, and not necessarily consumer preference. The Secretary wishes to give emphasis to consumer preference. Further, the priority as written encompasses all types of cable programming.

Changes: None.

Comment: One commenter suggested that priorities for captioning should focus on persuading networks and stations to assume a greater degree of responsibility for covering the cost of captioning.

Discussion: The Secretary agrees that increased private sector funding of closed-captioning is important. In fact, since 1980 the portion of captioning paid for through non-federal support has grown significantly, particularly in prime-time news and sports programming on major broadcast networks. The Secretary believes that as the implementation of the Decoder Circuitry Act increases the number of homes with decoders, this trend is likely to accelerate. Therefore, the Secretary believes there is no need at this time to add such a focus to the language of this priority.

Changes: None.

Absolute Priority 2—Broadcast and Cable Television Description and Absolute Priority 3—Described Home Video

Comment: One commenter requested a clarification regarding the requirement for identification of sources of private sector funding. The commenter urged that private funding not be made mandatory, stating that private sector funding was particularly difficult to obtain at this stage of development for description services.

Discussion: The Secretary does not intend to require private sector funding under this priority, but rather to encourage projects to seek any support that might become available.

Changes: Priorities two and three have been changed to indicate that sources of private or other public support for description, should any be available, must be identified.

Comment: Two commenters sought clarification of the methods used to provide description. Another commenter requested clarification of the difference between description for broadcast television and description for cable television. One commenter stated that commercial networks, included under this priority for the first time, may resist description because of the high cost of audio routing equipment for a separate description channel.

Discussion: Two examples of the current methods used for description are identified in the priority: One method uses the Secondary Audio Program (SAP), the other uses open description (similar to open captioning, where all viewers are subject to the descriptions). Public television has primarily broadcast descriptions using the SAP channel, although it has provided open descriptions upon occasion. Providers of video description for cable and home video have used open descriptions. However, the method to be used to provide description is not stipulated in the priority. The inclusion of the terms broadcast and cable within the priority is to indicate that programs on both types of networks may be included in the activities under this priority.

As with open captioning, the commercial networks may prefer not to broadcast open descriptions for regular programming because of overall viewer preference. Further, the Secretary agrees that commercial networks may also resist video description because of the high cost of audio routing equipment for a separate description channel. The priority does not stipulate that commercial broadcast networks must be included in the activities under this priority. The Secretary, however, does not wish to preclude commercial broadcast networks from the priority.

Changes: None.

Comment: One commenter expressed the concern that outreach was not identified as an activity in the priorities for video description.

Discussion: The Secretary agrees that outreach (marketing and dissemination) is a necessary component to approved projects for video description. All applications submitted to the Secretary under these priorities are evaluated under the established selection criteria at 34 CFR 332.32, which include information related to marketing and dissemination.

Changes: None.

Comment: One commenter expressed an interest in a priority for video description of televised sports.

Discussion: While the Secretary agrees that video description of televised sports may be of interest to persons with visual impairments, the Secretary believes that research is needed as to viewer demographics and interests before designating specific types of programs for description.

Changes: None.

Absolute Priority 4—Research on Video Description

Comment: Three commenters expressed an interest in promoting the educational benefits of descriptive video through research.

Discussion: The Secretary acknowledges the value of research on the educational benefits of descriptive video. The Secretary believes that this topic may be addressed as a related issue under the priority for Research on Video Description.

Changes: None.

Absolute Priority 5—Research on Captioning as a Language Development Tool

Comment: Three commenters strongly supported this priority and stated that it will extend opportunities for developing literacy skills, not only of students with other disabilities, but non-disabled children as well as those for whom English is a second language. One commenter encouraged the Department to broaden this priority to include research into the potential benefits of captioning as a preventive technique, thus covering individuals for whom English is a second language.

Discussion: The authorizing legislation and program regulations at 34 CFR 332.10 clearly state that projects funded under the Educational Media Research, Production, Distribution, and Training Program are to benefit individuals with disabilities. However, research findings and resulting benefits may be useful to other agencies or individuals serving specific populations.

Changes: None.

Comment: One commenter suggested that the word "standards," as used in the background information be replaced by the word "styles" because "standards" suggests an official process that overstates any current activities in this area.

Discussion: The Secretary agrees that the use of the term "standards" may be misleading.

Changes: "Styles" has been substituted for "standards."

