

NAVAJO NATION CODE ANNOTATED

**Title 1**

**General Provisions**

**Chapter 1. Navajo Nation Bill of Rights**

**United States Code**

Civil action for deprivation of rights, 42 U.S.C. §§ 1983, 1984.

Equal rights under the law, 42 U.S.C. § 1981.

Federal civil rights law regarding public accommodations, facilities, education and programs, employment and voting, 42 U.S.C. § 2000a *et seq.*

Offenses, prosecutions and proceedings in vindication of rights, 42 U.S.C. §§ 1985-1991.

Organization of Indian tribes, constitution and bylaws, 25 U.S.C. § 476.

**Annotations**

**1. Authority of Indian governments**

While Congress retains paramount authority to legislate for and enforce its laws on all the tribes in certain respects, it has recognized the authority of Indian governments over their reservation and if this power is to be taken away from them it is for Congress to do it. *Oliver v. Udall* (1962) 306 F.2d 819, cert. denied 372 U.S. 908.

Indian tribes have a status higher than that of states and are subordinate and dependent nations possessed of all powers as such only to the extent that they have expressly been required to surrender them by the superior sovereign, the United States. *Native American Church v. Navajo Tribal Council* (1959) 272 F.2d 131.

**2. Tribal immunity**

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [ ... ] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [.... ] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

**3. Property interests**

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

**§ 1. Other rights not impaired; deletion or abridgment only by public referendum**

The enumeration herein of certain rights, shall not be construed to deny or disparage others retained by the people. No provision of this Chapter, the Navajo Nation Bill of Rights, shall be abridged or deleted by amendment or otherwise, except by referendum vote of the Navajo electorate, in accordance with applicable provisions of the laws of the Navajo Nation.

**History**

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

**Note.** 1 N.N.C. § 1 was formerly codified at 1 N.N.C. § 8.

**Annotations**

**1. Purpose**

"The Navajo Nation Bill of Rights (1986) is a fundamental, overriding statute which, by its own terms and necessary implication, allows judicial review to decide whether another law or an act of the Navajo Nation Government is void because of a violation of fundamental rights. We have judicial review authority because the Navajo Nation Council made the policy decision that there would be a fundamental law which is superior to other laws, and which cannot be changed without a vote of the Navajo People." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 324 (Nav. Sup. Ct. 1990).

**2. Bills of attainder**

"... [T]here was no 'punishment' and thus, there was no bill of attainder in violation of 1 N.T.C. § 3, in the disqualification of MacDonald as a candidate [pursuant to 11 N.N.C. § 8(A)(7)]." *MacDonald v. Redhouse*, 6 Nav. R. 342, 345 (Nav. Sup. Ct. 1991).

"*Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), recognizes three tests for determining whether punishment is present. These tests are adopted by this Court. The first test is the historical experience test. This test determines punishment in terms of what historically has been regarded as punishment for purposes of bills of attainder and bills of pains under the law of England and the United States. The historical test may include what historically has been regarded as punishment under Navajo common law. [... ] The second test is the functional test. This test considers the extent to which a law challenged as a bill of attainder furthers any nonpunitive purposes

underlying the law. The third test is the motivational test. The inquiry here is whether the legislative record evinces a legislative intent to punish." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

"We adopt the common definition of bill of attainder; therefore, under the Indian Civil Rights Act and Navajo Bill of Rights, a bill of attainder is a law that legislatively determines guilt and inflicts punishment upon an identifiable person or group without the protections of trial in the Navajo courts. This definition has two elements: first, an element of punishment must be inflicted by some tribal authority other than tribal judicial authority; and second, an element of specificity, that is, a singling out of an individual or identifiable group for infliction of punishment." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

"A bill of attainder is apparently unknown to traditional Navajo culture." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

### **3. Tribal immunity**

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [ ... ] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [.... ] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

### **4. Due process**

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

### **§ 2. Equality of rights not abridged by entitlements, benefits or privileges; nor by affirmative action necessary to support rights of the Navajo People to economic opportunity**

Recognition, enactment, lawful implementation and enforcement of provisions for specific entitlements, benefits and privileges based upon membership in the Navajo Nation or in other recognized Tribes of Indians and affirmative action in support of Navajo or other Indian preference in employment and business contracting or otherwise necessary to protect and support the rights of Navajo People to economic opportunity within the jurisdiction of the Navajo Nation, shall not be abridged by any provision herein nor otherwise be denied.

### **History**

CD-59-86, December 11, 1986.

## Annotations

### 1. Tribal immunity

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [ ... ] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [.... ] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

### 2. Property interests

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

### § 3. Denial or abridgment of rights on basis of sex; equal protection and due process of Navajo Nation law

Life, liberty, and the pursuit of happiness are recognized as fundamental individual rights of all human beings. Equality of rights under the law shall not be denied or abridged by the Navajo Nation on account of sex nor shall any person within its jurisdiction be denied equal protection in accordance with the laws of the Navajo Nation, nor be deprived of life, liberty or property, without due process of law. Nor shall such rights be deprived by any bill of attainder or ex post facto law.

## History

CD-59-86, December 11, 1986.

CF-9-80, February 7, 1980.

**Note.** 1 N.N.C. § 3 was formerly codified at 1 N.N.C. § 9.

**Preamble.** CF-9-80 contains the following preamble:

"Whereas: 1. The tradition and culture of the Navajo Nation has always emphasized the importance of the woman in Navajo society; and

"2. Navajo culture and society is both matrilineal and matrilocal; and

"3. The Navajo Tribal Council by Resolution CO-63-67, of October 9, 1967, passed the Navajo Bill of Rights; and

"4. No provision was made in the Navajo Bill of Rights for equal protection of

the laws for both men and women; and

"5. Such a declaration would be in keeping with the tradition of the Navajo People."

### **Annotations**

#### **1. Interpretation**

The proper interpretation of the Navajo Equal Rights guarantee is that there can be no legal result on account of a person's sex, no presumption in giving benefits or disabilities gauged by a person's sex and no legal policy which has the effect of favoring one sex or the other. *Help v. Silvers a.k.a. Silver Fox*, 4 Nav. R. 46 (Nav. Ct. App. 1983).

#### **2. Presumptions**

"Customary usage is therefore viewed as a property interest by the Navajo Nation." *In re: Estate of Wauneka, Sr.*, 5 Nav. R. 79, 81 (Nav. Sup. Ct. 1986).

Under the Navajo Equal Rights Amendment, there can be no presumption, in a child custody dispute, that a young child should be in the care of the mother. *Help v. Silvers a.k.a. Silver Fox*, 4 Nav. R. 46 (Nav. Ct. App. 1983).

#### **3. Tribal immunity**

"Due process rights, viewed as quasi-constitutional rights in our system as far as the Indian Civil Rights Act and Navajo Nation Bill of Rights are concerned, may be asserted only if one can show the denial of the right to an *opportunity* to be heard in a meaningful way." *In re: Estate of Plummer, Sr.*, 6 Nav. R. 271, 276 (Nav. Sup. Ct. 1990).

"The rights protected in the Navajo Due Process Clause are fundamental, but they are not absolute, limitless, or unrestricted. They are considered in light of the enjoyment and protection of rights by all Navajos. We require that everyone coming before our courts have an opportunity to be heard at a meaningful time and in a meaningful way. That is the right to one's day in court." *In re: Estate of Plummer, Sr.*, 6 Nav. R. 271, 275 (Nav. Sup. Ct. 1990).

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [ ... ] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [.... ] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

#### **4. Due process**

"Due process under the Navajo Bill of Rights is similar to the same right under

the United States Constitution, in that our courts must provide notice and an opportunity to be heard, including in custody matters." *Miles v. Chinle Family Court, and concerning Miles*, No. SC-CV-04-08, slip op. at 8 (Nav. Sup. Ct. February 21, 2008); citing, *Zuni v. Chinle Family Court*, No. SC-CV-63-06, slip op. at 6-7 (Nav. Sup. Ct. January 12, 2007); *Lente v. Notah*, 3 Nav. R. 72, 73-74 (Nav. Ct. App. 1982).

"The Navajo Nation Bill of Rights recognizes liberty as a fundamental right. Liberty cannot be taken away unless it is done using a fair process ('due process') and the law must be evenly applied ('equal protection of the law'). For purposes of due process of law under Navajo common law, the right to participate in the political process is considered a protected liberty right." *Begay v. Navajo Nation Election Administration*, No. SC-CV-27-02, slip op. at 3 (Nav. Sup. Ct. July 31, 2002).

" ... [E]lected officials have no property interest in their elective office. [... ] Thus, fundamental rights are not implicated by the removal of an elected official from office." *Vandever v. The Navajo Nation Ethics and Rules Office*, 7 Nav. R. 356, 358 (Nav. Sup. Ct. 1998).

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

"This court has noted that the concept of due process was not brought to the Navajo Nation by the Indian Civil Rights Act not the Navajo Bill of Rights. Instead, due process is fundamental fairness in a Navajo cultural context." *In the Matter of the Estate of Goldtooth Begay #2*, 7 Nav. R. 29, 31 (Nav. Sup. Ct. 1992).

" ... [T]here is a strong and fundamental tradition that any Navajo can participate in the processes of government, and no person who is not otherwise disqualified by a reasonable law can be prohibited from holding public office. Therefore, there is sufficient liberty interest for the application of the due process rule regarding the invalidity of vague statutes." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 325 (Nav. Sup. Ct. 1990).

"Navajo due process must be interpreted in a way that is beneficial to the Navajo Nation." *Sells v. Espil*, 6 Nav. R. 195, 199 (Nav. Sup. Ct. 1990).

"The Begays' interest in Mutual Help Housing is a property interest." *Begay v. Begay*, 6 Nav. R. 160, 161 (Nav. Sup. Ct. 1989).

"Fair procedure mandates that a defendant shall be properly charged, arraigned, found guilty and sentenced for an offense that is expressly provided for under a valid Code section." *Begay v. Navajo Nation*, 6 Nav. R. 132, 133 (Nav. Sup. Ct. 1989).

"This Court recognizes that a '[a]' substantial liberty interest is at stake in sentencing." *Begay v. Navajo Nation*, 6 Nav. R. 132, 133 (Nav. Sup. Ct. 1989).

"Any due process requirements attendant to placing a Chairman or Vice Chairman on administrative leave will depend upon a finding that the official's life, liberty or property interest has been adversely affected by Navajo governmental action." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

"An elected official does not have a property right in public office. The office belongs to the voting public. Katenay's due process rights do not stem from his position as a holder of elected office. His due process rights are derived from 2 N.T.C. § 4005, which gives him the right to explain to his constituents the grievances against him and to be voted out of office, or retained, by persons who were present during his explanation." *In re: Removal of Katenay*, 6 Nav. R. 81, 85 (Nav. Sup. Ct. 1989).

"When Navajo sovereignty and cultural autonomy are at stake, the Navajo courts must have broad-based discretion in interpreting the due process clauses of the ICRA and NBR, and the courts may apply Navajo due process in a way that protects civil liberties while preserving Navajo culture and self-government." *Billie v. Abbott*, 6 Nav. R. 66, 74 (Nav. Sup. Ct. 1988).

"Therefore, we hold that a civil forfeiture proceeding must provide due process as set forth in the Navajo Nation Bill of Rights, 1 N.T.C. § 3; the Indian Civil Rights Act, 25 U.S.C. § 1302(8), and Navajo common law." *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

"A person alleged to be in indirect civil or criminal contempt of court must be notified of the charges, have a right to be represented by counsel, have a reasonable time to prepare a defense, and have an opportunity to be heard. [... ] The rules of criminal procedure are also applicable to indirect criminal contempt proceedings." *In the Matter of Contempt of Mann*, 5 Nav. R. 125, 128 (Nav. Sup. Ct. 1987).

"The power of Navajo courts to punish for contempt must be exercised within the bounds of due process embodied in the Indian Civil Rights Act, [ ... ], and the Navajo Bill of Rights ... " *In the Matter of Contempt of Mann*, 5 Nav. R. 125, 126 (Nav. Sup. Ct. 1987).

"The rule is that in the absence of special rules of procedure adopted by a body, or adopted for it by an outside power having the right to do so, its procedure is governed by parliamentary law." *Mustach v. Navajo Board of Election Supervisors*, 5 Nav. R. 115, 119 (Nav. Sup. Ct. 1987).

"Due process requires that notice of hearing be given sufficiently in advance of the scheduled date of hearing, so that the party will have reasonable time to prepare." *Mustach v. Navajo Board of Election Supervisors*, 5 Nav. R. 115, 119 (Nav. Sup. Ct. 1987).

"We refuse to require compliance with procedural due process for agency discussions that do not seek to deprive a person of a property right." *Yazzie v. Jumbo*, 5 Nav. R. 75, 77 (Nav. Sup. Ct. 1986).

## **5. Contempt proceedings**

" ... [N]avajo courts must still afford due process protections in direct

contempt proceedings. The judge must advise the contemnor of the charges and give the contemnor an opportunity to explain the contemptuous conduct. The order of contempt must show that the judge saw or heard the conduct constituting the contempt and that the contempt was committed in the presence of the court. The order must also state the facts constituting the contempt and the punishment imposed." *In the Matter of Contempt of Mann*, 5 Nav. R. 125, 128 (Nav. Sup. Ct. 1987).

## **6. Trial procedure**

"We have never held that a party's right to due process is violated when that party fails to comply with applicable time limits. [... ] When a party does not comply with court rules or abuses court process (as in the failure to comply with discovery orders), the courts have the power to rule that the party has given up his right to be heard." *Yazzie, et al. v James, et al.*, 7 Nav. R. 324, 328 (Nav. Sup. Ct. 1998).

"The due process clause of the Navajo Nation Bill of Rights required the special prosecutor to prove to the trial court, in an adversarial hearing, that the evidence it used in preparing its case and the evidence offered at trial were not based on or derived from the information MacDonald gave to any official under either a formal or informal grant of immunity." *Navajo Nation v. Peter MacDonald, Jr.*, 7 Nav. R. 1, 13 (Nav. Sup. Ct. 1992).

"To require a judge, who did not preside over the trial, to enter findings and a final decision in a case with which he is unfamiliar, is to deny the parties due process of law. [... ] We hold that, within the Navajo Nation, only the judge who presided at the trial shall enter findings of fact, conclusions of law and the final judgment or order." *Benally v. Black*, 5 Nav. R. 137, 138 (Nav. Sup. Ct. 1987).

## **7. Notice**

"The fundamental rights involved [when and how a court accepts a plea to a criminal charge] are the right to not be deprived of liberty without due process of law, and the right to be informed of the nature and cause of accusation in criminal proceedings." *Stanley v. Navajo Nation*, 6 Nav. R. 284, 285 (Nav. Sup. Ct. 1990).

"The concept of due process was not brought to the Navajo Nation by the Indian Civil Rights Act, 25 U.S.C. § 1302(8), or the Navajo Nation Bill of Rights, 1 N.T.C. § 3. The Navajo people have an established custom of notifying all involved parties in a controversy and allowing them, and even other interested parties, an opportunity to present and defend their positions. This custom is still followed today by the Navajo people in the resolution of disputes." *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

"We hold only that the forfeiture of an automobile demands notice and a hearing. Navajo court proceedings must comply with the Navajo Nation Bill of Rights and the Indian Civil Rights Act, and as such, we must ensure compliance with procedural and substantive due process before someone is deprived of their private property." *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).



"It is an established rule that notice to the counsel of record serves as notice to the client." *Chavez v. Tome*, 5 Nav. R. 183, 189 (Nav. Sup. Ct. 1987).

#### **8. Retroactive and ex post facto laws**

"The election reforms of 1989 and 1990 are not ex post facto laws, made to punish MacDonald, but laws which are well within the competence of the Council and are designed to promote the integrity of public office." *MacDonald v. Redhouse*, 6 Nav. R. 342, 346 (Nav. Sup. Ct. 1991).

"Ex post facto laws are prohibited by the Navajo Nation Bill of Rights at 1 N.T.C. § 3." *MacDonald v. Redhouse*, 6 Nav. R. 342, 345 (Nav. Sup. Ct. 1991).

"There is no property right to hold public office, although a candidate may have a due process right which arises out the Navajo Nation election law." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 325 (Nav. Sup. Ct. 1990).

" ... [T]he Navajo Nation has no statute which authorizes an award for past child support in a paternity action." [ ] "Due process under the Navajo Nation Bill of Rights, 1 N.T.C. § 3 (1986 amend.), and the Indian Civil Rights Act, 25 U.S.C. § 1302(8) (1968), dictates that Mariano not be ordered to make up for something which he had no legal duty to do originally." *Descheenie v. Mariano*, 6 Nav. R. 26, 29 (Nav. Sup. Ct. 1988).

#### **9. Statutory due process rights**

"However as in *Katenay*, a statutory scheme can be the source of due process rights for an elected official. [ ... ] There are a number of basic protections that the Navajo Tribal Council should afford while placing a Chairman or Vice Chairman on administrative leave. These are: (1) the Navajo Tribal Council must act in a properly convened session with a quorum as established in the Navajo Tribal Code; (2) an agenda must be properly adopted by the Council, although procedures for presentation of resolutions and for voting on resolutions are within the power of the Tribal Council; (3) the resolution placing a Chairman or Vice Chairman on administrative leave must pass by a majority vote of the Navajo Tribal Council present, [... ]; and (4) the resolution placing a Chairman or Vice Chairman on administrative leave must not be a bill of attainder." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

#### **10. Jurisdiction**

"Given the clear mandate of the long arm statute [7 N.N.C. § 253a], the District Court would have to find the statute invalid as a violation of Appellees' due process rights under the Navajo Bill of Rights." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 6 (Nav. Sup. Ct. April 30, 2007).

"If the long arm statute [7 N.N.C. § 253a] allows jurisdiction over Appellees, the District Court must further analyze whether the long arm statute is consistent with Navajo concepts of fairness embedded in the Due Process Clause of the Navajo Bill of Rights. As stated previously by this Court, the Navajo

concept of due process is unique, in that it applies concepts of fairness consistent with Navajo values." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 7 (Nav. Sup. Ct. April 30, 2007).

"The due process provision in the Navajo Bill of Rights is not a statute which gives this Court its appellate jurisdiction." *Vandever, v. The Navajo Nation Ethics and Rules Office*, 7 Nav. R. 356, 357 (Nav. Sup. Ct. 1998).

"In the Navajo Nation, the [minimum] contacts of a defendant shall be evaluated on a case-by-case basis ... " *Sells v. Espil*, 6 Nav. R. 195, 198 (Nav. Sup. Ct. 1990).

#### **11. Vagueness**

"Statutes which confer rights grounded upon Navajo liberties must contain ascertainable standards. That is, they must sufficiently describe standards and requirements for the exercise of the right so that the ordinary person will know what they are and be able to satisfy them." *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 327 (Nav. Sup. Ct. 1990).

#### **12. Civil judgments**

"We hold that Section 3 of the Navajo Nation Bill of Rights prohibited her incarceration for failure to pay the judgment on a contract as an unreasonable deprivation of liberty." *Pelt v. Shiprock District Court*, No. SC-CV-37-99, slip op. at 7 (Nav. Sup. Ct. May 4, 2001).

" ... [G]iven the difficulty in framing a general rule, we will restrict our focus to the question of whether a judgment debtor who fails to pay a civil judgment on a contract for a loan may be incarcerated for failure to pay the judgment, whether the judgment debtor is indigent or not." *Pelt v. Shiprock District Court*, No. SC-CV-37-99, slip op. at 3-4 (Nav. Sup. Ct. May 4, 2001).

#### **13. Bill of attainder**

" ... [T]here was no 'punishment' and thus, there was no bill of attainder in violation of 1 N.T.C. § 3, in the disqualification of MacDonald as a candidate [pursuant to 11 N.N.C. § 8(A)(7)]." *MacDonald v. Redhouse*, 6 Nav. R. 342, 345 (Nav. Sup. Ct. 1991).

"*Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), recognizes three tests for determining whether punishment is present. These tests are adopted by this Court. The first test is the historical experience test. This test determines punishment in terms of what historically has been regarded as punishment for purposes of bills of attainder and bills of pains under the law of England and the United States. The historical test may include what historically has been regarded as punishment under Navajo common law. [... ] The second test is the functional test. This test considers the extent to which a law challenged as a bill of attainder furthers any nonpunitive purposes underlying the law. The third test is the motivational test. The inquiry here is whether the legislative record evinces a legislative intent to punish." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

"We adopt the common definition of bill of attainder; therefore, under the

Indian Civil Rights Act and Navajo Bill of Rights, a bill of attainder is a law that legislatively determines guilt and inflicts punishment upon an identifiable person or group without the protections of trial in the Navajo courts. This definition has two elements: first, an element of punishment must be inflicted by some tribal authority other than tribal judicial authority; and second, an element of specificity, that is, a singling out of an individual or identifiable group for infliction of punishment." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

"A bill of attainder is apparently unknown to traditional Navajo culture." *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

#### **14. Habeas corpus**

"This Court holds that the jail sentence imposed does not have a definite term. The Petitioner was jailed for 55 days although he kept informing the District Court that he does not have the money, nor can he raise the money if he is incarcerated. Under these circumstances, the sentence is contrary to 17 N.N.C. § 223, constituting cruel and unusual punishment." *Cody v. Greyeyes*, No. SC-CV-09-09, slip op. at 4 (Nav. Sup. Ct. March 11, 2009).

"We therefore hold that the Navajo Nation Bill of Rights prohibited Petitioner's incarceration for his inability to pay the court imposed fines and fees in a criminal proceeding; under these circumstances, the sentence constitutes cruel and unusual punishment and an unreasonable deprivation of liberty." *Cody v. Greyeyes*, No. SC-CV-09-09, slip op. at 5 (Nav. Sup. Ct. March 11, 2009).

"The Court now clarifies that written reasons are not required, as long as the district court judge clearly and adequately explains his or her reasons for denying release to the defendant, and such reasons are available in the record of the case. The primary purpose of requiring reasons is so that the defendant understands why he or she will continue to be held pending trial, and may contest those reasons before the district court, and, if necessary, before this Court in a habeas corpus proceeding." *Dawes v. Eriacho*, No. SC-CV-09-08, slip op. at 4-5 (Nav. Sup. Ct. May 5, 2008).

"By violating Rule 15(d) [of the Navajo Rules of Criminal Procedure], the District Court detained Dawes without notice or opportunity to be heard, and also therefore violated her right to due process under the Navajo Bill of Rights." *Dawes v. Eriacho*, No. SC-CV-09-08, slip op. at 7 (Nav. Sup. Ct. May 5, 2008).

#### **§ 4. Freedom of religion, speech, press, and the right of assembly and petition**

The Navajo Nation Council shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Navajo Nation government for a redress of grievances.

#### **History**

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

**Note.** 1 N.N.C. § 4 was formerly codified at 1 N.N.C. § 1.

#### **Cross References**

The Foundation of the Diné, Diné Law and Diné Government; 1 N.N.C. § 201 *et seq.* (CN-69-02), contains the following preamble:

"Whereas:

"6. The Navajo Nation Council finds that the acknowledgment, recognition and teaching of these laws do not contravene 1 N.N.C. § 4; the incorporation of these fundamental laws into the Navajo Nation Code is not governmental establishment of religion nor is it prohibiting the free exercise of religion; the Navajo Nation Council and the Diné have always recognized and respected the principle of these fundamental laws and the Diné Life Way that all Diné have the right and freedom to worship as they choose; and the Navajo Nation Council and the Diné recognize that the Diné Life Way is a holistic approach to living one's life whereby one does not separate what is deemed worship and what is deemed secular in order to live the Beauty Way."

Free exercise of religion as defense to prosecution for narcotic or psychedelic drug offense, 35 A.L.R.3d 939 (1971).

#### **Annotations**

##### **1. Freedom of press, generally**

"The decision to print a retraction rests with the publisher, and the court is prohibited by the Navajo Bill of Rights and the Indian Civil Rights Act from ordering a retraction." *Chavez v. Tome*, 5 Nav. R. 183, 190 (Nav. Sup. Ct. 1987).

##### **2. Tribal immunity**

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [ ... ] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [.... ] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

##### **3. Due process**

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there

was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

## **§ 5. Searches and seizures**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### **History**

CD-9-86, December 11, 1986.

CO-63-67, October 9, 1967.

**Note.** 1 N.N.C. § 5 was formerly codified at 1 N.N.C. § 4.

### **Annotations**

#### **1. Construction and application**

"The Navajo Nation Bill of Rights (1 N.N.C. § 5 (1995)), like the Fourth Amendment to the United States Constitution, and Section 1301 of the Indian Civil Rights Act, protects the right of the people to be secure in their persons and property against unreasonable searches and seizures of government, including unreasonable arrest and detention. A person may not be subject to incarcerations except by clear authority of the law. A person is entitled to prompt judicial determination of probable cause soon after arrest, but in no event later than 36 hours, if in custody during business days, or 48 hours if on a weekend or holiday. The probable cause determination examines whether arrest and detention are justified. However, a determination of probable cause only justifies initial arrest and detention incident to the arrest. When pretrial release is opposed, the question then becomes whether the defendant, if release, will seek to interfere with the proper administration of justice, or is a danger to the community. Our rules of criminal procedure require a finding that 'the defendant is dangerous to public safety or that the defendant will commit a serious crime, or will seek to intimidate any witness, or will otherwise unlawfully interfere with the administration of justice if released, or for any other reason allowed by law...' Nav. R. Cr. P. 15(d). To ensure fairness and propriety the court must also, 'state the reasons for the record.' " *Apachito v. Navajo Nation*, No. SC-CV-34-02, slip op. at 3 (Nav. Sup. Ct. August 13, 2003).

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

*Re: Double Jeopardy:* "The applicable rule is that where the same act or

transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 446 (Nav. Sup. Ct. 1991).

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [ ... ] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [.... ] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

## **§ 6. Right to keep and bear arms**

The right of the people to keep and bear arms for peaceful purposes, and in a manner which does not breach or threaten the peace or unlawfully damage or destroy or otherwise infringe upon the property rights of others, shall not be infringed.

### **History**

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

**Note.** 1 N.N.C. § 6 was formerly codified at 1 N.N.C. § 2.

### **Annotations**

#### **1. Construction and application**

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [ ... ] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [.... ] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

## **§ 7. Rights of accused; trial by jury; right to counsel**

In all criminal prosecutions, the accused shall enjoy the right to a

speedy and public trial, and shall be informed of the nature and cause of the accusation; shall be confronted with the witnesses against him or her; and shall have compulsory process for obtaining witnesses in their favor. No person accused of an offense punishable by imprisonment and no party to a civil action at law, as provided under 7 N.N.C. § 651 shall be denied the right, upon request, to a trial by jury of not less than six persons; nor shall any person be denied the right to have the assistance of counsel, at their own expense, and to have defense counsel appointed in accordance with the rules of the courts of the Navajo Nation upon satisfactory proof to the court of their inability to provide for their own counsel for the defense of any punishable offense under the laws of the Navajo Nation.

### **History**

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

**Note.** 1 N.N.C. § 7 was formerly codified at 1 N.N.C. § 6.

### **United States Code**

Right to speedy trial, 42 U.S.C. § 1992.

### **Annotations**

#### **1. Sufficiency of complaint**

"Fair procedure mandates that a defendant shall be properly charged, arraigned, found guilty and sentenced for an offense that is expressly provided for under a valid Code section." *Begay v. Navajo Nation*, 6 Nav. R. 132, 133 (Nav. Sup. Ct. 1989).

This Section requires that prosecutors prepare criminal complaints which allege the basic parts of the statute creating the crime and sufficient facts fitting within the statute to enable the defendant and his defense attorney to prepare their case. *Navajo Nation v. Benson Lee*, 4 Nav. R. 185, (W.R. Dist. Ct. 1983).

#### **2. Due process**

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

"A person alleged to be in indirect civil or criminal contempt of court must be notified of the charges, have a right to be represented by counsel, have a reasonable time to prepare a defense, and have an opportunity to be heard. [... ] The rules of criminal procedure are also applicable to indirect criminal contempt proceedings." *In the Matter of Contempt of Mann*, 5 Nav. R. 125, 128 (Nav. Sup. Ct. 1987).

### **3. Appointed counsel**

"We have cited two statutes enacted by the Navajo Tribal Council that govern appointment of attorneys in criminal cases." *Boos v. Yazzie*, 6 Nav. R. 211, 216 (Nav. Sup. Ct. 1990).

"The Navajo Nation Bill of Rights also guarantees appointment of counsel for indigent criminal defendants charged in Navajo courts." *Boos v. Yazzie*, 6 Nav. R. 211, 214 (Nav. Sup. Ct. 1990).

### **4. Delay**

"In determining whether the right to a speedy trial has been violated, the Court applies four factors: 1) the length of the delay, 2) the reason for the delay, 3) the defendant's assertion of the right, and 4) the prejudice to the defendant caused by the delay." *Navajo Nation v. Badonie*, No. SC-CR-06-05, slip op. at 4 (Nav. Sup. Ct. March 7, 2006).

"Considering the four factors in this case, Badonie's speedy trial right was violated. The District Court took about a year to comply with the Supreme Court's remand, which specified that the findings and conclusions were necessary. Nothing in the record explains why the District Court took so long and no effort was made to provide any justification. Further, as noted above, Badonie several times asserted his right to a speedy trial, and even the Navajo Nation sought to move the case forward by seeking intervention by this Court. The first three factors therefore support Badonie's argument." *Navajo Nation v. Badonie*, No. SC-CR-06-05, slip op. at 5 (Nav. Sup. Ct. March 7, 2006).

"The fourth factor, prejudice to the defendant, is also clearly shown. The fourth factor reflects that the speedy trial right exists to protect the criminal defendant's ability to defend himself or herself, primarily by preventing the loss of witnesses, their memory of events, or other evidence through the passage of time." *Navajo Nation v. Badonie*, No. SC-CR-06-05, slip op. at 5 (Nav. Sup. Ct. March 7, 2006).

"Under the four factors, the Court holds that the District Court violated Seaton's right to a speedy trial. Under the first factor, as of the hearing on Seaton's petition before this Court, Seaton had been in detention for approximately 172 days without a trial. Under the third factor, Seaton himself, with no assistance from his attorney, filed a writ of habeas corpus with this Court, claiming a violation of his speedy trial right. Under the fourth factor, Seaton experienced significant prejudice, as the District Court's orders of temporary commitment coupled with the seven continuances meant that he remained in jail with no resolution of his case for nearly six months." *Seaton v. Greyeyes*, No. SC-CV-04-06, slip op. at 5-6 (Nav. Sup. Ct. March 28, 2006).

"Delay was not excessive considering the circumstances of the case." *Navajo Nation v. MacDonald, Jr.*, 7 Nav.R. 1, 11 (Nav. Sup. Ct. 1992).

### **5. Tribal immunity**

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither



the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [ ... ] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [.... ] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R.57, 61 (Nav. Sup. Ct. 1988).

## **6. Jury trial**

"Fairness requires that parties not be denied their right to a jury trial merely because they cannot immediately afford the costs of holding one. However, the Court holds that the requirement to prepay jury costs is not, in and of itself, a violation of a party's right to a jury trial." *Johnson et al. v. Tuba City District Court, and concerning Yellowman*, No. SC-CV-12-07, slip op. at 9 (Nav. Sup. Ct. November 7, 2007).

## **§ 8. Double jeopardy, self-incrimination; deprivation of property**

No person shall be subject for the same offense to be twice put in jeopardy of liberty, or property; nor be compelled in any criminal case to be a witness against themselves; nor shall private property be taken nor its lawful private use be impaired for public or governmental purposes or use, without just compensation.

### **History**

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

**Note.** 1 N.N.C. § 8 was formerly codified at 1 N.N.C. § 5.

### **United States Code**

Double jeopardy, 42 U.S.C. § 2000h-1.

### **Annotations**

#### **1. Eminent domain**

The Navajo Tribe has the power to take or authorize the taking of property without the consent of the owners of the property or of any interest therein, provided that the owners are given due process of law and just compensation. *Dennison v. Tucson Gas and Electric Co.*, 1 Nav. R. 95, (Nav. Ct. App. 1974).

Under the customary division of governmental power into three separate branches, a division which exists in the Navajo Nation, the right to exercise the power of eminent domain may be authorized only by the legislature and there can be no taking of private property for public use against the will of the owner without direct authority from the legislature and then the taking must be only in the manner prescribed by the legislature. *Dennison v. Tucson Gas and Electric Co.*, 1 Nav. R. 95, (Nav. Ct. App. 1974).

Where Chairman of the Navajo Tribe, on behalf of the tribe, granted gas and electric company a right-of-way across land of plaintiffs, who had a grazing permit and had a home and other improvements on the land, to build and maintain a power line, and just compensation was not given plaintiffs, the taking of the land was illegal and not in accord with 16 N.T.C. §§ 551 *et seq.*, and defense of sovereign immunity from suit was not available to the tribe in plaintiffs suit for damages, an injunction against further trespass and cancellation of their allegedly fraudulently obtained consent to the taking. *Dennison v. Tucson Gas and Electric Co.*, 1 Nav. R. 95 (Nav. Ct. App. 1974).

## **2. Property interests**

" ... [E]lected officials have no property interest in their elective office. [... ] Thus, fundamental rights are not implicated by the removal of an elected official from office." *Vandever, v. The Navajo Nation Ethics and Rules Office*, 7 Nav. R. 356, 358 (Nav. Sup. Ct. 1998).

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no "taking" by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

"The Begays' interest in Mutual Help Housing is a property interest." *Begay v. Begay*, 6 Nav. R. 160, 161 (Nav. Sup. Ct. 1989).

"An elected official does not have a property right in public office. The office belongs to the voting public. Katenay's due process rights do not stem from his position as a holder of elected office. His due process rights are derived from 2 N.T.C. § 4005, which gives him the right to explain to his constituents the grievances against him and to be voted out of office, or retained, by persons who were present during his explanation." *In re: Removal of Katenay*, 6 Nav. R. 81, 85 (Nav. Sup. Ct. 1989).

## **3. Civil forfeitures**

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [ ... ] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [... ] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R.57, 61 (Nav. Sup. Ct. 1988).

"Therefore, we hold that a civil forfeiture proceeding must provide due process as set forth in the Navajo Nation Bill of Rights, 1 N.T.C. § 3; the Indian Civil Rights Act, 25 U.S.C. § 1302(8), and Navajo common law." *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

## **4. Double jeopardy, generally**

"The Court will apply heightened scrutiny to provisions that allegedly create separate offenses based on a single action, and in the absence of clear intent that the statutory offenses indeed punish separate conduct, multiple convictions for the same action will be barred by double jeopardy. The mere fact that the elements of the two or more statutory offenses are fulfilled by a defendant's action does not, by itself, show clear intent." *Navajo Nation v. Kelly*, No. SC-CR-04-05, slip op. at 8 (Nav. Sup. Ct. July 24, 2006).

"The *Diné* concept of 'double jeopardy' also means that even if the Council creates two separate offenses that clearly punish the same conduct, it cannot nonetheless mandate multiple punishments, even if its intent is clear." *Navajo Nation v. Kelly*, No. SC-CR-04-05, slip op. at 8 (Nav. Sup. Ct. July 24, 2006).

"In future cases, a prosecutor must file the complaint with double jeopardy in mind, and understand that an offender cannot be convicted of both reckless driving or DUI and homicide by vehicle when such conduct causes a death. If the Prosecutor charges the defendant with reckless driving or DUI and homicide by vehicle, and establishes the elements of reckless driving or DUI, and that a death resulted from those actions, the district court may only convict the defendant for the homicide offense." *Navajo Nation v. Kelly*, No. SC-CR-04-05, slip op. at 10 (Nav. Sup. Ct. July 24, 2006).

## **5. Takings**

"Requiring uncompensated representation of indigent criminal defendants by NNBA members is not a taking of private property without just compensation, but a reasonable condition of Bar membership." *Boos v. Yazzie*, 6 Nav. R. 211, 220-221 (Nav. Sup. Ct. 1990).

## **§ 9. Cruel and unusual punishment; excessive bail and fines**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

### **History**

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

**Note.** 1 N.N.C. § 9 was formerly codified at 1 N.N.C. § 7.

### **Annotations**

#### **1. Sentencing**

"A jail sentence rendered outside the authority of a district court is cruel and unusual punishment under the Navajo Bill of Rights." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"This Court has previously established that a criminal sentence not according to law is cruel and unusual punishment prohibited by the Navajo Nation Bill of Rights." *Martin v. Antone*, No. SC-CV-48-02, slip op. at 2 (Nav. Sup. Ct. August 13, 2003); *citing*; *Navajo Nation v. Jones*, 1 Nav. R. 14, 18 (1971),

*Johnson v. Navajo Nation*, 5 Nav. R. 152, 153 (Nav. Sup. Ct. 1987).

"As a general matter, a criminal sentence [including a consecutive sentence] is not cruel and unusual punishment as long as it falls within the boundaries set by the legislature." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 447 (Nav. Sup. Ct. 1991).

"This Court recognizes that a '[a]' substantial liberty interest is at stake in sentencing." *Begay v. Navajo Nation*, 6 Nav. R. 132, 133 (Nav. Sup. Ct. 1989).

## **2. Treatment of juveniles**

"The Court therefore interprets [9 N.N.C.] Section 1152(A)(2) to only allow incarceration when allowed for adults. Incarceration of a minor when unauthorized for an adult is cruel and unusual punishment in violation of the Navajo Bill of Rights." *In the Matter of N.B. v. Greyeyes*, No. SC-CV-03-08, slip op. at 4-5, (Nav. Sup. Ct. April 16, 2008).

" ... [W]e also hold that at the minimum a detained juvenile must be provided with a padded area to lie on, a blanket, and food to eat to comply with the Navajo Bill of Rights Section against cruel and unusual punishment." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

## **3. Due process**

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no 'taking' by the imposition of new regulatory requirements and thus no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

"We disagree with TBI's position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1-9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [ ... ] ... [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [.... ] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe's immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

## **4. Child in Need of Supervision**

"The use of contempt to incarcerate a CHINS child improperly treats that child as delinquent, violates the Council's clear prohibition on incarceration of such children, and amounts to cruel and unusual punishment under the Navajo Bill of Rights." *In the Matter of M.G. v. Greyeyes*, No. SC-CV-09-07, slip op. at 4 (Nav. Sup. Ct. March 14, 2007).

## **5. Habeas corpus**

"This Court holds that the jail sentence imposed does not have a definite term. The Petitioner was jailed for 55 days although he kept informing the District

Court that he does not have the money, nor can he raise the money if he is incarcerated. Under these circumstances, the sentence is contrary to 17 N.N.C. § 223, constituting cruel and unusual punishment." *Cody v. Greyeyes*, No. SC-CV-09-09, slip op. at 4 (Nav. Sup. Ct. March 11, 2009).

"We therefore hold that the Navajo Nation Bill of Rights prohibited Petitioner's incarceration for his inability to pay the court imposed fines and fees in a criminal proceeding; under these circumstances, the sentence constitutes cruel and unusual punishment and an unreasonable deprivation of liberty." *Cody v. Greyeyes*, No. SC-CV-09-09, slip op. at 5 (Nav. Sup. Ct. March 11, 2009).

## **6. Denials of release**

"We therefore hold that being incarcerated for 21 days without court action on motions for release constitutes cruel and unusual punishment under the Navajo Bill of Rights. 1 N.N.C. § 9." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 10 (Nav. Sup. Ct. July 1, 2009).

## **Chapter 2. The Foundation of the Diné, Diné Law and Diné Government**

### **History**

CN-69-02, November 1, 2002.

**Preamble.** CN-69-02 contains the following preamble:

"Whereas: 2. The Diné have always been guided and protected by the immutable laws provided by the Diyin, the Diyin Diné'é, Nahasdzáán and Yádi[hi]; these laws have not only provided sanctuary for the Diné Life Way but has guided, sustained and protected the Diné as they journeyed upon and off the sacred lands upon which they were placed since time immemorial; and

"3. It is the duty of the Nation's leadership to preserve, protect and enhance the Diné Life Way and sovereignty of the people and their government; the Nation's leaders have always lived by these fundamental laws, but the Navajo Nation Council has not acknowledged and recognized such fundamental laws in the Navajo Nation Code; instead the declaration and practice of these fundamental laws have, up to this point in time, been left to those leaders in the Judicial Branch; and

"4. The Navajo Nation Council is greatly concerned that knowledge of these fundamental laws is fading, especially among the young people; the Council is also concerned that this lack of knowledge may be a primary reason why the Diné are experiencing the many negative forms of behavior and natural events that would not have occurred had we all observed and lived by these laws; and

"5. The Navajo Nation Council finds that the Diné Life Way must be protected and assured by incorporating these fundamental laws into the Navajo Nation Code in a manner that will openly acknowledge and recognize their importance and would generate interest to learn among all Diné; and

"6. The Navajo Nation Council finds that the acknowledgment, recognition and

teaching of these laws do not contravene 1 N.N.C. § 4; the incorporation of these fundamental laws into the Navajo Nation Code is not governmental establishment of religion nor is it prohibiting the free exercise of religion; the Navajo Nation Council and the Diné have always recognized and respected the principle of these fundamental laws and the Diné have the right and freedom to worship as they choose; and the Navajo Nation Council and the Diné recognize that the Diné Life Way is a holistic approach to living one's life whereby one does not separate what is deemed worship and what is deemed secular in order to live the Beauty Way; and

"7. The Navajo Nation Council further finds that it is entirely appropriate for the government itself to openly observe these fundamental laws in its public functions such as the installation or inauguration of its leaders and using and placing the appropriate symbols of the Diné Life Way in its public buildings and during legislative and judicial proceeding; and

"8. The Navajo Nation Council further finds that all elements of the government must learn, practice and educate the Diné on the values and principles of these laws; when the judges adjudicate a dispute using these fundamental laws, they should thoroughly explain so that we can all learn; when leaders perform a function using these laws and the symbols of the Diné Life Way, they should teach the public why the function is performed in a certain way or why certain words are used; and

"9. The Navajo Nation Council further finds that all the details and analysis of these laws cannot be provided in this acknowledgment and recognition, and such as effort should not be attempted; the Navajo Nation Council finds that more work is required to elucidate the appropriate fundamental principles and values which are to be used to educate and interpret the statutory laws already in place and those that may be enacted; the Council views this effort today as planting the seed for the education of all Diné so that we can continue to Walk in Beauty."

**§ 201. Diné Bi Beehaz'áanii Bitsé Siléí—Declaration of the Foundation of Diné Law**

We, the Diné, the people of the Great Covenant, are the image of our ancestors and we are created in connection with all creation.

Diné Bi Beehaz'áanii Bitsé Siléí

Diyin Dine'é,

Sin dóó sodizin,

Bee

Nahasdzáán dóó yádi[hi] nitsáhákees yi[ hadeidiilaa,

Tó dóó dzi[ diyinii nahat'á yi[ hadeidiilaa,

Ni[ch'i dóó nanse' a[taas'éi iiná yi[ hadediilaa,

K- ', adinídíín dóó nt['iz náádahaniihjì' sihasin yi[ hadediilaa.

Díí ts'idá aláají' nihi beehaz'áanii bitse siléí nihá' ályaa.

Nitsáhákees éí nahat'á bitsé silá.

Tiná éí sihasin bitsé silá.

Hanihi'diilyaadi díí nihiihdaahya' dóó bee hadíníit'é.

Binahji' nihéého'dílzingíí éíí:

Nihízhí',

Ádóone'é niidliinii,

Nihinéí',

Nihee ó'ool íí[,

Nihi chaha'oh,

Nihi kék'ehashchíín.

Díí bik'ehgo Diyin Nohookáá Diné nihi'doo'niid.

Kodóó dah'adiníisá dóó dah'adiidéél.

Áko díishjíigi éí nitsáhákees, nahat'á, iiná, saad, oodla',

Dóó beehaz'áanii a['aa ádaat'éego nihitah nihwiileeh,

Ndi nihi beehaz'áanii bitsé siléí nhá ndaahya'áá t'ahdii doo [ahgo  
ánéehda.

Éí biniinaa t'áá nanihi'deelyáháa doo ní[ch'i diyin hinááh nihiihdaahya'áa  
ge'át'éigo,

T'áá Diné niidliígo náásgóó ahoool'á.

The Holy People ordained,

Through songs and prayers,

That

Earth and universe embody thinking,

Water and the sacred mountains embody planning,

Air and variegated vegetation embody life,

Fire, light, and offering sites of variegated sacred stones embody

wisdom.

These are the fundamental tenets established.

Thinking is the foundation of planning.

Life is the foundation of wisdom.

Upon our creation, these were instituted within us and we embody them.

Accordingly, we are identified by:

Our Diné name,

Our clan,

Our language,

Our life way,

Our shadow,

Our footprints.

Therefore, we were called the Holy Earth-Surface-People.

From here growth began and the journey proceeds.

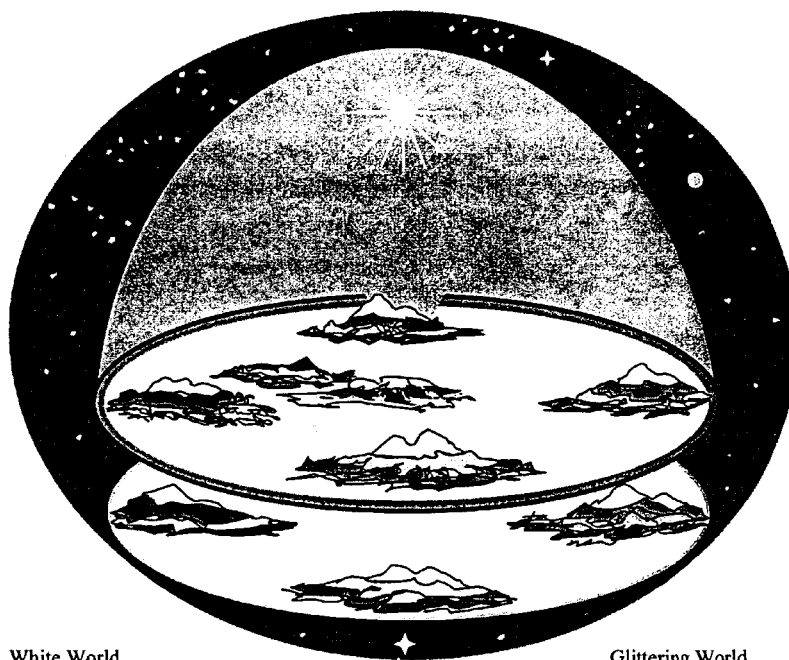
Different thinking, planning, life ways, languages, beliefs, and laws appear among us,

But the fundamental laws placed by the Holy People remain unchanged.

Hence, as we were created and with living soul, we remain Diné forever.<sup>1</sup>



## Mother Earth and Father Universe



White World

Glittering World

### History

CN-69-02, November 1, 2002.

### Annotations

#### 1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is

raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

## **2. Probate**

"While the Navajo Probate Code states that state law should apply unless custom is 'proved,' 8 N.N.C. § 2(B) (2005), the subsequent passage of the statute affirming the Fundamental Laws of the Diné, 1 N.N.C. § 201, *et seq.* (2005) (passed by Navajo Nation Council Resolution No. CO-72-03, (October 24, 2003)), means that a trial court may take judicial notice of *Diné bi beenahaz'áanii*." *In the Matter of the Estate of Amy Kindle*, No. SC-CV-40-05, slip op. at 7 (Nav. Sup. Ct. May 18, 2006).

"This Court's previous decision in this case, that state law applies if custom is not proven, *see Kindle*, No. SC-CV-38-99, slip op. at 4, predates these statutory changes. In light of these new statutory developments, the choice of law provision in the probate Code cannot be reconciled with the clear mandate to apply *Diné bi beenahaz'áanii* first, and state law only in the absence of Navajo law, and must therefore yield." *In the Matter of the Estate of Amy Kindle*, No. SC-CV-40-05, slip op. at 7 (Nav. Sup. Ct. May 18, 2006).

### **§ 202. Diné Bi Beenahaz'áanii**

The Diné bi beenahaz'áanii embodies Diyin bits33d66' beehaz'áanii (Traditional Law), Diyin Dine'é bits33d66' beehaz'áanii (Customary Law), Nahasdzáán dóó Yádi[hi] bits33d66' beehaz'áanii (Natural Law), and Diyin Nohookáá Diné bi beehaz'áanii (Common Law).

These laws provide sanctuary for the Diné life and culture, our relationship with the world beyond the sacred mountains, and the balance we maintain with the natural world.

These laws provide the foundation of Diné bi nahat'á (providing leadership through developing and administering policies and plans utilizing these laws as guiding principles) and Diné sovereignty. In turn, Diné bi nahat'á is the foundation of the Diné bi naat'á (government). Hence, the respect for, honor, belief and trust in the Diné bi beenahaz'áanii preserves, protects and enhances the following inherent rights, beliefs, practices and freedoms:

A. The individual rights and freedoms of each Diné (from the beautiful child who will be born tonight to the dear elder who will pass on tonight from old age) as they are declared in these laws; and

B. The collective rights and freedoms of the Diyin Nihookáá Diné as a distinct people as they are declared in these laws; and

C. The fundamental values and principles of Diné Life Way as declared in these laws; and

D. Self-governance; and

E. A government structure consisting of Hózhó%3Eó%3Eójí Nahat'á (Executive Branch), Naat'ájí Nahat'á (Legislative Branch), Hashkééjí Nahat'á (Judicial Branch), and the Naayee'jí Nahat'á (National Security Branch); and

F. That the practice of Diné bi nahat'á through the values and life way embodied in the Diné bi beenahaz'áanii provides the foundation of all laws proclaimed by the Navajo Nation government and the faithful adherence to Diné bi nahat'á will ensure the survival of the Navajo Nation; and

G. That Diné bi beenahaz'áanii provides for the future development and growth of a thriving Navajo Nation regardless of the many different thinking, planning, life ways, languages, beliefs, and laws that may appear within the Nation; and

H. The right and freedom of the Diné to be educated as to Diné bi beenahaz'áanii; and

I. That Diné bi beenahaz'áanii provides for the establishment of governmental relationships and agreements with other nations; that the Diné shall respect and honor such relationships and agreements and that the Diné can expect reciprocal respect and honor from such other nations.

