

§ 11.446

(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

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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 person convicted of an offense under the regulations in this part may be sentenced as follows:

Type of offense	Maximum allowable sentence
(a) Misdemeanor	Up to 1 year in prison, or a fine of up to \$5,000, or both.
(b) Petty misdemeanor.	Up to 6 months in prison, or a fine of up to \$2,500, or both.
(c) Violation	Up to 3 months in prison, or a fine of up to \$1,000, or both.

[73 FR 39861, July 11, 2008]

§ 11.451 Abuse of psychotoxic chemical solvents.

- (a) It is unlawful to:
 - (1) Intentionally smell or inhale the fumes of any psychotoxic chemical solvent or possess, purchase, or attempt to possess or purchase any psychotoxic chemical solvent, for the purpose of causing intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system; or

(2) Sell, give away, dispense, or distribute, or offer to sell, give away, dispense, or distribute, any psychotoxic chemical solvent knowing or believing that the purchaser or another person intends to use the solvent in violation of this section.

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

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

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

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

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

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

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

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§ 11.452 Possession of a controlled substance.

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

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

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

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

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

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

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

[73 FR 39861, July 11, 2008]

§ 11.453 Prostitution or solicitation.

A person who commits prostitution or solicitation or who knowingly keeps, maintains, rents, or leases, any house, room, tent, or other place for the purpose of prostitution is guilty of a misdemeanor.

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§ 11.454 Domestic violence.

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