Comment: One commenter indicated that a 18-month project period is not an adequate amount of time to refine the research design, conduct the study, and disseminate the results of the project, and recommended that research projects be 24 months in length with 12-month extensions at the option of the Department.

Discussion: The priority did not specify any project period. The Secretary, however, agrees that a reasonable amount of time should be provided to allow researchers to adequately conduct research efforts. Information about project periods is provided in the Secretary's notice inviting application for new awards.

Changes: None.

Comment: One commenter pointed out that the priority did not mention dissemination of the results of studies or projects.

Discussion: The Secretary acknowledges the importance of disseminating project results. The program regulations at 34 CFR 332.41 require that all projects funded under the Educational Media Research, Production, Distribution, and Training Program disseminate their findings and products broadly.

Changes: None.

Comment: One commenter requested clarification on what was meant by the term "outcomes data" as referred to in paragraph (4) of the priority.

Discussion: The Secretary understands how the term "outcomes" can cause some confusion since it has also been used in reference to educational goals expected of students. However, under this priority the term is intended to mean any concrete or existing data that are collected or result from the research study. In other words, the term refers to actual rather than expected results.

Changes: None.

Comment: One commenter sought clarification on whether a project must conduct the research in more than one setting or more than one type of setting, as referred under paragraph (5) of the priority.

Discussion: The Secretary agrees with the commenter that depending on the population one intends to study or the nature of the study, one setting or type of setting may be appropriate. In establishing this requirement the Secretary intended to emphasize that the settings must be realistic and as natural as possible as opposed to being laboratory-like or in isolation. The settings listed are examples of settings that might be included in the research, but a particular project would not necessarily focus on more than one setting.

Changes: The words "a variety of" have been removed from the priority.

Comment: One commenter suggested that the educational/linguistic implications of caption capture technology be investigated as a tool in enhancing reading and language development.

Discussion: This priority allows projects to address the issues described in the priority or other issues related to captioning as a language development tool. Thus, research on caption capture technology could be included under this priority.

Changes: None.

Absolute Priority 6—Symposium on Exploring New Strategies for Providing Captioned Media Services

Comment: Three commenters expressed support for using a symposium format to study long-term strategies for expanding the availability of captioned media. One commenter objected to the emphasis on closed captions rather than on open captions, stating that the greatest percentage of deaf and hard of hearing students are in mainstream programs that might not have access to decoders.

Discussion: The Secretary did not intend for this priority to focus on any one method or form of captioning. The main purpose of the symposium is to explore as many strategies as possible to make captioned media available to as wide a number of deaf and hard of hearing individuals as possible. The term closed-captioning was used in reference to television programming that has been close-captioned.

Changes: None.

Comment: One commenter expressed concern regarding the lack of promotion and dissemination of the educational film and video lesson guides, and proposed that this issue be reviewed and discussed at the symposium. Several commenters suggested various additional pre-symposium activities or additional topics that should be included in the symposium. Other commenters suggested types of individuals that should be symposium attendees or presenters. One commenter suggested that attendance be free of charge and that the proceedings be distributed beyond the participants.

Discussion: The Secretary appreciates the commenters' suggestions and agrees that they could be taken into consideration by applicants responding to this priority. However, the Secretary does not believe this priority should be overly prescriptive. The successful applicant will be encouraged to consider various options in terms of participants, topics, and dissemination of conference proceedings.

Changes: None.

Absolute Priority 7—Educational Video Selection and Captioning

Comment: Twelve comments were received in support of this priority. Nine commenters expressed similar concerns regarding two areas: (1) closed-captioned educational videos and (2) the omission of the lesson guide production. Several pointed out that closed-captioned videos are not fully accessible nor desirable for educational purposes since many schools or programs do not have access to decoders. They also stated that the production of lesson guides has been a standard procedure for several years and has become an integral part of the program and serve a unique purpose. They suggested keeping this activity as an ongoing activity under this priority. One commenter supported the decision to leave out the lesson guide activity because of the low usage statistics, production limitations, and cost factors. The commenter offered support for the activity if these problems were resolved.

Discussion: The rationale and support for open-captioned educational videos is strong and convincing. The Secretary also recognizes the value of the lesson guides to educators who use them. However, the Secretary is also aware of the low usage, high cost factors, and complicated production logistics associated with the guides and believes the Department should evaluate this activity more closely before continuing this activity.

Through a separate mechanism the Secretary plans to review the impact of the lesson guides, teacher usage, and ensuing costs. If warranted, an activity for the development and production of lesson guides may be considered at a future date.