### **History**

CN-69-02, November 1, 2002.

### **Annotations**

#### **1. Failure to plead**

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and

opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

## **2. Harassment**

"Lacking any guidance in the NPEA, the Court adopts Anderson's suggested definition of 'harassment' as consistent with the policies of the statute and *Diné bi beenahaz'áanii*." *Kesoli v. Anderson Security Agency*, No. SC-CV-01-05, slip op. at 5 (Nav. Sup. Ct. October 12, 2005).

## **3. Rights**

"Just as there are fundamental rights and freedoms of individuals as acknowledged by the Council in the Navajo Bill of Rights, there are fundamental rights of the collective People, the tribal nation, as acknowledged and recognized in the Fundamental Law statute." *Thinn v. Navajo Generating Station, Salt River Project*; and *Gonnie v. Headwaters Resources*, No. SC-CV-25-06 and No. SC-CV-26-06, slip op. at 8 (Nav. Sup. Ct. October 19, 2007).

### **§ 203. Diyin Bits'áádée' Beehaz'áanii-Diné Traditional Law**

The Diné Traditional Law declares and teaches that:

A. It is the right and freedom of the Diné to choose leaders of their choice; leaders who will communicate with the people for guidance; leaders who will use their experience and wisdom to always act in the best interest of the people; and leaders who will also ensure the rights and freedoms of the generations yet to come; and

B. All leaders chosen by the Diné are to carry out their duties and responsibilities in a moral and legal manner in representing the people and the government; the people's trust and confidence in the leaders and the continued status as a leader are dependent upon adherence to the values and principles of *Dine bi beenahazáanii*; and

C. The leader(s) of the Executive Branch (Al33j9' Hózh==jí Naat'ááh) shall represent the Navajo Nation to other peoples and nations and implement the policies and laws enacted by the legislative branch; and

D. The leader(s) of the Legislative Branch (Al33j9' Naat'ájí Naat'ááh and Al33j9' Naat'ájí Ndaanit'áii or Naat'aanii) shall enact policies and laws to address the immediate and future needs; and

E. The leader(s) of the Judicial Branch (Al33j9' Hashkééjí Naat'ááh) shall uphold the values and principles of *Diné bi beenahaz'áanii* in the practice of peace making, obedience, discipline, punishment, interpreting laws and rendering decisions and judgments; and

F. The leader(s) of the National Security Branch (Al33j9' Naayéé'jí Naat'ááh) are entrusted with the safety of the people and the government. To this end, the leader(s) shall maintain and enforce security systems and operations for the Navajo Nation at all times and shall provide services and guidance in the event of severe national crisis or military-type disasters;

and

G. Our elders and our medicine people, the teachers of the traditional laws, values and principles must always be respected and honored if the people and the government are to persevere and thrive; the teachings of the elders and medicine people, their participation in the government and their contributions of the traditional values and principles of the Diné life way will ensure the growth of the Navajo Nation; and from time to time, the elders and medicine people must be requested to provide the cleansing, protection prayers, and blessing ceremonies necessary for securing healthy leadership and the operation of the government in harmony with traditional law; and

H. The various spiritual healings through worship, song and prayer (Nahaghá) must be preserved, taught, maintained and performed in their original forms; and

I. The Diné and the government must always respect the spiritual beliefs and practices of any person and allow for the input and contribution of any religion to the maintenance of a moral society and government; and

J. The Diné and the government can incorporate those practices, principles and values of other societies that are not contrary to the values and principles of Diné Bi Beenahaz'áanii and that they deem is in their best interest and is necessary to provide for the physical and mental well-being for every individual.

### **History**

CN-69-02, November 1, 2002.

### **Annotations**

#### **1. Application**

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim.

Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

## **2. Elections**

"In Navajo thinking, the selection of a person by voters is one of two requirements for a candidate to become a *naat'áanii*. That person must also accept the position, and, to accept, must take an oath to serve the laws of the sovereign government within whose system he or she will serve the people-'naat'áanii ádee hadidziih.' Only when a person accepts through an oath will all of the Navajo people say that a person has been properly installed as a *naat'áanii*-'*naat'áanii idl9 bee bitsoosz99*.' In other words, 'Diné binant'a'í bee bi'doosz99d or *Diné binaat'áanii bee bi'doosz99d*' [ ... ] The oath is absolute, and allows no conflict in loyalty. This requirement of absolute loyalty is reiterated in the Election Code itself, as one of the qualifications for a council delegate is that he or she must 'maintain unswerving loyalty to the Navajo Nation.' 11 N.N.C. § 8(B)(5) (2005). Under these principles, a person may not swear allegiance to obey and serve simultaneously the laws of the Nation and the State of New Mexico. The prohibition is then consistent with our Fundamental Law, and it is not improper for the Election Code to require Tsosie to serve only one government." *In the Matter of the Grievance of: Wagner, and concerning, Tsosie*, SC-CV-01-07, slip op. at 7-8 (Nav. Sup. Ct. May 14, 2007).

"The Council may establish requirements for elected offices, but such requirements must conform to *Diné bi beenahaz'áanii*. There is a basic right, highlighted in the Fundamental Law statute, the the *Diné* have the right to choose leaders of their choice." *In the Matter of the Appeal of Vern Lee*, No. SC-CV-32-06, slip op. at 5 (Nav. Sup. Ct. August 11, 2006).

"Further, under *Diné bi beenahaz'áanii*, Navajo candidates have a liberty interest to participate in the political process by running for office." *In the Matter of the Appeal of Vern Lee*, No. SC-CV-32-06, slip op. at 5 (Nav. Sup. Ct. August 11, 2006).

"The residency requirement must be considered in light of these fundamental rights. If it is in irreconcilable conflict with those rights, that is, if it defeats the ability of the people to elect leaders of their choosing and candidates to run for office, it must yield." *In the Matter of the Appeal of Vern Lee*, No. SC-CV-32-06, slip op. at 5 (Nav. Sup. Ct. August 11, 2006).

### **§ 204. Diyin Dine'é Bits33d66' Beehaz'áanii—Diné Customary Law**

The Diné Customary Law declares and teaches that:

A. It is the right and freedom of the people that there always be holistic education of the values and principles underlying the purpose of living in balance with all creation, walking in beauty and making a living; and

B. It is the right and freedom of the people that the sacred system of k'é, based upon the four clans of Kiiyaa'áanii, Todíich'iínii, Honagháahnii and Hasht[íishnii and all the descendant clans be taught and preserved; and

C. It is the right and freedom of the people that the sacred Diné language (nihiinéí') be taught and preserved; and

D. It is the right and freedom of the people that the sacred bonding in marriage and the unity of each family be protected; and

E. It is the right and freedom of the people that every child and every elder be respected, honored and protected with a healthy physical and mental environment, free from all abuse; and

F. It is the right and freedom of the people that our children are provided with education to absorb wisdom, self-knowledge, and knowledge to empower them to make a living and participate in the growth of the Navajo Nation.

### **History**

CN-69-02, November 1, 2002.

### **Annotations**

#### **1. Application**

"Just as there are fundamental rights and freedoms of individuals as acknowledged by the Council in the Navajo Bill of Rights, there are fundamental rights of the collective People, the tribal nation, as acknowledged and recognized in the Fundamental Law statute." *Thinn v. Navajo Generating Station, Salt River Project*; and *Gonnie v. Headwaters Resources*, No. SC-CV-25-06 and No. SC-CV-26-06, slip op. at 8 (Nav. Sup. Ct. October 19, 2007).

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in

their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

## **2. Child support**

The role of the mother and father must complement each other so that what was acquired through the joint labor is for the support, benefit, and safety of the children. *Watson v. Watson*, No. SC-CV-40-07, slip op. at 15 (Nav. Sup. Ct. December 14, 2009).

### **§ 205. Nahasdzaán dóó Yádi[hi] Bits'33d66' Beehaz'áanii—Diné Natural Law**

Diné Natural Law declares and teaches that:

A. The four sacred elements of life, air, light/fire, water and earth/pollen in all their forms must be respected, honored and protected for they sustain life; and

B. The six sacred mountains, Sisnaajini, Tsoodzi[, Dook'o'oosliíd, Dibé Nitsaa, Dzi[ Na'oodi[i], Dzi[ Ch'ool'í'í, and all the attendant mountains must be respected, honored and protected for they, as leaders, are the foundation of the Navajo Nation; and

C. All creation, from Mother Earth and Father Sky to the animals, those who live in water, those who fly and plant life have their own laws and have rights and freedoms to exist; and

D. The Diné have the sacred obligation and duty to respect, preserve and protect all that was provided for we were designated as the steward for these relatives through our use of the sacred gifts of language and thinking; and

E. Mother Earth and Father Sky is part of us as the Diné and the Diné is part of Mother Earth and Father Sky; The Diné must treat this sacred bond with love and respect without exerting dominance for we do not own our mother or father; and

F. The rights and freedoms of the people to the use of the sacred elements of life as mentioned above and to the use of land, natural resources, sacred sites and other living beings must be accomplished through the proper protocol of respect and offering and these practices must be protected and preserved for they are the foundation of our spiritual ceremonies and the Diné life way; and

G. It is the duty and responsibility of the Diné to protect and preserve the beauty of the natural world for future generations.

## **History**



CN-69-02, November 1, 2002.

## Annotations

### 1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

### § 206. *Diyin Nohookáá Diné Bi Beehaz'áanii*—Diné Common Law

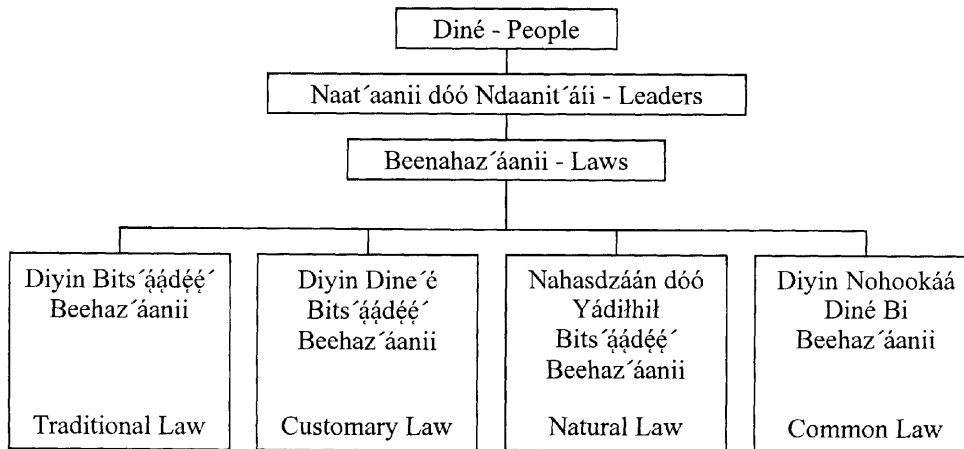
The Diné Common Law declares and teaches that:

A. The knowledge, wisdom, and practices of the people must be developed and exercised in harmony with the values and principles of the *Diné Bi Beenahaz'áanii*; and in turn, the written laws of the Navajo Nation must be developed and interpreted in harmony with Diné Common Law; and

B. The values and principles of Diné Common Law must be recognized, respected, honored and trusted as the motivational guidance for the people and their leaders in order to cope with the complexities of the changing world, the need to compete in business to make a living and the establishment and maintenance of decent standards of living; and

C. The values and principles of Diné Common Law must be used to harness and utilize the unlimited interwoven Diné knowledge, with our absorbed knowledge from other peoples. This knowledge is our tool in exercising and exhibiting self-assurance and self-reliance and in enjoying the beauty of happiness and harmony.

## Diné Original Law Structure



### History

CN-69-02, November 1, 2002.

### Annotations

#### 1. Application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

### Chapter 3. Great Seal and Flag

## History

**Revision note.** Sections 101-107 were redesignated §§ 301-307 for numerical consistency.

### § 301. Great Seal

The entry submitted by John Claw, Jr. as reproduced below, is adopted as the Great Seal of the Navajo Nation.



## History

CMY-18-88, May 3, 1988.

CJA-9-52, January 18, 1952.

**Note.** Two additional arrowheads were added to signify protection within the 50 states. Also, the word Tribe was changed to Nation.

## Annotations

### 1. Construction and application

"As the test we announce today requires clear intent in the plain language or structure of a statute to override an exemption, we do not fill any omissions or interpret ambiguous language under *Diyin Nohookáá Dine' é Bi Beehaaz'áanii* (Navajo Common Law). Our general rules of statutory construction changed with Council passage of Resolution Nos. CN-69-02 (November 13, 2002) (Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné) and CO-72-03 (October 24, 2003) (Amending Title VII of the Code), which mandate that we interpret statutes consistent with Navajo Common Law. We have applied this mandate when the plain language of a statute does not cover a particular situation or is ambiguous, but have applied the plain language directly when it applies and clearly requires a certain outcome." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).

"Resolutions CN-69-02 (recognizing the Fundamental Laws of the Diné) and CO-72-03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz'áanii* in our Courts. Resolution CN-69-02 instructs our judges and justices to take notice of *Diné bi beenahaz'áanii* in

their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue." *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

### **§ 302. Flag**

The Navajo Nation Council accepts and adopts the selected flag for the Navajo Nation to symbolize the tradition, sovereignty and heritage of the Navajo People.

#### **History**

CO-49-06, October 20, 2006. Added the word "sovereignty."

CMY-75-68, May 21, 1968.

### **§ 303. Display of the flag**

A. The Navajo Nation flag shall be displayed, except on days when the weather is inclement, within, on, or near the main building or entrance of every Navajo Nation facility, institution, or Navajo Nation Administration building.

B. The Navajo Nation flag may be displayed within buildings, or outside where it shall be displayed only from sunrise to sunset, and only on flagstaves or staffs affixed to buildings. The flag may be otherwise displayed in an appropriate manner on special occasions.

C. The flag should be displayed during school days in or near every school house or school yard.

#### **History**

CJA-6-70, January 8, 1970.

### **§ 304. Manner of display**

A. The manner in which the Navajo Nation flag is displayed with or near the flag of the United States shall be in conformance with laws governing the display of the flag of the United States.

B. The Navajo Nation flag should be displayed in a proper and respectful manner, conspicuously placed and well secured. When the flag is displayed other than being flown from a staff, it should be displayed flat, whether indoors or out, or so suspended that its folds fan as free as though the flag were staffed.

C. The Navajo Nation flag should be hoisted briskly and lowered ceremoniously.

D. The Navajo Nation flag should be displayed above any flags on a single staff, except the United States flag. If several flags are displayed together with the Navajo Nation flag on different staffs, the Navajo Nation flag should occupy the place of central or greatest prominence, except when the United States flag is displayed. When displayed with the United States flag, the Navajo Nation flag should be displayed immediately to the left of the United States flag.

E. The President of the Navajo Nation is hereby authorized to order that the Navajo Nation flag be displayed at half staff, whenever appropriate, and to prescribe the length of time the flag should be so displayed. The flag, when displayed at half staff, should first be hoisted to the peak of the staff for an instant and then lowered to the half-staff position. The flag should again be raised to the peak of the staff before it is lowered for the day.

#### **History**

CO-49-06, October 20, 2006. Amended Subsection (D).

CJA-6-70, January 8, 1970.

#### **§ 305. Proper methods of handling, storage, or destruction**

A. The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise, and should always be kept or placed in a clean container or wrapping used for the purpose of keeping the flag.

B. The flag should never be used as drapery of any sort whatsoever, never festooned, drawn back, nor up, in folds, but always allowed to fall free.

C. The flag should never be fastened, displayed, used, or stored in such a manner as will permit it to be easily torn, soiled, or damaged in any way.

D. The flag should never have placed upon it, nor on any part of it, nor attached to it any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.

E. The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard; or used as any portion of a costume or athletic uniform. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.

F. The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning by the Department of Navajo Veterans Affairs or a bonafide veterans organization.

#### **History**

CO-49-06, October 20, 2006. Amended Subsection (F).

CJA-6-70, January 8, 1970.

**§ 306. Desecration of the Navajo Nation flag**

Any person who knowingly casts contempt upon the Navajo Nation flag by publicly mutilating, defacing, defiling, burning, or trampling upon it shall be deemed to have committed an offense.

**History**

CJA-6-70, January 8, 1970.

**§ 307. Penalties**

Any person found to have committed the offense, defined and established by 1 N.N.C. § 306, shall be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than 30 days, or both.

**History**

CO-49-06, October 20, 2006.

CJA-6-70, January 8, 1970.

**Chapter 5. Navajo Nation**

**History**

**Revision note.** Sections 301 and 302 were redesignated §§ 501 and 502 for numerical consistency.

**Revision note.** Sections 351-355 were redesignated §§ 551-555 for numerical consistency.

**Subchapter 1. Designation**

**§ 501. Use of term "Navajo Nation"; certification of resolutions; address**

A. The President of the Navajo Nation and all departments, divisions, agencies, enterprises, and entities of the Navajo Nation shall use the phrase "Navajo Nation" in describing the lands and people of the Navajo Nation.

B. All resolutions of the Navajo Nation government shall be certified as being duly enacted at "Window Rock, Navajo Nation (Arizona)".

C. All correspondence, stationery and letterhead, of all divisions, agencies, etc., of the Navajo Nation shall use the designation "Navajo Nation." For example, Navajo Nation letterhead should read "The Navajo Nation, Window Rock, Navajo Nation (Arizona) 86515," or "Navajo Police Department, Crownpoint, Navajo Nation (New Mexico) 87313".

**History**

CJY-55-85, July 25, 1985.

ACAP-101-69, April 15, 1969.

**Revision note.** Reworded for grammatical content, statutory form, and clarity.

#### **§ 502. Spelling of "Navajo"**

All use of the name "Navajo" shall use the spelling "j", not "h".

#### **History**

CJY-55-85, July 25, 1985.

ACAP-101-69, April 15, 1969.

**Revision note.** Reworded for grammatical content, statutory form, and clarity.

### **Subchapter 2. Navajo Sovereign Immunity Act**

#### **History**

**Redesignation.** Sections 351-355 were redesignated §§ 551-555 for numerical consistency.

#### **§ 551. Establishment**

There is established the Navajo Sovereign Immunity Act.

#### **History**

CMY-42-80, May 6, 1980.

**Revision note.** Slightly reworded for purposes of statutory form.

#### **Annotations**

##### **1. Construction and application**

"We hold that private individuals, such as the Petitioners, may not raise sovereign immunity as a defense against suits." *Owens, et al. v. Honorable Allen Sloan*, 7 Nav. R. 215, (Nav. Sup. Ct. 1996).

*Formerly §§ 351-355.* "Whether the Act applies is not determined by who the plaintiffs are, but by who the defendants are and in what capacity the defendants are acting." *MacDonald v. Yazzie*, 6 Nav. R. 95, 96 (Nav. Sup. Ct. 1989).

*Re: previous sov. Imm. Act at 7 N.T.C. §§ 851-855.* "The 1980 Navajo Sovereign Immunity Act, 7 N.T.C. §§ 851 to 855, does not allow implied waivers of the Navajo Nation's immunity from suit. Only an unequivocally expressed waiver is allowed by the 1980 Navajo Sovereign Immunity Act. [... ] Therefore, the filing of a compulsory counterclaim by the Navajo Nation does not waive its

immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

**§ 552. Definitions**

For the purposes of this Subchapter, "Navajo Nation" means:

- A. The Navajo Nation Council;
- B. The President, Navajo Nation;
- C. The Vice-President, Navajo Nation;
- D. The Delegates to the Navajo Nation Council;
- E. The Certified Chapters of the Navajo Nation;
- F. The Grazing Committees of the Navajo Nation;
- G. The Land Boards of the Navajo Nation;
- H. The Executive Branch of the Navajo Nation government;
- I. The Judicial Branch of the Navajo Nation government;
- J. The Commissions of the Navajo Nation government;
- K. The Committees of the Navajo Nation Council;
- L. The Legislative Branch of the Navajo Nation government;
- M. The Enterprises of the Navajo Nation;
- N. Navajo Community College;
- O. The Kayenta Township and the Kayenta Township Commission;
- P. Navajo Housing Authority;
- Q. Navajo Nation Gaming Enterprise;
- R. Tribal Gaming Enterprises.

**History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006. Added Subsection (R), Tribal Gaming Enterprises.

CS-34-06, September 26, 2006. Added Subsection (Q), Navajo Nation Gaming Enterprise.

CO-55-04, October 19, 2004.

CAU-47-03, August 29, 2003.



CJY-42-03, July 25, 2003.

CMY-28-88, May 6, 1988.

CMY-42-80, May 6, 1980.

## **Annotations**

### **1. Construction and application**

"Based on this history, it is clear that the Resolution did not merely 'clarify' an ambiguity, but altered the legal landscape by purporting to bring NHA under the Sovereign Immunity Act." *Phillips v. Navajo Housing Authority*, No. SC-CV-13-05, slip op. at 6 (Nav. Sup. Ct. December 8, 2005).

"NHA is not considered the 'Navajo Nation' in the act, but instead its immunity is covered by a separate Section of the Navajo Nation Code directly related to NHA, 6 N.N.C. § 616(b)(1)." *NHA v. Bluffview Resident Management Corporation, Board of Directors, et al.*, No. SC-CV-35-00, slip op. at 9 (Nav. Sup. Ct. December 17, 2003).

"For the reasons stated, CIT was not covered by the Sovereign Immunity Act's umbrella of "enterprises of the Navajo Nation" in April 1995." *Blaze Construction, Inc. v. Crownpoint Institute of Technology*, 7 Nav. R. 296, 299 (Nav. Sup. Ct. 1997).

"We hold that private individuals, such as the Petitioners, may not raise sovereign immunity as a defense against suits." *Owens, et al. v. Honorable Allen Sloan*, 7 Nav. R. 215, (Nav. Sup. Ct. 1996).

*Formerly §§ 351-355.* "Whether the Act applies is not determined by who the plaintiffs are, but by who the defendants are and in what capacity the defendants are acting." *MacDonald v. Yazzie*, 6 Nav. R. 95, 96 (Nav. Sup. Ct. 1989).

*Re: previous sov. Imm. Act at 7 N.T.C. §§ 851-855.* "The 1980 Navajo Sovereign Immunity Act, 7 N.T.C. §§ 851 to 855, does not allow implied waivers of the Navajo Nation's immunity from suit. Only an unequivocally expressed waiver is allowed by the 1980 Navajo Sovereign Immunity Act. [... ] Therefore, the filing of a compulsory counterclaim by the Navajo Nation does not waive its immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

### **2. Navajo Housing Authority**

"This case concerns whether a monetary judgment against the Navajo Housing Authority (NHA) may be enforced, or whether sovereign immunity, Navajo statutory exemption from execution, or a circular issued by the U.S. Office of Management and Budget (OMB) prohibits the enforcement. The Court holds that only certain NHA funds are exempt from execution, and that the judgment must be satisfied with those that are non-exempt." *Tso v. Navajo Housing Authority*, No. SC-CV-20-06, slip op. at 1 (Nav. Sup. Ct. December 6, 2007).

## **§ 553. General principles of sovereign immunity**

A. The Navajo Nation is a sovereign nation which is immune from suit.

B. Sovereign immunity is an inherent attribute of the Navajo Nation as a sovereign nation and is neither judicially created by any court, including the Courts of the Navajo Nation, nor derived from nor bestowed upon the Navajo Nation by any other nation or government.

C. The Courts of the Navajo Nation are created by the Navajo Nation Council within the government of the Navajo Nation and the jurisdiction and powers of the courts of the Navajo Nation, particularly with regard to suits against the Navajo Nation, are derived from and limited by the Navajo Nation Council as the governing body of the Navajo Nation.

D. The special authority of the Congress of the United States relating to Indian affairs derives from and is consistent with the recognition and fulfillment of its unique trust obligations to protect and preserve the inherent attributes of Indian tribal self-government.

E. The Navajo Nation Council has enacted the Navajo Nation Bill of Rights in recognition of the interests and rights of the People of the Navajo Nation, from whom the sovereignty of the Navajo Nation derives, as express self-limitations upon the exercise of its sovereign powers and has provided herein for specific remedies and redress for individuals from the government of the Navajo Nation as only the governing body of the Navajo Nation is empowered and responsible to determine on behalf of the People of the Navajo Nation.

F. Neither the President, Navajo Nation, the Vice-President, Navajo Nation, nor the delegates to the Navajo Nation Council may be subpoenaed or otherwise compelled to appear or testify in the courts of the Navajo Nation or any proceeding which is under the jurisdiction of the courts of the Navajo Nation concerning any matter involving such official's actions pursuant to his/her official duties.

### **History**

CMY-28-88, May 6, 1988.

CMY-42-80, May 6, 1980.

### **Annotations**

#### **1. Construction and application**

"We hold that private individuals, such as the Petitioners, may not raise sovereign immunity as a defense against suits." *Owens, et al. v. Honorable Allen Sloan*, 7 Nav. R. 215, (Nav. Sup. Ct. 1996).

*Formerly* §§ 351-355. "Whether the Act applies is not determined by who the plaintiffs are, but by who the defendants are and in what capacity the defendants are acting." *MacDonald v. Yazzie*, 6 Nav. R. 95, 96 (Nav. Sup. Ct. 1989).

Re: *previous sov. Imm. Act at 7 N.T.C. §§ 851-855.* "The 1980 Navajo Sovereign Immunity Act, 7 N.T.C. §§ 851 to 855, does not allow implied waivers of the Navajo Nation's immunity from suit. Only an unequivocally expressed waiver is allowed by the 1980 Navajo Sovereign Immunity Act. [... ] Therefore, the filing of a compulsory counterclaim by the Navajo Nation does not waive its immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

## **2. Immunity**

"Under the Navajo Sovereign Immunity Act, the Navajo Nation is immune from suit. This immunity from suit is an inherent attribute of Navajo sovereignty and not judicially created by any court, including the Navajo courts, and is not bestowed upon the Nation by the United States government, or any other government." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 143 (Nav. Sup. Ct. 1995).

Re: *Sov. Imm. Act definition of Navajo Nation:* "The suit challenges certain resolutions passed by the Navajo Tribal Council. When the Navajo Tribal Council and the delegates to that body are performing legislative functions they fall within the definition of Navajo Nation and the [Navajo Sovereign Immunity] Act applies." *Plummer v. Brown II*, 6 Nav. R. 88, 91 (Nav. Sup. Ct. 1989).

## **3. Powers of council**

"The Navajo Nation Council, as the governing body of the sovereign Navajo Nation, has the power to limit the jurisdiction of the Navajo courts, especially in suits against the Nation." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 143 (Nav. Sup. Ct. 1995).

## **4. Remedies**

"The Act recognizes that the People of the Nation have rights and interests (as enacted in the Navajo Nation Bill of Rights), and that these rights and interests are limitations of the Nation's sovereign powers. Thus, the Act provides individuals with specific remedies and redress from governmental actions which are violative of the people's rights." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 143 (Nav. Sup. Ct. 1995).

## **5. Jurisdiction**

*Formerly 1 N.T.C. §§ 353 & 354.* "We will not adopt Chairman MacDonald's argument that, because this is a unique case where the Navajo Nation has sued itself, we must ignore the express tribal code law on suits against the Navajo Nation. If we ignore the provisions in the Act, in effect the Navajo courts would be creating their own jurisdiction—a power Navajo courts do not have. Navajo code law expressly provides that the Navajo courts can exercise jurisdiction over suits against the Navajo Nation only when authorized by the Navajo Tribal Council." *Plummer v. Brown II*, 6 Nav. R. 88, 92 (Nav. Sup. Ct. 1989).

**§ 554. Exceptions to the general principles of sovereign immunity; purpose and**

**intent**

A. The purpose and intent of the Navajo Sovereign Immunity Act is to balance the interest of the individual parties in obtaining the benefits and just redress to which they are entitled under the law in accordance with orderly process of the Navajo government, while at the same time protecting the legitimate public interest in securing the purpose and benefits of their public funds and assets, and the ability of their government to function without undue interference in furtherance of the general welfare and the greatest good of all people. All of the provisions of this Act shall be applied as hereinafter set forth in order to carry out this stated purpose and intent of the Navajo Nation Council, as the governing body of the Navajo Nation.

B. The Navajo Nation may be sued in the courts of the Navajo Nation when explicitly authorized by applicable federal law.

C. The Navajo Nation may be sued only in the courts of the Navajo Nation when explicitly authorized by Resolution of the Navajo Nation Council.

D. Any exception to the immunity of the Navajo Nation and assumption of liability pursuant to this Act does not apply in circumstances in which such liability has been or is hereafter assumed by third parties, including any other governmental body or agency, nor for which the Navajo Nation has been or is hereafter indemnified or held harmless by such parties, to the extent of such assumption or indemnification of liability. Nor does any liability assumed by the Navajo Nation pursuant to this Act extend to any party or parties as third party beneficiary or otherwise, other than the party or parties to whom such liability is expressly assumed, and then only to the extent, circumstances and conditions specified thereby.

E. Any liability of a public entity or public officer, employee or agent assumed pursuant to this Act is subject to any other immunity of that public entity or person and is subject to any defense which would be available to the public entity or person if they were private entities and/or persons.

1. A public entity is not liable for any injury or damage resulting from an act or omission of any public officer, employee or agent if that party is not liable; nor for the actions or omissions of public officers, employees or agents which are determined to be contrary to or without authorization or otherwise outside or beyond the course and scope of such officer's, employee's or agent's authority.

2. This Section does not immunize a public officer, employee or agent from individual liability, not within Navajo Nation insurance coverage, for the full measure of the recovery applicable to a person in the private sector, if it is established that such conduct was outside the scope of his or her employment and/or authority.

3. Volunteers duly authorized by the Navajo Nation or any political subdivision thereof, in performing any of their authorized functions or duties or training for such functions or duties, shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the Navajo Nation and its governmental entities performing similar work.

F. The Navajo Nation may be sued only in the courts of the Navajo Nation with respect to any claim which is within the express coverage and not excluded by either commercial liability insurance carried by the Navajo Nation or an established Navajo Nation self-insured and/or other claims program of the Navajo Nation government, approved and adopted pursuant to the laws of the Navajo Nation and further, subject to the following provisions and limitation:

1. No judgment, order or award pertaining to any claims permitted hereunder shall be for more than the limits of valid and collectable liability insurance policies carried by the Navajo Nation covering each such claim and in force at the time of such judgment, including deductible amounts to the extent appropriated by the Navajo Nation Council; nor for more than the amount of coverage provided for each such claim under established claim reserves as appropriated by the Navajo Nation Council, or otherwise established pursuant to any self-insured liability and/or other Navajo Nation government claims program, approved and adopted pursuant to the laws of the Navajo Nation;

2. Any such judgment, order or award may only be satisfied pursuant to the express provisions of the policy(ies) of liability insurance and/or established self-insured or government claims program of the Navajo Nation which are in effect at the time of each such judgment, order or award. Regardless of the existence of applicable and collectible commercial insurance coverage at the time any cause of action arises or suit is filed against the Navajo Nation, in no event shall any funds or other property of the Navajo Nation be liable for satisfaction of any judgment against the Navajo Nation and/or other insureds thereunder, beyond the limits of any amounts specifically appropriated and/or reserved therefor at the time of judgment, which shall be modified by law in accordance with such limitation of funds. This limitation shall apply to any deductible or retained liability or otherwise resulting from any inability or insolvency occurring any time prior to entry of such judgment;

3. No cause of action shall lie and no judgment may be entered or awarded on any claim for punitive or exemplary damages against the Navajo Nation; nor against any officer, employee or agent of the Navajo Nation acting within the course and scope of the authority of such office, employment or agency;

4. Notwithstanding any provisions of this Subsection (F), there shall be no exception to the sovereign immunity of public entities, officials, employees or agents of the Navajo Nation from claims for injury or damage alleged to have been sustained by:

a. Policy decisions or the exercise of discretion made by a public official, employee or agent in the exercise or judgment or discretion vested in the entity or individual;

b. A decision made in good faith and without gross negligence in carrying out the law, except that this provision does not immunize a public entity, officer, employee or agent from liability for false arrest, false imprisonment or malicious prosecution;

c. Legislative or judicial action or inaction or administrative action or inaction of a legislative or judicial nature, such as adopting or failure to adopt a law or by failing to enforce a law;

d. Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization, nor by the termination or reduction of benefits under a public assistance program; if the public entity, officer, employee or agent of the Navajo Nation is authorized by law to determine whether or not such authorization or benefits should be issued, denied, suspended or revoked;

e. Probation, parole, furlough or release from confinement of a prisoner or other detainee or from the terms and conditions or the revocation thereof, except upon a showing of gross negligence;

f. Any injury or damage caused by an escaping or escaped person or prisoner, a person resisting arrest or by a prisoner to himself or herself, or to any other prisoner, except upon showing of gross negligence;

g. The enumeration of the above immunities shall not be construed to waive any other immunities, nor to assume any liability except as explicitly provided in this Act.

5. Subject to all other provisions of this Act, the express coverage of any commercial liability policy insuring the Navajo Nation or of any self-insurance program established by the Navajo Nation, for sums which the Navajo Nation as insured shall become legally obligated to pay as damage because of personal injury and/or property damages shall include liability for such actual monetary loss and damage which is established by clear and convincing evidence, to be the direct and proximate result of the wrongful deprivation or impairment of civil rights as set forth in Chapter 1 of Title 1 of the Navajo Nation Code, the Bill of Rights of the Navajo Nation. In the sound exercise of judicial discretion, the courts of the Navajo Nation may, to the extent deemed proper and appropriate in any action for damages for wrongful deprivation or impairment of civil rights as provided herein, award necessary costs of suit and/or reasonable fees; based upon time and value, incurred for legal representation; or require each or any party thereto, to bear their own respective costs and/or legal fees incurred therein.

G. Any officer, employee or agent of the Navajo Nation may be sued in the courts of the Navajo Nation to compel him/her to perform his/her responsibility under the expressly applicable laws of the United States and of the Navajo Nation, which shall include the Bill of Rights of the Navajo Nation, as set forth in Chapter 1, Title 1, Navajo Nation Code.

1. Relief awarded by the courts of the Navajo Nation under this Subsection (G) shall be limited to declaratory or prospective mandamus or injunctive relief and in accordance with the express provisions of the

laws of the United States and the Navajo Nation establishing the responsibility for such performance. The courts may further, in the exercise of judicial discretion, award necessary costs of suit and/or reasonable fees for legal representation, in the same manner and to the same extent provided in Paragraph (5) Subsection (F) hereof.

2. No relief as provided under this Subsection (G) may be awarded by the courts of the Navajo Nation without actual notice to the defendant(s), nor before the time provided in this Act for answering complaints, motions or orders to show cause, nor without opportunity for full hearing of all defenses and objection thereto, in accordance with all provisions of this Act all other applicable law(s).

3. This Subsection (G) shall not apply to the President of the Navajo Nation, the Vice-President of the Navajo Nation, or the delegates to the Navajo Nation Council.

H. Contracted or otherwise retained counsel and other attorneys employed by the Navajo Nation may be sued for malpractice when authorized by the Government Services Committee of the Navajo Nation Council.

I. The Navajo Nation may be sued by Navajo contractors and/or their sureties on construction development or reclamation contracts, provided:

1. The contractor's contract is properly approved by the appropriate Committee of the Navajo Nation Council.

2. The contract is to be performed by a Navajo contractor as defined herein and is performed within the territorial jurisdiction of the Navajo Nation.

3. Damages against the Navajo Nation under the consent to suit granted by the Navajo Nation to Navajo contractors and/or their sureties shall be limited to damages claimed under applicable principles of contract damage law, including damages necessary to compensate for fulfilling the obligations under the bond, which shall include properly authorized change orders and properly authorized performance under owner directives to proceed done under protest, but shall not include:

a. Punitive damages;

b. Damages from claims arising in tort;

c. Damages caused by delays in performance due to governmental review and approval procedures of the Navajo Nation or other governmental entity having the right to review and/or approve the contract or project; or

d. Damages caused by delay, contract modification, or contract termination, due to delay in or failure to receive matching funds for the contract or project.

4. Damages against the Navajo Nation claimed above shall be limited to the dollar amount of the contract including properly approved change

orders.

5. The Navajo Nation shall be subject to suit under this Subsection (I) only in the courts of the Navajo Nation. In determining the Navajo Nation's obligations under this Subsection (I), the courts of the Navajo Nation shall not give any preclusive effect against the Navajo Nation of any determination by any judicial or quasi-judicial body except the Courts of the Navajo Nation.

6. Navajo Contractor shall mean any contractor entitled to a priority number one, number two or number three pursuant to the Navajo Nation Business Opportunity Act.

J. The Navajo Nation may be ordered to proceed with arbitration, provided:

1. The agreement is properly approved and executed on behalf of the Navajo Nation according to all applicable laws of the Navajo Nation;

2. All agreements entered into under the Navajo Nation Arbitration Act shall be approved by the Navajo Nation Department of Justice; and

3. The arbitration process shall be conducted in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. § 1101 *et seq.*

K. The Courts of the Navajo Nation shall have original and exclusive jurisdiction to enforce an arbitral award against the Navajo Nation when such suit is specifically provided for in an agreement containing an arbitration clause that is entered into in accordance with the Navajo Nation Arbitration Act. The Navajo Nation shall be subject to suit under this Subsection (K) provided that:

1. The agreement is properly approved and executed on behalf of the Navajo Nation according to all applicable laws of the Navajo Nation;

2. All agreements entered into under the Navajo Nation Arbitration Act shall be approved by the Navajo Nation Department of Justice;

3. The award of damages shall be compensatory damages only, and shall not exceed the dollar amount of the contract including properly approved amendments, but shall not include:

a. Punitive or exemplary damages;

b. Damages from claims arising in tort;

c. Damages caused by delays in performance due to governmental review and approval procedures of the Navajo Nation or other governmental entity having the right to review and/or approve the contract; or

d. Damages incurred by those not a party to the contract, including third party beneficiaries or others who receive direct or indirect benefits from the agreement.



4. The courts may, in the exercise of judicial discretion, award necessary costs of suit and/or reasonable fees for legal representation, in the same manner and to the same extent provided in Section 554(F) (5) hereof;

5. In determining the Navajo Nation's obligations under this Subsection (K), the courts of the Navajo Nation shall not give any preclusive effect against the Navajo Nation of any determination by any judicial or quasi-judicial body except the courts of the Navajo Nation; and

6. The arbitration process shall be conducted in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. § 1101 *et seq.*

### **History**

CJA-05-07, January 24, 2007. Added Subsections (J) and (K).

**Note.** Previous reference to the Navajo Nation Business Preference Law at § 554(I) (6) was changed to the Navajo Nation Business Opportunity Act, pursuant to CAP-37-02, April 19, 2002. See, 5 N.N.C. § 201 *et seq.*

CJY-40-92, July 24, 1992.

CMY-28-88, May 6, 1988.

CD-60-86, December 11, 1986.

CJY-55-85, July 25, 1985.

CMY-42-80, May 6, 1980.

### **Annotations**

#### **1. Construction and application**

"Section 554(G) of the Act permits suit against any officer, employee or agent of the Navajo Nation to compel him or her to perform responsibilities under the expressly applicable laws of the United States and the Navajo Nation." *Judy v. White*, No. SC-CV-35-02, slip op. at 15 (Nav. Sup. Ct. August 2, 2004).

"The Act explicitly denies any liability on the part of the Nation for 'the actions or omissions of public officers, employees or agents which are determined to be contrary to or without authorization or otherwise outside or beyond the course and scope of such officer's, employee's or agent's authority.'" *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 8 (Nav. Sup. Ct. March 11, 2004).

"A personal capacity suit seeks compensation from the individuals themselves, not from the Navajo Nation." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 8 (Nav. Sup. Ct. March 11, 2004).

"Official capacity suits are suits naming individual officials or employees,

but in reality seeking compensation from the Navajo Nation." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 8 (Nav. Sup. Ct. March 11, 2004).

"One purpose of the Act is for the Navajo Nation to assume, under certain circumstances, responsibility for the actions of its officials and employees." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 6 (Nav. Sup. Ct. March 11, 2004).

"We hold that private individuals, such as the Petitioners, may not raise sovereign immunity as a defense against suits." *Owens, et al. v. Honorable Allen Sloan*, 7 Nav. R. 215, (Nav. Sup. Ct. 1996).

"The Navajo Nation may be sued when explicitly authorized by applicable federal law." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 143 (Nav. Sup. Ct. 1995).

Formerly § 354. "Neither can the Navajo Tribal Council nor its delegates be sued based upon their actions in performing legislative functions." *Plummer v. Brown II*, 6 Nav. R. 88, 93 (Nav. Sup. Ct. 1989).

Formerly §§ 351-355. "Whether the Act applies is not determined by who the plaintiffs are, but by who the defendants are and in what capacity the defendants are acting." *MacDonald v. Yazzie*, 6 Nav. R. 95, 96 (Nav. Sup. Ct. 1989).

Re: *previous Sov. Imm. Act at 7 N.T.C. § 854*. "The relief under this Section of the Navajo Tribal Code is limited to declaratory or injunctive relief. TBI prays for money damages in its complaint, therefore, this Section is inapplicable to the case at bar. We hold that, as this is a breach of contract action for money damages, the suit may not proceed under 7 N.T.C. § 854(d)." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

"... [T]he ICRA does not explicitly authorize suit against the Navajo Nation in Navajo courts ... " *Johnson v. The Navajo Nation*, 5 Nav. R. 192, 199 (Nav. Sup. Ct. 1987).

## **2. Construction with federal law**

"It is the finding of this Court that the ICRA is not an applicable federal law under the meaning of Section 354(b) of the Act. In addition, the ICRA does not explicitly waive the Nation's immunity from suit as required by the Act." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 143 (Nav. Sup. Ct. 1995).

## **3. Exceptions to immunity**

"The Court agrees with Appellants that they generally may file claims for injunctive and declaratory relief, and the 'policy decision' exception does not apply. By its plain language, Subsection (F)(4)'s exceptions apply only to the insurance coverage waiver in Subsection F. The key language is '[n]otwithstanding any provision of this Subsection (F) there shall be no exception to ... sovereign immunity ... from claims for injury or damage.' The exceptions, including the 'policy decision' exception, are clearly intended

only to restrict suits under Subsection (F), that is, under an insurance policy for money damages. Suits seeking injunctive and declaratory relief are covered by a separate Subsection of the Act. Subsection G states that [ ... ] 1 N.N.C. § 554(G) (2005). That subsection limits the remedy to 'declaratory or prospective injunctive relief.' 1 N.N.C. § 554(G)(1) (2005). However, there is no exception similar to Subsection (F)(a). Taken together, these provisions allow suits for injunctive and declaratory relief, and there is not 'policy decision' exception for these kinds of suits." *Bennett, et al. v. Shirley, et al.*, No. SC-CV-21-07, slip op. at 5-6 (Nav. Sup. Ct. November 29, 2007).

"In a legal malpractice action, whether there is insurance coverage is not a justifiable issue until after the plaintiff has satisfied the legal malpractice subsection at Section 354(h)." *Navajo Nation, et al. v. Cleveland, et al.*, 7 Nav. R. 185, 187 (Nav. Sup. Ct. 1995).

"The Council reenacted the legal malpractice language in 1988 and it is still Navajo Nation law." *Navajo Nation, et al. v. Cleveland, et al.*, 7 Nav. R. 185, 186 (Nav. Sup. Ct. 1995).

"The final exception to the Nation's immunity from suit under the Act states that '[a]ny officer, employee or agent of the Navajo Nation may be sued in the [c]ourts of the Navajo Nation to compel him/her to perform his/her responsibility under the expressly applicable laws of the United States and of the Navajo Nation, which shall include the Bill of Rights of the Navajo Nation. 1 N.N.C. § 354(g)(1).' " *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 145 (Nav. Sup. Ct. 1995).

"The third exception is for claims within the express coverage and not excluded by the commercial liability insurance carried by the Nation. 1 N.N.C. § 354(f)." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 144 (Nav. Sup. Ct. 1995).

"The second exception to the Nation's immunity from suit under the Sovereign Immunity Act is when the Navajo Nation Council explicitly authorizes suit by resolution. 1 N.N.C. § 354(c)." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 144 (Nav. Sup. Ct. 1995).

*Formerly 1 N.T.C. §§ 353 & 354.* "We will not adopt Chairman MacDonald's argument that, because this is a unique case where the Navajo Nation has sued itself, we must ignore the express tribal code law on suits against the Navajo Nation. If we ignore the provisions in the Act, in effect the Navajo courts would be creating their own jurisdiction—a power Navajo courts do not have. Navajo code law expressly provides that the Navajo courts can exercise jurisdiction over suits against the Navajo Nation only when authorized by the Navajo Tribal Council." *Plummer v. Brown II*, 6 Nav. R. 88, 92 (Nav. Sup. Ct. 1989).

"Once the court has obtained jurisdiction under the insurance exception, that jurisdiction cannot be defeated by a later insolvency of the insurance company." *Johnson v. The Navajo Nation*, 5 Nav. R. 192, 197 (Nav. Sup. Ct. 1987).

*Referring to previous Sov. Imm. Act at 7 N.T.C. § 854(c) re: insurance exception.* "The law requires that the plaintiff's claim be covered under the

insurance policy before the court can assert jurisdiction over the Navajo Nation." *Johnson v. The Navajo Nation*, 5 Nav. R. 192, 197 (Nav. Sup. Ct. 1987).

#### **4. Civil rights**

"A person seeking redress of civil rights violations must establish that Navajo Nation courts have jurisdiction to hear her claims. If the claimant is suing the Nation, the claimant must, as a jurisdictional predicate, establish that the Nation's immunity from suit has been waived." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 145 (Nav. Sup. Ct. 1995).

"The Nation does not attempt to hide behind sovereign immunity for civil rights claims. The Act itself mandates that commercial liability policies must contain a provision regarding civil rights violations. Under Section 354(f)(5) of the Act, the Nation's commercial liability policies must contain a provision covering damages resulting from 'wrongful deprivation of civil rights.'" *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 145 (Nav. Sup. Ct. 1995).

#### **5. Waivers of immunity**

"It is without question that our government cannot be sued except by its expressed consent. The Navajo Sovereign Immunity Act is the expression of that consent. It provides the means and manner by which suit will be brought against the sovereign." *Judy v. White*, No. SC-CV-35-02, slip op. at 11 (Nav. Sup. Ct. August 2, 2004).

"Whether the official or employee acted in their official or personal capacity also controls whether the defenses under the Act are available. The Act waives the Navajo Nation's immunity from certain types of suits, including civil rights claims." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 8-9 (Nav. Sup. Ct. March 11, 2004).

"Raymond is not seeking prospective mandamus or injunctive relief, but is specifically seeking an amount equal to 'a sum calculated to reimburse her or her damage,' i.e., retrospective monetary relief. Accordingly, this Court holds that Raymond's claims do not constitute a waiver of the Nation's immunity from suit under Section 354(g) of the Act." *Raymond v. Navajo Agricultural Products Industry, et al.*, 7 Nav. R. 142, 145 (Nav. Sup. Ct. 1995).

Re: *previous 7 N.T.C. § 854(c)*: "The ICRA is federal law, which is applicable to the Navajo Nation, but it does not expressly waive the Navajo Nation's immunity from suit as required by our statute. Our statute requires the federal law or regulation relied upon to explicitly state that the Navajo Nation may be sued." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 60 (Nav. Sup. Ct. 1988).

Re: *previous sov. Imm. Act at 7 N.T.C. §§ 851-855*. "The 1980 Navajo Sovereign Immunity Act, 7 N.T.C. §§ 851 to 855, does not allow implied waivers of the Navajo Nation's immunity from suit. Only an unequivocally expressed waiver is allowed by the 1980 Navajo Sovereign Immunity Act. [... ] Therefore, the filing of a compulsory counterclaim by the Navajo Nation does not waive its

immunity from suit." *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

## **6. Special prosecutor**

"The [Special Prosecutor] Act blends well with the Sovereign Immunity Act because it provides a remedy for the Navajo Nation against officers or employees who exceeded their authority." *MacDonald, Sr. v. Navajo Nation ex rel. Rothstein*, 6 Nav. R. 290, 296 (Nav. Sup. Ct. 1990).

### **§ 555. Procedure with respect to actions authorized by this subchapter**

A. Any person or party desiring to institute suit against the Navajo Nation or any officer, employee or agent of the Navajo Nation as authorized by this Subchapter shall, as a jurisdictional condition precedent provide notice to the President of the Navajo Nation and the Attorney General of the Navajo Nation, as provided herein.

1. Such notices shall be sent by registered mail, addressed to the main administrative offices of the President of the Navajo Nation and of the Attorney General of the Navajo Nation, return receipts requested. The time of such notice shall commence to run only from the date following actual delivery of both notices as evidenced upon such receipts, and filed together with such notices with the court in which such action is subsequently to be commenced. The President of the Navajo Nation and the Attorney General of the Navajo Nation shall, ensure the availability, during all regular office hours, of office staff personnel duly authorized to accept and receipt for delivery of such notices provided herein and their receipt thereof shall not waive the assertion of any appropriate defense pertaining to the validity of such notice or service.

2. Such notices shall state the name of each prospective plaintiff, the identity of each prospective defendant; the nature of all claims and relief which will be sought, and the correct address, name and telephone number of each prospective plaintiff's attorney or counselor (if any).

3. No action shall be accepted for filing against the Navajo Nation or any officer, employee or agent of the Navajo Nation unless the plaintiff has filed proof of compliance with this Subsection by service of the notices as required by this Subsection at least 30 days prior to the date on which the complaint or any other action is proposed to be filed with such Court.

B. In any action against the Navajo Nation or any officer, employee or agent of the Navajo Nation, the time for responding to valid service of any summons and complaint shall be 60 days; to valid service of any order to show cause not less than 30 days; and to valid service of any motion, not less than 20 days. Any claim against the Navajo Nation or any public entity, officer, employee or agent thereof, which is filed pursuant to this Act, is deemed generally denied 60 days after valid service of the complaint, unless the claimant or claimant's attorney or counsel filing the complaint is advised of acceptance or of a specific or otherwise limited denial in writing or by responsive pleading filed before the expiration of 60 days; and any such claim shall otherwise proceed in the same manner as upon the filing of such general

denial thereof. These time periods may not be shortened by rule of court or judicial order, but shall be extended by any longer period provided by other applicable law, rule or order of court.

