

## § 11.102

### § 11.102 What is the purpose of this part?

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.

### § 11.104 When does this part apply?

(a) The regulations in this part continue to apply to each tribe listed in § 11.100 until either:

(1) BIA and the tribe enter into a contract or compact for the tribe to provide judicial services; or

(2) The tribe has put into effect a law-and-order code that establishes a court system and that meets the requirements of paragraph (b) of this section.

(b) When a tribe adopts a legal code and establishes a judicial system, the tribe must notify the Assistant Secretary—Indian Affairs or his or her designee. The law-and-order code must be adopted by the tribe in accordance with its constitution and by-laws or other governing documents.

### § 11.106 Who is an Indian for purposes of this part?

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 the purposes of 18 U.S.C. 1152–1153.

### § 11.108 How are tribal ordinances affected by this part?

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:

(a) Are enforceable in the Court of Indian Offenses having jurisdiction over the Indian country occupied by that tribe; and

(b) Supersede any conflicting regulation in this part.

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### § 11.110 How are tribal customs affected by this part?

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.

### § 11.112 [Reserved]

### § 11.114 What is the criminal jurisdiction of the Court of Indian Offenses?

(a) Except as otherwise provided in this title, each Court of Indian Offenses has 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 may be prosecuted, tried or punished for any offense unless the complaint is filed within 5 years after the offense is committed.

### § 11.116 What is the civil jurisdiction of a Court of Indian Offenses?

(a) Except as otherwise provided in this title, each Court of Indian Offenses has jurisdiction over any civil action arising within the territorial jurisdiction of the court in which:

(1) The defendant is an Indian; or

(2) Other claims, provided at least one party is an Indian.

(b) Any civil action commenced in a Court of Indian Offenses is barred unless the complaint is filed within 3 years after the right of action first accrues.

### § 11.118 What are the jurisdictional limitations of the Court of Indian Offenses?

(a) A Court of Indian Offenses may exercise over a Federal or State official only the same jurisdiction that it could exercise if it were a tribal court. The jurisdiction of Courts of Indian Offenses does not extend to Federal or State employees acting within the scope of their employment.

(b) A Court of Indian Offenses may not adjudicate an election dispute, take jurisdiction over a suit against a tribe, or adjudicate any internal tribal

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government dispute, unless the relevant tribal governing body passes a resolution, ordinance, or referendum granting the court jurisdiction.

(c) In deciding who is a tribal official, BIA will give deference to a decision of the Court of Indian Offenses, acting as a tribal forum by resolution or ordinance of a tribal governing body under paragraph (b) of this section.

(d) 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 What is the composition of the Court of Indian Offenses?

(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 must be heard by a panel of magistrates who were not involved at the tribal/trial level.

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

[58 FR 54411, Oct. 21, 1993, as amended at 73 FR 39860, July 11, 2008]

#### § 11.201 How are magistrates for the Court of Indian Offenses appointed?

(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 How is a magistrate of the Court of Indian Offenses removed?

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 How are the clerks of the Court of Indian Offenses appointed and what are their duties?

(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