Changes: The priority has been changed to indicate that the educational videos procured for classroom use will include open-captioned and close-captioned videos for each title.

Comment: Three commenters indicated that many people do not know the difference between open, closed, and real-time captioning and know very little about the process. They suggested a clearinghouse that could disseminate captioning information to consumers, agencies, corporations, businesses and schools. Another commenter suggested that information on captioned videos from private databases be disseminated under this activity.

One commenter indicated that providers of new video formats and delivery systems (satellite, CD–ROM, and others) should be made aware of the benefits of captioned materials for other special-needs groups, as well as for individuals with a hearing loss.

Discussion: The Secretary agrees with the importance of disseminating information about captioning, but believes the operation of a general clearinghouse on captioning or disseminating information from private databases is beyond the intended scope of this priority. Further, activities funded under this program are restricted to individuals who are deaf or hard of hearing. The Secretary will explore under other mechanisms ways to disseminate information about captioning to relevant organizations serving other special-needs groups.

Changes: None.

Comment: One commenter suggested that since advances in technology allow captions to be prepared on computers and since diskettes are used to transfer caption data directly to the finished product, the reference to preparation of captioned scripts is outmoded.

Discussion: The Secretary agrees with this observation.

Changes: This priority has been changed to require the preparation of captions on computer diskettes.

Comment: Two commenters indicated that in the past, the functions of two current contracts (one that parallels the activities under this priority) were under one contract and recommended that many of the current splintered and scattered activities be brought under this cooperative agreement. They suggested that the project evaluate, select, and caption new titles and also maintain a computer database of all video records, including production company, lease company, date of production, date of receipt in the program, lease expiration date, and lease documentation for continual coordination and follow-up with the video companies. Through this arrangement, commenters believe that the Captioned Film and Video Loan Service will more efficiently and effectively meet the needs of consumers.

Discussion: The Secretary will consider this recommendation at the same time the results and recommendations from the symposium under Priority 6 are considered.

Changes: None.

Comment: One commenter recommended that an extensive weeding process be initiated to eliminate theatrical, special interest, and educational titles that are no longer in demand or useful and convene re-evaluation groups and develop guidelines for withdrawing or replacing titles.

Discussion: The Secretary understands the importance of re-evaluating dated titles and withdrawing obsolete titles and replacing them with more current titles. This is included in the process of evaluating and selecting titles.

Changes: None.

Comment: One commenter recommended that a more broadly based evaluation of videos for captioning and inclusion in the theatrical and special interest collection should be included.

Discussion: The Secretary believes the evaluation process described in the priority will be more broadly based than similar activities in past years and allows for the inclusion of feature and special interest titles.

Change: None.

Comment: Two commenters thought the priority should address the issue of increased duplication from video masters of captioned educational and general interest titles. They anticipated an increasing demand for many titles by consumers because of the American with Disabilities Act (ADA), and stated that contract controlled duplication should be allowed to meet this increased demand.

Discussion: The Secretary is aware of the need to increase the number of duplicate copies of captioned video titles. This effort will be addressed through the process to procure the video titles.

Changes: None.

Comment: One commenter believed that work under the current contract has demonstrated the capability to select and caption 150 educational titles. Therefore, this individual recommended that the number of annual new educational title procurements be increased from 100 to 200–300 titles.

Discussion: The Secretary is pleased that technology and production systems are available to make it possible to caption an increased number of educational titles. The priority, as written, does not specify any given number. Applicants may propose a number they deem reasonable and practical.

Changes: None.

Comment: One commenter suggested that a consumer work group be convened biennially to provide input to the project, and that a similar advisory group of educators be a requirement.

Discussion: The priority as proposed requires strategies for determining the curricular needs of deaf and hard of hearing students as well as an evaluation program that incorporates consumer information into the selection and captioning process. Consumer advisory groups represent one approach to these requirements, and may be proposed by applicants under this program.

Changes: None.

Comment: One commenter suggested that making captioned videos available through general distribution mechanisms will require the Department to make distribution a prerequisite in the procurement of videos by the captioned film and video loan service.

Discussion: The Secretary will work closely with the successful applicant to determine what measures are necessary to make captioned videos available through general distribution mechanisms.

Changes: None.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet these absolute priorities:

Absolute Priority 1—Closed-Captioned Sports Programs

Background: This priority supports cooperative agreements to continue and expand closed-captioning of major national sports programs shown on national commercial broadcast or cable television networks. Captioning provides a visual representation of the audio portion of the programming and enables persons who are deaf or hard of hearing to participate in the shared educational, social, and cultural experiences of national sporting events.