C. Any person or party filing a complaint against the Navajo Nation or any officer, employee or agent of the Navajo Nation shall serve by registered mail, return receipt requested, a copy of this complaint together with summons duly issued, upon the President of the Navajo Nation and the Attorney General of the Navajo Nation. Service of summons and complaint against any officer, employee or agent of the Navajo Nation shall be made by any means authorized under the rules of the courts of the Navajo Nation, provided that the time for response thereto shall be as provided herein and service upon such parties shall not be affected by such required service upon the President of the Navajo Nation and the Attorney General of the Navajo Nation.

D. In any action in which any claim is asserted against the Navajo Nation or any public entity thereof, upon written demand of the Navajo Nation Department of Justice, made at or before the time of answering, served upon the opposing party and filed with the court where the action is pending, the place of trial of such action shall be changed to Window Rock, Navajo Nation (Arizona).

### **History**

CJY-55-85, July 25, 1985.

CMY-42-80, May 6, 1980.

### **Annotations**

#### **1. Notice**

"Before a district court may take jurisdiction over a suit against the Navajo Nation, a plaintiff must give notice to the Nation of his or her intended suit." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 5 (Nav. Sup. Ct. March 11, 2004).

"... Appellants send a Notice of Desire to Institute Suit to the President and Attorney General prior to filing their complaint." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 3 (Nav. Sup. Ct. March 11, 2004).

"We therefore hold that in cases where the Nation is sued as vicariously liable for the conduct of its officials or employees, the Nation itself does not need to be named." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 7 (Nav. Sup. Ct. March 11, 2004).

"The notice requirements of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, are jurisdictional, 1 N.N.C. § 555(A), and whether a plaintiff complied with them is a question of law." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 4-5 (Nav. Sup. Ct. March 11, 2004).

"For the reasons stated, CIT was not covered by the Sovereign Immunity Act's umbrella of 'enterprises of the Navajo Nation' in April 1995." *Blaze Construction, Inc. v. Crownpoint Institute of Technology*, 7 Nav. R. 296, 299

(Nav. Sup. Ct. 1997).

## **2. Enforcement of orders**

"Under the plain language of the NPEA, the only restriction on enforcement of a post-judgment order applies to enforcement against the Navajo Nation, which must proceed under the procedural guidelines of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*" *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 7 (Nav. Sup. Ct. August 26, 2004).

## **3. Jurisdiction**

"We believe that if the Council had intended to make Section 555(D) a jurisdictional condition that all trials against the sovereign be heard in Window Rock, it would have said so. It could have used the same 'jurisdictional condition precedent' language but it did not, and we therefore decline to extend the jurisdictional language of § 555(A) to § 555(D)." *Judy v. White*, No. SC-CV-35-02, slip op. at 11-12 (Nav. Sup. Ct. August 2, 2004).

"Therefore, as a 'jurisdictional condition precedent,' 1 N.N.C. § 555(A), the plaintiff is required to name each defendant and the claim against that defendant." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 5 (Nav. Sup. Ct. March 11, 2004).

"The Ramah District Court transferred the case to the Window Rock District Court at the request of the Navajo Nation Department of Justice, pursuant to 1 N.N.C. § 555(D)." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 3 (Nav. Sup. Ct. March 11, 2004).

*Formerly § 355.* "As a jurisdictional condition precedent to suit against the Navajo Nation, the plaintiff must comply with the provisions of 1 N.T.C. § 355." *Plummer v. Brown II*, 6 Nav. R. 88, 92 (Nav. Sup. Ct. 1989).

## **4. Procedures, generally**

"The transfer to Window Rock pursuant to 1 N.N.C. § 555(D) may be demanded at any time at or before the time of answering. In this case, White's identity as a protected entity was not settled until disposition of the motions for failure to state a claim, at which time White could have made a second demand to transfer pursuant to § 555(D)." *Judy v. White*, No. SC-CV-35-02, slip op. at 14 (Nav. Sup. Ct. August 2, 2004).

"In a suit against the Navajo Nation, where a timely demand to transfer is made by the Department of Justice pursuant to Section 555(D), the trial court is obligated to transfer the case and the failure to do so may lead to a mandamus action compelling transfer." *Judy v. White*, No. SC-CV-35-02, slip op. at 12 (Nav. Sup. Ct. August 2, 2004).

"When the Department of Justice makes proper and timely demand for transfer, the Court is without discretion to deny it. The authority to request a transfer pursuant to 1 N.N.C. § 555(D) is limited to the Department of Justice, however, and no other party or entity, including the Court, may raise it. If suit is brought in a district other than Window Rock, and the Department of Justice fails to make a proper and timely request for transfer, then the trial

will remain in the initial district." *Judy v. White*, No. SC-CV-35-02, slip op. at 12 (Nav. Sup. Ct. August 2, 2004).

" ... [W]hile Loley has submitted his sum certain damages, a damages hearing is always necessary for the Navajo Nation to defend its treasury." *Loley v. Department of Employment and Training*, 7 Nav. R. 406, 412 (Nav. Sup. Ct. 1999).

"While a Navajo Nation government agency need not file an answer to a complaint under 1 N.N.C. § 555(B), it is not free to extend that privilege to ignore the valid orders of the [Labor] Commission (or a court for that matter). Once the Navajo Nation has been afforded its sovereign protection, it will be held to the same standards and responsibilities of any litigant." *Loley v. Department of Employment and Training*, 7 Nav. R. 406, 409 (Nav. Sup. Ct. 1999).

Formerly §§ 351-355. "Whether the Act applies is not determined by who the plaintiffs are, but by who the defendants are and in what capacity the defendants are acting." *MacDonald v. Yazzie*, 6 Nav. R. 95, 96 (Nav. Sup. Ct. 1989).

## **5. Immunity**

"We hold that private individuals, such as the Petitioners, may not raise sovereign immunity as a defense against suits." *Owens, et al. v. Honorable Allen Sloan*, 7 Nav. R. 215, (Nav. Sup. Ct. 1996).

# **Chapter 7. Membership in the Navajo Nation**

## **History**

**Revision note.** Sections 501-505 were redesignated §§ 701-705 for numerical consistency.

## **Subchapter 1. General Provisions**

### **§ 701. Composition**

The membership of the Navajo Nation shall consist of the following persons:

A. All persons of Navajo blood whose names appear on the official roll of the Navajo Nation maintained by the Bureau of Indian Affairs.

B. Any person who is at least one-fourth degree Navajo blood, but who has not previously been enrolled as a member of the Navajo Nation, is eligible for membership and enrollment.

C. Children born to any enrolled member of the Navajo Nation shall automatically become members of the Navajo Nation and shall be enrolled, provided they are at least one-fourth degree Navajo blood.

## **History**

CF-12-54, February 26, 1954.



CJ-50-53, July 20, 1953.

CM-36-53, May 21, 1953.

CM-12-51, May 7, 1951.

Tribal Council Resolution, January 18, 1938, 1922-1951 Res. p. 648.

#### **Annotations**

##### **1. Construction and application**

"While there is a formal process to obtain membership as a Navajo, [.... ], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

##### **§ 702. Adoption as not possible**

A. No Navajo law or custom has ever existed or exists now, by which anyone can ever become a Navajo, either by adoption, or otherwise, except by birth.

B. All those individuals who claim to be a member of the Navajo Nation by adoption are declared to be in no possible way an adopted or honorary member of the Navajo People.

#### **History**

Tribal Council Resolution 1922-1951 Res. p. 647, March 13, 1934.

#### **Cross References**

Adoption generally, see 9 N.N.C. § 601 *et seq.*

##### **§ 703. Member of another tribe**

No person, otherwise eligible for membership in the Navajo Nation, may enroll as a member of the Navajo Nation, who, at the same time, is on the roll of any other tribe of Indians.

#### **History**

CJ-50-53, July 20, 1953.

##### **§ 704. Authority of Government Services Committee**

The Government Services Committee of the Navajo Nation Council is authorized and directed:

A. To make and promulgate all necessary rules and regulations for establishing eligibility for membership and enrollment in the Navajo Nation;

B. To establish basic standards and requirements of proof required to determine eligibility for membership and enrollment; and

C. To prescribe forms of application for enrollment, and establish dates or designated periods for enrollment.

#### **History**

CJY-70-69, July 24, 1969.

CF-12-54, February 26, 1954.

#### **Cross References**

Eligibility for membership generally, see § 701 of this title.

Oversight authority of the Government Services Committee, see 2 N.N.C. § 343(B) (4).

#### **§ 705. Renunciation of membership**

Any enrolled member of the Navajo Nation may renounce his membership by written petition to the President of the Navajo Nation requesting that his name be stricken from the Navajo Nation roll. Such person may be reinstated in the Navajo Nation only by the vote of a majority of the Navajo Nation Council.

#### **History**

CJ-50-53, July 20, 1953.

### **Subchapter 3. Enrollment Procedure**

#### **History**

**Revision note.** Sections 551-560 were redesignated §§ 751-760 for numerical consistency.

#### **Code of Federal Regulations**

Enrollment appeals, see 25 CFR § 62.1 *et seq.*

Preparation of rolls of Indians, see 25 CFR § 61.1 *et seq.*

#### **§ 751. Application for enrollment**

Anyone wishing to apply for enrollment in the Navajo Nation may submit an application pursuant to 1 N.N.C. § 760. Such application must be verified before a notary public.

#### **History**

ACS-39-55, September 7, 1955.

## Annotations

### 1. Construction and application

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [.... ], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

### § 752. Enrollment Screening Committee; action by Government Services Committee

A. An Enrollment Screening Committee consisting of the Navajo Nation President, the Vice-President, the Executive Director of the Division of Natural Resources, the Agency Census Clerk, and the Attorney General is established. The Enrollment Screening Committee shall consider all applications for enrollment in the first instance.

B. In all cases where the records of the Navajo Agency do not show that the applicant is of at least one-fourth degree Navajo blood or the applicant does not establish such fact by documentary evidence independent of his own statement, consisting of the affidavits of disinterested persons, certified copies of public or church records, or the like, the Screening Committee shall reject the application. In all cases where the applicant appears to be enrolled in another Indian tribe, the Screening Committee shall reject the application. In all cases the Screening Committee or any successor committee lawfully established shall inform the applicant of his or her rights of appeal under this Section. The Committee or its successor shall establish a record of any hearing or proceeding on any application, and this record shall contain the evidence used by the Committee in making its decision, a statement of its decision, and its reasons therefore, and the date.

C. The Committee or its successor shall transmit this record established under Subsection (B) to an appropriate District Court of the Navajo Nation and a copy to the Office of the Prosecutor.

### History

CJY-70-69, July 24, 1969.

ACS-39-55, September 7, 1955.

**Revision note.** The "Attorney General" was substituted for "Legal Advisor". See 2 N.N.C. § 1961 (B).

"Executive Director of the Division of Natural Resources" was substituted for "Director of Land Investigations" in light of 2 N.N.C. § 1901 *et seq.*

Subsection (B) slightly reworded for statutory clarity.

#### **Annotations**

##### **1. Construction and application**

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [.... ], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

##### **§ 753. Standards for Screening Committee recommendations**

The Screening Committee shall be guided by the following standards in making its recommendations:

A. If the applicant appears to be a Navajo Indian of full blood it shall recommend approval.

B. If the applicant appears to have Navajo blood of one-fourth degree or higher, but not full blood, it shall base its recommendations on his degree of Navajo blood, how long he has lived among the Navajo People, whether he is presently living among them, whether he can be identified as a member of a Navajo clan, whether he can speak the Navajo language, and whether he is married to an enrolled Navajo. The Screening Committee is authorized to make investigations to determine such facts, but the burden of proof in all cases shall rest on the applicants.

#### **History**

ACS-39-55, September 7, 1955.

#### **Annotations**

##### **1. Construction and application**

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [.... ],

that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

#### **§ 754. Appeals from Screening Committee-District Courts**

The District Courts of the Navajo Nation shall have original jurisdiction to hear and decide appeals from decisions of the Enrollment Screening Committee or any successor committee lawfully established by the Government Services Committee of the Navajo Nation Council pursuant to 1 N.N.C. § 704.

#### **History**

CJY-70-69, July 24, 1969.

ACS-39-55, September 7, 1955.

CF-12-54, February 12, 1954.

CJ-50-53, July 20, 1953.

**Revision note.** "Trial Courts" changed to "District Courts".

**Transfer of pending cases.** CJY-70-69, § 2F, provided that all cases presently pending before the Advisory Committee of the Navajo Nation shall be transferred to the Navajo Nation Courts.

#### **Annotations**

##### **1. Construction and application**

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [.... ], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

#### **§ 755. Navajo Nation Supreme Court**

The Supreme Court of the Navajo Nation shall have jurisdiction to hear appeals from any judgment of the District Court of the Navajo Nation in any case involving an application for enrollment and membership in the Navajo Nation, and the decision of the Supreme Court in any such appeal shall be final and binding upon the parties.

#### **History**

CJY-70-69, July 24, 1969.

**Revision note.** "Appeals Court" changed to "Navajo Nation Supreme Court".  
"Trial Court" changed to "District Court".

#### **§ 756. Application of rules and regulations**

The District Courts, and the Supreme Court of the Navajo Nation shall consider, apply, and be bound by any rules or regulations governing eligibility for membership, and other aspects of applications for enrollment in the Navajo Nation, established by the Navajo Nation Council or by the Government Services Committee of the Navajo Nation Council, pursuant to authorization by the Navajo Nation Council.

#### **History**

CJY-70-69, § 2C, July 24, 1969.

**Revision note.** "Appeals Court" changed to "Navajo Nation Supreme Court".  
"Trial Courts" changed to "District Courts".

#### **Annotations**

##### **1. Construction and application**

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [.... ], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

#### **§ 757. Appeals**

The Navajo Nation, through the Navajo Nation Prosecutor, or the applicant may appeal any decision of the Screening Committee or its lawful successor, or District Court of the Navajo Nation authorized to hear and determine cases of applications for enrollment, within the time provided by law for appeals from judgments of the District Courts of the Navajo Nation. The decision of the Screening Committee or its lawful successor, or the decision of any District Court of the Navajo Nation in any case of an application for enrollment shall be final and binding upon the parties, if no appeal is taken within the time prescribed.

#### **History**

CJY-70-69, July 24, 1969.

**Revision note.** "Trial Court" changed to "District Court".

#### **Annotations**

##### **1. Construction and application**

"We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by 'adoption' in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under Navajo common law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

"While there is a formal process to obtain membership as a Navajo, [.... ], that is not the only kind of 'membership' under Navajo Nation law." *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

##### **§ 758. Order directing enrollment of applicant**

The District Courts of the Navajo Nation shall enter an order directing the appropriate official of the Navajo Nation to enroll as a member of the Navajo Nation any applicant, if any judgment of the Screening Committee or its lawful successor, or of a District Court of the Navajo Nation, upholding the application for enrollment becomes final and binding pursuant to 1 N.N.C. § 757. The Supreme Court of the Navajo Nation shall enter an order directing the appropriate official or employee of the Navajo Nation to enroll as a member of the Navajo Nation any applicant whose application is upheld by the Supreme Court of the Navajo Nation.

#### **History**

CJY-70-69, July 24, 1969.

**Revision note.** "Trial Courts" changed to "District Courts". "Appeals Court" changed to "Supreme Court".

##### **§ 759. Effectiveness of provisions**

Applications for enrolling in the Navajo Nation may be acted upon from September 7, 1955, until further notice.

#### **History**

ACS-39-55, September 7, 1955.

##### **§ 760. Form of application [Deleted]**

#### **History**

See ACS-39-55, Exhibit A, September 7, 1955, regarding application form; current form may be obtained from Navajo Census Office.

**Revision note.** See 1 N.N.C. § 704(C).

## **Title 2**

### **Navajo Nation Government**

#### **Chapter 1. Establishment**

##### **Subchapter 1. Generally**

###### **§ 1. Navajo Nation government establishment**

There is hereby established the Navajo Nation government consisting of the Legislative, Executive and Judicial Branches, and political subdivisions of which are not under any branch of the Central government.

###### **History**

CD-68-89, December 15, 1989. See 2 N.N.C. §§ 101, 1001 and 7 N.N.C. § 201, respectively.

###### **§ 2. Location of Navajo Nation Capitol**

The capitol of the Navajo Nation shall be located at Window Rock, Navajo Nation (Arizona).

###### **History**

CD-68-89, December 15, 1989. Language slightly amended.

Tribal Council Res. 1922-1951, Res. p. 371, October 14, 1949.

###### **§ 3. Oath of office**

The President, Vice-President and all delegates to the Navajo Nation Council, before assuming their official duties, shall take an oath of office.

###### **History**

CD-68-89, December 15, 1989.

###### **Cross References**

Navajo Nation Election Code, see 11 N.N.C. § 6.

###### **§ 4. [Deleted]**

###### **History**

Deleted by CD-68-89; December 15, 1989.

CJN-60-71, June 8, 1971; an organizational structure for the Navajo Nation was adopted. Justifications in the 1972 budget for all departments, programs, etc.,



were approved and adopted as plans of operation. Each year thereafter the appropriate budget year reference was substituted until CS-28-83, September 28, 1983 substituted references of 1984 for 1983. The approval of plans of operation and organizational structure rested with the Advisory Committee.

By CD-68-89, December 15, 1989, the Government Services Committee succeeded the Advisory Committee. Authorization for various programs is found throughout this title. Plans of Operation are no longer codified.

#### **Cross References**

Approval of plans of operation for Legislative Branch programs, Intergovernmental Relations Committee, authority, see 2 N.N.C. § 824(B) (1).

Programs in the Executive Branch, authority of the Government Services Committee for plans of operation, see 2 N.N.C. § 343(B) (2).

### **Subchapter 2. Property Control**

#### **§ 51. Purpose**

This policy sets forth, in general terms, the authority, principles, and policies governing the accounting for Navajo Nation property in terms of both dollar value and units, and prescribes staff responsibilities for their execution and supervision. This policy also provides the basis for the implementation of and general supervision over procedures necessary to put such principles and policies into practice; insures physical integrity and responsible use of all Navajo Nation assets through the maintenance of records, performance of inventories and implementation of disposal procedures; and insures the provision of adequate and economical warehousing, receipt and delivery of the Navajo Nation's property.

#### **History**

ACJY-84-84, July 10, 1984.

#### **§ 52. Statutory provisions**

The Navajo Nation Council may prescribe regulations for the accounting of Navajo Nation property and the fixing of responsibility for that property. Under regulations prescribed by the Navajo Nation Council, records of real property, personal property and supplies of the Navajo Nation will be maintained on both a quantitative and monetary basis, so far as practicable.

#### **History**

ACJY-84-84, July 10, 1984.

#### **§ 53. Scope**

A. The general principles of this regulation are applicable to all components of the Navajo Nation wherever located, including the Navajo Nation's property in programs operating under the regulation of federal, state or other

contractual arrangements.

B. The general principles of this policy are applicable to programs operating under one or more elements of the financial management plans and procedures of the Navajo Nation.

C. Activities operating under federal grant or contract funds shall apply the general principles of this regulation and observe the Code of Federal Regulations (CFR), Title 41, Public Contracts and Property Management, Subtitle C, Federal Property Management Regulations System.

### **History**

ACJY-84-84, July 10, 1984.

### **§ 54. Explanation of terms**

The following terms are pertinent to this regulation and to all other regulations dealing with property accounting:

A. Accountability involves the basic obligation of accounting for property, whereas responsibility arises from possession of property and/or the obligation of supervision of others who are in possession of property. Either or both of these concepts may be attached to one individual. Accountability is assigned at the department head level, or equivalent, or higher. In the appointment of accountable individuals, consideration should be given to the fact that accounting for and familiarity with property should constitute an important part in the experience and knowledge of the individual. Familiarity with Navajo Nation's Property Policies and Procedures is necessary for all accountable individuals.

B. Responsibility is the obligation of an individual with respect to the proper custody, care and safekeeping of the Navajo Nation's property entrusted to his/her possession or his/her supervision.

The department head or equivalent is, by virtue of his/her assignment, responsible for all the property of his department regardless of whether or not he/she has signed inventory forms for such property. In the case of temporary absence, such responsibility may be delegated to an assistant for a specified period. The department head will attend personally to the security of the property of his/her department and to supervising the activities of assistants to the extent necessary to permit determination of individual responsibility for loss or damage.

C. Pecuniary liability is defined as referring to a personal, joint or corporated monetary obligation for any lost, damaged or destroyed property resulting from misconduct or negligence.

D. Property list accountability refers to the obligation to maintain records of certain classes of property under conditions specified in policies or specific instruction of the Navajo Nation Council.

1. This obligation includes that of property responsibility. Such records, as well as books of account, are subject to examination by

auditors or others as may be authorized or required.

E. Property record is a basic record showing, by item, the receipt, use and disposition of property and such other identifying data as may be required by proper authority.

F. A loan form is a signed document, acknowledging acceptance of responsibility of items of property listed thereon which are loaned or issued for use and are to be returned.

G. The Navajo Nation's Property Listing is a record of personal property accountability maintained by the Property Department of the Navajo Nation.

H. Installed building equipment are the items of equipment and furnishings, including materials for installation thereof, which are required to make the facility usable and are affixed as a permanent part of the structure. These items will include plumbing fixtures and equipment; fixed heating, ventilating, cooling, air conditioning, electrical and fixed fire protection systems; elevators and escalators; overhead crane runways, laboratory counters, cabinets and similar fixed equipment. Machine tools, production and research equipment and their foundations are excluded.

I. Capitalized assets consist of real property, installed building equipment, personal property and non-expendable supplies which meet criteria in (1), (2) and (3) below:

1. Has a value of three hundred dollars (\$300.00) or more;
2. Is classified non-expendable in accordance with Navajo Nation Council Resolutions; and
3. Has been determined to be a sensitive item by the Controller, Navajo Nation.

J. Sensitive items are items costing less than three hundred dollars (\$300.00) but having a high intrinsic value or high degree of utility, i.e., firearms, calculators, cameras, etc.

K. Equipment in place is personal property of a movable nature which has been fixed in place or attached to real property but which may be severed or removed from buildings without destroying the usefulness of the structures. It does not include installed building equipment.

L. Real property is land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

#### **History**

ACJY-84-84, July 10, 1984.

**Note.** Slightly reworded for grammatical clarity.

#### **§ 55. Distinction of terms**

A. Formal accountability refers to the obligation to maintain a property record. This is the obligation of an individual, officially designated with respect to a specified activity, to maintain records of item balances and/or dollar values in accordance with a prescribed system showing authorized debits, credits and available balances on hand or in use by such activity. The records so maintained will be referred to in general as "Records of Accountability".

B. An accountable individual is vested with accountability for property and maintains records in connection therewith, irrespective of whether the property is in his/her own possession for use or storage, or in the possession of others to whom it has been officially entrusted for temporary use or for care and safekeeping. Property accountability is not terminated until transfer to another accountable individual has been accomplished, or until items of property have been dropped from accountability by the Property Control and Stores Department. Specifically, accountability is not terminated by the disposition of property which merely places responsibility for its custody or safekeeping with another individual.

C. Responsibility is vested upon any individual to whom property has been entrusted and who is specifically charged with its care and safekeeping whether in use or in storage. The signature of an individual on the Navajo Nation's physical inventory form is prima facie evidence that he/she has accepted responsibility for its care and safekeeping. The assignment to duty, in which responsibility for an item of property or for the property of a unit or activity is inherent, is also prima facie evidence that the individual so assigned is charged with responsibility for its care and safekeeping. (Such assignment to duty may be either written or verbal and should be accompanied by a suitable inventory listing. If the accuracy of the listing is questioned, a physical inventory may be requested prior to the official acceptance of transfer of responsibility.)

D. Both Accountability and Responsibility. An individual may be both accountable and responsible, or vice versa. An accountable individual who has issued/loaned property, using the Navajo Nation's inventory sheet or official loan form or has an officially-designed area, has accountability without responsibility. The individual so receiving the property or so charged with its care and custody has responsibility without accountability.

### **History**

ACJY-84-84, July 10, 1984.

### **§ 56. Classifications of property**

Property under the control of the Navajo Nation and purchased from General Funds is, for the purpose of accountability, classified as follows:

A. Real property consists of lands and interest therein, leaseholds, buildings and improvements and appurtenances thereto. It includes piers, docks, warehouses, rights-of-way and easements, whether temporary or permanent, underground conduits and associated manholes, utilities systems and parts thereof, and all other improvements permanently attached and ordinarily considered real estate. It does not include machinery, equipment, fixed signal communications systems, etc., which may be severed or removed from buildings

without impairing or destroying the usefulness of the structures.

B. Personal property is all property other than real. Such property can be further classified as "expendable" and "non-expendable" property.

1. Expendable property is property which is of a relatively low dollar value, or is property which is consumed in the performance of a function or is incorporated into an end item. The cost or appraised value of such items are to be charged as an expense.

2. Non-expendable property is an item of personal property of any dollar value, which retains its identity throughout its useful life and has a dollar value high enough to warrant maintenance of item accountability. Property is defined as those categories or specific items of property which, for property management and/or accounting purposes, are to be carried as capital assets until disposed of by transfer, sale or other means.

### **History**

ACJY-84-84, July 10, 1984.

**Note.** Slightly reworded for grammatical clarity.

### **§ 57. General provision concerning the Nation's property**

A. Individuals to whom the Navajo Nation's property is entrusted are charged with responsibility for its care and safekeeping, and they should be prepared to show, in the event of loss, the precautions taken by them personally to guard against loss, damage, etc.

B. An individual should not be assigned to duty that will separate him/her from property for which he/she is responsible. Individuals may be required to assume accountability for property remotely located. In such instances they are required to maintain records which will show at all times, the general location of such property and the individuals responsible for its care and safekeeping.

C. The sale, gift, loan, exchange, or other disposition of any of the Navajo Nation's property not specifically authorized by regulations or other directives issued by the Navajo Nation Council is illegal.

D. Any person who, without authority, sells or otherwise disposes of the Navajo Nation's property willfully or through neglect allows the Navajo Nation's property to be lost, damaged, destroyed, sold or wrongly disposed of, may be punished as local rules, regulations and/or laws may direct.

E. To the extent practical, all of the Navajo Nation's property will be identified by marking and/or tagging unless such marking would impair the utility of the item.

F. Records of accountability for property will list serial numbers for positive identification of like items and reporting losses.

G. Navajo Nation employees who occupy assigned Navajo Nation quarters or have been issued Navajo Nation property for use in family quarters, acquire responsibility for the proper care of the quarters and furnishings.

Upon occupancy of quarters or receipt of furnishings, a document covering the occupancy or receipt of property will contain a listing of the property, including its present condition. Acceptance of the quarters and/or furnishings infers that the employee assumes responsibility for loss, damage, or destruction of the property due to his/her negligence, including those instances where the loss, damage or destruction is related to an act of a member of his/her household or other individual and the evidence shows that the employee, under the circumstances, failed to exercise a reasonable degree of care.

#### **History**

ACJY-84-84, July 10, 1984.

**Note.** Slightly reworded for grammatical clarity.

#### **§ 58. General property accounting**

A. All property acquired by the Navajo Nation by purchase, lease rental, transfer, manufacture or any other means and whether paid for or not, must be accounted for and marked or tagged.

B. All property that is discovered, tagged or not, by an accountable individual will be taken up and accounted for by him/her. When discovered by individuals not accountable it will be reported by them to an accountable individual. It shall also be the duty of the individual reporting the existence of property as indicated above to take charge of and protect such property until responsibility has been assumed by property authority.

C. Under special or extraordinary circumstances, the Navajo Nation Council may grant waivers of or deviations from prescribed accounting procedures. Any requests for such waivers or deviations will be prepared and routed through their respective chain of command to the Property Control and Stores Department where recommendations will be made and forwarded for formal approval.

D. Trading Stamps and/or Other Gratuities. No rewards, favors, gifts or other form of remuneration shall be received from any vendor, contractor, individual or firm, or any other source having relations with the Navajo Nation or any of its delegate agencies.

#### **History**

ACJY-84-84, July 10, 1984.

#### **§ 59. Inventories of property**

In the interest of proper accounting, complete, detailed and accurate physical inventories of property assigned will be made and reconciled annually or upon a change of accountable individuals within departments or equivalent

levels of administration. A physical inventory involves an actual observation and count of the property. A property condition check is a part of inventories. Damaged/destroyed property will be handled as prescribed in the Internal Operating Procedures of the Property Control and Stores Department.

#### **History**

ACJY-84-84, July 10, 1984.

#### **§ 60. Adjustments of discrepancies**

In the event unmarked/untagged property is found, ownership will be determined and if proven to be Navajo Nation-owned, it shall be marked/tagged as such. If ownership cannot be determined, the property will be marked/tagged as Tribal Property and recorded as "found property". Property not located during the inventory and after a reasonable time and effort will be considered lost or stolen and will be handled as prescribed in the Internal Operating Procedures of the Property Control and Stores Department.

#### **History**

ACJY-84-84, July 10, 1984.

### **Chapter 2. Navajo Nation Privacy and Access to Information**

#### **Subchapter 1. Privacy and Access to Information**

#### **§ 81. Short Title**

This Act shall be referred to as the Navajo Nation Privacy Act.

#### **History**

CAP-48-99, April 23, 1999

#### **§ 82. Declaration of Public Policy**

The Navajo Nation Council finds and declares it the policy of the Navajo Nation that a democratic form of government requires that information related to government operations be accessible to the public, while recognizing that individuals have a right to privacy. It is the intent of the law that the general public be provided a means to access records and information relating to the operation of the Navajo Nation while preserving the privacy interests of individuals and entities.

#### **History**

CAP-48-99, April 23, 1999

#### **Annotations**

##### **1. Construction and application**

"The meaning of the Act is a matter of first impression for this Court. The Act attempts to balance two competing values: (1) the importance of a transparent Navajo government that educates the people on its activities through unfettered access to government information, and (2) the protection of the privacy of individuals affected by the government." *Navajo Nation Department of Child Support v. Navajo Nation Labor Commission*, No. SC-CV-22-06, slip op. at 3 (Nav. Sup. Ct. August 24, 2006).

### **§ 83. Definitions**

As used in this Subchapter:

A. "Governmental entity" means any administrative, advisory, executive, judicial or legislative office or body of the Navajo Nation or its political subdivisions, including without limitation all commissions, corporations, and other instrumentalities whose boards of directors are appointed or elected by the Navajo Nation or its political subdivisions. Governmental entity includes all quasi-judicial bodies and all standing, special or advisory committees of subcommittees of, or appointed by, the Navajo Nation to carry out the public's business.

B. "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.

C. "Protected record" means any record containing data on persons or governmental entities that is private or otherwise protected as provided by 2 N.N.C. § 85.

D. "Public record" means any record that is not private or otherwise protected and that is not exempt from disclosure as provided in 2 N.N.C. § 84.

E. "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary materials regardless of physical form or characteristics which are prepared, owned, received, or retained by a governmental entity and where all of the information in the original is reproducible by photocopy or other mechanical or electronic means. "Record" does not mean:

1. Materials that are legally owned by an individual in his private capacity;

2. Materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity;

3. Junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity;

4. Books and other materials that are catalogued, indexed, or inventoried and contained in the collections of libraries open to the public;

5. Daily calendars and other personal notes prepared by the originator for the originator's personal use or for the personal use of an individual for whom he is working;



6. Computer programs that are developed or purchased by or for any governmental entity for its own use; or

7. Notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary or any other body charged with performing a quasi-judicial function.

F. "Right to Privacy" means the right of a person to be free from unwarranted intrusion by a governmental entity.

### **History**

CAP-48-99, April 23, 1999

### **Annotations**

#### **1. Construction and application**

"The Act attempts to regulate access to 'records,' defined as certain documents and other physical objects held by government offices." *Navajo Nation Department of Child Support v. Navajo Nation Labor Commission*, No. SC-CV-22-06, slip op. at 3 (Nav. Sup. Ct. August 24, 2006).

#### **§ 84. Records that must be disclosed**

A. The following records are public except to the extent they contain information expressly permitted to be treated as protected as provided for in 2 N.N.C. § 85.

1. Laws;

2. Names, gender, job titles, job description, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, relevant education, previous employment, and similar job qualifications of the governmental entity's current and former employees and officers excluding:

a. Undercover law enforcement personnel; and

b. Investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

3. Inter-office memoranda;

4. Final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is protected.

5. Final interpretations of statutes or rules by a governmental entity;

6. Information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting, excluding executive sessions, or a governmental entity;

7. Judicial records unless a court orders the record to be restricted under the rules of civil or criminal procedure or unless the records are protected under this Subchapter;

8. Records filed with or maintained by governmental entities that give public notice of:

a. Titles or encumbrances to real property, including homesite permits, land use permits and grazing permits; or

b. Restrictions on the use of real property;

9. Records filed with or maintained by governmental entities that evidence incorporations, name changes, and uniform commercial code filings;

10. Documentation of the compensation that a governmental entity pays to a contractor or private provider; and

11. Data on individuals that would otherwise be protected under this Subchapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public.

B. The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under 2 N.N.C. § 85:

1. Administrative staff manuals, instructions to staff, and statements of policy;

2. Records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

3. Contracts entered into by a governmental entity;

4. Any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

5. Correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the Nation, a political subdivision, the public, or any person;

6. Empirical data if contained in drafts if:

a. The data is not reasonably available to the requester elsewhere in similar form; and

b. The governmental entity is given a reasonable opportunity

to correct any errors or make nonsubstantive changes before release;

7. Drafts that are circulated to anyone other than a governmental entity, a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program, or a contractor or private provider;

8. Drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

9. Arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

10. Search warrants after execution and filing of the return, except that, for good cause, a court may order restricted access to search warrants prior to trial;

11. Records that would disclose information relating to formal charges or disciplinary action against a past or present governmental entity employee if:

a. The disciplinary action has been completed and all time periods for administrative appeal have expired; and

b. The formal charges were sustained.

C. The list of public records in this Section is not exhaustive and should not be used to limit access to records.

### **History**

CAP-48-99, April 23, 1999

### **Annotations**

#### **1. Construction and application**

"The first category is 'records that must be disclosed,' or 'public records,' and the second is records that cannot be disclosed, or 'protected records'." *Navajo Nation Department of Child Support v. Navajo Nation Labor Commission*, No. SC-CV-22-06, slip op. at 3 (Nav. Sup. Ct. August 24, 2006).

"The act lists a total of twenty-two types of records that are public, but also states that '[t]he list of public records is not exhaustive and should not be used to limit access to records.' 2 N.N.C. § 84( C) (2005). The last phrase prohibits the use of Section 84 to bar access to non-listed records by negative implication. The Council intended that the list be inclusive, but not exclusive. In other words, the list is meant to illustrate types of records that are public, but not restrict 'public records' to only those records the Council chose to list. While this open-ended approach may create confusion as to what records other than those listed are public, it nonetheless indicates a preference for maintaining a transparent government and bars CSE's negative implication argument." *Navajo Nation Department of Child Support v. Navajo Nation Labor Commission*, No. SC-CV-22-06, slip op. at 6 (Nav. Sup. Ct. August

24, 2006).

## **2. Navajo Nation Labor Commission proceedings**

"The Court holds that the Act does not regulate access to Commission proceedings, regardless of whether Commission records are covered by the Section. As noted above, the Act regulates access to records, that is, physical objects held by the government." *Navajo Nation Department of Child Support v. Navajo Nation Labor Commission*, No. SC-CV-22-06, slip op. at 4 (Nav. Sup. Ct. August 24, 2006).

"The Court also holds the Section does not bar access to Commission records. The Court approaches the issue in two ways. First, the Court holds that the list of 'public records' in Section 84 of the Act cannot be used to bar access to other records by negative implication. Second, the Court holds that even if Section 84 barred other records by negative implication, Section 84(B) does not apply to Commission records, but only to records concerning Navajo governmental employee grievances. Access to Commission records therefore are not covered by the Section at all, and the Section's negative implication therefore does not bar access to them." *Navajo Nation Department of Child Support v. Navajo Nation Labor Commission*, No. SC-CV-22-06, slip op. at 5 (Nav. Sup. Ct. August 24, 2006).

### **§ 85. Protected records**

A. The following records are private or otherwise protected and shall not be considered public for purposes of required disclosure;

1. Records concerning an individual's eligibility for social services, welfare benefits, or the determination of benefit levels;

2. Records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data, including psychiatric or psychological data;

3. Records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

4. Records concerning a current or former employee of, or applicant for employment with, a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under 2 N.N.C. § 84 (A) (2) or (B) (11);

5. Records describing an individual's finances, except that the following are public;

a. Records described in 2 N.N.C. § 84(A);

b. Navajo Nation Economic Disclosure Statements filed with the Ethics and Rules Office by elected public officials and candidates for elected public office, pursuant to 2 N.N.C. § 3762;

c. Loan applications for Navajo Nation loans to elected public officials and appointed public officials submitted to the Government Services Committee for approval, pursuant to Section 7(c) of the Personal Loan Operating Policies and Guidelines, approved by Resolution CLO-19-88; or

d. Records that must be disclosed in accordance with another statute or duly adopted rules and regulations of a governmental entity;

7. The negotiating position of the Navajo Nation before a contract, lease, or other agreement is entered into;

8. Records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

9. Information, research, and discussions conducted by the public bodies of the Navajo Nation during executive sessions;

10. Memoranda prepared by staff and used in the decision-making process by a judge or a member of any other body charged by law with performing a quasi-judicial function;

11. Information received in response to an invitation for bids or request for proposals before a contract is awarded. Such information will also remain unavailable to the general public after a contract is entered into provided that the information contained in the bid or proposals is proprietary in nature, or otherwise to remain confidential at the request of the person submitting the bid or proposal;

12. Information contained within or related to a contract, lease or other agreement which is proprietary in nature or otherwise to remain confidential at the request of any party to the contract, lease or other agreement;

13. Records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

14. Records which are sealed or otherwise protected by court order due to the sensitive nature of the record in which the privacy interest of the person outweighs the public interest in the information;

15. Records to which access is restricted pursuant to court rule or as a condition of participation in a state or federal program or for receiving state or federal funds;

16. Drafts, unless otherwise classified as public;

17. Information related to the location of an individual member of any threatened or endangered species, such that that individual could be placed further at risk;

18. Information which cannot be released without interfering with

an individual's right to exercise or practice his chosen religion;

19. Information otherwise protected by applicable laws;

20. Other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of privacy.

B. Upon request, a governmental entity shall disclose a private or otherwise protected record as provided for in 2 N.N.C. § 86.

### **History**

CAP-48-99, April 23, 1999

### **Annotations**

#### **1. Construction and application**

"The Navajo Nation Code prohibits court staff from distributing certain types of court information, requires certain proceedings to be closed to the public, and prohibits certain people from revealing information concerning specific types of cases." *Johnson et al. v. Tuba City District Court, and concerning Yellowman*, No. SC-CV-12-07, slip op. at 7 (Nav. Sup. Ct. November 7, 2007).

"The first category is 'records that must be disclosed,' or 'public records,' and the second is records that cannot be disclosed, or 'protected records'." *Navajo Nation Department of Child Support v. Navajo Nation Labor Commission*, No. SC-CV-22-06, slip op. at 3 (Nav. Sup. Ct. August 24, 2006).

#### **§ 86. Access to protected documents**

Upon request, protected records will be available for disclosure, as follows:

A. Information shall be available for criminal and civil law enforcement for prosecution purposes, internal audit, as a result of a court order, to further an individual's medical treatment, and to address public health needs.

B. Information relating to an individual shall be available to the individual who is the subject of the record, or if a minor, shall be available to the parent or guardian subject to any applicable court order.

C. Individual records may be released to third parties with the written permission, by means of a notarized release, of the individual who is the subject of those records, or his or her parent or legal guardian if a minor.

D. Individual records may be used for statistical and other purposes provided that any information which could be used to identify the individual specifically is removed or withheld.

E. Information about an individual will always be available to other Navajo Nation governmental entities subject to the general restrictions above.

F. Before releasing a protected record, the governmental entity shall

obtain evidence of the requester's identity.

G. Before releasing a protected record, the governmental entity shall inform the requester that he or she is prohibited from disclosing or providing a copy of the protected record to any other person and shall obtain the requester's written acknowledgment of this prohibition.

#### **History**

CAP-48-99, April 23, 1999

#### **§ 87. Segregation of records**

A. Notwithstanding any other provision in this Subchapter, if a governmental entity receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect, and, if the information the requester is entitled to inspect is intelligible and able to be segregated, the governmental entity;

1. Shall allow access to information in the record that the requester is entitled to inspect under this Subchapter; and

2. May deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial as provided in 2 N.N.C. § 89.

B. If there is more than one subject of a protected record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

#### **History**

CAP-48-99, April 23, 1999

#### **§ 88. Procedures**

A. Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Subsection (H).

B. All records are public unless otherwise expressly provided by statute.

C. A person making a request for a record shall furnish the governmental entity with a written request containing his name, mailing address, daytime telephone number, if available, and a description of the records requested that identifies the record with reasonable specificity. The request for information shall be addressed to the governmental entity primarily responsible for compiling such records.

D. A governmental entity is not required to create a record in response to a request. However, upon request, a governmental entity shall provide a record in a particular format if:

1. The governmental entity is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

2. The requester agrees to pay the governmental entity for its additional costs actually incurred in providing the record in the requested format.

E. Nothing in this Section requires a governmental entity to fulfill a person's records request if the request unreasonably duplicates prior records requests from that person.

F. Within 90 days, the governmental entity shall respond to the request by:

1. Approving the request and providing the record;

2. Denying the request by providing a written explanation of why the record is protected from disclosure. In making such determinations, the governmental entity shall consult with the Department of Justice; or

3. Notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record.

G. In the event that the governmental entity determines that the requested record is protected from disclosure, or fails to respond to the request within the 90 day period, the requesting party may make application to the District Court, as defined in 7 N.N.C. § 253, in accordance with the proper processes of the Court for an order compelling the release of the record.

1. This application must meet the notice and filing requirements of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551, *et seq.*

2. Any person who may have an interest in maintaining the confidentiality of the record may appear and demonstrate the need for maintaining the confidentiality of such record.

3. In determining the availability of any record requested, the District Court shall apply the standards set forth in 2 N.N.C. §§ 84 and 85.

H. The Navajo Nation may assess the reasonable costs for photocopying and other activities associated with providing the record against the person requesting the record.

I. The implementation of the Navajo Nation Privacy and Access to Information Act shall be subject to rules and regulations duly adopted by the Government Services Committee. Records released may be subject to reasonable restrictions on use, pursuant to such rules and regulations of the Government Services Committee.

## **History**



CAP-48-99, April 23, 1999

**§ 89. Denials**

A. If the governmental entity denies the request in whole or in part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.

B. The notice of denial shall contain the following information:

1. A description of the record of portions of the record to which access was denied, provided that the description does not disclose protected information;

2. Citations to the provisions of this Subchapter, court rule or order, state or federal statute or regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose protected information;

3. A statement that the requester has the right to make application to the District Court for an order releasing the record and the time limits for filing the application.

C. Unless otherwise required by a court of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period of an appeal has expired or the end of the appeals process.

**History**

CAP-48-99, April 23, 1999

**§ 90. Ordinances adopted in compliance with this Subchapter**

A. Each governmental entity may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including access, denials, segregation, and appeals.

B. If any governmental entity does not adopt and maintain an ordinance or policy, that governmental entity is subject to this Subchapter.

C. Notwithstanding the adoption of an ordinance or policy, each governmental entity is subject to 2 N.N.C. §§ 83, 84 and 85.

D. Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect or obtain records of the governmental entity, and time limits for appeals.

E. Each ordinance or policy shall establish an appeals process for persons aggrieved by the access decisions, allowing petition for judicial review to the District Court as set forth at 2 N.N.C. § 88(G).

**History**

CAP-48-99, April 23, 1999

**§ 91. Criminal penalties**

A. A public employee or other person who has lawful access to any protected record under this Subchapter, who intentionally discloses or provides a copy of a protected record to any other person is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000).

B. It is a defense to prosecution under Subsection (A) that the actor released protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

C. A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any protected record to which he is not legally entitled is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000). No person shall be guilty who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

D. A public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a governmental entity or a court is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than one thousand dollars (\$1,000) not more than five thousand dollars (\$5,000).

**History**

CAP-48-99, April 23, 1999

**§ 92. Civil penalties**

A. A non-Indian who has lawful access to any protected record under this Subchapter, who intentionally discloses or provides a copy of a protected record to any other person is subject to civil penalties of not less than one thousand dollars (\$1,000) nor more than five (\$5,000).

B. It is a defense to a civil action under Subsection (A) that the non-Indian actor released protected information in the reasonable belief that the disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.

C. A non-Indian person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any protected record to which he is not legally entitled is subject to civil penalties of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000). No person shall be subject to civil penalties who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

D. A non-Indian public employee who intentionally refuses to release a record the disclosure of which the employee knows is required by law or by final unappealed order from a governmental entity or a court is subject to civil penalties of not less than one thousand dollars (\$1,000) not more than five thousand dollars (\$5,000).

E. Any non-Navajo person within the Navajo Nation's jurisdiction, as defined at 7 N.N.C. § 254, having been found to be in repeated violation of this Subchapter may be subject to the exclusionary provisions of the Navajo Nation, as provided at 17 N.N.C. § 1901 *et seq.*

#### **History**

CAP-48-99, April 23, 1999

### **Chapter 3. Legislative Branch**

#### **Subchapter 1. Navajo Nation Council**

##### **§ 101. Establishment**

A. There is hereby established the Legislative Branch of the Navajo Nation government. The Legislative Branch shall consist of the Navajo Nation Council and any entity established under the Navajo Nation Council.

B. This § 101(A) shall not be amended unless approved by majority of all registered Navajo voters through a referendum.

#### **History**

CD-68-89, December 15, 1989.

**Note.** § 101 was amended by CD-68-89; previous § 101 language is now at § 102.

##### **§ 102. Powers; composition**

A. The Navajo Nation Council shall be the governing body of the Navajo Nation and shall consist of 88 delegates. This § 102 (A) shall not be amended unless approved by majority vote of all registered voters in all precincts.

B. All powers not delegated are reserved to the Navajo Nation Council.

C. The Navajo Nation Council shall supervise all powers delegated.

D. The Navajo Nation Council shall have all powers to discipline and/or regulate the conduct of its members, including removal.

E. The Navajo Nation Council shall have the authority to promulgate rules, regulations and procedures for the conduct of its meetings and that of its committees.

F. The Navajo Nation Council shall confirm the appointments of all division directors upon recommendation from the appropriate oversight

committee. The President shall present the appointments at the next Navajo Nation Council session following the date the appointments are made.

G. The Navajo Nation Council shall establish standing committees of the Council and delegate such authority to such committees as it deems necessary and proper for such committees to execute the purposes delegated.

### **History**

CD-68-89, December 15, 1989. "Composition" of the Navajo Nation Council was previously at § 101. Pursuant to CD-68-89, "Composition" was redesignated at § 102 and "powers" were added.

CJY-55-82, July 7, 1982. Substituted "88" for "87".

CJN-49-78, June 5, 1978. Substituted "87" for "74".

Rules governing Tribal Council, July 1938, VII, 1954 Res. 190 *et seq.*, app. by Councilmen and General Superintendent, recommended for approval by Commissioner, app. by Secretary of Interior July 26, 1938. Amendments app. September 17, 1938, and March 27, 1939.

### **Cross References**

Navajo Nation Council, Rules of Order adopted, see CJA-1-04.

Navajo Nation Election Code, see 11 N.N.C. § 1 *et seq.*

### **Annotations**

#### **1. Legislative body; jurisdiction of Secretary of Interior**

"The Navajo Government has been called 'probably the most elaborate' among tribes ... The legitimacy of the Navajo Tribal Council, the freely elected governing body of the Navajos, is beyond question ... [N]either Congress nor the Navajos have found it necessary to subject the Tribal Council's tax laws to review by the Secretary of the Interior.... " *Kerr McGee Corp. v. Navajo Tribe*, 471 U.S. 195 (1985).

#### **2. Powers of Navajo Nation Council**

"The Navajo Nation Council may not amend Section 102(A) independently; it must defer to the will of the Navajo People." *In the Matter of Two Initiative Petitions Filed by Navajo Nation President Joe Shirley, Jr.*, No. SC-CV-41-08, slip op. at 9 (Nav. Sup. Ct. July 18, 2008)—(Order of Correction entered July 22, 2008).

"If a Chairman or Vice Chairman is not exercising powers as defined by the Council, or if the powers are not exercised in the best interests of the Navajo people, or if the powers are being used to provide for personal gain or profit, then surely the Council can restrict use of those powers." *In re: Certified Questions II*, 6 Nav. R. 105, 116 (Nav. Sup. Ct. 1989).

" ... [T]he offices of Chairman and Vice Chairman were created by the Council

and whatever powers are in those offices were placed there by the Council. Without the Council giving and defining those powers the Chairman's or Vice Chairman's powers would not exist." *In re: Certified Questions II*, 6 Nav. R. 105, 116 (Nav. Sup. Ct. 1989).

"The question then arises whether the Navajo Tribal Council can place a Chairman or Vice Chairman on administrative leave with pay. The answer is yes, because the power to place those officials on leave is a part of the power the Council has to withdraw, limit, or supervise the exercise of powers it has bestowed on the offices of Chairman and Vice Chairman." *In re: Certified Questions II*, 6 Nav. R. 105, 115 (Nav. Sup. Ct. 1989).

"The Navajo Nation Council clearly has authority to withdraw, limit, or supervise the exercise of power it gives to the offices of Chairman and Vice Chairman. The power to create an office and delegate authority to that office includes the power to abolish, withdraw, limit, or supervise exercise of those powers by the office holder. The Navajo Tribal Council can prevent a Chairman and Vice Chairman from exercising certain powers it has delegated to the offices of Chairman and Vice Chairman, and the Council can specify how those powers can be exercised. The latter has frequently been done by the Council as shown by the history of Navajo government." *In re: Certified Questions II*, 6 Nav. R. 105, 115 (Nav. Sup. Ct. 1989).