Priority: To be considered for funding under this priority, a project must—

(1) For selecting programs to be captioned, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be captioned;

(3) For each proposed program to be captioned, identify the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time or offline—and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that would ensure successful, timely captioning service;

(6) Demonstrate the willingness of major national commercial broadcast or

cable networks to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Absolute Priority 2—Broadcast and Cable Television Description

Background: This priority supports cooperative agreements for the description of television programming shown on national commercial or public broadcast networks or cable networks, as well as syndicated programs, in order to make television programming more accessible to persons with visual impairments. The intent of this priority is to provide continued and expanded access to described television programming in order to enhance shared educational, social, and cultural experiences for persons who are visually impaired.

Currently, there are two types of described television available to persons with visual impairments: (1) WGBH's descriptive video services (DVS), which offers described video as part of its PBS programming, using the Second Audio Program (SAP) and (2) Narrative Television Network (NTN), which produces and airs described videos via the Nostalgia Channel cable service and affiliated stations. To date, commercial networks and local stations have been unwilling to broadcast described television (using the SAP) due to the required equipment modification and extensive equipment operations. Alternative approaches must be explored.

Priority: To be considered for funding under this priority, a project must—

(1) For selecting programs to be video described, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experiences of individuals with visual impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be described;

(3) For each program to be described, identify the source of private or other public support, if any, and the projected dollar amount of that support;

(4) Identify the methods to be used in the provision of described video;

(5) Demonstrate the willingness of major national commercial or public broadcast networks or cable networks, as well as providers of syndicated programming, to permit video description of their programs; and

(6) Implement procedures for monitoring the extent to which an accurate description is provided and use this information to make refinements in the video description operations.

Absolute Priority 3—Described Home Video

Background: This priority supports cooperative agreements for describing and making available described home videos in order to enhance shared social, educational, and cultural experiences for persons who are visually impaired.

Priority: To be considered for funding under this priority, a project must—

(1) For selecting videos to be described, include criteria that take into account the preference of consumers for particular titles or subjects, the diversity of video titles available, and the contribution of the videos to the general social, educational, and cultural experience of individuals with visual impairments;

(2) Determine the total number of videos and the projected cost per original video to be described;

(3) For each proposed video to be described and made available, identify the source of private or other public support, if any, and the projected dollar amount of that support;

(4) Show evidence that copyright holders would permit video description and distribution of their videos;

(5) Identify strategies for making described home videos available to persons with visual impairments, including any public awareness activities used to inform persons with visual impairments about described home videos; and

(6) Evaluate the effectiveness of the methods and technologies used in providing this service, barriers encountered, and impact on intended populations.

Absolute Priority 4—Research on Video Description

Background: This priority supports research projects on video description services for persons who are visually impaired. Issues to be explored by projects funded under this priority would include, but not be limited to, the incidence of visual impairment within the general population; demographics of the target population; the extent of consumer interest in video description services; the degree of awareness of the availability of video description services; the percentage of visually impaired individuals with stereo televisions; and the feasibility of alternative methods of distribution, including cablecast open descriptions, broadcast descriptions inserted within the vertical blanking interval, simulcast descriptions, and the Second Audio Programming channel (SAP).

Research resulting from these projects would make major contributions to the body of knowledge regarding video description, would produce findings regarding the impact and relative effectiveness of various distribution methods, and may provide alternative technologies for broadcast distribution.

Priority: To be considered for funding under this priority, a project must—

(1) Address all of the issues identified in the background to this priority, and may also address any related issues;

(2) Identify specific strategies that would be used in the investigation;

(3) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(4) Collect, analyze, and report (a) a variety of descriptive and demographic data, including information regarding the potential target population, settings, and the service providers; and (b) outcome data on the effects of different distribution methods on the provision of video description services;

(5) Conduct the research using methodological procedures that would (a) produce unambiguous findings regarding the effects of the identified issues and alternative approaches; and (b) permit use of the findings in policy analyses; and

(6) Design the research activities in a manner that would lead to improved video-described services for individuals with visual impairments.