### **3. Retroactive legislation**

"The prohibition against retroactive legislation is not absolute, and '[r]etroactivity provisions often serve entirely benign and legitimate purposes, whether to respond to emergencies, to correct mistakes, to prevent circumvention of a new statute in the interval immediately preceding its passage, or simply to give comprehensive effect to a new law Congress considers salutary.'.... The question to be asked when examining a statute for prohibited retroactivity is 'whether the new provision attaches new legal consequences to events completed before its enactment,' or whether the new provisions affect existing contract or property rights .... Legislation which impairs vested rights retroactively cannot stand." *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 6-7 (Nav. Sup. Ct. July 25, 2001).

### **4. Presumptions**

"... [R]esolutions of the Navajo Tribal Council are presumed to be valid and the party seeking to challenge the validity of any Council resolution has the burden of rebutting that presumption with clear evidence to the contrary." *Thompson v. Navajo Nation*, 6 Nav. R. 181, 184 (Nav. Sup. Ct. 1990).

### **5. Waiver**

"It is also true that when dealing with the sovereign powers of the Nation, only clear, unmistakable words of the Council or its properly empowered designee can waive governmental authority. To decide whether an alleged waiver is unmistakable, the Court looks to the language of the purported waiver, the agreement as a whole, and the legal context within which the agreement was entered." *Thinn v. Navajo Generating Station, Salt River Project; and Gonnie v. Headwaters Resources*, No. SC-CV-25-06 and No. SC-CV-26-06, slip op. at 5 (Nav.

Sup. Ct. October 19, 2007), citing *Office of Navajo Labor Relations ex rel. Bailon v. Central Consolidated School Dist. No. 22*, No. SC-CV-37-00, slip op. at 4-5 (Nav. Sup. Ct. June 23, 2004).

## **6. Delegation**

"Because employment is central to living a good life, in that it provides for the well being of the people, the duty and authority to legislate or regulate for the protection of employees and employers cannot be delegated to a non-Navajo entity." *Thinn v. Navajo Generating Station, Salt River Project*; and *Gonnie v. Headwaters Resources*, No. SC-CV-25-06 and No. SC-CV-26-06, slip op. at 8 (Nav. Sup. Ct. October 19, 2007).

## **§ 103. Qualifications**

No person shall serve as a delegate to the Navajo Nation Council unless he or she is an enrolled member of the Navajo Nation above the age of 25.

### **History**

CD-68-89, December 15, 1989.

CAP-41-82, April 28, 1982. Lowered age requirement from "30" to "25".

Rules governing Tribal Council July 1938, Ch. 1, § 10, 1954 Res. p. 192. The substance of this Section was previously codified at § 102.

### **Cross References**

Member qualifications, Navajo Nation Election Code, see 11 N.N.C. § 8.

## **§ 104. Incompatible service**

A. No person shall serve as a delegate if he or she is in the permanent employment of the United States or any state or any subdivisions thereof; nor shall an elected official of the United States or the several states thereof serve as a delegate. This Section shall not apply to service on a school board or elective county office.

B. No person shall be eligible for election to the Navajo Nation Council if that person is permanently employed or an elected official as described in § 104(A).

C. If any delegate, after his/her election, enters such service, the delegate shall immediately forfeit his/her office as a Council Delegate.

D. No Council Delegate shall engage in the private practice of law while serving as a Navajo Nation Council Delegate.

### **History**

CD-68-89, December 15, 1989; previously at § 103. Subsection (A) amended and Subsections (B) and (D) added.

CAU-40-84, August 9, 1984. Effective October 8, 1984, former provision of this Section forbidding a person from serving as a Tribal Council Delegate if he or she was in the employment of "any private employer with business interests on the Navajo Reservation" was rescinded, as contrary, inconsistent with, and superseded by, the Navajo Nation Ethics in Government Law, 2 N.N.C. §§ 3751-3761.

Order No. 1912 of the United States Department of the Interior, December 20, 1943. Employment in Indian Service.

Rules governing Tribal Council, July 1938, Ch. 1, §§ 11, 12, 1954 Res. p. 192.

#### **Cross References**

Navajo Nation Election Code, see 11 N.N.C. Part 1, § 8.

#### **Annotations**

##### **1. Elected official of the states**

"In Navajo thinking, the selection of a person by voters is one of two requirements for a candidate to become a *naat'áanii*. That person must also accept the position, and, to accept, must take an oath to serve the laws of the sovereign government within whose system he or she will serve the people- '*naat'áanii ádee hadidziih.*' Only when a person accepts through an oath will all of the Navajo people say that a person has been properly installed as a *naat'áanii*- '*naat'áanii idl9 bee b'itsoosz99.*' In other words, '*Diné binant'í bee bi'doosz99d*' or '*Diné binaat'áanii bee bi'doosz99d*' [ ... ] The oath is absolute, and allows no conflict in loyalty. This requirement of absolute loyalty is reiterated in the Election Code itself, as one of the qualifications for a council delegate is that he or she must 'maintain unswerving loyalty to the Navajo Nation.' 11 N.N.C. § 8(B)(5) (2005). Under these principles, a person may not swear allegiance to obey and serve simultaneously the laws of the Nation and the State of New Mexico. The prohibition is then consistent with our Fundamental Law, and it is not improper for the Election Code to require Tsosie to serve only one government." *In the Matter of the Grievance of: Wagner, and concerning, Tsosie*, SC-CV-01-07, slip op. at 7-8 (Nav. Sup. Ct. May 14, 2007).

##### **§ 105. Term of office**

A. Each delegate to the Navajo Nation Council shall serve for a term of four years.

B. A delegate shall not be limited in the number of terms he or she may serve.

#### **History**

CD-68-89, December 15, 1989; previously at § 104; Subsection (B) added.

Rules governing Tribal Council July 1938, Ch. 1, § 9, 1954 Res. 192.

## **Cross References**

Term of office, Navajo Nation Election Code, see 11 N.N.C. § 6.

### **§ 106. Compensation of Council Delegates**

A. Delegates shall be compensated by an annual salary of twenty-five thousand dollars (\$25,000) per year. All Council Delegates shall be paid bi-weekly. A salary increase may be approved by the Navajo Nation Council but shall not become effective unless ratified by two-thirds (<sfr>2/3<efr>) of all Navajo Nation Chapters within 30 days of approval by the Navajo Nation Council. The provisions of this Section shall not apply to mileage payments, per diem payments, deferred compensation benefits or any other payments or benefits which are separate from the bi-weekly base salary established in this Section.

B. Delegates attending a Navajo Nation Council meeting or their respective committee meetings may receive sixty dollars (\$60.00) per diem for each day official business is conducted and mileage reimbursement for use of a private vehicle at the rate established in the Navajo Nation Travel Policy and Procedures Handbook, and amendments thereto. Chairpersons of Committees may receive as compensation for extra time spent by the Chairperson beyond meetings to execute committee business eighty dollars (\$80.00) per diem for each committee meeting day.

C. For every week of a session of the Navajo Nation Council, delegates shall be paid mileage equal to one round trip to Window Rock from their residence and return, according to the official mileage chart of the Controller.

D. For each complete committee meeting delegates to the Navajo Nation Council shall be paid mileage equal to one round trip to Window Rock, from their residence and return, according to the official mileage chart of the Controller.

E. Full per diem shall be paid only for attendance of at least three hours of meeting or until all agenda items are concluded.

F. Delegates, or their beneficiary in the event of death, are paid a deferred compensation benefit when they leave office.

## **History**

CJY-63-00, Override of Presidential Veto, CJY-52-00, Amending §§ 106(A) and 1008 to Adjust the Salaries of the Navajo Nation President, Vice-President, and Navajo Nation Council Delegates by ten thousand dollars (\$10,000). Determined legally invalid. See, *Judy v. White*, No. SC-CV-35-02, slip op. (Nav. Sup. Ct. August 2, 2004).

CJA-16-00, Override of Presidential Veto, CO-98-99, Amending § 106(A) to Eliminate the Ratification Requirement of Two-Thirds of All Navajo Nation Chapters. Not effective, as amendment failed to receive approval by <sfr>2/3<efr> of Navajo Nation Chapters.

CJA-15-00, Amending § 106(B) Mileage Rate in Accordance with the Navajo Nation



Travel Policy and Procedures Handbook.

CAU-73-97, August 22, 1997, Override of Presidential Veto, CJY-49-97, Amending § 106(A) to Exclude Certain Council Delegate Fringe Benefits.

CD-68-89, December 15, 1989; previously at § 107. Subsection (A) increased salary to twenty-five thousand dollars (\$25,000). Also added second sentence. Subsection (B): amended generally. Subsection (E) and (F) added.

CJY-52-85, July 24 1985. Subsection (A) increased salary to twenty-one thousand dollars (\$21,000).

1982 Amendment. Increased salary to twenty thousand dollars (\$20,000).

CMY-26-79, May 4, 1979. Subsections (A) and (B) increased compensation.

1978 Budget, pages 1-2, 1-6. Subsection (B) raised per diem allowance from thirty dollars (\$30.00) to forty dollars (\$40.00).

1976 Budget, Div. 0, Dept. 0 1. Increased compensation per year and per diem.

1974 Budget, Div. 0, Dept. 0 1. Deleted provision-raising per diem for trips away from home.

1972 Budget, Div. 0, Dept. 01. Increased compensation per year and per diem.

CMY-49-65, May 4, 1965. Rescinded CJY-34-63. Subsection (A) increased salary to five thousand two hundred ninety-seven dollars (\$5,297).

CJY-34-63, rescinded CAP-9-63. Subsection (A) increased salary to three thousand dollars (\$3,000) and the per diem for each Council session to eighteen dollars (\$18.00).

CAP-9-63, April 23, 1963. Subsection (A) provided an annual salary of two thousand seven hundred dollars (\$2,700), payable bi-weekly, instead of the twenty-seven dollars (\$27.00) per day.

CAU-41-61, August 22, 1961. CAU-40-61, August 22, 1961. Repealed CMY-23-60 and CJY-45-60.

CJY-45-60, July 14, 1960.

CMY-23-60, May 4, 1960. CJY-35-58 repealed.

CJ-35-58, July 21, 1958.

CM-42-53, May 15, 1953.

CM-39-53, May 13, 1953.

1922-1951, Res. P. 573, passed September 13, 1951; 1922-1951 Res. p. 572, passed August 24, 1951; 1922-1951 Res. p. 569, passed April 13, 1950; 1922-1951 Res. p. 567, passed October 14, 1949; 1922-1951 Res. p. 566, passed November 4, 1947; 1922-1951 Res. p. 565, passed February 21, 1947; 1922-1951

Res. p. 555, passed November 8, 1938; 1922-1951 Res. p. 553, passed July 23, 1937, provided compensation for Council Delegates in such forms as salaries, wages, fees, expenses, mileage, and per diem, subject to various limitations and exceptions.

**Note.** For the Deferred Compensation Plan referred to at Subsection (F), see BFMY-41-73 as amended by BFD-251-82, BFD-212-86 and BFMY-26-91. See also CF-21-73 authorizing the Plan.

## **Annotations**

### **1. Purpose**

"CJY-52-00 was adopted by the Navajo Nation Council on July 20, 2000, to amend 2 N.N.C. § 106 to increase the salaries of the Council delegates, the president and vice president." *Judy v. White*, No. SC-CV-35-02, slip op. at 18 (Nav. Sup. Ct. August 2, 2004).

### **2. Construction and application**

"Lastly, we consider the District Court's mandate that White 'take such actions as may be necessary to recoup illegal payments of salary, deferred compensation or tax contributions by the Navajo Nation, and to seek assistance of pertinent Navajo Nation officials for such purposes.' *Judy v. White*, No. CH-CV-53-01, slip op. At 12 (Chin.Dist.Ct. August 21, 2002). We reverse and vacate the district court's judgment." *Judy v. White*, No. SC-CV-35-02, slip op. at 24 (Nav. Sup. Ct. August 2, 2004).

"2 N.N.C. § 106(A), as codified, is the only valid legislation which can form the basis for Council Delegate salary increases." *Judy v. White*, No. SC-CV-35-02, slip op. at 22 (Nav. Sup. Ct. August 2, 2004).

### **3. Validity**

"Resolution CJY-52-00 is invalid, and any payment of salaries in excess of those mandated by 2 N.N.C. §§ 106(A) and 1008 is illegal. We therefore affirm the trial court's decision invalidating CJY-52-00." *Judy v. White*, No. SC-CV-35-02, slip op. at 22 (Nav. Sup. Ct. August 2, 2004).

### **§ 107. Advances to Council Delegates**

A. Temporary travel advances to a Council Delegate, not to exceed the reasonable expected cost and expenses of authorized travel, may be made by the Controller upon written authorization of the Speaker of the Navajo Nation Council.

B. Claims for reimbursement of travel expenses shall be submitted to the Controller promptly upon completion of travel. Travel advances outstanding at the time reimbursement claims are submitted shall be deducted from the amount being claimed.

C. Temporary travel advances not cleared, either partially or completely, within 30 days from the date of advance shall be deducted from the next bi-weekly Council Delegate's pay.

D. Salary advances to a Council Delegate, not to exceed fifteen thousand dollars (\$15,000) during any bi-weekly pay period, may be made by the Controller or his or her designee.

E. Salary advances made to a Council Delegate during any bi-weekly pay period shall be deducted in amounts not less than fifty dollars (\$50.00) from his or her bi-weekly pay, unless larger deductions are authorized in writing by the individual Council Delegate.

F. The Navajo Nation shall have the right to deduct from any and all moneys or other credits which the Navajo Nation owes to any Council Delegate receiving an advance under this Section, an amount equal to the total funds advanced at any time within 30 days prior to the expiration of the Council Delegate's term of office, or at any other time after the Council Delegate leaves his or her office for any reason whatsoever, whether voluntary or involuntary.

#### **History**

CJA-12-99, July 23, 1997, Amending § 107(D) Increasing Council Delegate Salary Advances Not to Exceed twenty-five thousand dollars (\$25,000), Presidential Veto Exercised, February 4, 1999.

CJY-54-97, July 23, 1997, Amending § 107(D) Increasing Council Delegate Salary Advances Not to Exceed fifteen thousand dollars (\$15,000).

CJY-56-96, July 17, 1996, Amending § 107(D) Increasing Council Delegate Salary Advances Not to Exceed five thousand dollars (\$5,000).

CD-68-89, December 15, 1989. Amended generally. Previously at § 108.

CN-75-80, November 11, 1980. Subsections (D) and (E) rewritten.

CMY-38-74, May 1, 1974. Added Subsections (G) and (H).

**Note.** There no longer is a Subsection G; and the substance of Subsection (H) now is under Subsection (F).

CO-86-71, October 13, 1971. Substituted one thousand dollars (\$1,000) for five hundred dollars (\$500.00).

CAP-28-67, April 27, 1967. Subsection (D) changed one hundred dollars (\$100.00) to five hundred dollars (\$500.00); Subsection (E) provided that a sum not to exceed fifty dollars (\$50.00) be deducted from a Council Delegate's bi-weekly pay for special advances.

CJY-89-66, July 20, 1966.

#### **§ 108. Group insurance**

A. Navajo Nation group insurance shall be provided for Navajo Nation Council Delegates and their dependents

B. The Navajo Nation shall pay a percent of the insurance premium as its contribution.

#### **History**

CD-68-89, December 15, 1989. Amended generally. Previously at § 109.

CF-8-62, February 16, 1962. Extended coverage to dependents.

CF-9-58, February 11, 1958, app. April 28, 1958.

#### **Cross References**

See also, Navajo Nation Personnel Policies and Procedures.

#### **§ 109. Tax declarations and returns; deductions**

A. Each delegate to the Navajo Nation Council is a common law employee of the Navajo Nation for federal employment tax purposes.

B. The Controller of the Navajo Nation shall make deductions in the proper amounts from the salaries of the delegates to the Navajo Nation Council for federal income tax and social security income withholding.

C. Excluded from participating in the Navajo Nation Personnel Policy are the elected officials, public boards, volunteer, and any other contractual services agreements to provide services to the Navajo Nation Government.

#### **History**

CJY-59-00, July 21, 2000, Amending CAP-23-00 to become effective on July 1, 2000.

CAP-23-00, April 18, 2000, Amending § 109 Classifying Navajo Nation Council Delegates As Common-Law Employees for Federal Tax Purposes.

CD-68-89, December 15, 1989. Amended generally. Previously at § 110. CO-107-66, October 6, 1966.

#### **Annotations**

##### **1. Purpose**

"CAP-23-00 was adopted on April 18, 2000, to amend 2 N.N.C. § 109 to make Council delegates 'common law employees' of the Navajo Nation." *Judy v. White*, No. SC-CV-35-02, slip op. at 18 (Nav. Sup. Ct. August 2, 2004).

##### **2. Construction and application**

"Amendment of Section 109 did not require the Chapter ratification process as did Section 106(A), and for good reason. Whether a Delegate was self-employed or a common law employee, the salary remained at twenty-five thousand dollars (\$25,000). There was no significance to the change except a shift in the responsibility for payment of individual tax liability." *Judy v. White*, No.

SC-CV-35-02, slip op. at 23 (Nav. Sup. Ct. August 2, 2004).

### **3. Procedural considerations**

"In this respect, we disagree with the district court that CAP-23-00 was a salary increase and thus subject to the procedural demands of Section 106(A). We vacate the district court's decision." *Judy v. White*, No. SC-CV-35-02, slip op. at 24 (Nav. Sup. Ct. August 2, 2004).

"Had the Title II Amendments contemplated that additional tax benefits operate to increase Delegate salaries, it would have subjected Section 109 to the same Chapter ratification process. The Council recognized that the federal taxing process was keyed to the salary set by 106(A), and not an amount in addition to the salary. In passing CAP-23-00, the Council recognized that the legislation dealt only with employment benefits and, 'not salary increases for Council delegates,' CAP-23-00, Resolved Clause 2 (April 19, 2000)." *Judy v. White*, No. SC-CV-35-02, slip op. at 23 (Nav. Sup. Ct. August 2, 2004).

"Resolved Clause 7 does not comply with the procedural requirements of Section 165. Although the exhibits attached to the resolution carried the required overstriking and underlining, the clauses within the body of the resolution itself did not. We acknowledge that Section 165 was under contemporaneous consideration with Section 106(A) and had not yet become law, but we believe that the Council nonetheless intended then that amendments to any Navajo Nation statutory law ought to reflect the same deliberation and contemplation that it gave to the Title II amendments, given the then-recent governmental controversy. Therefore, we hold that Resolution CD-68-89, Resolved Clause 7 (1989) was not a legislative act carrying the weight of law." *Judy v. White*, No. SC-CV-35-02, slip op. at 21-22 (Nav. Sup. Ct. August 2, 2004).

## **Subchapter 2. Navajo Nation Council Meetings**

### **§ 161. Place**

A. All regularly scheduled or special meetings of the Navajo Nation Council shall be held at the Navajo Nation Council Chambers located at Window Rock, Navajo Nation (Arizona) with the following exceptions:

1. If the Chambers in Window Rock are unsuitable for meeting, because of fire, physical damage, remodeling or other cause the Speaker may designate an alternate meeting place in Window Rock, and give reasonable notice to all Council Delegates.

2. A majority of all Council Delegates may agree to hold a meeting in some location in Window Rock other than the Chambers. Such agreement may be by written petition or by motion at any regular or special session of the Navajo Nation Council.

### **History**

CD-68-89, December 15, 1989. Amended generally. Previously at § 110.

CF-29-72, February 3, 1972.

Rules governing Tribal Council, July 1938, Ch. VI, § 1, 1954 Res. p. 206.

### **Annotations**

#### **1. Validity of resolutions**

" ... [R]esolutions of the Navajo Tribal Council are presumed to be valid and the party seeking to challenge the validity of any Council resolution has the burden of rebutting that presumption with clear evidence to the contrary." *Thompson v. Navajo Nation*, 6 Nav. R. 181, 184 (Nav. Sup. Ct. 1990).

#### **§ 162. Number; time; duration**

A. There shall be four regular sessions of the Navajo Nation Council each year. Such Sessions shall commence at 10 a.m. on the fourth Monday of January, and the third Monday of April, July and October of each year.

B. Special meetings of the Navajo Nation Council may be called upon reasonable and timely notice to all Council Delegates, by:

1. The Speaker of the Navajo Nation Council acting on the recommendation of the Ethics and Rules Committee; or

2. Written petition of a majority of all Council Delegates.

C. The duration of each session shall be no more than five working days. Each meeting day of the Navajo Nation Council shall be for a minimum of six hours each day of the session.

### **History**

CJA-1-98, January 20, 1998. Changed the day of commencement for the Navajo Nation Council Winter Session from the third Monday to the fourth Monday of January, to accommodate celebration of the Martin Luther King federal holiday. CD-69-89, December 15, 1989. Generally, changed meeting dates, added a notice requirement for special meetings, limited the duration of sessions to five working days, and provided a minimum time requirement for each meeting day.

CF-29-72, February 3, 1972. Changed dates for regular meetings and added provision for special meetings.

CMY-60-66, May 16, 1966. Provided that the first meeting shall commence on the first Tuesday after the first Monday of January instead of the second Monday in January and that the duration of each meeting shall be determined by a majority vote of the Navajo Nation Council instead of jointly by the Area Director and the Chairperson of the Navajo Nation Council.

Tribal Council Res. 1922-1951, Res. p. 591, passed May 7, 1951.

#### **§ 163. Agenda**

A. The Navajo Nation Council shall adopt an agenda in accordance with written rules and procedures established by the Navajo Nation Council.

B. Once an agenda is adopted, it shall be amended only by two thirds (2/3) vote of the Council.

### **History**

CAP-83-93, April 22, 1993. Rules of Order were amended for budget deliberations.

CAP-24-90, April 30, 1990. Rules of Order for the Navajo Nation Council were adopted.

CD-68-89, December 15, 1989.

CF-29-72, February 3, 1972.

CMA-51-66, § 2, March 9, 1966.

1922-1951 Res. p. 592, May 7, 1951.

### **§ 164. Navajo Nation Council and committee resolutions procedure**

A. Statements of policy, enactment of positive law, intergovernmental agreements, budget resolutions, and reallocations, must be reviewed and approved by resolution by the appropriate standing committee(s) and the Navajo Nation Council except as otherwise provided herein.

1. Only Council delegates or Standing Committees may introduce a proposed resolution to the Standing Committee(s) and the Navajo Nation Council, except where Navajo government employees are authorized by statute or regulation to introduce proposed resolutions. Prior to introducing the proposed resolution, the Office of Legislative Counsel shall review and draft the proposed resolution for the council delegate(s) or standing committee(s) to ensure that the proposed resolution is drafted in a proper codified format. Where Navajo government employees are authorized to introduce proposed resolutions, they may seek the assistance of either the Office of Legislative Counsel or the Navajo Department of Justice.

2. Expressions of condolence, congratulations, appreciation, recognition of achievement and other similar expressions of sentiment shall not be drafted or processed as resolutions of the Navajo Nation Council or its standing committees but shall be issued by certificates from the Speaker of the Navajo Nation Council at the written request of any Council Delegate and in the manner set forth at 2 N.N.C. § 285(B) (7).

3. After the proposed resolution is drafted, the council delegate(s), standing committee(s) or Navajo government employee(s) shall present the proposed resolution to the Executive Director for the Office of Legislative Services who will assign a number to the proposed resolution.

4. After the proposed resolution is assigned a number, the Speaker of the Navajo Nation Council shall assign the proposed resolution to the

respective oversight committee(s) of the Navajo Nation Council having authority over the matters contained in the proposed resolution for proper consideration and distribute a photocopy of the proposed resolution to the Office of the President, Office of the Attorney General, Office of the Controller and the affected division, department and/or program. The chairpersons of the standing committees shall place the proposed resolution on the committees' agenda for consideration by the standing committee at the next regular committee meeting. Passage of the proposed resolution, defeating the proposed resolution and tabling the proposed resolution shall be considered as actions taken by the standing committee.

5. Proposed resolutions that require final action by the Navajo Nation Council shall be assigned to at least two standing committees; the oversight committee(s) and the Ethics and Rules Committee. The standing committees may markup the proposed resolutions, which will be presented as amendments. Only the Navajo Nation Council proposed resolution shall be introduced, and the Ethics and Rules Committee shall present the oversight committee(s) markup to the Council as amendment(s).

6. Proposed resolutions that do not require final action by the Navajo Nation Council shall be assigned to the respective standing committees authorized to act on the proposed resolutions and considered by said standing committee as provided in Subsection (3) above. Only the resolution for the committee having authority over the subject matter shall be introduced. The oversight committee not having final approval authority over the resolution may recommend amendments.

7. The Ethics and Rules Committee of the Navajo Nation Council shall, upon the recommendation of the Speaker of the Navajo Nation Council, develop the proposed agenda for the Navajo Nation Council 15 calendar days prior to the start of the regular sessions; all verbal and written reports shall be presented to the Council only on the first day of the regular sessions. The proposed resolutions to be placed on the proposed Navajo Nation Council agenda shall have completed the procedures set forth in Subsections (1), (2), (3), and/or (4) of this Section prior to placement on the agenda.

a. Resolutions which address matters which constitute an emergency shall not be subject to this provision. Matters constituting an emergency shall be limited to the cessation of law enforcement services, disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation.

B. Agreements not requiring Committee or Council approval.

1. Subcontracts implementing agreements approved under § 164(A) above, grants providing funds to the Navajo Nation, contracts expending funds appropriated by the Navajo Nation Council, Letter of Assurance agreements, memoranda of understanding, memoranda of agreement and other agreements that do not expend funds, associated amendments shall not require approval by resolution by the Navajo Nation Council or its committees.



2. Prior to final execution as provided in 2 N.N.C. § 222, documents not requiring approval by resolution of the Navajo Nation Council or its committees shall be reviewed and signed by the following:

a. The appropriate Division Director for departments and activities under his or her supervision;

b. The Controller (or designee) for all documents having a financial impact on the Navajo Nation; and

c. The Attorney General of the Navajo Nation (or designee).

### **History**

CO-39-06, October 19, 2006. Amended Subsection (A)(2) providing for the issuance of certificates by the Speaker.

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Amended generally.

CAP-24-97, April 22, 1997. Amended generally. Subsections (B) and (C) were added. The time period for reviews was reduced from ten to five working days. Attorney General review was eliminated for certain proposed resolutions.

CD-68-89, December 15, 1989. Amended generally. Subsections (A)(2), (5), (6), (7), (C)(4), (D) and (E) were added.

CJA-14-72, January 26, 1972.

The review requirements were previously at § 165.

### **Annotations**

#### **1. Validity of resolutions**

" ... [R]esolutions of the Navajo Tribal Council are presumed to be valid and the party seeking to challenge the validity of any Council resolution has the burden of rebutting that presumption with clear evidence to the contrary." *Thompson v. Navajo Nation*, 6 Nav. R. 181, 184 (Nav. Sup. Ct. 1990).

#### **2. Construction and application**

" ... [B]ecause we have held that Title 2 of the Navajo Nation Code is an 'organic law' which takes precedence over other statutes, along with the Navajo Nation Bill of Rights, *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 322-323 (1990), procedural requirements for the enactment of Navajo Nation legislation must be strictly observed." *In the Matter of Certified Question from the United States District Court for the District of Arizona and Concerning the Case of: Peabody Western Coal v. Nez, et al.*, No. SC-CV-49-00, slip op. at 5 (Nav. Sup. Ct. July 18, 2001). [Editor's note: This opinion (answer to certified question) was issued prior to amendments to 2 N.N.C. § 164 by CJY-32-03].

"We take judicial notice of the fact that the Navajo Nation Council adopts many kinds of resolutions, which may approve, disapprove or recommend some action, but not all are 'legislative acts' in the legal sense of statutes or legislation as such, which carry the weight of law." *In the Matter of Certified Question from the United States District Court for the District of Arizona and Concerning the Case of: Peabody Western Coal v. Nez, et al.*, No. SC-CV-49-00, slip op. at 3-4 (Nav. Sup. Ct. July 18, 2001). [Editor's note: This opinion (answer to certified question) was issued prior to amendments to 2 N,N,C § 164 by CJY-32-03].

"Acknowledging the presumption that the Navajo Nation Council will not enact legislation which would deny civil rights in contravention of the Navajo Nation Bill of Rights,<sup>1</sup> noting the procedures used to place the measure before the Navajo Nation Council, and given the lack of compliance with Navajo Nation statutes for the enactment of legislation, and an additional presumption that the Navajo Nation Council will follow the limitations it places on itself, we hold that the resolution is not a statute which carries the weight of law, but a declaration of the wishes of the Navajo Nation Council and guidance for future legislation." *In the Matter of Certified Question from the United States District Court for the District of Arizona and Concerning the Case of: Peabody Western Coal v. Nez, et al.*, No. SC-CV-49-00, slip op. at 2 (Nav. Sup. Ct. July 18, 2001). [Editor's note: This opinion (answer to certified question) was issued prior to amendments to 2 N,N,C § 164 by CJY-32-03].

"The statute, 2 N.T.C. § 164 (contained in comprehensive 1989 amendments to Title 2 of the Navajo Tribal Code, which are intended to establish the fundamental structure and operations of the Navajo Nation Government), is clearly mandatory rather than directive, and its procedures are a condition precedent to the enactment of valid legislation. The required procedure was not followed in the enactment of Council Resolution CO-80-90, and the same is void under the clear wording and meaning of 2 N.T.C. § 164." *Navajo Nation v. Redhouse*, 6 Nav. R. 305, 308 (Nav. Sup. Ct. 1990).

"A vote of two-thirds of a quorum of the Navajo Nation Council is necessary to modify or change such powers [in 2 N.N.C. § 873]." *Navajo Nation v. Redhouse*, 6 Nav. R. 305, 307 (Nav. Sup. Ct. 1990).

#### **§ 165. Legislation and reading**

A. All resolutions proposing new laws or amendments of laws are legislation and shall clearly indicate new language by underscoring the new language and deletion by overstrike and shall refer to appropriate Navajo Nation Code Titles and Sections.

B. All proposed resolutions enacting new laws, amending existing laws, or adopting a statement of policy shall be read twice in their entirety to the members of the Navajo Nation Council, the exhibits attached to the proposed resolutions shall be identified by reference only; these proposed resolutions are subject to veto by the President of the Navajo Nation, pursuant to 2 N.N.C. § 1005(C)(10) and (11), with the exception of those proposed resolutions approving internal procedures and policies of, or endorsements from, the Navajo Nation Council which are not subject to veto but become effective upon certification by the Speaker pursuant to 2 N.N.C. § 221(C).

### **History**

CO-39-06, October 19, 2006. Amended Subsection (B).

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Added Subsection B.

CD-68-89, December 15, 1989.

### **Annotations**

#### **1. Construction and application**

"Resolved Clause 7 does not comply with the procedural requirements of Section 165. Although the exhibits attached to the resolution carried the required overstriking and underlining, the clauses within the body of the resolution itself did not. We acknowledge that Section 165 was under contemporaneous consideration with Section 106(A) and had not yet become law, but we believe that the Council nonetheless intended then that amendments to any Navajo Nation statutory law ought to reflect the same deliberation and contemplation that it gave to the Title II amendments, given the then-recent governmental controversy. Therefore, we hold that Resolution CD-68-89, Resolved Clause 7 (1989) was not a legislative act carrying the weight of law." *Judy v. White*, No. SC-CV-35-02, slip op. at 21-22 (Nav. Sup. Ct. August 2, 2004).

#### **§ 166. Record of proceedings; interpreters; access to records**

A. Proper records of the proceedings of the Navajo Nation Council and all standing committees, boards and commissions shall be kept and the necessary interpreting services shall be provided by the Office of Legislative Services.

B. Access to records of the proceedings of the Navajo Nation Council, standing committees, boards and commissions shall be provided to the public through the Office of Legislative Services and the Central Records Department.

### **History**

CD-68-89, December 15, 1989. Added Subsection (B), and redesignated § 167 as § 166.

CF-29-72, February 3, 1972.

Rules governing Tribal Council, July 1938, Ch. VI, § 4, 1954 Res. p. 206.

**Note.** Subsection (B) slightly reworded for clarity.

#### **§ 167. Failure to attend**

All delegates to the Navajo Nation Council shall attend all regular and special meetings of the Navajo Nation Council or Committees. If any delegate is absent from sixty percent (60%) of the meeting days within a one year period, the Navajo Nation Council may consider a motion to censure said

delegate. If his/her absence continues, the Navajo Nation Council shall have the authority to declare the delegate's seat forfeited and vacant.

#### **History**

CD-68-89, December 15, 1989. Amended generally. Previously at § 169.

CF-29-72, Exhibit A, § D, February 3, 1972;

Prior language provided that a Council Delegate unable to attend meetings for a year resign.

Rules governing Tribal Council, July 1938, Ch. VI, § 4, 1954 Res. p. 206.

#### **§ 168. Sergeant at Arms; appointment; duties**

A. The Director of the Division of Public Safety shall designate a member of the Navajo Nation police force to fill the post of Sergeant at Arms.

B. The Sergeant at Arms shall maintain order under the direction of the Speaker or Presiding Chairperson of the Navajo Nation Council or Committees and shall make appropriate arrangements for maintenance of law and order during Council and Committee sessions.

#### **History**

CD-68-89, December 15, 1989. Amended generally; previously at § 171.

CJ-54-53, July 22, 1953.

Tribal Council Res. 1922-1951 Res. p. 591, May 7, 1951.

#### **§ 169. Quorum**

A. A quorum shall consist of a simple majority of all voting members of the Navajo Nation Council.

B. No resolution or motion of the Navajo Nation Council or its Standing Committees shall be passed or otherwise acted upon unless a quorum is present. When a quorum is present, any motion or resolution shall be passed if it receives a majority of all votes cast in favor or opposed, unless a larger proportion than a simple majority has been properly stipulated in advance or is required by Navajo Nation law. Abstention vote may be cast only when a delegate has a personal interest conflict in the motion of the Council or Standing Committee. Only a vote in favor and opposed shall be accepted. A delegate who fails to cast a vote shall be declared absent from the whole meeting. Any delegate who intentionally fails or refuses to cast a vote shall be declared absent from the entire meeting, unless otherwise excused by the Speaker of the Navajo Nation Council.

#### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Added language to Subsection B, changing the voting requirements for Council Delegates.

CD-68-89, December 15, 1989. At Subsection (B) added were provisions addressing votes acceptable and Council Delegates not casting votes. Previously at § 172.

CF-29-72, February 3, 1972.

### **Annotations**

#### **1. Construction and application**

"A vote of two-thirds of a quorum of the Navajo Nation Council is necessary to modify or change such powers [in 2 N.N.C. § 873]." *Navajo Nation v. Redhouse*, 6 Nav. R. 305, 307 (Nav. Sup. Ct. 1990).

### **Subchapter 3. Navajo Nation Council Committees—Generally**

#### **§ 180. Appointment**

Each delegate to the Navajo Nation Council shall be appointed to no more than one standing committee and no more than one board or commission of the Navajo Nation excluding membership on the Intergovernmental Relations Committee; except that the Speaker of the Navajo Nation Council shall serve only on the Intergovernmental Relations Committee and shall not serve on any board, commission or any other entity of the Navajo Nation.

#### **History**

CD-68-89, December 15, 1989.

CMA-17-89, March 24, 1989.

#### **§ 181. Membership**

A. Committee members representing agencies of the Navajo Nation shall be recommended by the agency caucuses for selection by the Speaker and confirmation by the Navajo Nation Council. The Speaker shall select the at-large committee members. The Speaker shall select and the Navajo Nation Council confirm any of its members to fill vacancies which may occur in the Committee membership.

B. At least one member of each Committee shall be from each of the Agencies of the Navajo Nation.

#### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Amended Subsection A to provide for agency caucus recommendation for standing committees.

CD-68-89, December 15, 1989. Amended generally. CMA-17-89, March 24, 1989.

**§ 182. Term of office**

Committee members shall serve a term of office coinciding with their term of office as delegates of the Navajo Nation Council.

**History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Deleted language relative to continuation on standing committees.

CD-68-89, December 15, 1989.

**§ 183. Meetings; quorum**

A. All meetings of the Navajo Nation Council committees or commissions shall be held in Window Rock, Navajo Nation, (Arizona). For a meeting to be deemed to have been held, each of the following acts shall occur: a quorum is present, an agenda is adopted, substantive actions (approval, disapproval or table) are taken, and per diem and roundtrip mileage are paid to committee members or commissioners. Meetings shall not mean work sessions, workshops, orientations, training and business meetings with Navajo or non-Navajo entities, therefore, no meeting per diem payment for work sessions, workshops, etc. shall be paid. See 2 N.N.C. § 106. Meetings held elsewhere within the Navajo Nation shall be by written permission of the Speaker of the Navajo Nation Council, provided that funds are available. No meetings shall be held outside the Navajo Nation unless by written permission of the Speaker of the Navajo Nation Council, provided that funds are available; and further provided that the meeting is with a legislative body of another sovereign.

B. Committee and commission meetings shall be for a minimum of three hours for each meeting day and such meetings shall be for at least two days each month. No compensation, per diem and mileage shall be paid unless these requirements are met. Special meetings may be held only if the following conditions are met:

1. Funds are available within the approved annual budget for additional meetings; and

2. The Speaker of the Navajo Nation Council approves such meetings; and

3. Notice of the meeting is posted at Window Rock Navajo Nation offices, published in a daily newspaper and announced on local radio, at least one day before the meeting.

C. When a Committee is authorized by law to hold hearings as a quasi-judicial body, the restrictions on meeting days per month and minimum hours for meetings shall not apply to said hearings.

D. Until the Navajo Nation Council adopts uniform rules for conduct of

Committee meetings, the Committees may adopt their own rules for conduct of meetings.

E. Quorums for committees, boards and commissions shall be a simple majority of the membership of the committees, boards, and commissions.

F. No committee or commission meeting shall be held while the Navajo Nation Council is in special or regular session except to consider a matter which is already a part of the agenda for the Council session then in progress and for which committee or commission action is a legal condition precedent to action by the Council. Nor shall the Speaker approve travel for any member of the Council which is to take place during a special or regular session of the Council except when such travel is to conduct a meeting with, or to give official testimony to, the government of another sovereign.

#### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Amended Subsection A to clarify meeting requirements and differentiate between Standing Committee meetings and other gatherings such as work sessions. Added Subsection F.

CMY-26-90, May 3, 1990. Added "simple majority" provision at Subsection (E).

CD-68-89, December 15, 1989.

#### **Cross References**

Standing committees, rules of procedure, adopted pursuant to Subsection (D), see CJA-06-92, January 22, 1992.

Ethics and Rules Committee, rules of procedure adopted by Navajo Nation Council, see CAP-32-92, April 17, 1991.

#### **§ 184. Chairperson; vice-chairperson; chairperson pro tem**

A. The chairperson and vice-chairperson of committees shall be selected by vote of the committee.

B. At any committee meeting where the duly appointed Committee Chairperson and Vice-Chairperson are absent, the majority of those committee members present may select a pro tem chairperson to conduct the committee meeting; the pro tem chairperson shall retain the power to vote.

C. The chairperson of a committee or in his or her absence the vice-chairperson shall vote only in the event of a tie vote by the regular voting members.

#### **History**

CD-68-89, December 15, 1989.

#### **§ 185. Powers**

A. Subject to existing funding or contract requirements, the committees, Chapters, boards or commissions may reallocate funds appropriated by the Navajo Nation Council to the committees, boards and commissions and to divisions, departments and programs over which the committees have oversight authority, provided that funds are determined available by the Controller; further provided that such reallocation is upon the request of the affected division, department or program and further provided that reallocation of funds is by two-thirds (2/3) vote of the full membership of the committee, board or commission.

B. The committees, boards and commissions shall have the power to subpoena and acquire from any executive department, bureau, agency, board, commission, office, independent establishment or instrumentality, information, suggestions, estimates, and statistics necessary for execution of the purposes and authorities. Each such department, bureau, agency, board, commission, office, establishment or instrumentality is authorized and directed to furnish to the extent permitted by law such information, suggestions, estimates and statistics directly to the committee, board or commission upon request by the chairperson.

C. The committees, boards and commissions may, for the purpose of carrying out purposes and authorities, hold such hearings and shall have the power to subpoena the attendance and testimony of such witnesses and the production of books, records, memoranda, papers and documents as deemed advisable.

D. Any member of a committee, board or commission may administer oaths or affirmations to witnesses appearing before the Committee, board or commission.

E. Committees shall coordinate with one another where areas of authority and responsibility overlap.

F. Subpoenas and orders may be enforced by the courts of the Navajo Nation by means of civil enforcement of committee action. A committee, by the Attorney General, may apply to the District Court of the Window Rock Judicial District for an order to enforce any committee subpoena.

### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Deleted Subsection B.

CJY-54-01, July 19, 2001. Subsections (B)(1) and (2) were amended to eliminate the consideration of contracts entered into pursuant to the Navajo Nation Procurement Code, including small purchases, emergency procurements and sole source procurements.

CN-76-92, November 10, 1992. Amended generally Subsections (C) and (D) to specifically grant subpoena power. Subsection (G) was added.

CD-68-89, December 15, 1989.



**Note.** Subsection (C) was slightly reworded for clarity.

**Note.** The Navajo Nation Council expressed its intent that 2 N.N.C. § 185(A) also applies to the reallocation of Chapter funds. By Resolution CAP-17-92, April 13, 1992, "Overriding the Navajo Nation President's Veto of Resolution CMA-14-92," and Resolution CMA-14-92, March 28, 1992, Resolved Clause 8(c), the Navajo Nation Council adopted the following language: "*It is the interpretation of the Navajo Nation Council that the [ ... ] language of 2 N.T.C. § 185(a) [ ... ] means that prior to the reallocation by any Standing Committee of funds which have been allocated for the benefit of any chapter, the affected chapter shall be considered as the affected program. Further, the Navajo Nation Council directs all staff to ensure that a 60-day notice be provided to the affected chapter when a proposed reallocation of said chapter's funds is being considered. Further, the Navajo Nation Council directs the appropriate staff to notify the affected chapters and Council Delegates six months in advance when their project no year funds will revert to the General Fund at the end of that fiscal year.*"

#### **§ 186. Subcommittees**

Each committee may establish subcommittees consisting of committee members selected by the committee. The subcommittee shall exist until its assigned tasks are completed and report and recommendation is made to the committee. The same provisions which apply to committee meetings shall also apply to subcommittee meetings.

#### **History**

CD-68-89, December 15, 1989.

#### **§ 187. Joint Committee meetings**

A. Standing committees of the Navajo Nation Council may convene joint meetings to address issues where their authority and responsibility overlap. The same provisions that apply to committee meetings including, but not limited to, committee uniform rules of order shall also apply to the joint committee meetings.

B. Joint committee meetings shall be held when:

1. Funds are available within the approved annual budget for each standing committee account wanting to participate in the joint meeting;

2. The chairpersons of the standing committees wanting to participate in the joint meeting shall request the joint meeting.

3. Each standing committee participating in the joint meeting shall have a quorum of its members at the joint meeting; and

4. The meeting is approved by the Speaker of the Navajo Nation Council and notice of the joint meeting posted on a Navajo government building and published in a daily newspaper or announced on the local radio 24 hours in advance of the joint meeting.

C. No substantive action shall be taken in joint committee meetings. Each committee shall make substantive decisions individually as provided in § 189 of this Title.

D. The presiding chairperson for the joint committee meeting shall be selected by the committee members present from among the chairpersons of the standing committees participating in the joint meeting; if only one chairperson of the standing committees participating in the joint meeting is available, said chairperson shall automatically preside over the joint meeting. If the chairpersons of any of the standing committees is not present, the vice-chairperson of such standing committee can be selected to preside over the joint committee meeting. If all the chairpersons and vice chairpersons of all the standing committees that are participating in the joint meetings are absent, the committee members of the joint meeting shall select any one of the committee members present to preside over the entire joint meeting.

#### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Added New Section 187 and renumbered succeeding Sections.

#### **§ 188. Reports**

All committees, boards and commissions of the Navajo Nation Council shall report quarterly and in writing to the Navajo Nation Council concerning their areas of oversight.

#### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Renumbered Section.

CD-68-89, December 15, 1989.

#### **§ 189. Committee actions**

All substantive actions shall be by written resolution duly certified by the presiding officer, setting forth the action taken and signed by the presiding officer. Resolutions and memoranda shall be identified by number and filed with the Central Records Department of the Navajo Nation.

#### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Renumbered Section and deleted reference to committee memoranda.

CD-68-89, December 15, 1989.

#### **§ 190. Staff**

Staff from divisions over which the committees have oversight authority shall assist the committees in execution of their authority and shall provide necessary advice and clerical services.

#### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Renumbered Section.

CD-68-89, December 15, 1989.

#### **§ 191. Conflict of interest**

Committee members who have personal, family or business interests in matters before the Committee or joint committee meeting shall not participate in the committee or joint committee proceeding or vote on the matter.

#### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Renumbered Section and added reference to Joint Committees.

CD-68-89, December 15, 1989.

#### **§ 192. Legislative oversight**

Committee oversight shall be limited to legislation and policy decisions and shall not involve program administration. Where the committee has statutory authority to appoint a director, the committee shall exercise administrative oversight consistent with the appointment authority.

#### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Renumbered Section.

#### **§ 193. Agency caucus**

A. Purpose. The Navajo Nation Council Rules of Order recognize the ability of the Council to form itself into caucuses for the discussion of Council business. Caucuses are formed by delegates dividing themselves among the Bureau of Indian Affairs agencies from which each delegate is elected. Each agency caucus then develops policy on issues to be discussed by the Council, and those policies are advanced by each member delegate of the caucus. It is the purpose of this Section to formalize the agency caucus powers and procedures. The purpose of this statute is to improve and make more efficient the legislative process by creating a forum which provides education of, and information to, Council delegates on issues pending before the Council and which allows formulation of positions on these issues in advance of Council

sessions.

B. Agency Caucus defined. An agency caucus shall consist of all those Council delegates elected from Chapters within the BIA recognized Northern, Fort Defiance, Chinle, Western and Eastern Agencies.

C. Powers. An agency caucus shall have authority to make recommendations on any issue before the Council. Caucuses shall act by resolution, but need not seek review of such resolutions pursuant to 2 N.N.C. § 164. In addition, the authority of the caucuses to make recommendations shall not be deemed to extend or add any requirement for review, recommendation or approval of any resolution of the Council. Caucus resolutions shall be only advisory in nature and are not binding upon the Council or the members of the caucus.

D. Procedures. The caucus shall select a caucus leader and Whip, and Recorder from among its members. The caucus leader may call meetings of the caucus upon notice to all members in a form reasonably calculated to provide actual notice of the meeting. There shall be no requirement that notice be given at any particular time in advance of the meeting; notice shall be timed only to provide members with as much advance notice of the meeting as is consistent with the requirements of due process. A caucus may adopt rules of order to govern their meetings. All caucus resolutions shall be in written form.

E. Powers and duties of caucus leader. In addition to powers and duties set forth elsewhere in this statute, the Caucus Leader shall have the following powers and duties:

1. Act as chair of all caucus meetings;
2. Speak of behalf of the caucus at all meetings of the Council and present the positions adopted through caucus resolutions;
3. Ensure that all caucus members have notice of all issues and legislation pending before the Council.

F. Powers and duties of whip. In addition to the powers and duties set forth elsewhere in this statute, the Whip shall have the following powers and duties:

1. Act as deputy to the caucus leader and exercise the powers and duties of the leader in his or her absence;
2. Communicate caucus policy, as adopted by resolution of the caucus, to all caucus members and seek to ensure that the actions of caucus members coincides with this policy;
3. Canvass all caucus members on issues during Council sessions and keep the Caucus Leader informed as to the number of votes which can be counted on for such issues.

G. Powers and duties of Recorder. The recorder shall have the following powers and duties:

1. Keep a record of all meetings of the caucus;
2. Arrange for preparation of all documents, including resolutions, utilized by the caucus;
3. Submit official forms on behalf of all caucus members.

#### **History**

CJA-12-03, January 31, 2003. Subsection (H) eliminated, making the Agency Caucuses permanent entities of the Navajo Nation Government.

CJA-17-00, January 28, 2000. Established the Pilot Project Agency Caucuses, with an initial authorized period of three years duration.

#### **Subchapter 4. [Reserved]**

#### **Subchapter 5. Resolutions and Documents**

##### **§ 221. Resolutions; certification; filing; codification**

A. The Speaker of the Navajo Nation Council or Speaker Pro Tem shall certify the adoption of any resolution of the Navajo Nation Council by signing the same after it is engrossed by the Executive Director of the Office of Legislative Services or his or her designee. Adopted resolutions shall be filed with the Central Records Department of the Navajo Nation and the Legislative Counsel shall immediately arrange for codification thereof.

B. All resolutions that enact new Navajo law or amend existing Navajo law and are adopted by the Navajo Nation Council shall become effective on the day the President of the Navajo Nation signs it into law or the Navajo Nation Council takes action to override the President's veto, unless the Navajo Nation Council specifically authorizes and directs a different effective date.

C. All resolutions that do not enact new Navajo law, amend existing Navajo law or make a policy statement and are adopted by the Navajo Nation Council shall become effective upon the certification by the Speaker or Speaker Pro Tem of the Navajo Nation Council. Resolutions that adopt internal policies and procedures of the Navajo Nation Council shall become effective upon certification by the Speaker or Speaker Pro Tem.

#### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Amended Subsection A to add engrossment requirement. Added Subsections B and C.

CD-68-89, December 15, 1989. Filing and Codification requirements added.

CO-51-81, October 22, 1981.

CF-24-57, February 15, 1957.

CA-48-52, § 1, 1952, Res. p. 107, passed August 15, 1952.

CA-34-52, § 2, 1952, Res. p. 106, passed April 25, 1952.

Rules governing Tribal Council, July, 1938, Ch. VI, § 6, 1954 Res. p. 208.

#### **Cross References**

Office of Legislative Counsel, see 2 N.N.C. §§ 164 and 964.

#### **§ 222. Contracts or other papers generally**

All contracts or agreements entered into pursuant to the Navajo Nation Procurement Code, to the extent applicable, or approved by the Navajo Nation Council, or its Committees shall be executed in the following manner:

A. The President or the Vice-President of the Navajo Nation or their designee shall execute contracts or agreements pertaining to the Executive Branch;

B. The Chief Justice of the Navajo Nation or their designee shall execute contracts or agreements pertaining to the Judicial Branch; and

C. The Speaker of the Navajo Nation Council or their designee shall execute contracts or agreements pertaining to the Legislative Branch.

D. The Chapter President of the Navajo Nation Chapter shall execute contracts or agreements pertaining to the Chapter.

#### **History**

CJY-54-01, July 19, 2001. Initial clause amended to acknowledge the application of the Navajo Nation Procurement Code. Subsections (A), (B), (C), and (D) amended to allow signature of contracts by designees of Branch Chiefs.

CD-68-89, December 15, 1989. Amended generally.

CO-61-62, October 17, 1962.

CF-24-57, February 15, 1957, provided as follows: "Notwithstanding any other provision of the resolutions of the Tribal Council, the execution of all contracts or papers of any nature heretofore signed by the Chairperson or Vice-Chairperson alone, purporting to act for the Navajo Nation, is hereby ratified, as of the date of such signatures. The purpose of this Section is merely to ratify the signatures on such contracts or papers and not to validate any contract or paper which may be void or voidable for any reason other than improper signature."

CF-13-53, § 4, 1953 Res. p. 224, January 6, 1953.

CA-48-52, § 1, 1952 Res. p. 107, August 15, 1952.

CA-34-52, § 2, 1952 Res. p. 106, April 25, 1952.

CA-48-52, § 2, 1952 Res. p. 107, August 15, 1952.

1922-1951 Res. p. 552, July 19, 1937, repealed by CF-24-57, § 5.

TAC-RC-9, 1922-1951 Res. p. 384, May 24, 1949.

### **§ 223. Contracts**

Except as otherwise provided, any contract authorized to be executed on behalf of the Navajo Nation shall meet the following conditions:

A. All contracts involving the expenditure of funds shall expressly state that the liability of the Navajo Nation under such contract is contingent upon the availability of appropriations by the Navajo Nation Council to carry out the same.

B. All contracts shall have sufficient funds appropriated and available.

C. Contracts shall not waive the sovereign immunity of the Navajo Nation or its entities unless approved by two-thirds (2/3) vote of the full membership of the Navajo Nation Council. This provision shall not apply to authority to waive immunity properly delegated.

D. All contracts, including those entered into pursuant to the Navajo Nation Procurement Code, shall comply with the Navajo Business Procurement Act, 12 N.N.C. § 1501 *et seq.*, the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, Navajo Business Opportunity Act, 5 N.N.C. § 201 *et seq.*, and rules and regulations promulgated thereto.

E. All contracts shall be awarded only after public advertisement and bidding unless otherwise authorized as small purchases, emergency purchases or sole source purchases under the Navajo Nation Procurement Code, or are Intergovernmental Agreements approved by the Navajo Nation Council or its standing committees.

F. All change orders, modifications or amendments of contracts utilizing Navajo Nation funds shall not exceed twenty percent (20%) of the accepted bid. If the twenty percent (20%) cap is exceeded by any change orders, modifications or amendments, such change orders, modification or amendment shall be subject to the provisions of § 223(E) above.

### **History**

CAU-48-03, August 29, 2003, Override Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Deleted Subsection B.

CJY-54-01, July 19, 2001. Subsections (B), (E), (F), and (G) amended to acknowledge changes made by the passage of the Navajo Nation Procurement Code.

CD-68-89, December 15, 1989.

CO-67-56, 1956 Res. p. 275, passed October 26, 1956, app. by Commissioner,

February 11, 1957.

**§ 224. Filing**

All executed contracts or papers, and any modifications thereof, shall be filed with Central Records Department of the Navajo Nation. Executed contracts shall also be filed with the Office of Contracts and Grants.

**History**

CD-68-89, December 15, 1989.

**Cross References**

Office of Contract and Grants, plan of operation adopted, see ACMY-79-86.

**§ 225. Public access**

Access to contracts or papers shall be provided to the public by the Central Records Department as provided in the Navajo Privacy and Access to Information Act.

**History**

CJY-32-03, amended to reference Navajo Privacy and Access to Information Act.

CAU-48-03, overrode Presidential veto.

CD-68-89, December 15, 1989.

**Subchapter 6. [Reserved]**

**Subchapter 7. Speaker of the Navajo Nation Council**

**§ 281. Office of Speaker of the Navajo Nation Council**

A. There is hereby established the Office of the Speaker of the Navajo Nation Council.

B. The Speaker of the Navajo Nation Council shall be a member of the Navajo Nation Council, in good standing.

C. The Office of the Speaker shall have such support personnel as may be budgeted for.

**History**

CD-68-89, December 15, 1989.

See Rules governing Tribal Council, July 1938, Ch. 111, § 1, 1954, Res. p. 196.

**§ 282. Selection of the Speaker, term of office**



A. The Speaker of the Navajo Nation Council shall serve in such office at the pleasure of the Navajo Nation Council.

B. The term of office of the Speaker shall be two years.

C. The Speaker shall be selected and confirmed by the Navajo Nation Council as the first order of business at the Council session scheduled for the fourth Monday in January of any odd numbered year.

#### **History**

CJA-1-98, January 20, 1998. Changed the day of commencement for the Navajo Nation Council Winter Session from the third Monday to the fourth Monday of January, to accommodate celebration of the Martin Luther King federal holiday.

CD-68-89, December 15, 1989.

#### **Cross References**

Selection and confirmation of Speaker, process and procedure, see CJA-02-99.

#### **§ 283. Residence**

A residence may be furnished at Window Rock, Navajo Nation (Arizona), together with the cost of water, sewer, refuse disposal, electricity and natural gas without charge to the Speaker. If the Speaker declines to reside in such residence, the Navajo Nation shall not be responsible or liable for costs and expenses of living elsewhere.

#### **History**

CD-68-89, December 15, 1989.

#### **§ 284. Salary**

The salary of the Speaker shall be thirty thousand dollars (\$30,000) per annum above the salary as a Navajo Nation Council Delegate.

#### **History**

CD-68-89, December 15, 1989.

#### **§ 285. Powers and duties**

A. The Speaker of the Navajo Nation Council shall exercise all powers and authorities which are delegated to the Office by law or may from time to time be delegated to such Office by the Navajo Nation Council.

B. The Speaker's powers and duties shall include the following:

1. Preside at all Navajo Nation Council and Intergovernmental Relations Committee meetings;

2. Direct and supervise the personnel and programs under the

Legislative Branch as provided by law;

3. Appoint a Speaker Pro Tem to allow the Speaker to participate in debate and sponsor legislation before the Navajo Nation Council and, in the sole discretion of the Speaker, to carry out the administrative duties of the office of Speaker when the Speaker is unavailable and absent due to travel, illness, or for any other reason deemed sufficient by the Speaker;

4. Vote only in the event of a tie vote;

5. Call a special session of the Navajo Nation Council pursuant to 2 N.N.C. § 162;

6. Recommend to the Budget and Finance Committee an annual operating budget or amendments thereof for the Legislative Branch and advise the Navajo Nation Council on the annual budget recommended by the Budget and Finance Committee; and

7. Issue official Certificates of Condolence, Congratulations, Appreciation, Recognition or Achievement and other similar expressions of sentiment signed by the Speaker on behalf of the Navajo Nation Council at the written request of any Council Delegate as provided herein:

a. Certificates of Condolence shall be reserved exclusively for former members of the Navajo Nation Council, Chairmen, Vice Chairmen, Presidents and Vice Presidents of the Navajo Nation.

b. Uniform Procedures for the Issuance of Certificates shall be developed by the Office of the Speaker subject to final approval by resolution of the Intergovernmental Relations Committee of the Navajo Nation Council.

### **History**

CO-39-06, October 19, 2006. Added Subsection (B) (7).

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Amended Subsection B(5) to add reference to 2 N.N.C. § 162.

CJY-58-00, July 21, 2000. Subsection (B)(3) amended to allow for the appointment of a Speaker Pro Tem to allow the Speaker to sponsor legislation, and to carry out administrative duties of the Speaker when the Speaker is unavailable.

CD-68-89, December 15, 1989.

### **Cross References**

Special sessions, authority to call on recommendation of Ethics and Rules Committee, see 2 N.N.C. § 162(B).

**§ 286. Removal; vacancy**

A. The Speaker may be removed by two-thirds (2/3) vote of the full membership of the Navajo Nation Council.

B. If a vacancy should occur in the Office of the Speaker of the Navajo Nation Council, the Navajo Nation Council shall select and confirm from among its members a successor to serve the remainder of the term.

**History**

CD-68-89, December 15, 1989.

**§ 287. Speaker Pro Tem**

A. When a quorum of the Navajo Nation Council is present at any duly called regular or special meeting, the members present, in absence of the Speaker, may select from among the Chairpersons of the standing committees to serve as the Speaker Pro Tem until the Speaker arrives.

B. The Speaker, in his or her sole discretion, may appoint a Speaker Pro Tem to carry out the administrative duties of the office of Speaker whenever the Speaker is both absent and unavailable due to travel, illness, or any other reason deemed sufficient grounds by the Speaker. The appointment shall be made in writing and shall expire at a time designated by the Speaker or whenever withdrawn in a separate writing by the Speaker, and shall, in any event, automatically expire in five working days after the date of the appointment unless renewed in writing by the Speaker. Only current members of the Council may be appointed as Speaker Pro Tem pursuant to this provision and shall serve without additional salary compensation.

C. If the Speaker is unable to perform his or her duties for any reason and is unable to appoint a Speaker Pro Tem pursuant to § 287(B), the Chairperson of the Government Services Committee shall serve as the Speaker Pro Tem until the Speaker's inability to perform his or her duties is removed.

D. A Speaker Pro Tem appointed pursuant to §§ 287(B) or (C) shall, in addition to his or her salary as a delegate pursuant to 2 N.N.C. § 106(A), receive mileage compensation in accordance with 2 N.N.C. § 106(A) and per diem for each day of service as Speaker Pro Tem in an amount equivalent to the daily rate of the salary established in 2 N.N.C. § 284.

**History**

CJY-58-00, July 21, 2000. Subsections (B), (C), and (D) added to allow for the appointment of a Speaker Pro Tem to carry out administrative duties of the Speaker when the Speaker is unavailable.

CD-68-89, December 15, 1989.

**Subchapter 8. [Reserved]**

**Subchapter 9. Standing Committees**

## **Article 1. Government Services Committee**

### **§ 341. Establishment; purposes**

A. The Government Services Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

B. It is the purpose of the Committee to monitor and coordinate the activities of all divisions and departments of the Executive Branch of the Navajo Nation.

#### **History**

CD-68-89, December 15, 1989. By CD-68-89, the "Government Services Committee" was established and the "Advisory Committee" abolished.

CJA-1-81, January 28, 1981.

CF-17-67, February 28, 1967.

CMA-51-66, March 9, 1966.

CS-51-64, September 4, 1964.

### **§ 342. Membership**

The Committee shall consist of eight members of the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989.

### **§ 343. Powers**

A. General. The Committee shall have powers necessary and proper to carry out the purposes set forth herein.

B. Enumerated Powers. The Committee is hereby authorized and directed:

1. To recommend to the Navajo Nation Council legislation for the creation of colleges, or other entities of the Navajo Nation and to recommend the amendment or rescission of such legislation.

2. To create any division or department of the Executive Branch of the Navajo Nation government by adoption of its plan of operation and to amend or rescind that Plan or the existing plan of operation for any division or department.

3. To give final confirmation of appointments to boards, commissions, and colleges.

4. To oversee the conduct and operations of entities of the Navajo Nation not otherwise under the oversight authority of other standing committees, except that such oversight shall not interfere with the prerogative or business decisions of management and governing boards.

5. To recommend legislation to Navajo Nation Council on matters within the Committee's jurisdiction.

#### **History**

CD-68-89, December 15, 1989.

#### **Cross References**

Fact-finding hearings, rules of Government Services Committee, see, also, GSCMY-33-90.

#### **§ 344. Meetings**

Meetings shall be held on the second and fourth Tuesday of each month.

#### **History**

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CD-68-89, December 15, 1989.

### **Article 2. Budget and Finance Committee**

#### **§ 371. Establishment**

The Budget and Finance Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989. Amended generally.

CMA-17-89, March 24, 1989.

CAP-17-84, April 19, 1984.

CJA-1-71, January 12, 1971.

CN-91-69, November 13, 1969.

CMA-18-67, March 2, 1967.

CJY-90-66, July 20, 1966.

CMA-28-65, March 18, 1965.

CF-11-6 1, February 13, 1961.

**§ 372. Purposes**

The purposes of the Committee are:

A. To coordinate, oversee and regulate the fiscal, financial, investment, contracting and audit policies of the Navajo Nation.

B. To report to the Navajo Nation Council on the fiscal and financial state of the Navajo Nation.

C. To recommend to the Navajo Nation Council the adoption of legislation designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation.

D. To protect the interests of the Navajo People through the prudent management of the financial reserves of the Navajo Nation and the efficient use of funds available for expenditure by the Navajo Nation.

E. To oversee and provide direction for lending programs within the Committee's authority.

**History**

CD-68-89, December 15, 1989. Amended generally.

CMA-17-89, March 24, 1989.

CAP-17-84, April 19, 1984.

CJA-I-71, January 12, 1971.

CN-91-69, November 13, 1969.

CMA-18-67, March 2, 1967.

CJY-90-66, July 20, 1966.

CMA-28-65, March 18, 1965.

CF-11-61, February 13, 1961.

**§ 373. Membership; advisors**

A. The Committee shall consist of eight members of the Navajo Nation Council.

B. The Department of Justice, Controller, Auditor General, Legislative Counsel, Director of Legislative Services and Director of the Division of Finance shall serve as official advisors to the Committee and shall provide appropriate support, advice and counsel on all matters.

## **History**

CD-68-89, December 15, 1989. Amended generally.

CMA-17-89, March 24, 1989.

CAP-17-84, April 19, 1984.

CJA-1-71, January 12, 1971.

CN-91-69, November 13, 1969.

CMA-18-67, March 2, 1967.

CJY-90-66, July 20, 1966.

CMA-28-65, March 18, 1965.

CF-11-6 1, February 13, 1961.

**Note.** The reference to "Division of Administration and Finance" at Subsection (B) was changed to "Division of Finance".

### **§ 374. Powers**

A. The Committee shall have all powers necessary and proper to carry out the purposes set forth above.

B. The Committee shall have the following powers:

1. To review and recommend to the Navajo Nation Council the budgeting, appropriation, investment and management of all funds.

2. To the extent permitted by federal or Navajo Nation laws and regulations, the Committee shall appropriate, allocate, cancel, reappropriate and review the use of Navajo Nation funds received including but not limited to all grants, contracts, gifts and other funds from all sources.

3. With prior approval of the President, Speaker and/or Chief Justice to recommend to the Navajo Nation Council amendment of the approved annual budgets by reallocating funds between branches.

4. To coordinate and review all fiscal, financial and investment activities of the Navajo Nation and its enterprises, as well as other agencies, federal, state, regional and private, expending or seeking to expend funds within the Navajo Nation or for the benefit of the Navajo People.

5. To require the presentation and submission of financial reports by any enterprise, authority, or entity chartered or approved by the Navajo Nation Council or its committees.

6. To return unexpended funds to the Reserve Fund or the

appropriate funding source.

7. To promulgate policies and regulations concerning wages, expenditure reimbursement, and fringe benefits for Navajo Nation officials and employees.

8. To require reports from and to monitor the financial performance of all offices, divisions, departments, enterprises, authorities, committees, boards, commissions, or entities having oversight or control over fiscal matters or financial obligations to the Navajo Nation.

9. To require an annual audit of the accounts of the Navajo Nation by certified public accountants and to present such audit to the Navajo Nation Council.

10. To review the annual budgets of the Bureau of Indian Affairs, the Indian Health Services and other departments and agencies of the United States government and to recommend the approval or disapproval of such budgets.

11. To promulgate rules and regulations for lending money to members of the Navajo Nation.

12. To provide legislative oversight over lending programs previously delegated to the Central Loan Committee.

13. To coordinate loan programs under the committee's oversight with other governments.

14. Review and approve agreements to make funds available for loans to Navajo individuals, except economic development business loans.

15. To approve lease purchase agreements concerning all tribal programs, departments and divisions within all branches of the Navajo Nation government upon recommendations of the Division of Finance.

16. Oversight of the functions of the Division of Finance.

### **History**

CO-81-90, October 30, 1990. Subsections (B) (15) and (16) added.

CMA-17-89, March 24, 1989. Amended generally.

CAP-17-84, April 19, 1984.

CJA-1-71, January 12, 1971.

CN-91-69, November 13, 1969.

CMA-18-67, March 2, 1967.

CJY-90-66, July 20, 1966.



CMA-28-65, March 18, 1965.

CF-11-61, February 13, 1961.

**Note.** Central Loans Committee ACN-229-87, November 13, 1987, was discontinued by the amendments adopted by CD-68-89.

### **§ 375. Meetings**

All regular meetings of the Committee shall be held on the first and third Tuesday of each month.

### **History**

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CMA-17-89, March 24, 1989. Amended generally.

CAP-17-84, April 19, 1984.

CJA-1-71, January 12, 1971.

CN-91-69, November 13, 1969.

CMA-18-67, March 2, 1967.

CJY-90-66, July 20, 1966.

CMA-28-65, March 18, 1965.

CF-11-61, February 13, 1961.

### **Article 3. [Reserved]**

### **Article 4. Transportation and Community Development Committee**

#### **§ 420. Establishment**

The Transportation and Community Development Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

#### **History**

CMY-26-90, May 3, 1990. "Transportation" was added to the title of the Committee.

CD-68-89, December 15, 1989.

#### **§ 421. Purposes**

The purposes of the Committee are:

A. To develop overall policies and legislation appropriate to the housing needs of the Navajo Nation.

B. To promote local community land use plans which support community infrastructural development.

C. To promote development of Chapter government which enhances local self government.

D. To promote, review, coordinate and approve projects to be financed by funds designated for capital improvement. Such projects shall include but not be limited to Chapter houses, multipurpose buildings, preschools, senior citizen centers, powerline extensions, housewiring, airports, waterline extensions and other water systems, airport/road infrastructures and other Navajo Nation facilities.

E. To be responsible for planning and coordinating all roads and transportation activities of the Navajo Nation.

#### **History**

CD-68-89, December 15, 1989.

#### **§ 422. Membership; advisors**

A. The Committee shall consist of eight members of the Navajo Nation Council.

B. The Executive Director of the Division of Community Development, the General Manager of the Navajo Tribal Utility Authority, the Area Director of Indian Health Service and other personnel from appropriate agencies shall serve as technical advisors to the Committee.

#### **History**

CD-68-89, December 15, 1989.

#### **§ 423. Powers**

A. General. The Committee shall have all powers necessary and proper to carry out the purposes set forth above.

B. Housing Development. The Committee shall:

1. Review and approve contracts and agreements between the Navajo Nation and any other entity for the development, construction and renovation of housing subject to applicable laws.

2. Propose policies and laws relating to housing development, including but not limited to building, construction, and utility codes.

3. Oversee and periodically review the overall function of the Division of Community Development to ensure that the purposes and objectives are properly and timely achieved and to recommend any

amendments to the Division of Community Development Plan of Operation.

4. Represent the Navajo Nation at local, state and federal levels for housing development.

5. Coordinate with the Budget and Finance Committee and lending institutions for housing loans to enrolled members of the Navajo Nation residing within the Navajo Nation.

C. Community Development. The Committee shall:

1. Approve legislation to develop and improve local governmental units.

2. Review and approve comprehensive community land use plans and zoning ordinances and amendments or modifications thereof, including land withdrawals necessary for the implementation of such land use plans.

3. Review and approve local ordinances, not otherwise delegated to Chapters by the Navajo Nation Council, enacted by local government entities and Chapters.

4. Review and approve all surface easements and rights-of-way and other clearances related to local community development including but not limited to powerline, waterline and sewerline extensions.

D. Capital Improvement Projects. The Committee shall:

1. Review and recommend to the Navajo Nation Council through the budget process an annual budget for capital improvement projects utilizing all sources of funds.

2. Review and recommend to the Navajo Nation Council through the appropriate process supplemental appropriations to the capital improvement projects annual budget to fund necessary additional capital improvement projects.

3. To review, prioritize and approve capital improvement projects funded by all funding sources.

4. To lobby for state, federal, and other sources of funds.

5. To review and recommend legislation to accomplish Committee purposes.

6. To periodically review the progress of capital improvement projects and take necessary action(s) to ensure timely and efficient completion of projects.

7. To require periodic reports from the Controller of the Navajo Nation concerning the fund status of capital improvement projects and require such other reports from appropriate officials as may be necessary to execute the Committee's purposes.

8. To review the annual capital improvement projects budgets of the Bureau of Indian Affairs, Indian Health Services and other departments or agencies of the United States, and recommend the approval or disapproval of such budgets.

E. Transportation and Roads. The Committee shall:

1. Represent the Navajo Nation in all roads and transportation matters.

2. Develop and approve a priority list for roads and transportation projects.

F. Other Powers. The Committee shall:

1. Promulgate rules and regulations necessary to accomplish the Committee's purposes.

2. Review and approve new programs and improve existing programs to better serve the public and communities.

3. Review and approve alternative and appropriate technological projects related to housing, community development and capital improvement projects.

#### **History**

CMY-26-90, May 8, 1990. At Subsection (E)(2), the word "maintain" was changed to "approve."

CD-68-89, December 15, 1989.

#### **§ 424. Meetings**

Committee meetings shall be held on the first and third Tuesday of every month.

#### **History**

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CD-68-89, December 15, 1989.

### **Article 5. Health and Social Services Committee**

#### **§ 451. Establishment**

The Health and Social Services Committee is hereby established and continued as a standing Committee of the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989. "Health and Human Services Committee" changed to

"Health and Social Services Committee."

CAU-36-73, August 22, 1973.

CJA-2-71, January 12, 1971.

CAP-11-63, April 30, 1963.

**§ 452. Purposes**

The Committee shall address health and social service problems affecting Navajo People and develop, monitor, and coordinate policies and proposals, laws, regulations and delivery of services to abate these problems consistent with and acceptable to the traditional practices and customs of the Navajo People.

**History**

CD-68-89, December 15, 1989. Amended Generally.

ACMA-35-84, March 14, 1984.

**§ 453. Membership**

The Committee shall consist of eight members of the Navajo Nation Council.

**History**

CD-68-89, December 15, 1989. Committee membership increased from "6" to "8". Subsections (B) and (C) deleted.

ACMA-35-84, March 14, 1984.

CAU-36-73, August 22, 1973.

CJA-2-71, January 12, 1971.

**§ 454. Powers**

A. The Committee shall have all authority necessary and proper to carry out the purposes set forth.

B. The Committee shall have the power:

1. To represent the Navajo Nation in matters relating to health, social services, and environmental health, including lobbying for, promotion and education on Navajo Nation policies.

2. To review and approve agreements and contracts negotiated with federal, state, regional, local, private and Navajo Nation health and social service authorities, subject to applicable laws of the Navajo Nation.

3. To coordinate all health and social services related activities of the Navajo Nation and its enterprises, relating to the delivery of health and social services and health and social services planning and prevention.

4. To coordinate all environmental health-related activities of the Navajo Nation and its enterprises.

5. To promulgate health and social services policies, objectives, priorities and regulations for the Navajo Nation and to monitor the implementation of those plans and regulations.

6. To recommend legislation relating to health, environmental health and social services.

7. To prepare and recommend a Committee budget each fiscal year.

8. To serve as the oversight committee for the Division of Health and the Division of Social Services except as delegated otherwise by Navajo Nation Council and this oversight responsibility shall include other programs designated by the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989. Amended generally.

ACMA-35-84, March 14, 1984.

#### **§ 455. Meetings**

Regular meetings shall be held the second and fourth Tuesday of each month.

#### **History**

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CD-68-89, December 15, 1989. Meeting dates changed and quorum requirements amended.

ACMA-35-84, March 14, 1984.

### **Article 6. Education Committee**

#### **§ 481. Establishment**

The Education Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989.

ACMA-35-84, March 14, 1984.

CJ-9-57, January 31, 1957.

CJA-13-38, Tribal Council Res. 1922-1951, p. I 11, January 18, 1938.

#### **§ 482. Purposes**

The Committee's general purpose is to oversee the educational development of the Navajo Nation and to develop policies for a scholastically excellent and culturally relevant education.

#### **History**

CD-68-89, December 15, 1989. Subsection (B) deleted, and remaining paragraph amended generally.

ACMA-35-84, March 14, 1984.

#### **§ 483. Membership**

The Committee shall consist of eight members of the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989. Committee membership increased from "6" to "8". Also, Subsections (B), (C) and (D) were deleted.

ACMA-35-84, March 14, 1984.

#### **§ 484. Powers**

A. The Committee shall have such powers as are necessary and proper for the accomplishment of the purposes set forth above.

B. The powers of the Committee are:

1. Promulgate regulations, policies and procedures to implement Navajo Nation education laws.

2. Review and make recommendations on all education-related legislation coming before the Navajo Nation Council.

3. Review, sanction and authorize applications, reapplications and amendments for Indian Self-Determination Act contracts and grants under the Tribally Controlled Schools Act for the operation of education programs, subject to final approval by the Intergovernmental Relations Committee. Approval or denial of reauthorizations of contract and grant applications by the Education Committee shall constitute approval or denial by the Tribal governing body, without further consideration by the Intergovernmental Relations Committee of the Navajo Nation Council.

4. Serve as the oversight committee of the Navajo Department of Diné Education, the Navajo Nation Board of Education, and colleges within the Navajo Nation.

5. Assist, support and coordinate with local communities, parent organizations and school boards and school board organizations.

6. Represent the Navajo Nation in consultation with federal, state and local officials regarding any proposed changes in federal education legislation or educational programs, including new schools (including charter schools), school closures, consolidations, education budget initiatives and the like. The Committee shall, where appropriate, seek concurrence of the Intergovernmental Relations Committee of the Navajo Nation Council or the Navajo Nation Council in framing official responses from the Navajo Nation to proposals for major changes in educational programs, such as proposals regarding major school closures or transfers of jurisdiction.

7. Review and approve any programs offered on the Navajo Nation by off-Navajo Nation post-secondary institutions or any "nonresident" or home study post-secondary programs for which student recruitment activities are conducted on the Navajo Nation.

#### **History**

CJY-37-05, July 19, 2005.

CD-68-89, December 15, 1989. Amended generally.

ACMA-35-84, March 14, 1984.

#### **Cross References**

Navajo Division of Education, establishment, see CJN-60-71, June 8, 1971.

Validity, construction, and application of Indian Self-Determination and Education Assistance Act, 190 A.L.R. Fed. 249 (2003).

#### **United States Code**

Indian self-determination and education assistance, see 25 U.S.C. § 450 et seq.

#### **§ 485. Meetings**

The Committee shall hold its regular meetings every first and third Wednesday of each month.

#### **History**

CAP-10-09, April 21, 2009. Changed regular Education Committee meetings from the second and fourth Friday of each month to the first and third Wednesday of each month.



CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CD-68-89, December 15, 1989. Meeting dates specified and quorum requirements set.

**Article 7. [Reserved]**

**Article 8. [Reserved]**

**Article 9. Judiciary Committee**

**§ 571. Establishment**

The Judiciary Committee is established and continued as a standing committee of the Navajo Nation Council with oversight responsibility for the Judicial Branch of the Navajo Nation.

**History**

CJA-04-01, January 24, 2001. Amended generally.

CD-68-89, December 15, 1989. Amended generally.

ACMA-35-84, March 14, 1984. Amended generally.

CAU-54-59, August 14, 1959.

**§ 572. Purposes**

The purposes of the Judiciary Committee are:

A. To improve the administration of justice on the Navajo Nation by ensuring an independent judiciary free from political influence in its deliberative process that remains accountable and responsible to the Navajo Nation for its administrative and operational activity.

B. To work towards cooperation between the courts of the Navajo Nation and the courts of the various states, the federal court system, and the administrative-judicial system of the Department of the Interior and other federal or state agencies.

C. To promote the interests of the Navajo People through support and/or sponsorship of projects and legislation to improve the quality of the justice system within the Navajo Nation.

D. To support and promote increased funding, planning and coordination to develop Navajo Nation infrastructure relating to or having an impact on the Judicial Branch, including but not limited to court facilities and detention facilities.

**History**

CJA-04-01, January 24, 2001. Amended generally.

CD-68-89, December 15, 1989.

ACMA-35-84, March 14, 1984.

### **Annotations**

#### **1. Construction and application**

"The Chairman [President] has no independent authority to appoint a person as judge who has not been screened and recommended by the Judiciary Committee. As a collateral matter, the Advisory Committee has absolutely no authority to either recommend, not recommend, confirm, or on its own appoint a person as judge of the Navajo Nation. All recommendations for appointment of judges are initiated by the Judiciary Committee." *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

"The initial screening of applicants, which includes review of qualifications pursuant to 7 N.T.C. § 354 and interviews, is conducted by the Judiciary Committee of the Navajo Tribal Council. The power of initial screening is given to the Judiciary Committee by 7 N.T.C. §§ 355, 354(a) and 2 N.T.C. § 572(1)." *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

#### **§ 573. Membership**

The Committee shall consist of eight members of the Navajo Nation Council.

### **History**

CD-68-89, December 15, 1989. Increased membership of Committee from 6 to 8.

ACMA-35-84, March 14, 1984. Amended generally.

CJA-4-79, January 26, 1979. Provided for a Chairperson and Vice-Chairperson of the Committee and provided that each agency have at least one member on the Committee.

CJA-3-71, January 12, 1971. Increased membership of Committee from 3 to 5.

#### **§ 574. Powers**

In addition to the powers enumerated at 2 N.N.C. § 185, the Committee shall have the following powers including those powers necessary and proper to carry out the purposes set forth in § 572 above:

A. To serve as the oversight committee for all operations of the Judicial Branch.

B. To determine, with the approval of the Navajo Nation Council, qualifications to be required of judges and justices of the Navajo Nation.

C. To provide a process for accepting applications for judicial positions and for determining the most qualified candidates.

1. Upon screening all eligible applicants, the Committee shall recommend to the President of the Navajo Nation a panel of qualified candidates for appointment as probationary Chief Justice, Associate Justices of the Supreme Court and probationary judges of the lower courts, and all other judicial positions which the Navajo Nation Council may create.

2. The President shall appoint probationary justices and judges only from among those named in the panel submitted by the Committee. Probationary justices or judges shall be confirmed by the Navajo Nation Council.

D. To review and evaluate the performance of probationary and permanent justices and judges.

E. To recommend to the President of the Navajo Nation the removal of probationary justices and judges prior to their permanent appointment.

F. To recommend to the President the permanent appointment of probationary justices and judges.

1. The President shall not appoint to a permanent position any justice or judge not recommended by the Judiciary Committee.

2. The appointment of permanent justices and judges shall be confirmed by the Navajo Nation Council.

G. To present directly to the Navajo Nation Council the issue of permanent appointment of any probationary justice or judge whom the Committee and the Chief Justice have recommended for permanent appointment and which recommendation the President of the Navajo Nation has failed to convey to the Navajo Nation Council within 60 days of receiving the recommendation.

H. To recommend to the Navajo Nation Council the removal of permanent justices or judges.

I. To initiate, recommend, support, and sponsor legislation to improve the Navajo judicial system.

J. To review and/or propose legislation and make recommendations regarding any proposed or current laws, procedures, and regulations affecting or creating any impact on the Judicial Branch.

K. To review and approve plans of operation for all Judicial Branch divisions, departments and programs and to amend or rescind such plans of operation.

L. To review and approve policies, procedures and regulations necessary for the administration and operation of the Judicial Branch including, but not limited to, travel policies, retirement policies and personnel policies for Judicial Branch employees, justices and judges.

M. To review and approve contracts, subcontracts, and agreements negotiated with federal, state, international, tribal, regional, local and private entities, subject to Intergovernmental Relations Committee approval when required by law. All Judicial Branch contracts must be in compliance with the requirements of 2 N.N.C. §§ 222(B) and 223.

### **History**

CJA-04-01, January 24, 2001. Amended generally.

CD-68-89, December 15, 1989.

### **Cross References**

Reallocation of funds, see also, 2 N.N.C. § 185.

### **Annotations**

#### **1. Screening, generally**

"The initial screening of applicants, which includes review of qualifications pursuant to 7 N.T.C. § 354 and interviews, is conducted by the Judiciary Committee of the Navajo Tribal Council. The power of initial screening is given to the Judiciary Committee by 7 N.T.C. §§ 355, 354(a) and 2 N.T.C. § 572(1)." *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

#### **2. Powers of committee**

"Different events occur if the Judiciary Committee recommends a probationary judge to a permanent position. [... ] The legislative scheme does not allow the Chairman's denial of permanent appointment to a probationary judge to be final. [... ] The Navajo Tribal Council will make a final decision as to whether to grant permanent status to this type of probationary judge." *In re: Certified Questions II*, 6 Nav. R. 105, 108-110 (Nav. Sup. Ct. 1989).

"If the Judiciary Committee's recommendation is that the probationary judge be denied permanent appointment, the Chairman must deny the appointment. [... ] The Chairman is required to follow the Judiciary Committee's recommendation of denial." *In re: Certified Questions II*, 6 Nav. R. 105, 108 (Nav. Sup. Ct. 1989).

"The Chairman [President] has no independent authority to appoint a person as judge who has not been screened and recommended by the Judiciary Committee. As a collateral matter, the Advisory Committee has absolutely no authority to either recommend, not recommend, confirm, or on its own appoint a person as judge of the Navajo Nation. All recommendations for appointment of judges are initiated by the Judiciary Committee." *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

#### **3. Termination of judge**

"The above cited statute providing for removal of probationary judge is not discretionary because the statute gives the public an overwhelming and

compelling interest in ensuring that only qualified and ethics-conscious individuals become judges. The Navajo public has an interest in a strong and independent judiciary. Navajo sovereignty is strengthened by a strong and independent judiciary. For these reasons, a probationary judge who has been determined to be unfit for office by the Judiciary Committee must be removed by the Chairman. The public is protected by the removal of the judge." *In re: Certified Questions II*, 6 Nav. R. 105, 107 (Nav. Sup. Ct. 1989).

"If a probationary judge is to be removed prior to the expiration of his probationary period, the Judiciary Committee must make a recommendation of removal to the Chairman. Pursuant to such recommendation, the Chairman *must* remove the probationary judge. No further removal proceeding is required. The removal is final." *In re: Certified Questions II*, 6 Nav. R. 105, 106 (Nav. Sup. Ct. 1989).

"The Chairman of the Navajo Tribal Council is not empowered to act alone in either removing a probationary judge or denying a permanent appointment to a probationary judge. The Navajo Tribal Code laws on the Judicial Branch provide for two ways by which a probationary judge can be terminated. The first is by removal and the second is by denial of permanent appointment. In either case the Chairman cannot act until after the Judiciary Committee of the Navajo Tribal Council has formally acted by recommendation." *In re: Certified Questions II*, 6 Nav. R. 105, 106 (Nav. Sup. Ct. 1989).

#### **4. Probationary evaluations**

"The Committee makes an independent determination of the training requirement and whether the probationary judge has performed satisfactorily over the two year probationary term." *In re: Certified Questions II*, 6 Nav. R. 105, 108 (Nav. Sup. Ct. 1989).

#### **§ 575. Meetings**

Meetings shall be held on the first and third Thursday of each and every month.

#### **History**

CMY-26-90, May 3, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CD-68-89, December 15, 1989. Meeting dates specified and quorum requirements added.

ACMA-35-84, March 14, 1984.

### **Article 10. Human Services Committee**

#### **§ 601. Establishment**

The Human Services Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

### **History**

CD-68-89, December 15, 1989. "Labor and Manpower Committee" changed to "Human Services Committee".

CJA-4-79, January 26, 1979. Increased membership from five to seven and provided that each agency have a member on the Committee.

CN-73-76, November 11, 1976. Rescinded §§ 601-603.

CJA-4-71, January 12, 1971. Established Labor and Manpower Committee.

### **§ 602. Purposes**

The purposes of the Committee are as follows:

A. To coordinate the Navajo Nation efforts with respect to the implementation and enforcement of Navajo Nation labor and veterans laws and policies.

B. To coordinate all employment and training and veterans services programs.

### **History**

CD-68-89, December 15, 1989. Implementation of veterans laws and coordination of veterans services included among purposes of the Committee.

ACMA-35-84, March 14, 1984.

### **§ 603. Membership**

The Committee shall consist of eight members of the Navajo Nation Council.

### **History**

CD-68-89, December 15, 1989. Increased membership from "6" to "8", and Subsections (B), (C), and (D) were deleted.

ACMA-35-84, March 14, 1984.

### **§ 604. Powers**

A. The Committee shall have all powers necessary and proper to carry out the purposes set forth above.

B. The Committee shall have the following powers:

1. To promulgate regulations for the enforcement and implementation of the labor laws and policies of the Navajo Nation and laws relating to veterans services.

2. To represent the Navajo Nation in matters relating to labor,

employment and training and veterans services.

3. To recommend legislation regarding employment, training, and veterans services.

4. In conjunction with the Education Committee to oversee and to propose the establishment of any employment training center or institution under the jurisdiction of the Navajo Nation and to review, recommend or propose the adoption, amendment or rescission of its Plan of Operation.

5. To serve as the oversight authority for the Division of Human Resources.

#### **History**

CD-68-89, December 15, 1989. Amended generally.

ACMA-35-84, March 14, 1984.

#### **§ 605. Meetings**

Meetings shall be held on the second and fourth Monday of each month.

#### **History**

CJY-69-95, July 21, 1995. Changed meeting days to the second and fourth Monday.

CMY-26-90, May 3, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CD-68-89, December 15, 1989. Meeting dates and quorum requirements specified.

ACMA-35-84, March 14, 1984.

#### **Article 11. [Reserved]**

#### **Article 12. Public Safety Committee**

#### **§ 661. Establishment**

The Public Safety Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989.

ACMA-35-84, March 14, 1984. "Police Committee" changed to "Public Safety Committee".

CJA-4-79, January 26, 1979.

CMY-29-61, May 25, 1961. Changed name of Committee from "Law and Order Committee" to "Police Committee"; transferred certain functions.

CJ-9-57, January 1, 1957. Navajo Nation assumed Law Enforcement responsibilities.

CJ-1-55, June 22, 1955.

#### **§ 662. Purposes**

The purposes of the Committee are:

A. To coordinate legislative activities relating to administration, police services, highway safety, fire and rescue services, detention, and criminal investigations within the Navajo Nation and such other activities as may hereafter be specifically delegated to the Division of Public Safety.

B. To coordinate federal, state and Navajo law enforcement activities.

C. To promote the efficient operation of public safety on the Navajo Nation.

#### **History**

CJY-51-90, July 20, 1990. Reference to "Emergency Services" deleted.

CD-68-89, December 15, 1989. Reference to "Emergency Services" added.

ACMA-35-84, March 14, 1984.

#### **§ 663. Membership**

The Committee shall consist of seven members of the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989. Membership increased from "6" to "7" and Subsections (B) and (C) deleted.

ACMA-35-84, March 14, 1984.

CJ-9-57, January 31, 1957.

#### **§ 664. Powers**

A. The Committee shall have all powers necessary and proper to carry out the purposes set forth above.

B. The Committee shall have the following powers:

1. To represent the Navajo Nation in matters relating to law enforcement.



2. To coordinate all law enforcement activities of the Navajo Nation and its enterprises, as well as those activities of federal, state and regional agencies.

3. To recommend to the Navajo Nation Council the enactment, repeal or amendment of law enforcement, traffic and safety legislation.

4. To promulgate regulations and rules as may be necessary to carry out the purposes stated herein and the laws of the Navajo Nation concerning law enforcement.

5. To serve as legislative oversight authority for the Division of Public Safety.

#### **History**

CJY-51-90, July 20, 1990. Amended generally.

CD-68-89, December 15, 1989. Amended generally.

ACMA-35-84, March 14, 1984.

#### **§ 665. Meetings**

Meetings shall be held on the second and fourth Monday of each month.

#### **History**

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CD-68-89, December 15, 1989. Meeting dates and quorum requirements specified, and Subsection (C) was deleted.

### **Article 13. Resources Committee**

#### **§ 691. Establishment**

The Resources Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989. Amended generally.

CJA-4-79, January 26, 1979. Reduced membership from "8" to "7".

CAU-35-73, August 21, 1973. Reduced membership from "11" to "8".

CJA-5-71, January 12, 1971. Amended generally.

Tribal Council Res. 1922-1951, p. 539, July 15, 1950.

### **Cross References**

Agriculture and livestock, see generally, 3 N.N.C. § 1 *et seq.*

### **§ 692. Definition of terms**

As used within this article, the following definition of terms shall apply:

A. "Resources". Any and all Navajo owned, controlled or claimed, natural, renewable, nonrenewable, solar and wind power energies, cultural, leisure, and recreational resources which includes, but is not necessarily limited to, land, air, airways, water, minerals, wildlife, fish, forests, woodlands, vegetation, livestock and parks.

B. "Surface Disturbance". The alteration of the land resources to an extent that would change its existing utilization (e.g., penetration of the land surface, however slight, disposition of materials upon the surface, withdrawal of rangelands for homesite purposes, etc.).

C. "Natural State". That which occurs or exists in the environment, not a result of man, inclusive of natural regeneration induced by man.

D. "Mineral Agreements". Mineral leases, operating agreements, and any other agreements authorized by the Indian Mineral Development Act of 1982.

### **History**

CN-72-92, November 12, 1992. Amended generally and added Subsection (D).

CD-68-89, December 15, 1989.

### **United States Code**

Indian Mineral Development Act of 1982, see 25 U.S.C. § 2101 *et seq.*

### **§ 693. Purposes**

The purpose of the Committee is to insure the optimum utilization of all resources of the Navajo Nation and to protect the rights, and interests and freedoms of the Navajo Nation and People to such resources.

### **History**

CD-68-89, December 15, 1989. Subsections (2)-(11) were deleted, and the remaining paragraph was amended generally.

ACMA-35-84, March 14, 1984.

### **§ 694. Membership**

The Committee shall consist of eight members of the Navajo Nation Council.

## **History**

CD-68-89, December 15, 1989. Increased Committee membership from "6" to "8"; and Subsections (B), (C), and (D) were deleted.

### **§ 695. Powers**

A. The Committee shall have all powers necessary and proper to carry out the purposes set forth above, and to promulgate rules and regulations thereto.

B. The Resources Committee shall have the following powers, including the authority to delegate to appropriate Executive Branch officials within the Division of Natural Resources provided that the Committee first approves rules and regulations governing such delegations and to rescind such delegations, and to adopt resolutions, regulations or policies that shall be necessary and proper for carrying into execution the following powers:

1. To act as the Central Grazing Committee in order to accomplish their duties as set forth in 3 N.N.C. §§ 832 and 852.

2. To give final approval of any land exchanges or non-mineral leases, subleases or assignments of leases of Navajo land, rights-of-way, prospecting permits, sand and gravel permits, including royalty rates and bonding rates of such permits, integration of tracts and unitization of approved-mineral agreements, mission site leases, and other licenses and usufructuary interests in Navajo land, including unrestricted (fee) land, in accordance with applicable federal and Navajo Nation laws.

3. To review, monitor, prioritize and/or negotiate all proposed land acquisitions and energy development agreements. The Resources Committee shall recommend to the Navajo Nation Council all actions which may involve the approval of mineral agreements, land acquisitions, and energy development agreements.

4. To give final approval of homesite lease procedures; and promulgate rules and regulations thereto.

5. To delegate authority to the Department Director of the Navajo Land Department (NLD) to review and grant individual homesite leases and certificates in accordance with procedures adopted by the Resources Committee. Such delegated authority shall be limited to withdrawal of one acre or less of Tribal Trust/Fee Lands for residential purposes, excluding the authority to withdraw land for residential subdivisions and other withdrawals.

6. To give final approval of all land withdrawals for residential subdivisions, rights-of-way, including all surface easements and other clearances related but not limited to powerline, waterline, and sewer line extensions.

7. To oversee and regulate all activities within Navajo Nation lands, including actions which may involve disposition or acquisition of resources, surface disturbance, or alteration of the natural state of the

resource.

8. To approve an overall Resource Management Plan of the Navajo Nation, including regulations governing the designation and use of resources.

9. To approve all water development projects utilizing Navajo water resources.

10. To give final confirmation of appointments to the Navajo Nation Water Rights Commission.

11. To issue cease and desist orders, and to assess fines for violations of its regulations and orders.

12. To oversee the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and utilization of resources.

13. To establish Navajo Nation policy with respect to the optimum utilization of all resources, including the authority to initiate and require studies of the natural resources for the protection and efficient utilization, management, administration, and enhancement of such resources and to approve consultants for such studies. The Resources Committee shall report to the Navajo Nation Council the findings and recommendations of committee studies of such resources.

14. To represent the Navajo Nation at local, state, and federal levels, in cooperation and coordination with the President of the Navajo Nation and the Intergovernmental Relations Committee of the Navajo Nation Council, on proposed legislation or actions affecting resource issues, natural resources development, and research and energy resources.

15. To serve as Legislative oversight authority for the Division of Natural Resources, District Grazing Officers, Eastern Navajo Land Board and Farm Boards, and over all matters affecting Navajo resources.

#### **History**

CO-59-03, amended 2 N.N.C. § 695 (B) (1), (4) and (5).

CAP-17-03, April 23, 2003, Added Subsection 695(B)(10), authorizing final confirmation of members to the Navajo Nation Water Rights Commission.

CN-72-92, November 12, 1992. Amended generally.

CD-68-89, December 15, 1989. Amended generally.

**Note.** Paragraphs 4-13 renumbered for purposes of statutory form and slightly reworded for clarity and grammatical form.

#### **Cross References**

Range land leases, see 3 N.N.C. § 501 *et seq.*.

Leasing, Economic Development Committee powers, see 2 N.N.C. § 724(B).

## **Annotations**

### **1. Court jurisdiction**

"The Navajo Nation District Courts continued to have jurisdiction over all land dispute cases filed in the courts between the time of the *In re: Mary Joe Ellis Joe*, 6 Nav. R. 177 (1990) and November 12, 1992." *Malone, et al. v. Yazzie, et al.*, 7 Nav. R. 88, 90 (Nav. Sup. Ct. 1994).

### **2. Office of Hearings and Appeals**

"If it has been determined that the objecting party has no grounds to object, such homesite application will be processed and finalized. Homesite Lease Policy & Procedures, XIII B.7. This provision clearly supports the notion that a groundless objection will not halt the finalization of a homesite lease application. Thus, the OHA erred in its legal conclusion that the Kings' consent was a condition precedent. The OHA does not explain how or what law provides that consent is a condition precedent. The OHA's legal conclusion therefore was not supported by substantial evidence and is not in accordance with the law." *Begay v. King*, No. SC-CV-51-06, slip op. at 4 (Nav. Sup. Ct. April 13, 2009).

"The Court holds the OHA has jurisdiction to hear and decide a grazing dispute which predates Navajo Nation Council Resolution CO-59-03 where an official decision is inadequate to conduct an appellate review." *Charley and Looking Glass v. Benally, et al.*, No. SC-CV-19-07, slip op. at 8 (Nav. Sup. Ct. December 10, 2008).

### **3. Homesite leases**

"In 2003, the Navajo Nation Council, by Resolution CO-59-03 (October 21, 2003), authorized the OHA to hear and decide disputes concerning grazing rights and land boundaries. See also *Charlie v. Benally*, No. SC-CV-19-07, slip op. at 6 (Nav. Sup. Ct. December 10, 2008) (OHA delegated authority to resolve all grazing, land and fencing disputes not pending appeal before the Resources Committee). The [Homesite Lease] Policy & Procedure outlines the homesite application process and permits a land or grazing permittee to intervene." *Begay v. King*, No. SC-CV-51-06, slip op. at 3 (Nav. Sup. Ct. April 13, 2009).

## **§ 696. Meetings**

Meetings shall be held on the second and fourth Thursday of each month.

## **History**

CN-72-92, November 12, 1992. Amended generally.

CMY-26-90, May 11, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CD-68-89, December 15, 1989. Meeting dates and quorum requirements generally changed.

ACMA-35-84, March 14, 1984.

## **Article 14. Economic Development Committee**

### **§ 721. Establishment**

The Economic Development Committee is hereby established and continued as a Standing Committee of the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989. Name "Economic and Community Development Committee" changed to "Economic Development Committee."

CJY-32-88, July 28, 1988. Provided for a revised Plan of Operation for the Committee.

ACMA-35-84, March 14, 1984.

CJA-4-79, January 26, 1979. Provided that each agency have at least one member on the Committee.

CAU-37-73, August 22, 1973. Amended generally.

CJA-6-71, January 13, 1971. Rescinded Res. 1922-1951, p. 515, passed July 15, 1950, which related to a "Trading Committee."

### **§ 722. Purpose and scope**

The purposes of the Committee shall be:

A. To establish and implement laws, rules and regulations and policies to streamline procedures for approval, management, and enforcement to enhance the development of the economy and increase development on the Navajo Nation;

B. To implement and amend the Navajo Nation Business Site Leasing Regulations of 2005, promulgated from 25 U.S.C. § 415(e), in accordance with Navajo and Federal laws.

#### **History**

CD-48-07, December 19, 2007. Overrode Presidential veto of CO-38-07, October 16, 2007.

CD-68-89, December 15, 1989. Subsections (A)-(D) were deleted and the remaining introductory Paragraph was generally amended.

CJY-32-88, July 28, 1988. Amended generally.

ACMA-35-84, March 14, 1974.

## **§ 723. Membership**

Membership of the Committee shall consist of eight members of the Navajo Nation Council.

### **History**

CD-68-89, December 15, 1989. Membership increased from "6" to "8", and Subsections (B), (C), and (D) were deleted.

CJY-32-88, July 28, 1988.