Absolute Priority 5—Research on Captioning as a Language Development Tool

Background: This priority supports research projects on the effectiveness of captioning as a language development tool for enhancing the reading and literacy skills of individuals who are deaf or hard of hearing, as well as the reading and literacy skills of individuals with other disabilities. Issues to be explored by projects funded under this priority could include, but are not limited to (1) captioning styles currently being developed or studied; (2) captioning features as effective educational tools; and (3) the use of captions with other media and multi-media technologies such as interactive videodiscs and CD–ROMs.

Priority: To be considered for funding under this priority, a project must—

(1) Address any of the issues identified in the background to this priority or closely related issues;

(2) Identify specific technological approaches that would be investigated;

(3) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(4) Collect, analyze and report (a) characteristics and outcomes data, including the settings, the service providers, and the individuals targeted by the project (e.g., age, disability, level of functioning, membership in a special population, if appropriate); and (b) multiple, functional outcome data on the individuals who are the focus of the technological approaches;

(5) Conduct the research in settings such as residential or integrated schools or colleges, or in community settings, as appropriate;

(6) Conduct the research using methodological procedures that would (a) produce unambiguous findings regarding the effects of the approaches and interaction effects between particular approaches and particular groups of individuals or particular settings; and (b) permit use of the findings in policy analyses; and

(7) Design the research activities in a manner that would lead to improved services for individuals with hearing impairments or with other disabilities, as may apply.

Absolute Priority 6—Symposium on Exploring New Strategies for Providing Captioned Media Services

Background: This priority supports one cooperative agreement for a three-day symposium to determine the best strategy or strategies for expanding the availability of captioned media, including captioned videos and closed-captioned television programs, to deaf and hard of hearing individuals in various educational and non-educational settings.

The Captioned Films Loan Service for the Deaf Program (CFD) was created in 1958 by Public Law 85–905 with the original purpose of giving people who are deaf access to motion pictures and enhancing the cultural, educational, and general welfare of that population. At that time most students who are deaf were educated at residential schools. Therefore, when CFD expanded to include the distribution of captioned educational films to students who are deaf, film depositories were established on, though not limited to, some of those campuses.

The depository system has changed little since that time, although deaf and hard of hearing students are now educated primarily in more integrated and local settings. The Secretary is particularly interested in seeking more effective means of providing educational media services to this population while continuing to serve students in residential settings.

During the 1970's closed-captioned television was included among CFD's projects. In 1972 a contract was awarded to develop and test Line 21 concepts and, eventually, prototype decoders. Closed-captioned television, which was entirely supported with Federal funds, officially began in 1980, and the first real-time closed-captioned broadcast took place in October 1982. The number of captioning hours of prime time television started with 16 hours in 1981. Currently all prime time programming, all Saturday morning children's programs, and many daytime and late night programs are closed captioned.

Closed-captioned television is an example of cooperative efforts between the public and private sectors. Department of Education funding provides approximately 40 percent of the current captioning available. The networks currently provide approximately 30 percent, and corporate advertisers, foundations, and contributions account for the remaining 30 percent. Meanwhile, there has been a significant increase in the number of programs being captioned. Further, the Television Decoder Circuity Act of 1990 mandates that, after July 1993, all television sets with screens 13 inches and larger manufactured in the United States or imported for use in the United States must have built-in circuitry designed to display closed captioning. This Act, along with the increase in the number of available captioned programs, the increase in the number of private funding sources, and the expanded array of television programming options combine to make it necessary to consider the most effective ways to ensure full access to expanded captioned programs in the future.

Thus, the symposium aims to explore strategies that the Department may consider making captioned videos available to a wider number of deaf and hard of hearing individuals, especially those attending local or mainstreamed schools, and strategies for expanding captioned television programming in light of future technology that will increase the number of available channels to 500.

Priority: To be considered for funding under this priority, the project must—

(1) Conduct pre-symposium activities, including reviewing reports and recommendations that resulted from previous evaluation studies of the Captioned Films Program, closed-captioned television, and related materials;

(2) Conduct a symposium that offers at least six work sessions, led by professionals or experts in areas including, but not limited to (a) educational media and technology, (b) television captioning technology, (c) special education administration, covering both mainstream and residential programs, (d) media distribution, (e) consumer advocacy, and (f) film and television post-production services;

(3) Make arrangements for participants to discuss and respond to issues and strategies that would be raised at the symposium—particularly strategies for improving services for deaf and hard of hearing consumers;

(4) Conduct post-symposium activities, including refining formally presented papers, reflecting group discussions and concerns expressed at the symposium, as well as potential strategies and directions for improved services i.e., for better delivery of captioned videos and expanding the availability of closed-captioned television programming; and

(5) Publish a proceedings document and distribute this document to symposium participants and relevant clearinghouses and organizations.