## **§ 724. Powers**

### **A. Generally**

The Committee shall have all powers necessary and proper to carry out the purposes set forth above.

B. The Committee shall have the authority to promulgate business site lease regulations, redelegation of approval authority, issue leases, permits and licenses.

1. The Committee shall have the authority to promulgate regulations governing the business, commercial or industrial site leasing, permitting and licensing of Navajo Nation lands, including unrestricted (fee) lands for business purposes. This authority does not extend to use of lands for resources (forestry, grazing, farmlands, ranches and parks), mineral and homesite purposes and allotments. Such regulations shall set forth the policies and standards to be followed in approving, amending, transferring or terminating business site leases, permits and licenses and setting, increasing, decreasing, or waiving rental rates.

2. The Committee shall, in accordance with approved regulations, grant final approval of non-mineral business leases, permits licenses and associated right-of-way for the use of Navajo Nation lands, including unrestricted (fee) lands for business purposes. The Committee may delegate its approval or granting authority to the Division of Economic Development of the Executive Branch, an entity, governance certified Chapters, or Townships of the Navajo Nation provided that the Committee first approves rules and regulations governing such delegations and rescission of such delegations. The Committee's authority includes business site lease transactions, including industrial, shopping center and other commercial leases, subleases, modifications, assignments, leasehold encumbrances, and transfers, renewals and extensions, and terminations in accordance with all applicable laws.

### **C. Business Site Leasing Management Plan.**

1. The Committee shall grant final approval of the Administrative and Business Site Leasing Management Plan for the Division of Economic Development, including any proposed amendments.

2. The Committee shall grant final approval for the Administrative and Business Site Leasing Management Plan for governance certified Chapters, Townships, or an appropriately designated entity. Such approval shall be conditioned upon the written recommendation of the Division of Economic Development, including any proposed amendments.

3. Any Administrative and Business Site Leasing Management Plan may be rescinded by the Committee based upon the written recommendation of the Division of Economic Development and in accordance with the rules and regulations governing such rescission of delegation.

4. The Administrative and Business Site Leasing Management Plan must be in accordance with the Navajo Nation Business Site Leasing Regulations of 2005, as amended.

D. Determination of findings.

1. The Committee is authorized to confirm or deny findings only for rescission of delegation of final approval authority and/or rescission of approval of the Administrative and Business Site Leasing Management Plan, subject to this Subsection (2).

2. The Committee shall conduct hearings only for alleged violations of the Navajo Nation Business Site Leasing Regulations of 2005 as amended, an approved Administrative and Business Site Leasing Management Plan, and the uniform rules and regulations governing delegations from the Committee. These hearings involve only those parties that have received delegation of final approval authority and have an approved Administrative and Business Site Leasing Management Plan, including the Division of Economic Development, an entity, governance certified Chapters, Townships, and other forms of municipal government.

E. Chapter, Townships, and other municipal forms of government.

The Committee shall periodically receive reports and review operations and shall make recommendations to assist in the enhancement of economic development pertaining to business development Chapters, Townships or other forms of municipal government that have received delegation of final approval authority and have an approved business site lease management plan.

F. Economic Development Land Withdrawal

The Committee shall review and grant final approval of land withdrawals for economic development projects, subject to Chapter approval and/or existing Navajo Nation law regarding local land use control.

G. Economic and Business Development

The Committee shall approve economic development plans which require the use of Navajo Nation funds and/or assets; shall be the central point of contact for economic development activities; shall establish and approve the Navajo Nation Overall Economic Development Plan and Ten Year Plan including the priority lists for economic and business development projects funded by Navajo Nation and federal funds; development plans for individual business site leases



shall not be subject to such approval.

#### H. Navajo Nation Enterprises and Other Entities

1. The Committee shall periodically receive reports and review the operations of the Navajo Nation enterprises, including all tribal gaming enterprises, authorities and industries and shall recommend the creation, reorganization, termination or "Privatization" of any enterprise to the Navajo Nation Council. The Committee shall also confirm appointments to enterprise boards.

2. The Committee shall jointly with appropriate Standing Committees of the Navajo Nation Council do all things necessary and proper to create an independent financial institution designed to provide credit and financing to the Navajo Nation business community.

#### I. Tribal Laws and Regulations; Commerce and Business; Taxation.

1. The Committee shall propose or review legislation relating to commerce and business within the Navajo Nation, and shall recommend the adoption or amendment of such laws to the Navajo Nation Council.

2. The Committee shall, in consultation with the Navajo Tax Commission, make recommendations to the Navajo Nation Council regarding taxation proposals affecting business or commercial activities.

#### J. Oversight

The Committee shall serve as the oversight committee of the Division of Economic Development or its successor in responsibility, including those activities which deal with the planning, development, promotion and oversight of economic development activities.

#### K. Other Powers

The Committee shall have the power to represent the Navajo Nation in matters related to economic development.

### **History**

CD-48-07, December 19, 2007. Overrode Presidential veto of CO-38-07, October 16, 2007.

CJA-12-01, Amended § 724(B).

CD-68-89, December 15, 1989. Amended generally.

CJY-32-88, July 18, 1988.

ACMA-35-84, March 14, 1984.

### **Cross References**

Business Site Leasing Act, see 5 N.N.C. §§ 2301-2305, and CJA-12-01, January

24, 2001.

Resources Committee, powers related to land, see 2 N.N.C. § 695 and 24 N.N.C. § 101 *et seq.*

#### **§ 725. Meetings**

Meetings shall be held on the first and third Wednesday of each month.

#### **History**

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CD-68-89, December 15, 1989. Quorum requirements generally changed. Except for meeting dates, the language of Subsection (A) was deleted.

CJY-32-88, July 28, 1988.

**Article 15. [Reserved]**

**Article 16. [Reserved]**

**Article 17. [Reserved]**

### **Article 18. Intergovernmental Relations Committee**

#### **§ 821. Establishment**

The Intergovernmental Relations Committee is hereby established as a standing committee of the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989.

ACMA-35-84, March 14, 1984.

#### **§ 822. Purposes**

The purposes of the Committee are:

A. To coordinate all federal, county and state programs with other standing committees and branches of the Navajo Nation government to provide the most efficient delivery of services to the Navajo Nation.

B. To ensure the presence and voice of the Navajo Nation.

#### **History**

CD-68-89, December 15, 1989.

ACMA-35-84, March 14, 1984.

**§ 823. Membership; selection; Chairperson**

A. The Committee shall consist of the Speaker of the Navajo Nation Council and the chairpersons of the Navajo Nation Council standing committees. In the absence of the chairperson of a standing committee, the vice-chairperson shall represent the standing committee.

B. The Chairperson of the Committee shall be the Speaker of the Navajo Nation Council.

C. In the absence of the Speaker, the members of the committee may select a Chairperson Pro Tem.

**History**

CD-68-89, December 15, 1989.

ACMA-35-84, Mardi 14, 1984.

**§ 824. Powers**

A. The Committee shall have all the powers necessary and proper to carry out the purposes set forth above.

B. The Committee shall have the following powers:

1. To serve as the oversight committee for the Office of Legislative Services and other offices, programs, commissions, boards or task forces under the Legislative Branch of the Navajo Nation government and to approve and amend plans of operation thereto.

2. To assist and coordinate all requests for information, appearances and testimony relating to proposed county, state and federal legislation impacting the Navajo Nation.

3. To review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments.

4. To authorize, review, approve and accept any and all contracts, grants and associated budgets with the United States, its departments and agencies for the implementation of the Indian Self-Determination and Education Assistance Act as amended upon the recommendation of the standing committee which has oversight of the division, department or program applying for the contract and/or grant.

5. To coordinate with all committees, Chapters, branches and entities concerned with all Navajo appearances and testimony before Congressional committees, departments of the United States government, state legislatures and departments and county and local governments.

6. To authorize, review, approve and accept agreements, including contracts and grants, between the Navajo Nation and any federal, state or regional authority upon the recommendation of the standing committee which has oversight of the division, department or program which has applied for the agreement, or upon recommendation of the Chapter.

7. To recommend to United States departments and agencies, the states and various regional agencies the appointment of individuals who, in the judgment of the Committee, will fulfill the requirements of their office and serve the interests of the Navajo Nation.

8. To continually monitor contracts with state, federal and regional entities to ensure compliance with applicable laws, regulations and contract terms.

9. To review and approve the negotiation and setting of the Navajo Nation's indirect cost or administrative cost rate agreements with the cognizant federal agent. When in the best interest of the Nation, the Committee may waive the indirect cost or administrative cost rate when:

a. The division, department or program requesting the waiver demonstrates a statutory and/or regulatory requirement that limits the indirect cost or administrative cost rate available for a particular grant or contract, or

b. There is a showing of necessity and a commitment of available general funds by the division, department or program requesting the waiver which is available to offset the loss in indirect costs or administrative costs.

c. Chapters meeting these requirements will not be subject to any administrative costs assessed by the central government.

10. To review and approve the distribution of funds appropriated or allocated to assist enrolled Navajos residing outside the Navajo Nation.

#### **History**

CD-68-89, December 15, 1989.

ACMA-35-84, March 14, 1984.

**Note.** Word "in", appearing at Subsection (B)(10) deleted.

#### **United States Code**

Indian Self-Determination and Education Assistance Act, see 25 U.S.C. § 450 *et seq.*

#### **§ 825. Meeting**

Regular meetings shall be held on the first and third Monday of each month.

### **History**

CMY-26-90, May 8, 1990. Subsection (B) was deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183 (E).

CD-68-89, December 15, 1989. Meeting and quorum requirements changed.

**Prior law.** ACMA-35-84, March 14, 1984.

### Article 19. Ethics and Rules Committee

#### **§ 831. Establishment**

The Ethics and Rules Committee of the Navajo Nation Council is hereby established and continued as a standing committee of the Navajo Nation Council.

### **History**

CD-68-89, December 15, 1989.

ACJA-37-89.

ACMA-130-84, October 10, 1984. Plan of Operation for Ethics and Rules Committee amended generally.

ACMA-35-84, March 14, 1984.

CJA-1-83, January 25, 1983.

#### **§ 832. Purposes**

The purposes of the Committee are as follows:

A. To insure that public officials and affected employees of the Navajo Nation are held to the highest standards of ethical conduct.

B. To provide for a fair, honest and an efficient government of the Navajo Nation, through review, recommendation and sponsorship of projects, legislation, rules and standards in furtherance of these ends.

### **History**

CD-68-89, December 15, 1989. Amended generally.

ACJA-37-89, January 26, 1989.

ACMA-130-84, October 10, 1984.

ACMA-35-84, March 14, 1994.

#### **§ 833. Membership**

The Committee shall consist of eight delegates of the Navajo Nation

Council.

### **History**

CD-68-89, December 15, 1989. Increased Committee membership from "6" to "8" and deleted Subsections (B), (C), and (D).

ACJA-37-89, January 26, 1989.

ACMA-35-84, March 14, 1984.

### **§ 834. Powers**

A. The Committee shall have all the powers necessary and proper to carry out the purposes set forth above.

B. The Committee shall have the power:

1. To review and recommend rules of procedure for the effective and efficient conduct of the Navajo Nation Council and its Committees.

2. To recommend legislation to maintain the highest standards of ethical conduct in the functions of the Navajo Nation government.

3. To perform the duties and responsibilities delegated by and implement the provisions of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741, *et seq.* and such other authority as may be delegated from time to time.

4. To provide for the compilation and publication of all Navajo Nation laws, rules and regulations.

5. To review and recommend an agenda for all Navajo Nation Council sessions.

6. To promulgate such rules and regulations as necessary to execute its authority.

7. To serve as the oversight authority for the Ethics and Rules Office.

8. To review and recommend referendums and initiatives to the Navajo Nation Council.

9. To appoint a Director of the Ethics and Rules Office of the Navajo Nation who will serve at the pleasure of the Committee.

### **History**

CD-68-89, December 15, 1989. Amended generally.

ACJA-37-89, January 26, 1989.

ACO-130-84, March 14, 1984.

ACMA-35-84. March 14, 1984.

#### **Cross References**

Referendums (Election Code), see also 11 N.N.C. Part 2.

#### **§ 835. Meetings**

Meetings shall be held on the first and third Friday of each month.

#### **History**

CMY-26-90, May 8, 1990. Subsection (B) deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183 (E).

CD-68-89, December 15, 1989. Amended generally.

#### **Subchapter 10. [Reserved]**

#### **Subchapter 11. Boards and Commissions**

#### **Article 1. Navajo-Hopi Land Commission**

#### **United States Code**

Navajo and Hopi tribes, settlement of rights and interests, see 25 U.S.C. § 640d *et seq.*

#### **§ 851. Establishment; purposes**

A. The Navajo-Hopi Land Commission ("Commission") is hereby established within the Legislative Branch.

B. It is the purpose of the Commission to:

1. Monitor, collect, and update information on any and all land use conflicts between the Navajo Nation and the Hopi Tribe, and any claimants in and to lands within the area described in the Act of June 14, 1934 (48 Stat. 960).

2. Speak and act for the Navajo Nation with respect to the land selection and land exchange provisions of P.L. 96-305.

#### **History**

CD-68-89, December 15, 1989. The Navajo-Hopi Land Commission was moved from the Executive Branch (2 N.N.C. § 330 1) and placed within the Legislative Branch.

ACAP-49-83, April 4, 1983. The name of the Commission was changed. from "Navajo-Hopi Land Dispute Commission" to "Navajo-Hopi Land Commission." Also, a "purpose" section was added.

CAU-70-72, August 7, 1972.

**§ 852. Membership; selection; Chairperson and Vice-chairperson; term of office; ex-officio members**

A. The Commission shall consist of eleven regular voting members and two ex-officio members who shall be appointed by the Speaker of the Navajo Nation Council with the approval of the Intergovernmental Relations Committee of the Navajo Nation Council. The Commission shall have the authority to establish subcommittees as deemed appropriate to provide advisory input from citizens, professionals, federal and other non-elected sources.

B. The Commission shall consist of:

1. Eleven voting members of the Navajo Nation Council representing areas affected by the Navajo-Hopi Land Dispute.

2. All members of the Commission shall be appointed by the Speaker of the Navajo Nation Council and shall serve at the pleasure of the Intergovernmental Relations Committee of the Navajo Nation Council.

3. The Agency Superintendent, Bureau of Indian Affairs, of Tuba City Agency and Crownpoint Agency and tribal employees shall provide technical input to the Commission.

C. The Chairperson and Vice-Chairperson of the Commission shall be selected by the Commission.

D. Commission members shall serve a term of office coinciding with the term of office of members of the Navajo Nation Council and until their successors are appointed.

E. The President and Vice-President of the Navajo Nation shall serve as ex-officio members of the Commission.

**History**

CD-68-89, December 15, 1989.

ACAP-49-83, April 4, 1983.

**§ 853. Powers**

A. General. The Commission shall have all powers necessary and proper to carry out the purposes set forth in 2 N.N.C. § 851.

B. Enumerated Powers. The Commission is hereby authorized and directed:

1. To advise the President of the Navajo Nation concerning all matters relating to land use conflicts between the Navajo Nation and the Hopi Tribe, and any claimants in and to lands within the areas described in the Act of June 14, 1934 (48 Stat. 960).



2. To speak and act for the Navajo Nation with respect to the land selection and land exchange provisions of P.L. 96-305 by making such selections and approving or disapproving any proposed exchanges, subject to the limitations set forth in resolution CN-69-80.

#### **History**

CD-68-89, December 15, 1989.

ACAP-49-83, April 4, 1983.

#### **Cross References**

GSCF-10-91, January 9, 1991.

CN-69-80, November 7, 1980.

#### **§ 854. Meetings**

Meetings shall be held on the call of the Chairperson of the Commission, the President of the Navajo Nation, or upon written request of any six members of the Commission. At any meeting, a quorum shall consist of six members.

#### **History**

CD-68-89, December 15, 1989. Amended generally.

ACAP-49-83, April 4, 1983.

#### **§ 855. Procedure**

Until such time as the Navajo Nation Council adopts procedures and rules for the conduct of Commission business, the Commission is empowered to develop its own procedure for the conduct of meetings, provided that all formal substantive action shall be taken by written resolution duly certified by the presiding officers, or memorialized by written memorandum setting forth the action taken and signed by the presiding officer and filed with the Central Records Department of the Navajo Nation. Minutes shall be kept of all meetings and shall be officially recorded by the Office of Legislative Services.

#### **History**

CD-68-89, December 15, 1989.

ACAP-49-83, April 4, 1983.

#### **§ 856. Staff**

A. There shall be a Navajo-Hopi Land Commission Office under the direction of the President of the Navajo Nation. The President of the Navajo Nation shall appoint a staff assistant who shall head the Land Commission Office who shall serve at the pleasure of the President of the Navajo Nation.

B. The Commission shall utilize the Navajo-Hopi Land Commission Office in

performing its assigned functions.

#### **History**

CD-68-89, December 15, 1989.

ACAP-49-83, April 4, 1983.

#### **Cross References**

GSCF-10-91, January 9, 1991.

#### **§ 857. Reports**

The Commission shall report quarterly and in writing to the Navajo Nation Council concerning matters relating to the land use conflict and agreements with the Hopi Tribe.

#### **History**

CD-68-89, December 15, 1989.

ACAP-49-83, April 4, 1983.

#### **§ 858. Subcommittees**

The Commission is authorized and directed to establish at least one Citizen's Advisory Subcommittee to provide advice and assistance to the Commission. The members of the Citizen's Advisory Committee shall be non-elected private citizens who reside in or near the lands affected by P.L. 96-305 and such other private citizens as the Commission and the President of the Navajo Nation may deem appropriate.

#### **History**

CD-68-89, December 15, 1989.

ACAP-49-83, April 4, 1983.

### **Article 2. Eastern Navajo Land Commission**

#### **§ 861. Establishment; purpose**

A. The Eastern Navajo Land Commission ("Commission") is established as a Commission of the Navajo Nation Council within the Legislative Branch.

B. The Commission is established for the following purposes:

1. To advocate for and initiate the acquisition and consolidation of land in or near the Eastern Navajo Agency, Navajo Nation (New Mexico), and to facilitate and ensure the timely processing and consummation of such actions.

2. To provide technical support to the appropriate agencies of the Navajo Nation and otherwise assist the Navajo Nation in securing Navajo Nation territorial, legislative, judicial, administrative and regulatory jurisdiction in the Eastern Navajo Agency.

3. To advocate for the rights of individual Navajo occupants of lands administered by the United States Bureau of Land Management (BLM) or the State of New Mexico.

4. To develop, and assist in the implementation and effectuation of, laws enacted or policies adopted by the Navajo Nation Council concerning land acquisition and consolidation, jurisdiction, and individual Navajo rights in the Eastern Navajo Agency.

5. To coordinate the planning for, advocating for or opposing, and mitigating the impact of energy development in the Eastern Navajo Agency, and to assist in planning and implementing the Navajo Nation's economic development and investment initiatives in or near the Eastern Navajo Agency.

6. To coordinate Navajo Nation efforts concerning land-related matters in the Eastern Navajo Agency with federal, state and local authorities and private interests in the appropriate judicial, legislative, administrative and private settings and in coordination with the Navajo Land Department, the Navajo Nation Department of Justice, or other agencies of the Navajo Nation, as proper.

7. To identify lands owned by others, the acquisition of which may be beneficial to the Navajo Nation, to engage in preliminary negotiations with any prospective seller, and to provide appropriate guidance and direction to the Navajo Nation regarding any proposal that such prospective seller may make to the Navajo Nation.

8. To provide recommendations and guidance to the Navajo Nation Council concerning expenditures of the Navajo Nation's Land Acquisition Trust Fund for lands in the Eastern Navajo Agency.

9. To provide information and assistance to Navajo residents of the Eastern Navajo Agency, the Eastern Navajo Agency Council, and the appropriate Land Boards with respect to land-related matters, and to receive input from Navajo residents of the Eastern Navajo Agency with respect to such matters.

10. To plan and initiate appropriate legislative strategies and initiatives regarding beneficial Navajo Nation, federal and/or New Mexico legislation, in cooperation with the appropriate committees of the Navajo Nation Council and otherwise in accordance with applicable Navajo law.

11. To take the above steps with the ultimate objective of securing reservation boundary legislation that will include the checkerboard area in New Mexico as part of the formal, recognized Navajo Indian Reservation and formal protection of areas or sites of cultural, religious or historic significance to the Navajo Nation in or near the Eastern Navajo Agency.

## **History**

CJY-21-08, July 23, 2008. Overrode Presidential veto of CAP-11-08.

CAP-11-08, April 22, 2008.

CD-68-89, December 15, 1989. The Commission was moved from the Executive Branch (2 N.N.C. § 3321) and placed within the Legislative Branch (2 N.N.C. § 861). Also, the "standing committee" status was changed.

CF-2-80, February 5, 1980.

### **§ 862. Membership**

A. The Commission shall be composed of seven members.

B. Six members shall be Navajo Nation Council Delegates representing the so-called Checkerboard Area of the Navajo Nation, nominated by the Speaker of the Navajo Nation Council and confirmed by the Navajo Nation Council. Representation on the Commission shall consist of one member from each of the following areas:

Area I: Counselor, Huerfano and Nageezi Chapters;

Area II. Becenti, Crownpoint, Lake Valley, Nahodishgish, Standing Rock and White Rock Chapters;

Area III. Ojo Encino, Pueblo Pintado, Torreon/Star Lake and White Horse Lake Chapters;

Area IV. Baca/Prewitt, Casamero Lake, Iyanbito, Littlewater, Mariano Lake, Pinedale, Smith Lake and Thoreau Chapters;

Area V. Bread Springs, Chichiltah, Church Rock, Manuelito, Red Rock, Rock Springs and Tsayatoh Chapters; and

Area VI. Alamo, Ramah and Tóhajiilee Chapters.

C. One at-large member shall be an enrolled member of the Navajo Nation skilled and experienced in land and/or energy matters, nominated by the President of the Navajo Nation and confirmed by the Navajo Nation Council.

D. Each of the six members who are Navajo Nation Council Delegates shall serve as a member of the Commission concurrent with his or her term as a Council Delegate and until his or her successor is confirmed in accordance with Subsection B. The seventh member shall serve until his or her successor is confirmed in accordance with Subsection C.

E. The Commission shall appoint a Chairperson and Vice-Chairperson from among its members, and may establish committees from among its members if deemed appropriate by the Commission to facilitate the business of the Commission.

## History

CJY-21-08, July 23, 2008. Overrode Presidential veto of CAP-11-08.

CAP-11-08, April 22, 2008.

CD-68-89, December 15, 1989. Previously at 2 N.N.C. § 3322. Amended generally.

CF-2-80, February 5, 1988.

### § 863. Powers and duties

The Commission is hereby authorized and directed to:

A. Establish an office at Crownpoint for the transaction of business, and establish any sub-offices within the Eastern Navajo Agency to house the administration to the Commission or other purposes, as deemed beneficial to the efficient delivery of services by the Commission.

B. Consistent with generally applicable Navajo law, represent the Navajo Nation on land and energy matters concerning the Eastern Navajo Agency; provided, however, that any agreement involving more than five hundred thousand dollars (\$500,000) or the purchase of more than 640 acres, or any land lease or other agreement whose term extends for more than one year from its effective date shall require the concurrence of the Resources Committee of the Navajo Nation Council in order for such agreement to be valid.

C. Hire such staff and consultants, including legal counsel, as may be provided for in the annual Navajo Nation budget of the Commission provided, however, that the concurrence of the Navajo Nation Attorney General is required prior to retention of legal counsel by the Commission.

D. Issue subpoenas, hold administrative hearings, and issue such other orders as may be necessary and proper to effectuate its purposes and authorities, and which are otherwise consistent with Navajo and any applicable federal law.

E. Report quarterly and in writing to the Navajo Nation Council, and report periodically to the Eastern Navajo Agency Council, concerning activities of the Commission.

F. Provide for the reimbursement of the Commission members for travel and other expenses reasonably incurred and consistent with the practice of other standing committees of the Navajo Nation Council.

G. Provide for the compensation of the Commission members for meeting attendance per rate set in the meeting policies.

H. Establish a budget for the Commission's activities and present such budget for approval by the Navajo Nation Council or authorized Committee thereof, seek independent sources and mechanisms for securing funding independent of such budget, maintain accurate books and records of all income and expenditures of the Commission, which shall be subject to audit by the Navajo Nation, or its agents, annually.

I. Assist the Navajo Department of Water Resources in planning and implementing systems for the production, acquisition and delivery of potable water throughout the Eastern Navajo Agency, and assist the Navajo Nation in securing water rights for the Navajo Nation and its citizens in the Eastern Navajo Agency.

J. Assume primary responsibility for the direction of the Navajo Nation's land acquisition and consolidation efforts in the Eastern Navajo Agency and the confirmation of Navajo Nation jurisdiction there, working in conjunction with the Navajo Land Department, the Navajo Nation Department of Justice and other appropriate agencies of the Navajo Nation, by, for example:

1. Preserving the Navajo Nation's claim that all unallotted lands in Executive Order 709/744 reservation remain held in trust for the Navajo Nation as a matter of law;

2. Converting the Navajo Nation fee lands to trust status;

3. Acquiring additional fee lands within the Eastern Navajo Agency and converting those lands to trust status;

4. Securing federal legislation to effect the intent of Congress in the Act of March 3, 1921 by confirming the trust status of lands, including mineral interests, set aside for exclusive Indian use under Public Land Order 2198 (1960);

5. Confirming, through legislation or administrative action, the Navajo Nation's right, title and interest in other lands in the Eastern Navajo Agency, including without limitation lands withdrawn under Executive Order 2513 and other lands now administered by the BLM, BIA, or other federal agencies.

6. Facilitating, consistent with the objectives and policies of the Economic Development Committee of the Navajo Nation Council, the purchase of lands outside the Eastern Navajo Agency for economic development or investment purposes;

7. Continuing land exchanges with the BLM under agreements between the Navajo Nation and the BLM, and recommending any amendments to such agreements or new agreements that may be beneficial to the Navajo Nation and the residents of the Eastern Navajo Agency;

8. Asserting Navajo Nation title and interests in cultural artifacts within the Eastern Navajo Agency;

9. Participating actively and otherwise assisting the Navajo Nation's efforts to acquire surplus federal lands in and adjacent to the Eastern Navajo Agency, including the Fort Wingate lands;

10. Supporting the Navajo Nation's efforts to achieve primacy for environmental and other regulatory authority in the Eastern Navajo Agency under retained Navajo sovereignty and/or federal delegations of authority, and work with the Navajo Nation Environmental Protection

Agency, the United States Environmental Protection Agency, and other appropriate governmental agencies to protect the environment and to identify and avoid or mitigate damage to environmentally sensitive or culturally significant areas in the Eastern Navajo Agency;

11. Augmenting and complementing the efforts of Navajo Nation chapters in the Eastern Navajo Agency to secure local governmental authority over all lands within chapter boundaries and, to the extent desired by the several chapters, and consistent with the Commission's purposes, assist such chapters in establishing consortia of chapters to undertake the responsibilities of local self-government under the Navajo Nation Local Governance Act;

12. Supporting the Navajo Nation's taxing and regulatory authority within the Eastern Navajo Agency, opposing taxing and regulatory incursions there by other sovereigns, and recommending cooperative agreements with other governmental entities to the Intergovernmental Relations Committee of the Navajo Nation Council when deemed beneficial by the Commission;

13. Developing data bases, providing input into land use plans, inventories, and other tools to assist with community and economic development, land use planning, and infrastructure development and supporting the expansion, construction, improvement, or installation of utilities, roads, schools, health care facilities, housing, and police and fire stations for the benefit of the residents of the Eastern Navajo Agency;

14. Acquiring for the Navajo Nation, by purchase or exchange or other means, lands owned by the State of New Mexico in the Eastern Navajo Agency; and

15. Evaluating proposals for development of resources within the Eastern Navajo Agency and advising the President of the Navajo Nation, the Resources Committee of the Navajo Nation Council and other appropriate Navajo Nation agencies and officials of the Commission's position and recommendations regarding such proposals.

#### **History**

CJY-21-08, July 23, 2008. Overrode Presidential veto of CAP-11-08.

CAP-11-08, April 22, 2008.

CD-68-89, December 15, 1989. Previously at 2 N.N.C. § 3323. Generally amended.

CF-2-80, February 5, 1980.

#### **§ 864. Staff**

A. The Commission shall engage an Executive Director and such other staff as may be provided for in the annual Navajo Nation budget.

B. The Executive Director shall serve at the pleasure of the Commission.

C. The Executive Director shall have such duties and responsibilities as may be assigned from time to time by the Commission.

#### **History**

CJY-21-08, July 23, 2008. Overrode Presidential veto of CAP-11-08.

**Note.** Subsection C slightly reworded for grammatical purposes.

CAP-11-08, April 22, 2008.

CD-68-89, December 15, 1989. Previously at 2 N.N.C. § 3324.

CF-2-80, February 5, 1980.

#### **§ 865. Meetings; procedures**

A. The Commission shall meet once per month on a regular schedule to be determined by the Commission, and, if a special or emergency meeting is required or desirable, on the call of the Chairperson of the Commission or the written request of any three members.

B. At any meeting a quorum shall consist of four members.

C. All formal substantive action shall be taken by written resolution certified by the presiding officer or shall be reflected in summary memorandum attested to by the presiding officer.

D. The Commission is empowered to develop and establish such other procedures for meetings as it deems just and proper.

#### **History**

CJY-21-08, July 23, 2008. Overrode Presidential veto of CAP-11-08.

CAP-11-08, April 22, 2008.

CD-68-89, December 15, 1989. Previously at 2 N.N.C. § 3325. Amended generally.

CF-2-80, February 5, 1980.

### **Article 3. Navajo Board of Election Supervisors**

#### **History**

CD-68-89, December 15, 1989.

#### **Cross References**

11 N.N.C., Part 1, § 1 *et seq.*

#### **§ 871. Establishment; purposes**



A. The Navajo Board of Election Supervisors, hereinafter, the Board, and the Election Administration Office, hereinafter, the Office are hereby established. The Board is created by the Navajo Nation Council as an independent entity. The Board shall be responsible to the Navajo Nation Council only and shall be placed under the Intergovernmental Relations Committee who shall have ministerial oversight and whose primary purpose shall be routing documents and record-keeping incidental to the authority delegated to the Board and the Office by the Election Code; and to cause effect to the authority entrusted solely in the Board and Office; and to guard the public interests entrusted to the Board.

B. The purposes of the Board are to:

1. Provide efficient and uniform administration and conduct of elections.

2. Provide the opportunity for each qualified elector to exercise his or her right to vote for a candidate of his or her choice.

3. Provide the opportunity for all qualified person(s) to serve the Navajo public by seeking office.

4. Provide for fair, unbiased and untainted elections.

5. Encourage voter registration at the Navajo Nation, state and federal levels.

6. Guard against abuse of the electoral system in the Navajo Nation.

### **History**

CD-68-89, December 15, 1989.

### **Annotations**

#### **1. Construction and application**

"The Board is an independent entity, responsible only to the Navajo Nation Council, ... " *Navajo Nation v. Redhouse*, 6 Nav. R. 305, 307 (Nav. Sup. Ct. 1990).

#### **§ 872. Membership; terms; Chairperson and Vice-Chairperson**

A. The Board shall be composed of 10 members to be elected. Each of the five agencies shall have two representatives. The Election of the 10 members shall be in conformity with the Election Code.

B. All members shall serve four year terms on a staggered basis in conformity with the Election Code.

C. The Chairperson and Vice-Chairperson shall be selected from among the members.

D. In the event the Chairperson and Vice-Chairperson are absent at a Board meeting, the majority of the members present shall select a Pro Tem Chairperson to conduct the meeting.

### **History**

CD-68-89, December 15, 1989.

**Note.** Slightly reworded for grammatical purposes.

### **§ 873. Powers and duties**

A. General. The Board shall have all powers necessary and proper to carry out the purposes set forth in the Election Code.

B. Enumerated Powers. The Board is hereby authorized and directed:

1. To administer, implement and enforce the Navajo Election Code.
2. To oversee and supervise generally all Navajo Nation elections.
3. To compile information regarding elections, and distribute and educate the Navajo public to include printing and publishing the Election Code and procedures in pamphlet form for distribution to all certified Chapter officials, candidates, poll officials and registrars.
4. To hear all election disputes, including the power to subpoena witnesses.
5. To make Board and Administrative policies.
6. To establish rules and regulations and to interpret the Election Code consistent with Navajo Nation laws.
7. To obtain and maintain uniformity in the application of the Election Code and operation of the Election office.
8. To develop and recommend to the Navajo Nation Council all apportionment plans for election purposes.
9. To hire and maintain direct authority over the Director of the Election Administration Office and confirm the hiring of the Deputy Director by the Director and maintain general supervision over an election staff to carry out authority vested in the Board.
10. To develop and submit separate annual budgets for the Board and the Election Administration to include devising and managing a revolving account utilizing filing, penalty and resignation fees for special election costs in addition to the annual appropriation for this category.
11. To coordinate with county, state, and federal election agencies efforts, including seeking and obtaining from various governmental entities and private organizations funding and support to carry out the

duties and responsibilities set out in the Election Code.

12. To establish subcommittees and delegate to them the authority to declare vacancies, certify elections, and to make rules and regulations not inconsistent with the Election Code.

13. To initiate recounts of ballots, where necessary.

14. To maintain the Election Administration Office and staff independent under its supervision with the Intergovernmental Relations Committee.

15. To maintain such staff and consultants including legal counsel as may be provided for in the annual Navajo Nation budget of the Board.

16. To recommend the withdrawal of land for the establishment of a building facility which is to be separate from other entities and convenient to the public and to request funding from the Navajo Nation to erect such a public building for the operation of the Election Office.

17. To procure necessary supplies, services, equipment and furniture purchases and to enter into contracts through the tribal process.

18. To delegate authority to the Election Office not inconsistent with the Election Code.

19. To bring action as deemed necessary and proper for the enforcement of the Election Code through the Attorney General and report violations/offenses to the Ethics and Rules Committee where necessary.

#### **History**

CJA-05-01, January 24, 2001. Subsections (B)(12) and (13) amended to acknowledge transfer of hearing functions to the Office of Hearings and Appeals.

CD-68-89, December 15, 1989.

**Note.** Slightly reworded for grammatical purposes.

#### **Cross References**

See 11 N.N.C., Part 1, § 321.

#### **Annotations**

##### **1. Construction and application**

"A vote of two-thirds of a quorum of the Navajo Nation Council is necessary to modify or change such powers." *Navajo Nation v. Redhouse*, 6 Nav. R. 305, 307 (Nav. Sup. Ct. 1990).

##### **2. Powers of board**

"Both of these statutes [2 N.T.C. § 873(B)(6) and 11 N.T.C. § 321(A)(6)] limit the Board discretion to interpret the Navajo Election Code of 1990 by requiring that such interpretations be consistent with Navajo Nation law." *Howard v. Navajo Board of Election Supervisors*, 6 Nav. R. 380, 381 (Nav. Sup. Ct. 1991).

"While the Board does have statutory discretion to interpret election laws, such discretion is limited, and the Navajo Nation Supreme Court has appellate jurisdiction to review whether the Board acted within its statutory discretion." *Pioche v. Navajo Board of Election Supervisors*, 6 Nav. R. 360, 364 (Nav. Sup. Ct. 1991).

### **3. Due process**

"An elected official does not have a property right in public office. The office belongs to the voting public. Katenay's due process rights do not stem from his position as a holder of elected office. His due process rights are derived from 2 N.T.C. § 4005, which gives him the right to explain to his constituents the grievances against him and to be voted out of office, or retained, by persons who were present during his explanation." *In re: Removal of Katenay*, 6 Nav. R. 81, 85 (Nav. Sup. Ct. 1989).

"Although 2 N.T.C. § 4005(c) is silent on this matter, fairness and due process are best served by requiring that the Board give an affected official or his authorized representative adequate notice and an opportunity to attend the verification process." *In re: Removal of Katenay*, 6 Nav. R. 81, 84 (Nav. Sup. Ct. 1989).

### **§ 874. Meetings; quorum; compensation**

A. The Board shall meet the 2nd and 4th Thursday of each month unless otherwise scheduled by the majority of a quorum.

B. A simple majority shall constitute a quorum.

C. Where subcommittees are designated, four members shall constitute a subcommittee. Subcommittee action shall require ratification by a quorum of the full Board.

D. All meetings shall be held in Window Rock Navajo Nation, (Arizona). Meetings held elsewhere must be authorized by the Chairperson of the Intergovernmental Relations Committee.

E. All meetings shall be recorded and minutes transcribed. All dispute decisions shall be in writing and filed.

F. Board members attending Board meetings or delegated Election business shall receive sixty dollars (\$60.00) per diem for each day official business is conducted and mileage at twenty-four cents (24 per mile for use of a private vehicle. Full per diem shall be paid for attendance of at least three hours of meeting or until all agenda items are concluded.

### **History**

CJA-05-01, January 24, 2001. Subsection (A) amended to acknowledge transfer of hearing functions to the Office of Hearings and Appeals.

CD-68-89, December 15, 1989.

**Note.** Slightly reworded for grammatical purposes.

**§ 875. Ethics**

The Board shall not, for the purpose of personal gain, use any information or conduct any proceeding for the intent of causing harm or injury to the political standing or reputation of any member of the Navajo Nation Council, or any other employee, official or candidate for office of the Navajo Nation. The Board shall conduct themselves in accordance with the requirements of all applicable laws of the Navajo Nation, especially the Navajo Ethics in Government Law.

**History**

CD-68-89, December 15, 1989.

**Note.** Slightly reworded for grammatical purposes.

**§ 876. Office; purpose**

The Election Administration Office shall implement the Election Code and assist the Board in carrying out authority delegated solely to the Board by the Navajo Nation Council to implement the Election Code and conduct elections.

**History**

CD-68-89, December 15, 1989.

**§ 877. Director; staff; powers and duties**

A. Powers and duties of the Director. The Director shall have all powers delegated by the Board and necessary and proper to carry out the purposes of the Election Code as authorized by the Board. The duties shall include the following:

1. Assist the Board in implementing and enforcing the Election Code.
2. Assist the Board in maintaining accountability to the Navajo Nation Council and the Intergovernmental Relations Committee and other Departments and Offices.
3. The Executive Director shall hire the Deputy Director with confirmation by the Board.
4. Serve as the Executive Director of the Navajo Election Administration and supervise the administrative staff.
5. Formulate administrative policies for Board approval.

6. Acquire and coordinate voting and election information from the States of Arizona, New Mexico and Utah and from the Bureau of Federal Elections and disseminate the information where necessary to meet objectives and goals.

7. Consult periodically with officials, Council Delegates, other elective offices, and various government officials regarding registration and elections in general, including the scheduling of activities called for by the Election Code and other states, counties, and federal government election requirements.

8. Serve as the communicating and organizing agent for the Board in executive level planning and activities.

9. Solicit available funding with approval of the Board for special programs not of a continuing nature, which relate to registration and elections, including "Voter Registration Drive" and "Get Out to Vote" projects and other educational training programs for Chapter offices, poll officials and the Navajo Nation Council.

10. Supervise and administer staff subject to Navajo Nation Personnel Policies and Procedures, compensation and benefits.

11. Coordinate with the Office of Legislative Services the processing of payroll, budget expenditures for travel, supplies, equipment, property and facilities management.

12. To determine and certify the qualifications of candidates for all elective positions, subject to appeal to the Office of Hearings and Appeals.

B. Powers and Duties of Staff. The staff shall have all powers delegated by the Board and Election Administration Office Director and necessary and proper in carrying out the purposes of the Election Code as authorized by the Board. The duties include the following:

1. Provide administrative support to the Board implementing the Election Code.

2. Register as many Navajos as possible for Navajo Nation, county, state and federal elections on an ongoing basis and insuring that they have the opportunity to vote in these elections.

3. Disseminate voter information across the Navajo Nation by publishing and distributing forms and information pamphlets and where necessary providing information in the Navajo language.

4. Obtain and maintain the cooperation of the appropriate county registrars and other officials in the States of Arizona, New Mexico and Utah to obtaining maximum Navajo voter registration for state and federal elections.

5. Assist in providing ongoing in-service training for Chapter

officials and election workers on a regular basis.

6. Utilize available reach to provide a sound and firm foundation in the areas of voter registration and elections for the Navajo People.

7. Providing logistical and technical assistance to the Board.

8. Assist in the drafting of proposed resolutions for the Board's consideration.

9. Execute the directives of the Board.

10. Assist the Board in the development of revisions of the Election Code for Navajo Nation elections.

11. Provide all required technical and support staff and equipment for Navajo Nation elections.

12. Insure elections are conducted pursuant to the Election Code and in a timely manner.

13. Conduct recounts under the supervision of the Board.

14. Assist the Board in functions as follows:

a. Declare vacancies in elective positions.

b. Oversee the destruction of ballots.

c. Approve policy decisions.

d. Recommend major purchases of election equipment.

e. Serve as a review and fact finding entity regarding election grievances.

f. Certify election results and petitions as provided for in the Election Code.

g. Develop rules and regulations not inconsistent with the Election Code.

h. Review state and federal legislation which may affect the Navajo Nation electorate or Election Code.

i. Attend and participate in recounts of voter tallies.

j. Refer election disputes to the Office of Hearings and Appeals.

k. Enforce the Election Code by reporting violations of the Election Code to the Attorney General or Ethics Office.

l. Study, develop and recommend apportionment plans.

m. Develop and submit annual budgets.

#### **History**

CJA-05-01, January 24, 2001. Subsections (A) (12), (B) (7) and (12) and (14) (J) amended to acknowledge transfer of hearing functions to the Office of Hearings and Appeals.

CD-68-89, December 15, 1989.

**Note.** Slightly reworded for grammatical purposes.

#### **§ 878. Political practices**

The staff shall not, for the purpose of personal gain, use any information or conduct any proceedings for the intent of causing harm or injury to the political standing or reputation of any member of the Navajo Nation Council, or any other employee, official or any candidate for an office of the Navajo Nation. The Director and staff shall conduct themselves in accordance with the requirements of all applicable laws of the Navajo Nation, especially the Navajo Ethics in Government Law.

#### **History**

CD-68-89, December 5, 1989.

**Note.** Slightly reworded for grammatical purposes.

### **Article 4. Commission on Emergency Management**

#### **§ 881. Establishment**

There is hereby established the Navajo Nation Commission on Emergency Management.

#### **History**

CJY-51-90, July 20, 1990.

#### **§ 882. Membership**

A. The Commission shall be composed of six persons, one with technical expertise in each of the following subject areas;

1. Civil defense/law enforcement;
2. First Aid/health;
3. Fire fighting;
4. Environmental,



5. Broadcast and Print Media; and an

6. Elected official.

B. All members of the Commission shall be appointed by the Speaker of the Navajo Nation Council and confirmed by the Intergovernmental Relations Committee of the Navajo Nation Council and shall serve a term concurrent to that of the President of the Navajo Nation, or until replaced, whichever is longer.

C. The President shall designate a Chairperson and Vice-Chairperson of the Commission.

### **History**

CJY-51-90, July 20, 1990.

### **§ 883. Purposes**

A. In conjunction with the Navajo Department of Emergency Management, to coordinate emergency and disaster relief services by the Navajo Nation and non-tribal entities.

B. To serve as the tribal emergency response commission analogous to a state emergency response commission pursuant to the Emergency Planning and Community Right to Know Act, 42 USC § 11001. Under the Act, the Commission responsibilities include:

1. To designate emergency planning districts in order to facilitate preparation and implementation of emergency plans;

2. To appoint a local emergency planning committee for each emergency planning district, and supervise and coordinate the activities of such committees;

3. To establish procedures for receiving and responding to requests from the public for information as provided in the Act, including the designation of an official to serve as the coordinator of information.

4. To notify the Administrator of the U.S. Environmental Protection Agency of problem areas on the Navajo Nation which are subject to the Act;

5. To accept and maintain data submitted by the owners or operators of facilities subject to the Act,

6. To review and make recommendations on emergency plans which shall be submitted by local emergency planning committees to ensure coordination of such plans with emergency response plans of other emergency planning districts;

7. To accept notification from an owner or operator of a facility subject to the Act of the release of an extremely hazardous substance;

8. To accept and maintain emergency and hazardous chemical inventory forms submitted by facility owners or operators who must prepare a material safety data sheet pursuant to the Occupational Safety and Health Act of 1970;<sup>1</sup>

9. To provide for availability for public inspection data required under the Act (under penalty of civil liability); and

10. To recommend a civil action to the Navajo Nation Attorney General against a subject facility operator or owner for non-compliance with the Act.

C. To recommend to the Navajo Nation Council legislation or other appropriate activity regarding natural and man-made emergencies.

### **History**

CJY-51-90, July 20, 1990.

### **§ 884. Powers**

A. General. The Commission shall have all powers necessary and proper to carry out the purposes set forth in § 883 of this Plan of Operation.

B. Enumerated Powers:

1. With the concurrence of the President of the Navajo Nation, to declare states of emergency affecting the Navajo Nation or any section thereof.

2. On behalf of the Navajo Nation, to assist in seeking assistance from federal, state, other tribal governments, and local and private agencies.

3. To obtain, coordinate and oversee assistance, whether in the form of goods, services, equipment, motor vehicles, or personnel, from all divisions, departments and enterprises of the Navajo Nation for use in addressing the requirements of the people in any declared emergency.

4. Within the approved budget, to execute contracts and other agreements for goods and services.

5. Within the approved budget, to employ such persons as may be necessary to carry out the responsibilities of the Commission, with the exception of legal counsel.

6. To establish offices within the Navajo Nation for the transaction of business as necessary.

7. To provide for the compensation of Commission members in a manner consistent with that of commissions of the Navajo Nation Council, pursuant to 2 N.N.C. § 183.

8. To establish such subcommittees as it deems appropriate and to

delegate to such subcommittees the authority it deems proper.

9. To ensure accountability by establishing specific policies, procedures and guidelines for the use of funds, goods, services or any type of assistance intended for use in meeting the requirements of the people in any declared emergency.

#### **History**

CJY-51-90, July 20, 1990.

#### **§ 885. Meetings; quorum**

Meetings shall be held on the call on the Chairperson or Vice-Chairperson of the Commission on Emergency Management, the President of the Navajo Nation, or upon the written request of any three members of the Commission on Emergency Management for the purpose of obtaining timely action on emergency matters. At any meeting, a quorum shall consist of three members.

#### **History**

CJY-51-90, July 20, 1990.

#### **Cross References**

Meetings of committees or commissions, see also, 2 N.N.C. § 183.

#### **§ 886. Procedures**

Until such time as the Navajo Nation Council adopts rules and procedures for the conduct of Commission business, the Commission on Emergency Management is empowered to develop its own procedures for the conduct of meetings, provided that any formal substantive action shall be taken by written resolution duly certified by the presiding officer and filed with the Records Department of the Navajo Nation.

#### **§ 887. Amendments to Plan of Operation**

The Plan of Operation may be amended from time to time by approval of the Government Services Committee of the Navajo Nation Council.

#### **History**

CJY-51-90, July 20, 1990.

### **Article 5. Black Mesa Review Board**

#### **§ 901. Establishment**

There is hereby established the Black Mesa Review Board within the Legislative Branch.

#### **History**

GSCJN-12-06, June 27, 2006.

ACN-143-82, November 10, 1982. Rescinded ACMA-22-82 and reestablished the Board with a revised Plan of Operation.

ACMA-22-82 March 10, 1982, Reestablished the Black Mesa Review Board.

CMY-45-80, May 6, 1980, effective October 1, 1980 abolished the Board.

CN-101-72, November 30, 1972, as amended by Advisory Committee Resolution ACMA-32-78, March 15, 1978. Established the Black Mesa Review Board, formerly codified at §§ 3701-3709 then § 3671-3679 of this title.

**Note.** This Board has been placed in the Legislative Branch by Budget Resolution since FY 1989.

### **§ 902. Purpose and authority**

The purpose of the Board shall be to advocate for fair and just compensation for Navajo families within the five Navajo Nation chapters whose socio-economic and environmental interests are adversely affected or impacted by coal mining and related operations of Peabody Western Coal Company, as authorized and provided for by the company's two coal mining leases with the Navajo Nation, Lease No. 14-20-0603-9910 and Lease No. 14-20-0603-8580, as amended. Peabody Western Coal Company is hereinafter referred to as PWCC and said term includes any of PWCC's employees, officers, contractors, subcontractors, agents, designees, successors, heirs, or assigns. The Board may also make appropriate recommendations to the President of the Navajo Nation, the Navajo Nation Council, the Resources Committee of the Navajo Nation Council, or to PWCC, concerning the health, social welfare, education, and environment of the Navajo People affected by any of PWCC's mining and post-mining or related operations.

### **History**

GSCJN-12-06, June 27, 2006.

ACS-178-89, September 26, 1989. Amended generally.

ACN-143-82, Plan, § I, November 10, 1982.

### **§ 903. Membership of Board**

A. Appointments. The Board shall consist of seven members appointed as follows: One member who must be a resident of a PWCC Lease area shall be appointed by the Kayenta Chapter. One member who must be a resident of a PWCC Lease area shall be appointed by the Forest Lake Chapter. One member shall be appointed by the Shonto Chapter. One member shall be appointed by the Chilchinbeto Chapter. One member shall be appointed by the Black Mesa Chapter. One member shall be appointed by the President of the Navajo Nation. One member shall be appointed by the Speaker of the Navajo Nation Council. To ensure continuity of Board membership, the five Chapters and the President of the Navajo Nation shall appoint their respective members to serve four year terms

in staggered appointments, as provided for herein. Notwithstanding the current expiration dates of their terms, the existing terms of the current Board members shall continue uninterrupted, except as modified as follows: Kayenta, Shonto and Black Mesa Chapters shall make their appointments in March 2006; Forest Lake and Chilchinbeto Chapters shall make their appointments in March 2007; the President and the Speaker shall make his or her appointment in March 2008.

B. Confirmation. Within 30 days of their appointment, each Board appointee shall be presented to the Government Services Committee of the Navajo Nation Council for confirmation. If so confirmed, a Board member's term shall not commence until he or she is administered an oath of office by a judge or justice of the Navajo Nation courts.