Absolute Priority 7—Educational Video Selection and Captioning

Background: This priority supports one cooperative agreement that will screen, evaluate, caption, and make available educational videos, including classics and special interest titles, for use by students and other individuals who are deaf or hard of hearing, parents of deaf and hard of hearing individuals, and other individuals directly involved in activities promoting the advancement of deaf and hard of hearing individuals in the United States. This activity includes the preparation of captions on computer diskettes. This priority will ensure that students and other individuals with hearing impairments benefit from the same educational videos used to enrich the educational experiences of students and other individuals without hearing impairments.

Priority: To be considered for funding under this priority, the project must—

(1) Develop strategies and procedures to be used in determining curricular needs of deaf and hard of hearing

students in all types of school settings for captioned videos;

(2) Develop and implement an on-going evaluation program for incorporating the reaction and suggestions of users into the selection and captioning process;

(3) Establish liaison with and obtain videos from film and video distributors for viewing and evaluation. Select from among submitted video titles those that closely match the curricular needs identified under paragraph (1) of this proposed priority, taking into account the videos most commonly used in school districts across the Nation for all students;

(4) Develop and implement criteria and procedures for screening and evaluating selected titles;

(5) Make arrangements with respective producers and distributors to have selected videos captioned and made available through general distribution mechanisms (such as video sales catalogues), as well as through the captioned film and video loan service authorized under part F of IDEA and 34 CFR part 330 (by purchasing up to 100 copies of each captioned title, some which will be open-captioned and some which will be closed-captioned);

(6) For selected titles, prepare captions on computer diskettes and check for accuracy. These captions would take into account the age and reading levels of the likely target audience;

(7) Identify, select, and, if necessary, provide training to video evaluators and caption checkers;

(8) Develop and implement quality control guidelines and procedures for checking videocassettes after they are captioned; and

(9) Prepare and make available to potential consumers information about the availability of captioned videos, including information about the captioned film and video loan service, regulations governing the use of captioned films and videos in the collection, procedures for applying for these services, and descriptions of the videos available.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 330, 331, and 332 Program Authority: 20 U.S.C. 1451, 1452.

Dated: October 15, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

(Catalogue of Federal Domestic Assistance Number: 84.026, Educational Media Research, Production, Distribution, and Training Program)

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.026]

Educational Media Research, Production, Distribution, and Training Program; Inviting Application for New Awards for Fiscal Year (FY) 1994

Purpose of Program: The purposes of this program are to promote the general welfare of deaf, hard-of-hearing, and visually impaired individuals, and the educational advancement of individuals with disabilities.

These priorities support the National Educational Goals by assisting those with disabilities in meeting Goal 1, school readiness, and Goal 5, adult literacy.

Eligible Applicants: Profit and nonprofit public and private agencies, organizations, and institutions are eligible to apply for a grant.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR part 332.

Priorities: The priorities in the notice of final priorities for this program as published elsewhere in this issue of the **Federal Register,** apply to these competitions.

Applications Available: October 26, 1993.

EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Closed-Captioned Sports Program (CFDA 84.026A).	2/04/94	4/05/94	$750,000	$250,000–750,000	$250,000	1 to 3	Up to 36.
Broadcast and Cable Television Description (CFDA 84.026C).	2/03/94	4/04/94	$500,000	$250,000–500,000	$250,000	1 to 2	Up to 36.
Described Home Video (CFDA 84.026H).	3/03/94	5/02/94	$250,000	$225,000–250,000	$250,000	1	Up to 36.
Research on Video Description (CFDA 84.026G).	2/04/94	4/05/94	$250,000	$50,000–250,000	$62,500	1 to 4	Up to 24.
Research on Captioning as a Language Development Tool (CFDA 84.026R).	2/04/94	4/05/94	$400,000	$75,000–100,000	$100,000	4	Up to 24.
Symposium on Exploring New Strategies (CFDA 84.026M).	2/04/04	4/05/94	$150,000	$125,000–150,000	$150,000	1	Up to 18.
Educational Video Selection and Captioning (CFDA 84.026D).	1/03/94	3/04/94	$700,000	$650,000–700,000	$700,000	1	Up to 36.

Note: The Department is not bound by any estimates in this notice.

For Applications: To request an application, telephone (202) 205–8485. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8169.