C. Chairperson; Vice Chairperson. Within 30 days of their confirmation, the five members shall meet and select a Chairperson and a Vice-Chairperson from the Board membership. The Chairperson and Vice-Chairperson shall serve for a term of one year. The Chairperson shall not vote in any official Board meetings, unless to break a tie vote among the other members. It is required that the Chairperson vote to break a tie.

D. Member languages. All members of the Board shall preferably be fluent in both the English and Navajo languages.

E. Quorum. A simple majority of the Board shall constitute a quorum.

F. Meetings. The Board shall meet at least once a month on the first Tuesday of every month, unless otherwise arranged by the Board. Additional meetings may be held as the Board deems necessary and appropriate.

G. Purpose of Meetings. The purpose of Board meetings shall include, but not be limited to, the discussion of PWCC mining and reclamation plans, imminent relocation for affected families and potential compensation for such families, possible resettlement sites, potential religious/cultural and burial site relocation, planning and coordination of appraisals for existing structures, and education of affected families regarding the comparison of cash benefits to replacement housing.

H. Membership terms. The term of appointment of all Board members shall be four years or until such time as PWCC completes or ceases all mining or related operations pursuant to its leases. Any Board member may be appointed for consecutive terms, but shall be limited to two consecutive terms. Terms of all Board members shall be staggered as described in Subsection 903(A) above to ensure continuity of membership.

I. Compensation. The Budget and Finance Committee of the Navajo Nation Council shall identify funding sources with which Board members shall be compensated for travel, training, conferences, work sessions, and meeting expenses. The Board shall annually submit a formal budget request for funding from the Navajo Nation General Fund in an amount sufficient to conduct the Board's duties and activities as provided for by this Plan of Operation.

J. Replacement of non-serving members. Should any member cease to serve for any reason, the Board shall declare such member's position vacant and

notify the affected Chapter, President or Speaker, as appropriate, of the need for a new appointment to fill such vacancy. Such newly appointed member shall not officially begin his or her term on the Board until confirmed and administered the oath as provided for in Section 903(B) herein.

K. Removal of members. Any Board member who misses two consecutive meetings without just cause may be removed by a majority vote of the Board. Any of the five Chapters represented on the Board, or the President, may recommend to the Board that their respective appointed member be removed, and the Board may remove such member by a majority vote. Such removal shall become effective on the date of such Board action and the Board shall immediately declare a vacancy and notify the affected Chapter, President or Speaker, as appropriate, of the need for a new appointment to fill such vacancy. A newly appointed member shall not officially begin his or her term on the Board until confirmed and administered the oath as provided for in Section 903(B) herein.

### **History**

IGRM-115-08, May 19, 2008. Amended quorum requirement at Subsection E.

GSCJN-12-06, June 27, 2006.

ACS-178-89, September 26, 1989. Amended generally.

ACN-143-82, Plan, § 11, November 10, 1982.

### **§ 904. Board employees and offices**

#### **A. Board Employees.**

1. Community Liaison. The Navajo Nation shall employ one person to serve as Community Liaison for the Board. His or her duties shall include, but not be limited to, coordinating and scheduling Board meetings, keeping all minutes of Board meetings and supervising the execution and transmission of all correspondence, agreements, communications and other documents for the Board. The Community Liaison shall be employed pursuant to the Navajo Nation Personnel Policies. The Community Liaison shall not serve as a Board member while employed as Community Liaison. The Community Liaison shall be subject to annual performance evaluations as prescribed for Navajo Nation employees. The Board Chairperson shall have supervisory authority over the Community Liaison.

2. Investigator. To assist the Board in its determination of economic loss suffered by Navajo families, the Board shall utilize one or more available investigators from the Office of Navajo Land Administration and/or the Navajo Nation Minerals Department who shall submit to the Board reports concerning the economic loss suffered by individual Navajos as a result of the mining activities.

a. The investigator shall be qualified and experienced in evaluating economic loss; and if necessary the investigator may be assisted by an interpreter.

b. Compensation.

(1) The investigator(s) shall be compensated by the Department in which he or she is employed.

(2) In addition, the investigator shall perform his or her duties for the Board as part of a regular business day, and shall receive reimbursement for actual expenses at the rate generally paid Navajo Nation employees.

3. Other assistance. The Board may request clerical assistance from the Navajo Nation to prepare reports, correspondence and handle other communications between the Board, PWCC, claimants, the investigators, etc.

B. Offices. The Board shall utilize the Division of Natural Resources and/or Department of Justice of the Navajo Nation to assist it in processing claims, preparing correspondence, and handling all communications on behalf of the Board.

### **History**

GSCJN-12-06, June 27, 2006. Amended and renumbered previous § 905.

ACS-178-89, September 26, 1989. Amended generally.

ACN-143-82, Plan, § IV, November 10, 1982.

**Note.** Previous § 904, Jurisdiction, deleted by GSCJN-12-06, June 27, 2006.

### **§ 905. Duties of the Board**

A. Within 60 days of the adoption of this amendment to the Board's Plan of Operation, the Board shall adopt procedures for the filing of a complaint by any Navajo Nation member claiming to be adversely affected by PWCC's lease activities.

B. Upon the receipt by the Board of a complaint filed in accordance with procedures adopted by the Board, the Board shall cause the investigator provided for in Subsection 904(A)(2) herein to investigate all elements of the complaint and report back to the Board within 30 days of the filing of the complaint. The investigator shall mail copies of the report to all members of the Board, as well as to the claimant or representative thereof and PWCC. The report of the investigator shall state the extent and amount of economic loss or harm suffered by the claimant as well as a specific description of property or properties involved and the date(s) of such loss or harm.

C. Within 30 days after the receipt by the Board of the investigator's report, either the claimant or PWCC may file a demand with the Board for a hearing on the claim. If no such request is filed with the Board within 30 days after copies of the investigator's report have been mailed to the claimant and PWCC, the Board shall enter judgment for the claimant in the amount recommended in the investigator's report.

D. If either PWCC or the claimant timely files an objection or request for hearing with the Board, the Chairperson of the Board shall schedule a hearing within 30 days of the date the first such objection or request is filed (to be held at a location as near as practicable to the land in question) and shall immediately notify both PWCC and the claimant of the date of the scheduled hearing. At such hearing, both the claimant and PWCC may present any relevant evidence or such witnesses, regarding the economic loss allegedly suffered, subject to 2 N.N.C. § 907.

E. At the conclusion of the initial hearing, the Board shall make a determination as to the amount of compensation to be paid, if any, and shall issue a Preliminary Determination and submit the same to both PWCC and the claimant. The Preliminary Determination may be made immediately at the conclusion of the initial hearing, or by written notice to the claimant and PWCC within 30 days after the initial hearing. If no appeal pursuant to 2 N.N.C. § 906 is taken by either PWCC or the claimant, PWCC shall pay, in accordance with a duly executed and approved agreement by and between PWCC and the Navajo Nation, the amount of the award set forth in the Preliminary Determination, as follows:

1. Within 15 days of the hearing if the award is made at the hearing;
2. Within 15 days of the date the Board's Preliminary Determination is submitted to PWCC and the claimant; or
3. If the investigator's report is not contested, within 45 days of its mailing to PWCC.

F. Generally: Minimizing Adverse Economic Impact on Mining Affected Families.

1. The Board and/or investigator may, in addition to testimony received with respect to economic loss, take testimony from interested parties as to proposed methods for reducing the adverse economic impact of the mining activities on the Navajo People in the Black Mesa area.

2. The investigator may also make specific recommendations as to procedures and operations to be followed in the individual case investigated, as well as in the general mining operations, so as to minimize the adverse economic impact of the mining activities on Navajo families within the PWCC mining area.

3. The determination of the Board may also include recommendations to PWCC with respect to the individual claimant, or with respect to the general mining operations so as to minimize the adverse economic impact upon the individual claimant or upon Navajos living in the PWCC mining area.

#### **History**

GSCJN-12-06, June 27, 2006. Amended and renumbered previous § 906.

ACS-178-89, September 26, 1989. Amended generally.



ACN-143-82, Plan, § V, November 10, 1982.

**§ 906. Appeal**

A. Within 30 days of the Board's issuance of its Preliminary Determination, either the claimant or PWCC may file a petition for review with the Navajo Nation District Court in the districts of Kayenta or Chinle, Navajo Nation (Arizona). The petition for review shall state why the finding of the Board is clearly erroneous.

B. The proceedings in the Navajo Nation District Court shall proceed as all other civil actions in the Navajo Nation Courts, except that the standard for review shall be that the Board's determination shall be upheld unless it is determined by the Navajo Nation District Court to be clearly erroneous.

**History**

GSCJN-12-06, June 27, 2006. Amended and renumbered previous § 907.

ACS-178-89, September 26, 1989. Amended generally.

ACN-143-82, Plan, § VI, November 10, 1982.

**§ 907. Standards of adjudication**

A. These standards of adjudication shall apply to the determination made by the investigator, the Board and the Navajo Nation District Court.

B. Adverse economic effect shall include but not be limited to the following:

1. Loss or harm to property and improvements to real property;
2. Loss or harm to traditional or customary grazing areas or areas grazed under permit;
3. Increased cost, hardship or inconvenience in the use and enjoyment of real property, grazing permits, or customary use areas;
4. Relocation, moving and other expenses caused or resulting from the mining operations;
5. Detriment to the quality of life as compared with that previously enjoyed by the individual Navajos or Navajo families;
6. In determining costs of relocation, value of structures and intangibles, traditional Navajo values including but not limited to costs of required religious ceremonies shall be considered to be relocation expenses.

C. The Board shall utilize an appraiser to determine the adverse economic effects suffered by any person filing a claim, and any awards shall be based on an amount reflecting fair and just compensation, or fair market value,

whichever is greater. The Board shall enter into agreements with appropriate Navajo Nation programs and departments to utilize the Navajo Nation's resources in obtaining appraisals and determining compensation amounts, as required by this Subsection.

D. Where mining operations allow the Navajo family or families displaced to return to their traditional area, the amount of damages sustained by relocated individuals or families shall take into account the likelihood and possibility of the Navajo individual or family being able to resume the life and lifestyle existing prior to the taking by PWCC.

E. Interest at the prevailing rate from the date the taking is determined to have occurred shall be added to any judgment made pursuant to this Plan of Operation. Where such damage includes the relocation of the claimant, the interest on the amount of such damages attributed to relocation expenses shall commence on the date the family actually relocated.

#### **History**

GSCJN-12-06, June 27, 2006. Amended and renumbered previous § 908.

ACS-178-89, September 26, 1989. Amended generally.

ACN-143-82, Plan, § VII, November 10, 1982.

#### **§ 908. Administration**

A. All costs of administration of the Black Mesa Review Board as well as compensation and expenses of members, investigators, employees, and office expenses shall be paid by the Navajo Nation through available tribal funding; provided that PWCC may assume or reimburse any of these costs if it agrees to do so.

B. The Chairperson of the Board shall file with Financial Services of the Navajo Nation, on a monthly basis, the time spent by the members of the Board at hearings and other activities and a statement of other expenses actually incurred.

C. If applicable, the Navajo Nation shall submit to PWCC, on a quarterly basis, a statement of all Board expenses which shall be paid by PWCC within 30 days or pursuant to such other agreement reached between the Navajo Nation and PWCC.

D. All notices required to be sent pursuant to this Plan of Operation shall, in addition to being sent to the Board members, the claimant or his/her representative and PWCC, also be sent to the secretaries of the Kayenta Chapter, Forest Lake Chapter, Black Mesa Chapter, Shonto Chapter, Chilchinbeto Chapter, the Office of the Speaker, the Attorney General, and the Office of the President of the Navajo Nation.

#### **History**

GSCJN-12-06, June 27, 2006. Amended and renumbered previous § 909.

ACS-178-89, September 26, 1989.

**§ 909. Amendment**

This Plan of Operation may be amended from time to time, upon the recommendation of the Black Mesa Review Board, and subject to approval by the Intergovernmental Relations Committee of the Navajo Nation Council.

**History**

GSCJN-12-06, June 27, 2006. Amended and renumbered previous § 910.

ACS-178-89, September 26, 1989.

[§ 910. Renumbered § 909 by GSCJN-12-06, June 27, 2006]

**Article 6. Navajo Nation Human Rights Commission**

**§ 920. Establishment**

There is hereby established the Navajo Human Rights Commission (herein referred to as the Commission) in the Legislative Branch as an entity of the Navajo Nation government.

**History**

CO-40-06, October 19, 2006. The Navajo Nation Human Rights Commission Act.

**§ 921. Purpose**

The Commission is organized to operate as a clearinghouse entity to administratively address discriminatory actions against citizens of the Navajo Nation, and to interface with the local, state, and federal governments and with national and international human rights organizations in accordance with its plan of operation and applicable laws and regulations of the Navajo Nation.

**History**

CO-40-06, October 19, 2006. The Navajo Nation Human Rights Commission Act.

**Note.** Slightly reworded by insertion of the words "and" before "federal", and "the" before the last reference to "Navajo Nation".

**§ 922. Organization; powers; and office**

A. The Commission shall consist of five commissioners. Qualifications for the commissioners shall include persons with reputable and established backgrounds in the fields of education, business, law enforcement and social services. The commissioners shall be appointed by the Speaker of the Navajo Nation Council and confirmed by the Intergovernmental Relations Committee.

B. Commissioners shall receive no additional compensation for their activities in connection with the Commission, other than reimbursement for required and authorized expenses incurred in the performance of their duties.

C. The Commission shall receive reports of discriminatory and racial acts perpetrated against citizens of the Navajo Nation. The Commission will compile this data and track occurrences of these events and refer documented incidents to the proper authorities, subject to applicable laws.

D. The Commission shall have the authority to approve the rules, policies and procedures for the Commission and its office, to conduct public hearings, and to issue subpoenas, in accordance with the laws of the Navajo Nation. Commissioners shall hire and supervise an Executive Director for the Commission in accordance with the Navajo Nation Personnel Policies Manual.

E. The Executive Director shall administer the daily operations of the Commission through the Office of the Navajo Nation Human Rights Commission. The Executive Director shall be responsible and accountable to the Commission and shall be authorized to employ necessary personnel in accordance with the Navajo Nation Personnel Policies Manual and the Navajo Nation operating budget.

F. The Commission shall coordinate with other Navajo Nation offices, departments, and other governmental entities as necessary to carry out the Commission's purposes and authorities, subject to applicable laws. This Act shall not be construed to diminish the operation of the Navajo Nation Business Opportunity Act, the Navajo Nation Business and Procurement Act, the Navajo Preference in Employment Act, the Navajo Nation Bill of Rights, or any other laws of the Navajo Nation.

#### **History**

CO-40-06, October 19, 2006. The Navajo Nation Human Rights Commission Act.

**Note.** Slightly reworded by insertion of the word "the" before "Navajo Nation Personnel Policies Manual" at Subsection (D).

#### **§ 923. Legislative oversight**

The Commission shall operate under the legislative oversight of the Intergovernmental Relations Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 824(B)(1). The Commission shall operate pursuant to a plan of operation recommended by the Office of the Speaker and adopted by the Navajo Nation Council.

#### **History**

CO-40-06, October 19, 2006. The Navajo Nation Human Rights Commission Act.

#### **§ 924. Amendments**

The enabling legislation for the Commission may be amended by the Navajo Nation Council upon recommendation of the Intergovernmental Relations Committee

of the Navajo Nation Council.

#### **History**

CO-40-06, October 19, 2006. The Navajo Nation Human Rights Commission Act.

#### **[Article 7. Navajo Nation Insurance Commission]**

*A former Article 7 was renumbered from Article 6 and another prior Article 7 was renumbered as Article 8 [now Article 9], pursuant to CO-40-06, October 19, 2006, the Navajo Nation Human Rights Commission Act.*

#### **Article 7. Navajo Nation Green Economy Commission**

##### **§ 925. Establishment**

There is hereby established the Navajo Nation Green Economy Commission ("Commission") in the Legislative Branch of the Navajo Nation government.

#### **History**

CJY-19-09, July 21, 2009. The Navajo Nation Green Economy Commission Act of 2009.

##### **§ 926. Purpose**

The Commission is established to fund "green" businesses, community projects and initiatives on the Navajo Nation. "Green" businesses are defined generally as businesses and industries that contribute to the economy with a minimum or no generation of greenhouse gases and/or with capabilities to counteract the negative effects of greenhouse gases, in accord with Nahasdzáán dóó Yádi[hi] Bits'33d66' Beehaz'áanii, Diné Natural Law, 1 N.N.C. § 205. Heat trapping greenhouse gases prevent heat from escaping the atmosphere, thereby negatively impacting the climate.

#### **History**

CJY-19-09, July 21, 2009. The Navajo Nation Green Economy Commission Act of 2009.

##### **§ 927. Authorities and powers**

The Commission shall have the authorities and powers:

A. To approve the rules, policies and procedures for the Commission and its office in accordance with the laws of the Navajo Nation.

B. To establish guidelines based on "green" criteria for allocating Navajo Nation Green Economy Funds (Guidelines) to be used in evaluation and ranking the green proposals submitted for funding. The Commission may amend the Guidelines, as needed.

C. To hire a Director for the Navajo Nation Green Economy Commission.

D. To seek appropriate federal, state and other funding for the Navajo Nation Green Economy Fund ("Fund").

E. To oversee the allocation of the Fund based on the Guidelines by reviewing Requests for Proposals for the Fund and selecting winning proposals to be funded by the Fund.

F. To oversee the investments of the Fund.

G. To promote and educate the Navajo public, private and government sectors about green economy opportunities.

H. To promote a long-term and sustainable Navajo Nation green economy.

I. To network with local, state, national and international groups to advocate and build Navajo Nation green economy strategies.

J. To provide oversight and accountability for the Navajo Nation Green Economy Commission Office Director.

### **History**

CJY-19-09, July 21, 2009. The Navajo Nation Green Economy Commission Act of 2009.

### **§ 928. Organization and personnel**

A. Organization.

1. The Commission shall consist of five commissioners.

2. Commissioners shall include persons with extensive knowledge of green economics, with reputable and established backgrounds in such fields as business, economics, environmental science, health, construction, agriculture, traditional Navajo culture, Navajo community development, and tribal, state and federal government operations. The Commission shall include a diverse representation of the Navajo Nation and shall include the following: a Navajo Non-Governmental Organization representative, a youth representative (18 to 30 year old), and at least two female commissioners.

3. The Commissioners shall be appointed by the Speaker of the Navajo Nation Council and confirmed by the Intergovernmental Relations Committee. Commissioners will serve staggered terms. Of the first Commission, three will serve for two years, three will serve for three years and one will serve a four year term. Thereafter, all commissioners will serve four year terms or until the Speaker appoints a replacement for an expired term.

4. All commissioners shall be enrolled members of the Navajo Nation.

5. Commissioners shall not be paid for their service other than to be reimbursed for required and authorized expenses incurred in performance of their duties.

**B. Personnel.**

1. The Commission shall hire and supervise a Director for the Commission Office in accordance with the Navajo Nation Personnel Policies Manual.

2. The Director shall administer the daily operations of the Commission through the Navajo Nation Green Economy Commission Office. The Director shall be responsible and accountable to the Commission and shall be authorized to employ necessary personnel in accordance with the Commission's plan of operation, the Navajo Nation Personnel Policies Manual and the Navajo Nation operating budget.

**History**

CJY-19-09, July 21, 2009. The Navajo Nation Green Economy Commission Act of 2009.

**§ 929. Legislative oversight**

The Commission shall operate under the legislative oversight of the Intergovernmental Relations Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 824(B)(1). The Commission's plan of operation shall be recommended by the Commission and approved by the Intergovernmental Relations Committee. Subsequent amendments to the plan of operation shall be approved by the Intergovernmental Relations Committee.

**History**

CJY-19-09, July 21, 2009. The Navajo Nation Green Economy Commission Act of 2009.

**§ 930. Amendments**

A. This enabling legislation for the Navajo Nation Green Economy Commission shall be amended upon the recommendation of the Commission and approved by the Navajo Nation Council.

B. A plan of operation for the Navajo Nation Green Economy Commission shall be approved and amended by the Intergovernmental Relations Committee.

**History**

CJY-19-09, July 21, 2009. The Navajo Nation Green Economy Commission Act of 2009.

**[Article 8. Employees Advisory Board]**

*A former Article 8 was renumbered from Article 7, pursuant to CO-40-06, October 19, 2006, the Navajo Nation Human Rights Commission Act. See, now, Article 9.*

## **Article 8. Navajo Nation Insurance Commission**

### **§ 931. Establishment**

The Navajo Nation Insurance Commission is hereby established and continued as the Navajo Nation Insurance Commission within the Legislative Branch.

#### **History**

CD-68-89, December 15, 1989. The Commission was specifically placed within the Legislative Branch.

ACAP-49-82, April 16, 1982.

### **§ 932. Purposes**

The purpose of the Commission shall be to insure accurate insurance coverage and protection for the Navajo Nation, its entities, employees, and property.

#### **History**

CD-68-89, December 15, 1989.

### **§ 933. Powers**

A. Subject to approval of the Government Services Committee and the Budget and Finance Committee of the Navajo Nation Council, the Navajo Nation Insurance Commission shall have the sole authority to review, determine, select and coordinate all insurance coverage and programs pertaining to the Navajo Nation, including all offices, divisions, departments, entities, programs, interests, property and employees, with any private or public carriers, plans or organizations and together with all self-insured programs or combined coinsured programs. Said programs may, without limitation, include the following coverages, together with any other insurance programs selected, reviewed or administered under the jurisdiction of the Navajo Nation Insurance Commission:

1. General, automobile, and excess liability insurance.
2. Building, personal property, equipment systems, machinery and vehicle physical damage insurance.
3. Health, life and accident, disability and income protection insurance.
4. Key man life insurance.



5. Blanket employee crime coverage.

6. Performance, fidelity, surety and other bonding.

7. Workmen's compensation and all other self-insured or co-insured programs.

B. To review and determine all policy or program premium and/or rate making obligations and to provide orderly procedures for payment of premiums for bonding and insurance obligations, and to establish appropriate reserves for self and coinsured programs, with appropriate apportionment of such obligations among the insured entities and parties for which coverage is provided.

C. To direct, supervise and review the administration and implementation of all insurance programs by the Insurance Services Department, together with all determinations of any review boards or committees established to administer any Navajo Nation Insurance program and to review, evaluate, determine or make recommendations pertaining to all claims made under such programs.

D. To report annually or as deemed necessary to the Budget and Finance Committee of the Navajo Nation Council at its budget session on the insurance coverages, and on the status of all pertinent fiscal, premium, revolving, special, operational and reserve accounts.

E. To recommend to the Navajo Nation Council the adoption of legislation appropriate to strengthen and protect the operations of the Navajo Nation, its entities, employees and property.

F. To establish and administer appropriate means for review, evaluation and recommendation for the disposition and settlement of all claims of liability pertaining to the Navajo Nation, its entities or employees acting within the scope of their employment, to the extent such disposition involves the expenditure of funds (whether within self-insured, coinsured, deductible or reimbursable insurance or other liability coverage); and to award damages from funds appropriated by the Navajo Nation Council for indemnification of such liability as determined by the Navajo Nation Insurance Commission.

G. To authorize or conduct appropriate investigation for determination of liability and evaluation of claims involving payment or reimbursement of funds in accordance with the above described purposes.

#### **History**

CD-68-89, December 15, 1989. Section 932 redesignated as § 933, and amended generally.

ACAP-49-82, April 16, 1982.

#### **§ 934. Membership; Chairperson and Vice-Chairperson; quorum; advisors; Review Boards and Committees**

A. Membership. The Commission shall consist of the following members.

1. Director of Office of Personnel Management;
2. The Senior Administrative Service Officer in the Office of the Speaker of the Navajo Nation Council;
3. A representative of the Navajo Nation enterprises selected by consensus among the enterprises participating in the Navajo Nation insurance program; and
4. A permanent employee of the Navajo Nation government selected at large by the employees for a term of four years. The election of the employee representative shall be conducted by the Office of Personnel Management.

B. The Chairperson and Vice-Chairperson shall be selected by the Commission.

C. At any meeting, a quorum shall consist of three members.

D. Advisors. Representatives of the Attorney General, Controller, Auditor General, Office of Contracts and Grants, all divisions and departments and duly chartered enterprises of the Navajo Nation are official advisors to the Commission and shall provide appropriate support, advice and counsel on substantial matters. The Risk Management Department shall provide staff assistance to the Committee.

E. Review Boards and Committees. Review boards and committees may be constituted, appointed and delegated review and administrative duties herein under the auspices of the Insurance Commission for such approved insurance programs including but not limited to the following:

1. Liability Claims Review Board.
2. Property and Casualty Insurance Review Board.
3. Key Man Insurance Review Board.
4. Employee Benefits Review Board.
5. Community, commercial and claims Arbitration boards.

#### **History**

CD-68-89, December 15, 1989. § 933 redesignated as § 934, and amended generally.

ACAP-49-82, April 16, 1982.

**Note.** "Contract Office" changed to "Office of Contracts and Grants."

#### **§ 935. Procedures**

A. On or before January 25 of each year, the Insurance Commission of the

Navajo Nation shall meet to determine:

1. The insurance coverages to be in effect during the forthcoming fiscal year.
2. The premiums to be incurred for such coverages.
3. The sums which shall be necessary to meet deductible or coinsurance features with respect to such coverage.
4. The appropriate apportionment of such premiums and deductible and coinsurance rates, among the Navajo Nation and its enterprises.

B. Following this meeting and on or before February 15 of each year, the Insurance Commission shall meet with the appropriate representatives of each enterprise participating in the Insurance Programs of the Navajo Nation, the Director, Division of Finance (or his/her representative) and the Director, Risk Management Department (or his/her representative) and the Controller of the Navajo Nation to:

1. Discuss insurance programs for the forthcoming fiscal year.
2. Discuss the apportionment, or premiums, deductible and co-insurance rates and present invoices for the respective entities.
3. Discuss risk management for the enterprises and the Navajo Nation.

C. Premiums deductible and coinsurance shall be paid within 30 days of receipt of approved invoice.

D. All such funds received from the Navajo Nation and its enterprises shall be placed in and administered on a revolving account basis. Appropriate procedures shall be used to identify the payer and the type of coverage for each payment.

E. The Insurance Commission shall cause payment for appropriate revolving accounts, premiums, bills and payments to divisions of the Navajo Nation and enterprises which suffer losses which are not fully paid by the carriers because of deductible and coinsurance requirements, as deemed appropriate.

F. On or before April 1 of each fiscal year, the Insurance Commission shall convene to review the status of these revolving accounts. A representative of the Director, Division of Finance and the Risk Management Department shall also be in attendance. This meeting shall determine:

1. If the payments due from the Navajo Nation and its enterprises have been made.
2. If account balances are adequate to meet premium and other obligations for the balance of the fiscal year.
3. Any risk management question which may be appropriate.

4. In the event that any balance is inadequate, the amount(s) necessary to carry the program through the balance of the fiscal year and its appropriate share of the additional funds needed for the program.

G. In the event that there is a surplus of funds in the premium contribution account at the end of any fiscal year (as determined by the Insurance Commission), the contributions of the Navajo Nation and the enterprises shall be reduced in the following fiscal year by the amount of such surplus.

#### **History**

CD-68-89, December 15, 1989. § 934 redesignated as § 935, and generally amended.

ACAP-49-82, April 16, 1982.

#### **§ 936. Compensation**

The members of the Insurance Commission shall receive no additional compensation for their activities in connection with the Insurance Commission, other than reimbursement for required and authorized expenses incurred in the performance of their duties and shall assume their responsibilities in addition to their other responsibilities as employees of the Navajo Nation or its entity.

#### **History**

CD-68-89, December 15, 1989. § 935 redesigned as § 936.

ACAP-49-82, April 16, 1982.

### **Article 9. Employees Advisory Board**

#### **§ 941. Establishment**

As directed by Navajo Nation Council Resolution CMY-37-90 authorizing the planning and design of a Plan of Operation for an Employees Advisory Committee, there is hereby established the Navajo Nation Employees Advisory Board ("Board") located within the Legislative Branch of the Navajo Nation government. Principal legislative oversight shall be provided by the Human Services Committee of the Navajo Nation Council.

#### **History**

CO-59-90, October 18, 1990.

CMY-37-90, May 8, 1990.

CO-59-90, October 18, 1990. Adopted the Plan of Operation for the Employees Advisory Board.

## **§ 942. Purpose**

The principal purpose of the Board is to serve as an official vehicle and forum through and by which Navajo Nation employees may express and address concerns and problems regarding their employment, consider solutions, and propose recommendations to the Navajo Nation government. Further, when an employee expresses or addresses a concern before the Board there shall be no retaliation against the employee by supervisors or others. The Board shall be given notice and the opportunity to review and make comments and recommendations on any proposed law, policy, or regulation affecting Navajo Nation employees. The Board shall not, however, act in any manner to bypass, circumvent, or attempt to defeat the Personnel Policies and Procedures or other relevant laws and policies.

### **History**

CD-59-90, October 18, 1990.

CMY-37-90, May 8, 1990.

## **§ 943. Organization and membership**

A. Administrative support to the Board shall be provided by the Division of Human Resources and the Personnel Management Department and, as appropriate, the Personnel Office of the Legislative Branch.

B. Membership.

1. Official and voting members of the Board shall be as follows:

- a. One representative from each tribal division; and
- b. One representative from the collective programs and offices comprising Executive Offices; and
- c. One representative from the Legislative Branch.

2. As regular salaried employees, all members shall serve without additional compensation.

C. Selection.

1. Representatives shall be permanent status employees who shall be elected by majority vote of their fellow permanent employees in an election to be held every two years during the fourth week in October. Election rules and regulations shall be formulated and promulgated by the Board and elections shall be conducted by the Personnel Management Department.

2. The Board shall elect a Chairperson and Vice-Chairperson to lead the Board in the conduct of official activities.

D. Term of Office.

Representatives shall normally serve a two-year term. Should a representative leave employment, transfer to another division, or resign from the Board, a vacancy shall be declared and a special election shall be conducted within 30 days to elect a new representative.

#### **History**

CO-59-90, October 18, 1990.

CMY-37-90, May 8, 1990.

**Note.** Reference to an organizational chart at Subsection (A) was deleted as such charts are generally not codified.

**Note.** Reformatted for purposes of statutory form.

#### **§ 944. Powers and authority**

Specific duties, functions and responsibilities shall be as follows:

A. Those powers necessary to properly carry out the purposes set forth herein;

B. Conduct periodic meetings to hear and respond to stated personnel concerns, problems, and recommendations of Navajo Nation employees;

C. Request and receive appropriate reports and information from Navajo Nation offices in order to review, study, and consider resolution to problems, concerns, and propose recommendations;

D. Formulate recommendations and proposed solutions to stated employee concerns and problems to appropriate offices of the Navajo Nation government; and,

E. Recommend upon subjects including, but not limited to, personnel policies, procedures, and programs, working conditions, health and safety, employee training, and employee benefits and services.

#### **History**

CO-59-90, October 18, 1990.

CMY-37-90, May 8, 1990.

#### **§ 945. Meetings and reports**

A. Meetings. Meetings shall normally be held on the fourth Friday of each month. Special meetings may be held upon written request of the majority of the Board membership. All meetings shall be publicized at least 24 hours in advance. At any meeting, a quorum is required and shall consist of a simple majority of the seated members. All meetings shall be open to the public and Navajo Nation employees except where confidential material is to be presented. Leave with pay shall be authorized to the Board members when attending Board meetings. Further, as far as possible, any travel expenses of members shall be

borne by budget accounts of the members' respective program, department, or division.

B. Reports. The Board shall provide a quarterly report to the Office of the President, Office of the Speaker, and the Human Services Committee of the Navajo Nation Council.

#### **History**

CO-59-90, October 18, 1990.

CMY-37-90, May 8, 1990.

#### **§ 946. Amendments**

Sections 941 through 945 may be amended from time to time as deemed appropriate by the Government Services Committee of the Navajo Nation Council, upon recommendation of the Human Services Committee.

#### **History**

CO-59-90, October 18, 1990.

CMY-37-90, May 8, 1990.

### **Subchapter 12. Legislative Offices**

#### **Cross References**

**Note.** See 12 N.N.C. §§ 1-7 for establishment of the Office of Auditor General under the Navajo Nation Council.

### **Article 1. Office of Legislative Services**

#### **§ 951. Establishment**

The Office of Legislative Services is established within the Legislative Branch.

#### **History**

CD-68-89, December 15, 1989; redesignated 2 N.N.C. § 1051 as "§ 951".

ACJN-77-84, June 15, 1984.

#### **§ 952. Purpose**

The Office of Legislative Services shall provide complete and full range of professional, technical and administrative support services to the Navajo Nation Council, Standing Committees of the Navajo Nation Council, unstaffed Commissions, Task Forces or Boards of the Navajo Nation Council, Council Delegates and the certified Chapters of the Navajo Nation.

### **History**

CD-68-89, December 15, 1989; redesignated 2 N.N.C. "\$ 1052" as "\$ 952".

ACJN-77-84, June 15, 1984.

### **§ 953. Director**

A. The Office of Legislative Services shall be headed by a Director, who shall be recommended for appointment by the Speaker in consultation with the Intergovernmental Relations Committee and subsequently confirmed by the Navajo Nation Council. The Director will be administratively responsible to the Speaker and serve at the pleasure of the Intergovernmental Relations Committee of the Navajo Nation Council. The Director will be responsible for program planning and administration, staff, guidance, direction and general supervision, budget preparation, implementation, management and control, and property and facilities coordination and management within the Office of Legislative Services.

B. The Director shall faithfully and diligently execute all duties and authorities delegated by law.

### **History**

CD-68-89, December 15, 1989; redesignated 2 N.N.C. "\$ 1053" as "\$ 953".

ACJN-77-84, June 15, 1984.

### **§ 954. Organization and functions**

The Director shall establish an organizational structure which will provide for the following primary organizational functions within the Legislative Branch:

A. General Services, which shall include processing of payroll and budget expenditures for travel, supplies, equipment, etc., personnel administration and management, property and facilities coordination and management;

B. Reporting and Clerical Services, which shall include recording meetings, transcription and maintenance of Council and standing committee meetings and resolutions, minutes, resolution processing, agenda preparation and provision of secretarial services to Council Delegates.

C. Legislative Research, which shall include researching for preparation of Council and Committee legislation, drafting of legislation, monitoring and analysis of pending legislation, and providing technical assistance (including English to Navajo and Navajo to English interpretation) in resolution processing and discussion, and coordination with various council delegates, Navajo Nation programs, departments, divisions on proposed, pending and approved legislation. In addition, this organizational unit shall perform various intergovernmental relations functions, which shall include monitoring of federal, state and other legislative actions, providing of periodic reports on these matters to the appropriate standing committees, Navajo Nation offices and officials, and the full Navajo Nation Council.



D. Support services to the Office of Legislative Counsel.

**History**

CD-68-89, December 15, 1989; redesignated 2 N.N.C. "\$ 1054" as "\$ 954", and all former provisions were deleted.

ACJN-77-84, June 15, 1984.

**Article 2. Office of Legislative Counsel**

**§ 960. Establishment**

The Office of Legislative Counsel is established within the Legislative Branch of the Navajo Nation government.

**History**

CD-68-89, December 15, 1989.

CF-3-89, February 17, 1989.

**§ 961. Purpose**

The purpose of the Office of Legislative Counsel is to provide legal advice and legislative services to the Navajo Nation Council, standing committees, commissions and boards of the Navajo Nation Council, independent of the Department of Justice.

**History**

CD-68-89, December 15, 1989.

**§ 962. Legislative and administrative oversight**

A. The Office of Legislative Counsel shall be directly accountable to the Navajo Nation Council for all legal and legislative assignments and activities of the Office.

B. The Intergovernmental Relations Committee of the Navajo Nation Council shall exercise legislative oversight over the Office on behalf of the Navajo Nation Council.

C. Day to day administrative and operational matters, such as time and attendance, travel authorizations, expenditure requests, and provision of office space and equipment shall be coordinated through the Speaker of the Navajo Nation Council.

**History**

CD-68-89, December 15, 1989.

## **§ 963. Personnel**

A. There is hereby established the position of Chief Legislative Counsel, who shall be a state-licensed attorney, appointed by the Navajo Nation Council upon recommendation of the Intergovernmental Relations Committee of the Navajo Nation Council. The Chief Legislative Counsel shall serve at the pleasure of the Navajo Nation Council at a negotiated salary. The appointment shall be effective upon the approval of the Navajo Nation Council. The Chief Legislative Counsel shall not be allowed to engage in the private practice of law.

B. A state-licensed attorney or firm, selected in accordance with Navajo preference laws, may be hired as the Chief Legislative Counsel under a contract. Such contract shall not exceed one year and shall be approved by the Navajo Nation Council upon recommendation of the Intergovernmental Relations and the Budget and Finance Committees of the Navajo Nation Council. Such attorney contract shall require the training of a qualified Navajo replacement within the term of the contract.

C. A non-Navajo licensed attorney may be hired only if a licensed Navajo attorney cannot be found to fill the position of Chief Legislative Counsel.

D. All other personnel shall be hired and compensated pursuant to usual Navajo Nation policies and procedures. The Chief Legislative Counsel shall be responsible for the selection and supervision of personnel.

### **History**

CD-68-89, December 15, 1989.

## **§ 964. Authorities, duties and responsibilities**

A. General authorities, duties and responsibilities of the Office of Legislative Counsel shall include:

1. Report and be responsible to the Navajo Nation Council and to the Intergovernmental Relations Committee of the Navajo Nation Council.

2. Coordinate with the Department of Justice and other attorneys providing legal services to the Navajo Nation the work of the Legislative Counsel to avoid duplication of work and conflicting legal advice and opinion.

3. Develop an annual work plan and budget for the office for consideration by the Navajo Nation Council during the regular annual budget process.

4. To advise the Navajo Nation Council on legislative matters pending before the Navajo Nation Council.

5. To advise standing committees, commissions, and boards of the Navajo Nation Council on legislative matters pending before the respective committees, commissions or boards.

6. To assist members of the Navajo Nation Council in preparing proposed resolutions for consideration by Chapters, committees, commissions, boards or the Navajo Nation Council.

7. Perform all duties and responsibilities in accordance with the highest standards of legal ethics.

**B. Codification of Navajo Nation Laws, Rules and Regulations:**

1. The Legislative Counsel shall periodically review all legislation of the Navajo Nation Council and standing Committees of the Navajo Nation Council to determine codification within the Navajo Nation Code.

2. The Legislative Counsel shall periodically prepare and publish new, revised and updated hard-bound versions of the Navajo Nation Code.

3. The Legislative Counsel shall periodically review and evaluate the Navajo Nation Code and recommend appropriate actions to repeal, supersede, clarify and generally update provisions of the Navajo Nation Code for consideration by the appropriate standing committees of the Navajo Nation Council.

**History**

CD-68-89, December 15, 1989.

**Article 3. Office of Navajo Government Development**

**§ 970. Establishment**

The Office of Navajo Government Development is established within the Legislative Branch. The Office is created by the Navajo Nation Council to work under the direction of the Speaker to accomplish the Council's project of instituting reforms necessary to ensure an accountable and responsible government. The Office shall be responsible directly to the Speaker with respect to its overall activities. The Intergovernmental Relations Committee of the Navajo Nation Council shall have legislative oversight authority.

**History**

CD-47-07, December 19, 2007. Overrode Presidential veto of CO-37-07, October 16, 2007. The Navajo Government Development Act.

CO-37-07, October 16, 2007. The Navajo Government Development Act performed an omnibus amendment of the Office of Navajo Government Development.

CD-68-89, December 15, 1989.

**§ 971. Purposes**

The purposes of the Office of Navajo Government Development shall be as follows:

A. To review and evaluate all aspects of the existing government structure of the Navajo Nation including laws, rules and regulations, practices, functions, goals and objectives of the Navajo Nation government, which includes the central government, chapters, townships and local communities.

B. To develop recommendations and proposals for government reform and alternative forms of Navajo Nation government.

#### **History**

CD-47-07, December 19, 2007. Overrode Presidential veto of CO-37-07, October 16, 2007. The Navajo Government Development Act.

CO-37-07, October 16, 2007. Amended the purposes of the Office of Navajo Government Development.

CJY-65-94, July 22, 1994.

CD-68-89, December 15, 1989.

#### **§ 972. [Reserved]**

#### **History**

CD-47-07, December 19, 2007. Overrode Presidential veto of CO-37-07, October 16, 2007. The Navajo Government Development Act.

CO-37-07, October 16, 2007. Eliminated the Commission on Navajo Government Development.

CJY-65-94, July 22, 1994.

CD-68-89, December 15, 1989.

#### **§ 973. Personnel**

A. The Office shall be administered by an Executive Director who shall be appointed by the Speaker of the Navajo Nation Council and confirmed by the Navajo Nation Council. The Executive Director shall serve at the pleasure of the Intergovernmental Relations Committee.

B. The Executive Director shall have the following duties and responsibilities:

1. To develop a series of recommendations and proposals for alternative forms of Chapter government.

2. To provide short and long range comprehensive planning, evaluation and development appropriate to further enhance a Navajo Government that will perpetually accommodate the Navajo People.

3. To review, evaluate, and recommend laws, rules and regulations

including those of agencies, boards and commissions in order to develop a comprehensive system of Navajo government for the Navajo People.

4. To collect, assemble, evaluate, interpret and distribute information, data statistics and evidence which accurately describes the present Navajo government.

5. To conduct hearings on government reform, and to receive recommendations from the public, private and public organizations, Chapters, traditional Navajo leaders, and Native ceremonial practitioners (medicinemen). The Office shall give due consideration to traditional values and philosophical views of the Navajo People.

6. To encourage appropriate educational curricula designed to educate students and the general public on the governmental development of the Navajo Nation.

7. To develop reports to be transmitted to the Speaker of the Navajo Nation Council, Intergovernmental Relations Committee and to the Navajo Nation Council on the activities of the Office, including quarterly reports on the implementation of its recommendations.

8. To develop the Office budget and formulate administrative and operating policies of the Office.

9. To hire and supervise support staff and consultants in accordance with Navajo Nation law, regulations, and procedures.

10. To exercise supervisory control and direction over the day-to-day operation of the Office.

11. To represent the Office in executive level planning.

12. To delegate authority to members of the staff.

13. To perform other duties as directed by the Speaker of the Navajo Nation Council.

#### **History**

CD-47-07, December 19, 2007. Overrode Presidential veto of CO-37-07, October 16, 2007. The Navajo Government Development Act.

CO-37-07, October 16, 2007. Amended the authorities of the Executive Director.

CJY-65-94, July 22, 1994.

CD-68-89, December 15, 1989.

**§ 974. [Reserved]**

#### **History**

CD-47-07, December 19, 2007. Overrode Presidential veto of CO-37-07, October

16, 2007. The Navajo Government Development Act.

CO-37-07, October 16, 2007. Eliminated meetings of the Commission on Navajo Government Development.

CJY-65-94, July 22, 1994.

CD-68-89, December 15, 1989.

**§ 975. [Reserved]**

**History**

CD-47-07, December 19, 2007. Overrode Presidential veto of CO-37-07, October 16, 2007. The Navajo Government Development Act.

CO-37-07, October 16, 2007. Eliminated subcommittees of the Commission on Navajo Government Development.

CJY-65-94, July 22, 1994.

CD-68-89, December 15, 1989.

**§ 976. Amendments**

Sections 970 through 976 herein may be amended from time to time by the Navajo Nation Council upon recommendation of the Intergovernmental Relations Committee of the Navajo Nation Council.

**History**

CD-47-07, December 19, 2007. Overrode Presidential veto of CO-37-07, October 16, 2007. The Navajo Government Development Act.

CO-37-07, October 16, 2007. Changed the manner by which the enabling legislation for the Office of Navajo Government Development is to be amended.

CJY-65-94, July 22, 1994.

CD-68-89, December 15, 1989.

**§ 977. Office; staff, duties and accountability**

A. The staff is accountable and reports to the Director. The staff is hired and subject to the Navajo Nation Personnel Policies and Procedures.

B. The duties of staff are as follows:

1. To provide a full range of administrative and support services to the Commission.

2. To act as resource persons for the Commission.

3. To collect information and maintain central files of all

information, data, statistics and research materials.

4. To assist in preparing for Commission meetings by collecting and confirming information, notifying interested parties and preparation of materials necessary to conduct meetings.

5. To assist in the coordination of scheduling of Commission and subcommittee meetings and activities.

6. Perform other duties as directed by the Director.

7. The Office of Navajo Government Development shall be authorized to procure necessary supplies, services, equipment, furniture, and make contracts as authorized from time to time through the Navajo Nation budget process.

#### **History**

CJY-65-94, July 22, 1994.

CD-68-89, December 15, 1989.

#### **§ 978. Amendments**

Sections 970-977 herein may be amended by the Navajo Nation Council upon recommendation of the Intergovernmental Relations Committee and the Commission on Navajo Government Development.

#### **History**

CJY-65-94, July 22, 1994.

CD-68-89, December 15, 1989.

**Note.** "Sections 970-977 herein" substituted for the words "The Sections hereof" for clarity and grammar.

#### **Article 4. [Reserved]**

#### **Article 5. [Repealed]**

### **Chapter 5. Executive Branch**

#### **Subchapter 1. Generally**

#### **Article 1. Office of the President and Vice-President**

#### **§ 1001. Executive Branch establishment**

There is established the Executive Branch of the Navajo Nation government. The branch shall consist of such divisions, departments, offices, or programs as may be established by law.

### **History**

CD-68-89, December 15, 1989.

#### **§ 1002. Office of President and Vice-President; term**

- A. There is established the Office of President and Vice-President.
- B. There shall be one President of the Navajo Nation.
- C. The President shall be elected for a term of four years.
- D. The President shall serve no more than two terms.

### **History**

CD-68-89, December 15, 1989.

CS-31-54, September 3, 1954.

Rules governing Tribal Council, July 1938, Ch. 111, § 1, 1954 Res. p. 196.

#### **§ 1003. Vice-President**

- A. There shall be one Vice-President of the Navajo Nation.
- B. He/she shall be elected for a term of four years.
- C. The Vice-President shall serve no more than two terms.

### **History**

CD-68-89, December 15, 1989.

CJA-1-63, January 10, 1963.

Rules governing Tribal Council, July 1938, Ch. 111, §§ 4-5, 1954 Res. p. 196.

#### **§ 1004. Qualifications**

A. No person shall serve as President or as Vice-President of the Navajo Nation unless he/she is an enrolled member of the Navajo Nation, 30 years old or older.

B. No person shall serve as President or Vice-President of the Navajo Nation unless he/she has continually, during the last three years before the time of election been physically present within the Navajo Nation. The "Navajo Nation" is defined at 7 N.N.C. § 254.

### **History**

CD-68-89, December 15, 1989. Rules governing Tribal Council, July 1938, Ch. 111, §§ 7-8, 1954 Res. pp. 196-198.



## **Cross References**

Navajo Nation Election Code, see 11 N.N.C. § 1, *et seq.*

### **§ 1005. Powers and duties**

A. The President of the Navajo Nation shall serve as the Chief Executive Officer of the Executive Branch of the Navajo Nation government with full authority to conduct, supervise, and coordinate personnel and programs of the Navajo Nation. He/she shall have fiduciary responsibility for the proper and efficient operation of all Executive Branch offices.

B. The President shall represent the Navajo Nation in relations with governmental and private agencies and create favorable public opinion and good will toward the Navajo Nation.

C. The President shall have the following enumerated powers:

1. Faithfully execute and enforce the laws of the Navajo Nation.
2. Negotiate and execute contracts subject to applicable laws.
3. Appoint supervisory executive personnel subject to applicable laws.
4. Appoint members of boards, commissions, and other entities subject applicable laws.
5. Report quarterly to the Navajo Nation Council on the state of the Navajo Nation.
6. Recommend to the Budget and Finance Committee an annual operating budget or amendments thereof for the Executive Branch and advise the Navajo Nation Council on the annual budget recommended by the Budget and Finance Committee.
7. Recommend to the Navajo Nation Council supplemental appropriations for the Executive Branch.
8. Recommend legislation, rules or regulations to the Navajo Nation Council or its Committees.
9. Exercise such powers as may be lawfully delegated to the Office of the President of the Navajo Nation.
10. Sign legislation passed by the Navajo Nation Council into Navajo law within ten calendar days after the certification of the legislation by the Speaker or Speaker Pro Tem.
11. Veto legislation passed by the Navajo Nation Council subject to an override of the veto by two-thirds (2/3) vote of the membership of the Navajo Nation Council. The veto shall be exercised by the President by a letter to the Speaker specifying the reasons for the veto. The President's veto shall not be subject to an override by the Navajo Nation

Council after the end of the next regular session of the Navajo Nation Council following the session in which the legislation was first passed by the Council.

12. The President's authority to sign into law or veto legislation shall be deemed to be waived if not exercised within ten calendar days after certification of the legislation by the Speaker or Speaker Pro Tem and the legislation shall be deemed enacted and become effective pursuant to 2 N.N.C. § 221.

13. Speak and act for the Navajo Nation on any and all matters relating to the Navajo-Hopi land dispute subject to applicable laws.

14. Issue executive orders for the purpose of interpreting, implementing or giving administrative effect to statutes of the Navajo Nation in the manner set forth in such statutes. Executive orders shall have the force of law upon the recipient.

D. The Vice-President of the Navajo Nation, during the absence of the President, shall exercise the powers and execute the duties of the President of the Navajo Nation.

#### **History**

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Added Subsections B(10), (12) and (14). Amended Subsection B(11) and Renumbered within Subsection B.

GSCF-10-91, January 9, 1991. Added Subsection (C)(11).

CD-68-89, December 15, 1989.

CAU-50-59, August 6, 1959.

CJ-13-53, January 6, 1953.

Rules governing Tribal Council, July 1938, Ch. 111, §§ 3-6, 1954 Res. p. 196.

#### **§ 1006. Vacancy**

If a vacancy should occur in the Office of the President of the Navajo Nation or the President is unable to perform his/her powers and duties, the Vice-President of the Navajo Nation shall serve as President of the Navajo Nation and serve the remainder of the term or until the President's inability to perform his/her powers and duties is removed. If a vacancy should occur in the Office of the President and Vice-President of the Navajo Nation, the Speaker of the Navajo Nation Council shall serve as President of the Navajo Nation until a special election is held. Such special election shall be called by the Navajo Board of Election Supervisors pursuant to the provisions of the Navajo Election Code. Service by the Speaker as the President shall not create a vacancy in the Office of the Speaker.

#### **History**

CD-68-89, December 15, 1989.

CJ-13-53, January 6, 1953.

Rules governing Tribal Council, July 1938, Ch. 111, § 10, Res. p. 198.

#### **§ 1007. Residences**

Residences shall be furnished at Window Rock, Arizona, together with the cost of water, sewer, refuse disposal, electricity and natural gas, without charge, to the President and Vice-President of the Navajo Nation. If the President or Vice-President decline to reside in such residence, the Navajo Nation shall not be responsible or liable for costs and expenses of living elsewhere.

#### **History**

CD-68-89, December 15, 1989.

CJ-13-53, January 6, 1953.

CO-69-53, October 9, 1953.

#### **§ 1008. Salary**

The salary of the President and Vice-President of the Navajo Nation shall be fifty-five thousand dollars (\$55,000) and forty-five thousand dollars (\$45,000) per annum, respectively. Salary adjustments may be approved by the Navajo Nation Council but shall not become effective until and unless approved by a referendum.

#### **History**

CJY-63-00, Override of Presidential Veto, CJY-52-00, Amending §§ 106(A) and 1008 to Adjust the Salaries of the Navajo Nation President, Vice-President, and Navajo Nation Council Delegates by ten thousand dollars (\$10,000). Determined invalid. See, *Judy v. White*, No. SC-CV-35-02, Slip. Op. August 2, 2004 (N. Sup. Ct. 2004).

CD-68-89, December 15, 1989.

1984-1982 Budgets.

CMY-26-79, May 4, 1979.

1972 Budget.

CJY-30-63, July 6, 1963.

CM-25-56, May 17, 1956.

CJ-3-53, January 6, 1953.

CJ-11-52, January 23, 1952.

## **Annotations**

### **1. Construction and application**

"Lastly, we consider the District Court's mandate that White 'take such actions as may be necessary to recoup illegal payments of salary, deferred compensation or tax contributions by the Navajo Nation, and to seek assistance of pertinent Navajo Nation officials for such purposes.' *Judy v. White*, No. CH-CV-53-01, slip op. At 12 (Chin.Dist.Ct. August 21, 2002). We reverse and vacate the district court's judgment." *Judy v. White*, No. SC-CV-35-02, slip op. at 24 (Nav. Sup. Ct. August 2, 2004).

"2 N.N.C. § 1008, as codified, is the only valid legislation which can form the basis for the President's and Vice President's salary increases." *Judy v. White*, No. SC-CV-35-02, slip op. at 22 (Nav. Sup. Ct. August 2, 2004).

### **2. Validity**

"Resolution CJY-52-00 is invalid, and any payment of salaries in excess of those mandated by 2 N.N.C. §§ 106(A) and 1008 is illegal. We therefore affirm the trial court's decision invalidating CJY-52-00." *Judy v. White*, No. SC-CV-35-02, slip op. at 22 (Nav. Sup. Ct. August 2, 2004).

### **§ 1009. Staff**

The President and Vice-President shall appoint such assistants, administrators, legal counsel and clerical staff as may be budgeted for.

### **History**

CD-68-89, December 15, 1989.

1976-1972 Budgets.

CJA-8-71, January 31, 1971.

### **§ 1010. Gifts of property**

The President of the Navajo Nation shall, for and on behalf of the Navajo Nation, accept or decline gifts of property, provided, that any such acceptance or refusal of a gift of an estimated value in excess of one thousand dollars (\$1,000) shall be with the concurrence of the Government Services Committee. All gifts to the Navajo Nation shall be and remain the property of the Navajo Nation.

### **History**

CD-68-89, December 15, 1989.

CMY-44-70, May 19, 1970.

## **Cross References**

Navajo Nation Ethics in Government Law, see 2 N.N.C., § 3741 *et seq.*

**§ 1011. Valuation and accounting; distribution**

The President of the Navajo Nation, upon acceptance of any gifts of property, shall cause a valuation and accounting of the property to be made. He/she shall further cause the property to be preserved and distributed in such a manner that the Navajo People will receive benefit thereby, or that income from sales will accrue to the Navajo Nation. Distribution of gifts in excess of one thousand dollars (\$1,000) value shall be with concurrence of the Government Services Committee.

**History**

CD-68-89, December 15, 1989.

CMY-44-70, May 19, 1970.

**§ 1012. Recording of gifts**

All public officials, elected and non-elected, of the Navajo Nation receiving gifts, whether intended as a gift to the official or to the Navajo Nation, shall record or cause to be recorded such gift with the Ethics and Rules Office.

**History**

CD-68-89, December 15, 1989.

**Note.** Slightly reworded for purposes of statutory form.

**§ 1013. [Repealed]**

**History**

CJY-54-01, July 19, 2001. Section repealed to acknowledge changes made by passage of the Navajo Nation Procurement Code.

**Article 2. Navajo-Hopi Land Commission Office**

**History**

GSCF-10-9 1, February 26, 1991.

CD-68-89, December 15, 1989.

ACAP-49-83, April 4, 1983.

**Note.** The "Navajo-Hopi Land Commission", previously at 2 N.N.C. §§ 33013308 is redesignated at 2 N.N.C. §§ 851-858 in the Legislative Branch.

**§ 1021. Navajo-Hopi Land Commission Office**

A. The Navajo-Hopi Land Commission Office ("Commission Office") is established under the Office of the President of the Navajo Nation. The President of the Navajo Nation shall appoint an Executive Director who shall head the Land Commission Office and who shall serve at the pleasure of the President of the Navajo Nation.

B. The Navajo-Hopi Land Commission Office shall perform its assigned functions as outlined in its approved Plan of Operation.

#### **History**

GSCF-10-91, February 26, 1991.

#### **Cross References**

Navajo-Hopi Land Commission, see 2 N.N.C. §§ 851-858.

### **Subchapter 3. Office of Hearings and Appeals**

#### **History**

Subchapter 3. formerly "Office of Legislative Affairs" adopted by ACJN-77-84, June 15, 1984, was discontinued when Office of Legislative Services was established by CD-68-89, December 15, 1989. See now 2 N.N.C. § 951 *et seq.* See also, the 1972 Budget, "Office of Legislative Secretary".

#### **§ 1051. Establishment**

There is established the Office of Hearings and Appeals within the Executive Branch of the Navajo Nation government. The Office shall be separate and independent from all other divisions, departments, programs, commissions, enterprises, boards, or other Navajo Nation government entities.

#### **History**

GSCAP-19-95, April 5, 1995.

GSCAP-20-93, April 27, 1993.

#### **§ 1052. Purpose**

The purpose of the Office of Hearings and Appeals is to serve as an informed, fair and impartial forum for hearing contested cases arising under applicable rules and regulations. The Office may also serve as a forum for contested cases not otherwise included in Navajo Nation law, if requested to do so by the exempted governmental entity. At the discretion of the Director of the Office, the Office may serve as a forum for rule-making hearings, upon request from a governmental entity.

#### **History**

GSCAP-19-95, April 5, 1995.

GSCAP-20-93, April 27, 1993.

**§ 1053. Organization and staff**

A. The Director, who will also act as the chief hearing officer, shall be appointed by the President for a term of six years. Upon completion of a six-year term, the Director may be considered for reappointment to another six-year term. The Director shall not be a political appointment; nor shall he/she serve at the pleasure of any person or entity. The Director shall have all of the rights of a permanent Executive Branch employee under the Personnel Policies and Procedures. The Director shall be responsible for implementation of policy and the administration of the Office, and shall exercise the powers and authority granted to the Office. The Director may employ or engage persons qualified by education and experience necessary to discharge the duties of the Office and may delegate authority and duties among such persons.

B. Staff.

1. The Director is authorized to hire, pursuant to the applicable laws and regulations of the Navajo Nation, hearing officers and technical and support staff authorized by the Office from time to time. The Director may also recommend additional staff positions as needed to carry out the purposes and powers described herein. Such additional staff shall be hired within applicable budget limitations.

2. All staff personnel shall be employed and compensated in accordance with applicable Personnel Policies and Procedures.

3. Hearing officers who hear contested cases shall be attorneys licensed to practice law in the Courts of the Navajo Nation and in the courts of one or more of the three states in which the Navajo Nation is situated. If a hearing officer is hired without such qualifications, a one year probationary period will be provided in order to obtain the necessary license. If the license is not attained within one year, the hearing officer shall be released from employment with the Office.

4. Support staff for the Office shall include one or more legal secretaries.

C. Organization. Personnel added after the initial establishment of the Office may be hired without change in this Plan of Operation or in the organization so long as there is appropriate funding available and the added positions fit within this plan and the organization.

**History**

GSCAP-19-95, April 5, 1995.

GSCAP-20-93, April 27, 1993.

**Note.** The organizational chart was deleted and minor changes in language in Subsection (C) were made to reflect this action and for statutory form.

## Annotations

### 1. Appointment of Hearing Officer

"Section 1053(A) of Title 2 provides that the Director of the OHA, pursuant to 'the powers and authority granted to the Office. . .may employ or engage persons *qualified by education and experience necessary to discharge the duties of the Office and may delegate authority and duties among such persons.*' (emphasis added). [ ... ] While hearing officers *hired* as staff under section 1053(B) (3) must be 'licensed to practice law in the Courts of the Navajo Nation and in the courts of one or more of the three states in which the Navajo Nation is situated,' Judge Perry will not be hired as staff, and therefore 2 N.N.C. § 1053(B) does not apply. [...] For the foregoing reasons and pursuant to 2 N.N.C. § 1053(A), we [the Supreme Court] appointed the Honorable Judge Carol K. Perry to preside as Hearing Officer at the Office of Hearings and Appeals in this case." *In the Matter of the Navajo Nation Election Administration's Determination of Insufficiency Regarding Two Initiative Petitions Filed by Navajo Nation President Dr. Joe Shirley, Jr.-Shirley v. Office of Hearings and Appeals*, No. SC-CV-24-09, slip op. at 8-9 (Nav. Sup. Ct. June 22, 2009).

#### § 1054. Power and authority

In addition to all powers and authority reasonable to carry out the purposes set forth in this plan, the Office of Hearings and Appeals shall have the following specific powers and authority to:

A. In contested cases, hear and decide or make recommendations to the decision-making authority pursuant to Navajo laws and regulations.

B. In hearings for other than contested cases, hear and decide or make recommendations as may be required or requested.

C. Exercise all powers and authority necessary or reasonable to carry out the purposes of applicable Navajo laws and regulations.

D. With relation to contested cases or other hearings, a hearing officer may

1. Administer oaths, examine witnesses, and receive evidence; however, no person may be compelled to divulge information which he/she could not be compelled to divulge in the courts of the Navajo Nation;

2. Issue subpoenas, procedural orders, and other orders necessary to the hearing procedures referred to herein;

3. Receive relevant evidence and rule upon offers of proof and other evidentiary matters;

4. Take or cause depositions to be taken;

5. Regulate the course of the hearing;

6. Hold conferences for the settlement or simplification of the issues;



7. Dispose of procedural matters by decision;

8. Take official notice of matters that could be given judicial notice in the Courts of the Navajo Nation; and

9. Take any other action authorized by the laws or regulations of the Navajo Nation.

E. Promulgate regulations to govern hearings in contested cases and, if the Office exercises its discretion to preside over rule-making hearings, promulgate regulations to govern such hearings.

### **History**

GSCAP-19-95, April 5, 1995.

GSCAP-20-93, April 23, 1993.

### **Annotations**

#### **1. Grazing disputes**

"The Court holds the OHA has jurisdiction to hear and decide a grazing dispute which predates Navajo Nation Council Resolution CO-59-03 where an official decision is inadequate to conduct an appellate review." *Charley and Looking Glass v. Benally, et al.*, No. SC-CV-19-07, slip op. at 8 (Nav. Sup. Ct. December 10, 2008).

#### **2. Homesite leases**

"In 2003, the Navajo Nation Council, by Resolution CO-59-03 (October 21, 2003), authorized the OHA to hear and decide disputes concerning grazing rights and land boundaries. See also *Charlie v. Benally*, No. SC-CV-19-07, slip op. at 6 (Nav. Sup. Ct. December 10, 2008) (OHA delegated authority to resolve all grazing, land and fencing disputes not pending appeal before the Resources Committee). The [Homesite Lease] Policy & Procedure outlines the homesite application process and permits a land or grazing permittee to intervene." *Begay v. King*, No. SC-CV-51-06, slip op. at 3 (Nav. Sup. Ct. April 13, 2009).

### **§ 1055. Judicial enforcement of orders and subpoenas**

A. If an individual fails to obey a subpoena issued by a hearing officer, or obeys a subpoena but refuses to testify when requested concerning any matter under examination or investigation at the hearing, the aggrieved party may petition the appropriate Navajo Nation Court for enforcement of the subpoena.

B. In addition to other remedies provided by law or regulation, the Office or its hearing officers may seek enforcement of its rules, regulations, rulings, or orders by filing a petition for civil enforcement in the appropriate Court of the Navajo Nation. The Office or hearing officer may request declaratory relief, temporary or permanent injunctive relief, or any other civil remedy, or combination of remedies, provided by the laws of the Navajo Nation.

### **History**

GSCAP-19-95, April 5, 1995.

GSCAP-20-93, April 23, 1993.

### **§ 1056. [Repealed]**

### **History**

GSCAP-19-95, April 5, 1995. Repealed Sunset Provision.

GSCAP-20-93, April 23, 1993.

### **§ 1057. Right of Appeal**

Unless otherwise provided by law, the right of appeal of final decisions of the Office of Hearings and Appeals is exclusively to the Navajo Nation Supreme Court and must be filed within 30 days from the date of decision.

### **History**

GSCD-98-01, December 11, 2001, Added § 1057.

GSCAP-19-95, April 5, 1995.

### **Annotations**

#### **1. Certified questions**

"Therefore, our appellate authority over OHA [referring to 11 N.N.C. § 404(B)(14)(b)(7)] gives this Court the jurisdiction to hear its certified questions, and *Election Supervisors* is overruled." *In the Matter of Two Initiative Petitions Filed by Navajo Nation President Joe Shirley, Jr.*, No. SC-CV-41-08, slip op. at 3 (Nav. Sup. Ct. July 18, 2008)–(Order of Correction entered July 22, 2008). [See, *In re Navajo Board of Election Supervisors*, 6 Nav. R. 302, 303-304 (Nav. Sup. Ct. 1990).]

#### **2. Findings of fact and conclusions of law**

"Findings of fact and conclusions of law by the trial courts are required by this Court and matters will be remanded when this requirement is not complied with. See *Help v. Silvers*, 4 Nav. R. 46, 47 (Nav. Ct. App. 1983) and *Navajo Transport Services v. Schroeder*, No. SC-CV-44-06, slip op. at 5 (Nav. Sup. Ct. April 30, 2007). Meaningful judicial review also cannot occur if the lower quasi-judicial tribunal does not provide reasons why it decided a certain way and not another." *Charley and Looking Glass v. Benally, et al.*, No. SC-CV-19-07, slip op. at 7-8 (Nav. Sup. Ct. December 10, 2008).

#### **3. Grazing disputes**

"The Court holds the OHA has jurisdiction to hear and decide a grazing dispute which predates Navajo Nation Council Resolution CO-59-03 where an official

decision is inadequate to conduct an appellate review." *Charley and Looking Glass v. Benally, et al.*, No. SC-CV-19-07, slip op. at 8 (Nav. Sup. Ct. December 10, 2008).

#### **4. Homesite leases**

"If it has been determined that the objecting party has no grounds to object, such homesite application will be processed and finalized. Homesite Lease Policy & Procedures, XIII B.7. This provision clearly supports the notion that a groundless objection will not halt the finalization of a homesite lease application. Thus, the OHA erred in its legal conclusion that the Kings' consent was a condition precedent. The OHA does not explain how or what law provides that consent is a condition precedent. The OHA's legal conclusion therefore was not supported by substantial evidence and is not in accordance with the law." *Begay v. King*, No. SC-CV-51-06, slip op. at 4 (Nav. Sup. Ct. April 13, 2009).

#### **§ 1058. Legislative oversight**

The Office of Hearings and Appeals shall be under the legislative oversight of the Government Services Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 343 (B) (4).

##### **History**

GSCAP-19-95, April 5, 1995.

GSCAP-20-93, April 23, 1993.

#### **§ 1059. Amendments**

This Plan of Operation may be amended from time to time by the Government Services Committee of the Navajo Nation Council.

##### **History**

GSCD-98-01. Added Section 1057 to provide a right of appeal to the Navajo Nation Supreme Court. Subsequent sections renumbered.

GSCAP-19-95, April 5, 1995.

GSCAP-20-93, April 23, 1993.

#### **Subchapter 4. [Reserved]**

#### **Subchapter 5. [Reserved]**

##### **History**

Subchapter 5 formerly the Office of Auditor General derived from the 1978 Budget, can now be found at 12 N.N.C. §§ 1-7; prior designation of this Subchapter at §§ 1101-1104, "Legal Office", was redesignated "Tribal Legal Department" by the 1978 Budget Resolution and moved to 2 N.N.C. § 1991-1994.

See now Office of Attorney General at 2 N.N.C. § 199 1, et seq.; Office of Legislative Counsel at 2 N.N.C. § 960 et seq.; and 12 N.N.C. §§ 1-7 for Office of Auditor General.

## **Subchapter 6. Navajo Women's Commission**

### **History**

Former §§ 1121-1124, 1126-1127, deleted by CJA-07-92, January 22, 1972, leaving only Navajo Women's Commission at § 1125, now redesignated at § 1121. GSCS-54-91, September 10, 1991, renamed the Office of Navajo Women, the Office of Navajo Women and Families and placed the program in the Division of Human Resources; see also 2 N.N.C. § 1701 et seq. and CJA-07-92, January 22, 1992.

### **§ 1121. Navajo Women's Commission**

A. The Navajo Women's Commission is established under the Executive Branch of the Navajo Nation government.

B. The purposes of the Women's Commission include:

1. Supporting improvement in the status of Navajo men, women, youth, children and their families;
2. Promoting methods for enabling women to develop their skills, to continue their education, to be retained to assume leadership roles;
3. Assisting in setting government policies related to Navajo men, women, youth, children and their families;
4. Assuring the Commission complies with Navajo Nation, federal and state laws;
5. Reporting to the Navajo Nation President from time to time on the status of Navajo women and families;
6. Undertaking studies and reviews on the status of Navajo men, women, youth, children and their families;
7. Securing recognition for the accomplishments and contributions of women to Navajo society; and
8. Securing and/or seeking tribal, state and federal funding to provide awareness and prevention, intervention against domestic violence, youth violence and abuse against elderly.

C. Membership, selection, terms of office, removal:

1. The Commission shall consist of five enrolled Navajo individuals representing various socio-economic, educational, and professional backgrounds, who shall be appointed by the Navajo Nation President, and confirmed by the Government Services Committee of the Navajo Nation Council. Appointed commissioners shall represent but not be limited to

the following fields: education, business, human services, law, and health. Commissioners shall have demonstrated leadership skills and ability to contribute to the fulfillment of the purpose and duties of the Commission.

2. Each of the five agencies of the Navajo Nation shall have one representative on the Commission:

- a. Eastern Agency (1);
- b. Fort Defiance Agency (1);
- c. Northern Navajo Agency (1);
- d. Western Navajo Agency (1);
- e. Central Navajo Agency (1).

3. Term of Office. The term of office shall be for a staggered term of four years. All appointments shall remain effective until the qualification, selection and confirmation of their successors is made or, until they resign, or are removed or disqualified, and shall remain in effect for the duration of that Commissioner's term. The initial appointments of the Navajo Women's Commission shall be made by the President and confirmed by the Government Services Committee of the Navajo Nation Council for a period of four years. The Commissioners shall retain at least three members, to ensure that experienced members of the Navajo Women's Commission are serving at all times.

4. The Chairperson, Vice-Chairperson, and Secretary of the Commission shall be selected by the Commission; and

5. A Commissioner shall be removed by the Navajo Nation President for missing three consecutive meetings without good cause, or at the request of that Commissioner.

D. Powers. The powers of the Commission are as follows:

1. The Commission is authorized and directed to disseminate information to the Navajo public concerning men, youth, children and women's issues, maintain local participation of men, youth, children and women within their communities, and advocate the continuation and support of programs and laws assisting Navajo men, women, youth and children;

2. To develop recommendations and proposals relating to Navajo women and families;

3. To provide short and long range planning, evaluation, and development to further enhance the status of Navajo women and families;

4. To review, evaluate, and recommend laws, rules and regulations of the Navajo Nation government in order to improve direct services delivery systems for Navajo women and families;

5. To collect, assemble, evaluate, interpret, and distribute information, data, statistics, and evidence which describe the needs, circumstances, and status of Navajo men, women, youth and children;

6. To conduct public hearings;

7. To encourage private and public organizations, chapters, traditional Navajo leaders, including native ceremonial practitioners to actively carry out the purposes of the Commission. The Commission shall give due consideration to the traditional values, preservation of family harmony and philosophical views of the Navajo People;

8. Work through the Navajo Women's Commission, and with the Office of Navajo Women and Families Program Director and staff to plan overall goals and objectives and implement actions;

9. Work with Navajo Nation Council Delegates and the Navajo Nation President's Office to promote plans and legislation on behalf of Navajo men, women, youth and children;

10. To establish networking and coordination with other Navajo Nation Departments/Divisions, state, federal agencies for the benefit of Navajo men, women, youth and children; and

11. To establish the authority to solicit funds, fund-raising and accept donations for Navajo youth and families incentive program and awards.

#### E. Meetings.

1. Meetings shall be held at least every month, provided that funds are available.

2. At any meeting a quorum shall consist of a simple majority of Commission members.

3. In the event the Chairperson and Vice-Chairperson are absent from a meeting, the members present shall select a Pro Tem Chairperson to conduct the meeting.

4. Minutes of each meeting shall be recorded and officially filed with the Records Management of the Navajo Nation.

5. Members attending Commission meetings shall be reimbursed for travel and other expenses consistent with the rates established by Navajo Nation policy. Full per diem shall be paid when all agenda items are concluded.

6. The Commission is empowered to develop its own procedures for the conduct of official meetings.

#### F. Reports.

The Commission shall provide reports quarterly and in writing to the

Navajo Nation President and Navajo Nation Council concerning matters relating to Navajo men, women, youth and children.

**History**

GSCJY-61-99, July 13, 1999.

CAP-34-97, April 24, 1997.

CJA-07-92, January 22, 1992.

ACAP-63-85, April 11, 1985.

ACJY-108-83, July 6, 1983.

**§ 1122. Legislative Oversight**

Legislative oversight for the operation of the Navajo Women's Commission shall be provided by the Human Services Committee of the Navajo Nation Council.

**History**

GSCJY-61-99, July 13, 1999.

CAP-34-97, April 24, 1997.

CJA-07-92, January 22, 1992.

ACAP-63-85, April 11, 1985.

ACJY-108-83, July 6, 1983.

**§ 1123. Amendment of the Plan of Operation**

The Navajo Women's Commission Plan of Operation may be amended from time to time upon recommendation by the Human Services Committee and final approval by the Government Services Committee of the Navajo Nation Council.

**History**

GSCJY-61-99, July 13, 1999.

CAP-34-97, April 24, 1997.

CJA-07-92, January 22, 1992.

ACAP-63-85, April 11, 1985.

ACJY-108-83, July 6, 1983.

**Subchapter 7. Navajo Nation Washington Office**

**History**

Former Subchapter 7, The Navajo Veteran's Commission was established by CF-14-82, February 10, 1982. By ACAU-104-84, August 24, 1984, a Plan of Operation was adopted which was later rescinded by ACJY-167-87; July 28, 1987; thereafter ACN-213-88, November 15, 1988, rescinded by the Plan of Operation for the Navajo Veterans Commission and established in its stead a Navajo Nation Council Committee, the Navajo Veteran's Committee. By CMA-17-89, the Veterans Committee was continued until December 15, 1989, when the Veteran's Committee was abolished and its responsibilities absorbed into the Human Services Committee which was established by CD-68-89, December 15, 1989. See now 2 N.N.C. § 601 *et seq.*

#### **§ 1150. Establishment**

There is hereby established the Navajo Nation Washington Office within the Executive Branch of the Navajo Nation government as an intergovernmental relations office.

#### **History**

GSCJY-14-08(A), July 31, 2008.

ACAU-102-84, August 23, 1984.

#### **§ 1151. Purposes**

The purposes of the Navajo Nation Washington Office are to:

A. Exist as an extension of the Navajo Nation government in Washington, D.C., representing the Navajo Nation government's concerns to the United States Congress and federal agencies.

B. Enhance the success of the Navajo Nation government's goals and objectives by strengthening the control and influence of the Navajo Nation over the activities of the federal government.

C. Maintain a Navajo presence in Washington, D.C., that would emphasize the government to government relationship thereby improving the capacity of the Navajo People to govern and represent themselves.

D. Provide for the Navajo Nation government easy and rapid access to Congress, the Administration, and federal agencies.

E. Monitor and analyze all Congressional legislation and activities of committees and subcommittees that affect the Navajo Nation, as well as all federal administration activities, specifically those that administer Indian programs.

F. Distribute to the Navajo Nation government information concerning congressional and administrative activities that affect the welfare of the Navajo Nation and to provide advice regarding alternatives that exist in developing strategies and decisions concerning Navajo programs, policies, budgets, and any other areas of concern to the Navajo Nation.



G. Assist in the preparation of legislative proposals and testimony before Congress.

H. Provide assistance to Navajo Nation government entities testifying before Congress or conducting Navajo Nation government business in Washington, D.C.

#### **History**

GSCJY-14-08(A), July 31, 2008.

ACAU-102-84, August 23, 1984.

#### **Cross References**

Intergovernmental Relations Committee of the Navajo Nation Council, authority and powers, see 2 N.N.C. § 821 *et seq.*

#### **§ 1152. Personnel**

A. There is hereby established the position of the Director of the Navajo Nation Washington Office and such other positions as may from time to time be budgeted for by the Budget and Finance Committee of the Navajo Nation Council or the Navajo Nation Council or by any other source acceptable to the President of the Navajo Nation.

B. The Director shall be appointed by the President of the Navajo Nation, subject to confirmation by the Navajo Nation Council, to serve at a negotiated salary and at the pleasure of the President of the Navajo Nation.

C. All other personnel shall be hired by the Director and shall serve at the pleasure of the Director. Such personnel shall be employed in accordance with the Navajo Nation Personnel Policies Manual. Compensation for Navajo Nation Washington Office employees shall factor in the need to attract qualified Navajos to employment positions at prevailing market pay levels within the Washington, D.C. area. See, Navajo Nation Personnel Policies Manual, Section VII(D) (3)-(5).

#### **History**

GSCJY-14-08(A), July 31, 2008.

**Note.** Subsection C references the Navajo Nation Personnel Policies Manual effective October 1, 2007, and last amended by Resolution HSCM-03-07.

ACAU-102-84, August 23, 1984.

#### **§ 1153. Duties, responsibilities and authority of the Director**

The duties, responsibilities and authority of the Director shall be as follows:

A. Report and be responsible to the Navajo Nation Council through the President of the Navajo Nation for the accomplishment of the purposes,

objectives, and functions of the Navajo Nation Washington Office.

B. Formulate overall administrative and operating policies pertaining to the Navajo Nation Washington Office and to take such actions as the Director shall deem necessary for the accomplishment and enforcement thereof.

C. Represent the Navajo Nation Washington Office in executive level planning.

D. Represent the Navajo Nation government within the areas of the responsibility of the office in dealings and relations with persons and organizations outside the Navajo Nation government.

E. Conduct such special projects and programs as may be assigned.

F. Delegate authority to his or her staff.

#### **History**

ACAU-102-84, August 23, 1984.

#### **§ 1154. Legislative oversight**

The Navajo Nation Washington Office shall operate under the legislative oversight of the Government Services Committee of the Navajo Nation Council pursuant to 2 N.N.C. § 343.

#### **History**

GSCJY-14-08(A), July 31, 2008.

#### **§ 1155. Amendments**

This plan of operation may be amended by the Government Services Committee of the Navajo Nation Council pursuant to 2 N.N.C. § 343(B) (2).

#### **History**

GSCJY-14-08(A), July 31, 2008.

#### **§§ 1156 to 1199. [Reserved]**

### **Subchapter 8. [Reserved]**

#### **History**

Formerly at Subchapter 7, the Office of the Prosecutor was continued at Subchapter 8, §§ 1171-1183 by ON-60-71, June 8, 1971 and CJY-43-76, June 14, 1976 (Budget resolutions) and is now redesignated at 2 N.N.C. § 1971 *et seq.* within the Office of the Attorney General. See 2 N.N.C. § 1971 *et seq.*

### **Subchapter 9. Office of Management and Budget**

### **History**

The Office of Operations, in the 1977, 1976 and 1972 Budgets and previously codified at §§ 1201-1203 of this title, was discontinued by the 1978 Budget and organization chart. The Office of Management and Policy Analysis was discontinued in 1979.

### **§ 1201. Establishment**

There is established the Office of Management and Budget within the Executive Branch of the Navajo Nation. The Director of the Office of Management and Budget shall serve under the general direction and guidance of the President of the Navajo Nation and the Budget and Finance Committee of the Navajo Nation Council shall provide legislative oversight.

### **History**

ACO-131-84, October 11, 1984.

### **§ 1202. Purpose**

The purpose of the Office of Management and Budget is to direct and manage the allocation and appropriation processes of all funds for the Navajo Nation and to provide management support in the areas of fiscal management, budgets, program operation and management, contracts, grants and similar agreements. The Office of Management and Budget is to communicate key information necessary for decision-making using principles of sound management and generally accepted processes and procedures.

### **History**

CAP-17-02, April 16, 2002. Amended generally.

ACO-131-84, October 11, 1984.

### **§ 1203. Authority and responsibility**

A. The Office of Management and Budget is authorized to:

1. Recommend and develop actions on all appropriation processes (i.e. general, federal, state, etc.) to ensure optimal Navajo Nation participation and benefit.

2. Direct and coordinate the submission of proposed budgets, contract and grant applications, and any other related agreements to ensure compliance with appropriate laws, regulations and guidelines.

3. Conduct comprehensive program analysis and monitoring.

4. Establish and administer all necessary policies for improved program performance to appropriate Navajo Nation officials to ensure compliance with Navajo Nation laws, regulations and guidelines.

5. Recommend and develop actions for improved program performance

to appropriate Navajo Nation officials to ensure compliance with Navajo Nation laws, regulations and guidelines.

6. Represent the Navajo Nation within areas of the responsibility and authority of the office in relations with persons and organizations outside the Navajo Nation and in matters relating to agreements with state or federal agencies pertaining to appropriation and allocation of funding.

B. Contracts and Grants Section Responsibilities. The Office of Management and Budget shall employ a Contracting Officer, with the general responsibility to coordinate the contracts and grants administration process for the Navajo Nation Government.

1. Authorities of the Contracting Officer:

a. Ensure all applications, proposals and related funding requests comply with applicable laws, regulations, and guidelines.

b. Review original applications and/or proposals to ensure proper approval prior to submission to the external funding source.

c. Arrange and coordinate joint meetings within the Navajo Nation and between the Navajo Nation and external funding sources to resolve contracts and grants issues.

d. Obtain program information as required for conducting monitoring and compliance activities.

e. Negotiate, on behalf and in the best interest of the Navajo Nation, contracts, grants and other similar agreements in accordance with the needs and requirements of the Navajo Nation.

f. Recommend and develop actions to appropriate officials on any matters pertaining to Navajo Nation contracts and grants and other external funds.

g. Recommend approval or disapproval of any application and/or proposal based upon:

(1) Consistency with current Navajo Nation strategies, goals, objectives and work plans for overall program planning and development: and

(2) Compliance with current Navajo Nation policy and procedures for entering into contracts and grants and other similar agreements.

**History**

CAP-17-02, April 16, 2002. Amended generally.

ACO-131-84, October 11, 1984,

**Note.** Slightly reworded and corrections made for purposes of statutory form.

#### **§ 1204. Personnel**

A. The Office of Management and Budget shall be administered by an Executive Director who shall be employed and compensated pursuant to Personnel Policies and Procedures of the Navajo Nation. The Executive Director shall report directly to the President of the Navajo Nation.

B. The Office of Management and Budget shall include a Contracting Officer who shall be responsible for the administration of all contracts and grants as delineated at § 1203(B) herein. The Contracting Officer shall report directly to the Executive Director of the Office of Management and Budget for ministerial matters and to the President and/or appropriate standing committee for grant/contract issues.

#### **History**

CAP-17-02, April 16, 2002. Amended generally.

ACO-131-84, October 11, 1984.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1205. Amendments**

This Plan of Operation may be amended by the Navajo Nation Council upon recommendation by the Budget and Finance Committee of the Navajo Nation Council.

#### **History**

CAP-17-02, April 16, 2002. Amended generally.

ACO-131-84, October 11, 1984.

**Note.** Slightly reworded for purposes of statutory form.

### **Subchapter 10. [Reserved]**

#### **History**

Office of Youth Affairs established by ACJY-82-82 was continued by ACAU-97-84 as the Division of Youth Development and Services. By GSCJA-02-95 the Plan of Operation for the Department of Youth/Community Services was incorporated into the Division of Education. See 2 N.N.C. § 1801 *et seq.*

### **Subchapter 11. Division of General Services**

#### **History**

CMA-16-90, Exhibit "B", March 29, 1990. By way of Budget resolution the Navajo Nation Council restructured the Division of Administration and Finance and the

Division of General Services. No establishment language was adopted at the time nor was a Plan of Operation put in place.

**Note.** Listed below are a few of the programs operated within the Division of Finance.

Purchasing Services. "Property Department", later redesignated as "Property and Purchasing Department", (CJY-43-76) was created by the 1973 Budget Resolution (CJN-66-72) however was discontinued by the 1978 Budget Resolution (CO-65-77). The Department was replaced with the materials Management Branch of the General Services Department of the Division of Administration and Finance.

Property Management. "Property Department", later redesignated as "Property and Purchasing Department", (CJY-43-76) was created by the 1973 Budget Resolution (CJN-66-72) however was discontinued by the 1978 Budget Resolution (CO-65-77). The Department was replaced with the materials Management Branch of the General Services Department of the Division of Administration and Finance.

Credit Services. See CF-13-85, ACD-234-85, CO-50-87, ACN-229-87, ACF21-88.

Home Loan Program. See BFJN-51-94 for Policies.

Personal Loan Program. See ACF-21-88, CLCO-34-88 and CLCO-19-88.

**§ 1251. Establishment; purpose; composition**

There is hereby established the Division of General Services within the Executive Branch of the Navajo Nation Government.

**History**

CO-87-95, October 19, 1995.

**§ 1252. Purposes and Objectives**

A. The purpose of the Division of General Services shall be:

1. To administer, plan, organize and monitor all aspects of the Division of General Services' programs or departments to ensure that services for the Navajo Nation Government and its individual employees are properly provided.

2. To effectively manage the diverse services provided by the various programs and departments.

B. The objectives of the Division of General Services shall include:

1. Providing safe and efficient chartered air transportation for various officials of the Navajo Nation in compliance with all Navajo Nation, state and federal laws regarding such transportation.

2. Providing management and planning for all communication and utility services for the Navajo Nation Government, including working with all state and federal agencies to develop and maintain technological

systems to ensure efficient and comprehensive service to the Navajo Nation Government and its people.

3. Providing updated computer technology to the Navajo Nation Government and its various divisions which may include assisting with development of training of the Navajo Nation employees in the use of various available computer systems.

4. Providing rental houses for the Navajo Nation employees in the local area so as to maintain an adequate work force.

5. Providing maintenance of the Nation's buildings including all structural, mechanical and electrical services, heating and cooling systems, grounds maintenance, custodial services and limited building renovation.

6. Providing motor vehicle transportation for the Navajo Nation Government employees including acquisition of a fleet of vehicles, routine maintenance of the fleet and selling vehicles as needed.

7. Providing cost effective insurance for the Nation and its employees by working with the Navajo Nation Insurance Commission.

8. Providing a ground transportation system for the Navajo people by offering low cost fixed route services on and around the Navajo Nation and by offering charter services to various groups in and around the Navajo Nation.

9. Maintaining custodial care of all vital official Navajo Nation Government records and provide duplicating services for the Government.

#### **History**

CO-87-95, October 19, 1995.

#### **§ 1253. Personnel**

The Division of General Services shall be administered by an Executive Director who shall be appointed by the President of the Navajo Nation and confirmed by the Navajo Nation Council. The Executive Director shall serve at the pleasure of the President. All personnel shall be subject to the Navajo Nation Personnel Policies and Procedures.

#### **History**

CO-87-95, October 19, 1995.

#### **§ 1254. Organization**

The Division of General Services shall be comprised of such departments and programs as deemed necessary to fulfill its purpose and objectives, subject to legislative review and approval of the Division's plan of operation.

#### **History**

CO-87-95, October 19, 1995.

**§ 1255. Legislative Oversight**

The Division of General Services shall be subject to the Legislative oversight authority of the Government Services Committee of the Navajo Nation Council.

**History**

CO-87-95, October 19, 1995.

**§ 1256. Amendments**

Sections 1251-1255 may be amended from time to time by the Navajo Nation Council, upon recommendation by the Government Services Committee of the Navajo Nation Council.

**History**

CO-87-95, October 19, 1995.

**Subchapter 12. [Reserved]**

**Subchapter 13. [Reserved]**

**History**

This Subchapter "Division of Justice" was renamed Department of Justice by CF-8-82, February 5, 1982 and redesignated at 2 N.N.C. § 1961 *et seq.*

Also formerly at Subchapter 13 was the "Office of Navajo Land Administration". CAU-50-59, § 1, August 6, 1959 established the Land Investigations Department.

The 1973 budget changed the Land Investigations Department into the Office of Navajo Tribal Land Administration codified at 16 N.N.C. § 201. The 1978 budget changed the Office of Navajo Tribal Land Administration to Land Administration Department and by ACAP-57-88 the Office of Navajo Land Administration was included in the Division of Resources.

By CAP-41-94, 16 N.N.C. § 201-204 were deleted from the Code and the Division of Natural Resources was established at 2 N.N.C. Subchapter 35. The Division is comprised of such programs as may be deemed necessary. See 2 N.N.C. § 1901 *et seq.* and notes.

**Note.** Planning and Zoning formerly at § 1302 is now in the Division of Community Development. See 2 N.N.C. § 1451, *et seq.*

**Subchapter 14. [Reserved]**

**Subchapter 15. Division of Public Safety**



## **History**

CAU-50-59, August 6, 1959, reorganized the Executive Branch and created among others a Division of Public Services which included "Police". This was implemented in the 1960 Budget.

CJA-7-70, January 8, 1970, amended CAU-50-59 to remove supervision of "Police" from the Division of Public Services and placed supervision with the Chairperson of the Navajo Tribal Council.

By CJN-60-71 the Office of Administration was established and the Division of Law Enforcement was placed under the Office of Administration.

CJY-72-74 created a Division of Law Enforcement by removing it from the Office of Administration.

In 1976 by Budget resolution, the Police Department was changed to the Office of Law Enforcement. Office of Resources and Security §§ 1351-1360 of this title was discontinued in 1978 by Budget Resolution and the Office of Law Enforcement was changed to the Division of Public Safety. ACJY-89-81, July 24, 1981 established the Division of Public Safety in Subchapter 15; 2 N.N.C. § 1351-1352.

ACAP-45-83 adopted a Plan of Operation for the Navajo Division of Public Safety by amendments to 2 N.N.C. §§ 1351 and 1352. ACN-232-87, November 13, 1987, rescinded ACJY-89-81 and ACAP-45-83 and established the Navajo Division of Public Safety at 2 N.N.C. § 1351 and adopted a Plan of Operation. GSCAU-28-92, August 12, 1992 amended ACN-232-87 but by its terms the amended Plan of Operation expired October 30, 1993 and ACN-232-87 came back into effect provided no new plan was adopted.

GSCN-62-93 extended the October 30, 1993 date to December 31, 1993.

**Note.** The Office of Resources and Security, §§ 1351-1360 of this title, was discontinued by the 1978 Budget and organization chart.

### **§ 1351. Establishment**

There is hereby established the Navajo Division of Public Safety within the Executive Branch of the Navajo Nation Government.

## **History**

CO-86-95, October 19, 1995.

ACN-232-87, November 13, 1987.

### **§ 1352. Purpose and objectives**

A. The purposes of the Navajo Division of Public Safety shall be:

1. To plan, organize and administer all aspects of the Navajo Division of Public Safety programs so as to provide multi-public safety services that meet the needs of tribal members of the Navajo Nation, as

well as other individuals and entities, within the territorial jurisdiction of the Navajo Nation as defined in 7 N.N.C. § 254 and 18 U.S.C. § 1151.

2. To exercise control and authority over all law enforcement and public safety activities within the Navajo Nation and adjoining Indian Country as designated under Navajo, federal and other applicable laws where the Navajo Nation exercises jurisdiction.

B. The objectives of the Navajo Division of Public Safety include, but are not limited to the following:

1. To maintain law and order by the enforcement of applicable criminal laws and the safeguarding of the lives and properties of the persons on the Navajo Nation by deterring criminal activities and violations of tribal, state and federal laws, through effective investigation, and to provide assistance in prosecutions and appropriate court actions, in cooperation with the Navajo Nation Office of the Prosecutor and other criminal justice entities which possess jurisdiction; to negotiate and enter into appropriate agreements with other governmental jurisdictions to carry out the responsibilities herein, in compliance with applicable Navajo Nation laws, rules and regulations.

2. To provide support services in the collection of information and generation of reports relating to vehicular accidents which involve injuries, deaths and property damage for purposes of minimizing contributing factors; to provide defensive driver education for Navajo Nation employees; and to issue Navajo Nation driver's permits.

3. To plan for, respond to, and aid in the recovery from natural and man-made disasters on the Navajo Nation and to coordinate with and train tribal and affiliated non-tribal entities in the development of a comprehensive emergency management plan.

4. To provide fire and rescue services and to develop community volunteer fire services to effectively and efficiently respond to fire and rescue operations; to provide training facilities and instructors for local fire departments; to enforce fire and building codes and other applicable codes related to fire safety.

5. To respond to medical emergencies by rendering emergency care, and to transport the sick or injured to a clinic or hospital when appropriate.

6. To establish, operate and provide support services for victims of serious and violent crimes.

7. To provide and coordinate support services to ensure the availability of counseling for Division employees.

8. To coordinate and disseminate information on safety programs and to facilitate funding mechanism for its component departments with non-tribal entities.

9. To plan for, establish, provide and operate appropriate correctional facilities and appropriate correctional services.

**History**

CO-86-95, October 19, 1995.

ACN-232-87, November 13, 1987.

**§ 1353. Personnel**

The Navajo Division of Public Safety shall be administered by an Executive Director appointed by the President of the Navajo Nation, with the consent of the Navajo Nation Council, and who shall serve at the pleasure of the President of the Navajo Nation. The Executive Director shall exercise full authority and control over all division activities and shall be responsible for the selection and supervision of all department directors and all personnel, including delegation of authorities. The Executive Director shall further exercise full authority to commission certified law enforcement personnel pursuant to standards approved by the Navajo Nation. All personnel shall be subject to the Navajo Nation Personnel Policies and Procedures and other applicable grant or contract provisions.

**History**

CO-86-95, October 19, 1995.

ACN-232-87, November 13, 1987.

**Note.** The organizational chart was deleted from the Code and minor changes in language were made for statutory form.

**§ 1354. Organization**

The Navajo Division of Public Safety shall comprise such departments and administrative components as may be deemed necessary by the Executive Director to fulfill its purposes, subject to legislative review and approval of the Division's Plan of Operation. The specific functions and responsibilities of the Navajo Division of Public Safety are more fully set forth within the Plans of Operation for its component departments.

**History**

CO-86-95, October 19, 1995.

GSCAP-21-94, April 21, 1994. Amended Subsection (F).

ACN-232-87, November 13, 1987.

**Note.** Slightly reworded for statutory form and consistency.

**§ 1355. Legislative Oversight**

The Navajo Division of Public Safety shall operate under the legislative oversight of the Public Safety Committee of the Navajo Nation Council, pursuant to the powers granted that committee in 2 N.N.C. § 661, *et seq.*

#### **History**

CO-86-95, October 19, 1995.

#### **§ 1356. Amendments**

This Plan of Operation may be amended from time to time by the Navajo Nation Council upon recommendation of the Public Safety Committee and the Government Services Committee of the Navajo Nation Council, as deemed appropriate.

#### **History**

CO-86-95, October 19, 1995.

ACN-232-87, November 13, 1987.

**Note.** Slightly reworded for purposes of statutory form.

### **Subchapter 16. Crimestoppers Program**

#### **§ 1361. Establishment**

There is established a Navajo Nation Crimestoppers Program.

#### **History**

ACAP-51-84, April 12, 1984.

#### **§ 1362. Purposes**

The purposes of the Navajo Nation Crimestoppers Program shall be:

A. To establish and maintain an office in Window Rock, Navajo Nation, Arizona, to carry out the purposes stated herein.

B. To promote community involvement in reduction of criminal activity across the Navajo Nation.

C. To provide for confidentiality of information and anonymity for informants.

D. To provide 24 hour toll-free telephone access from across the Navajo Nation for the Crimestoppers Program. Such telephone to be located at the Navajo Division of Public Safety Dispatcher Office and manned by the Division of Public Safety personnel.

E. To serve as a clearinghouse for confidential information on actual or anticipated crimes.

F. To secure and provide information to law enforcement authorities on crimes occurring within the Navajo Nation.

G. To publicize through the news media facts on preselected unsolved crimes and request community involvement on a weekly basis.

H. To receive from the Navajo Division of Public Safety information on unsolved felony and misdemeanor cases and develop a "Crime of the Week" weekly column in the Navajo Times.

I. To serve as a recipient of financial contributions, bequests, grants or gifts for operational costs and/or rewards and to find and develop other funding sources.

J. To establish a reward fund and provide monetary rewards to informants when convictions occur.

K. To develop procedures necessary for control of and maintain complete records of incoming calls, informant code numbers and other statistical data.

### **History**

ACAP-51-84, April 12, 1984.

### **Cross References**

Gifts, authority of President of Navajo Nation to accept, see 2 N.N.C. § 1010.

### **§ 1363. Board of Directors**

A. Composition. The Navajo Nation Crimestoppers Program shall be governed by a Board of Directors composed of 21 members appointed by the President of the Navajo Nation. No Director shall receive any compensation for serving on the Board.

1. Term of Office. A term of office shall normally be for one, two or three years; however, no director may serve for more than three consecutive terms (including years served between September, 1984, and October, 1986). A person may be reappointed after being off the Board one or more years. Terms shall begin on the date of the appointment and may be for one, two, or three years as determined by the Board, the objective being, insofar as practical, to have no more than one-third (1/3) to one-half (1/2) of the Directors replaced at any one time.

2. Removal. Any Director may be removed, with or without cause, by a two-thirds (2/3) vote by secret ballot, at a regular or special meeting of the Board, provided that notice of the intent to call for such a vote, naming the Director, is given at least 24 hours prior to the meeting.

3. Enumerated Powers. In managing the affairs of the Crimestoppers Program, the Board shall specifically have, but not be limited to, the power to:

- a. Adopt standing rules;
- b. Recommend individuals to be employed;
- c. Procure and maintain bonds for persons having custody of funds; and
- d. Authorize disbursement of funds

B. Meetings of Directors.

1. Regular Meetings. The Board of Directors shall hold no less than nine regular meetings, including an annual meeting in September of each fiscal year. Normally, regular meetings will be held on a monthly basis on the second Friday of each calendar month at 10:00 a.m. The regular location for all meetings shall be at Window Rock, Navajo Nation, Arizona 86515. The date, time and location of regular meetings can be changed by the Chairperson of the Board by 24 hours advance notice.

2. Special Meetings. Special meetings of the Board of Directors may be called by the Chairperson with at least 24 hours notice, or by any four Board members with at least five days written notice. Such notice by the Chairperson or at least four Board members shall include a statement of the purpose of the meeting as well as the date, time and location of the special meeting.

3. Quorum. A quorum shall be a simple majority of the total Board of Directors, present and voting, excluding vacancies.

C. Officers and Duties.

1. Officers. The Officers of the Crimestoppers Program shall be a Chairperson of the Board, a Vice-Chairperson, a Secretary and a Treasurer, elected by the Board from within the Board of Directors, and such other officers as the Board may elect from time to time to carry out the affairs of the Crimestoppers Program.

2. Term. A term of office shall be for one year and shall begin at the close of the annual meeting. No officer may serve two consecutive terms in the same office.

3. Vacancies. A vacancy shall be filled by the President of the Navajo Nation from a slate presented by a nominating committee elected by the Board of Directors. The individual appointed shall serve for the remainder of the term of the member he or she replaces.

No name shall be placed in nomination without the consent of the nominee.

4. Duties and Powers. Officers of the Crimestoppers Program shall perform the duties and exercise the powers prescribed by this Plan of Operation, the parliamentary authority adopted herein, and those assigned by the Board or which normally pertain to the office. These duties and powers shall include but not be limited to the following:

a. The Chairperson shall:

(1) Be the principal officer of the Crimestoppers Program.

(2) Preside at all meetings of the Board of Directors and the Executive Committee.

(3) Cosign all checks, promissory notes and contracts.

(4) Appoint standing committee chairs and members, except for the nominating committee and create special committees and chairpersons and members thereof as the need arises.

(5) Be an ex-officio member of every committee except the nominating committee.

b. The Vice-Chairperson shall:

(1) Assume such duties as may be assigned by Chair, the Board of Directors or the Executive Committee.

(2) In the absence of the Chair, preside at all Board of Directors and Executive Committee meetings.

(3) In the absence of the Chair, create special committees and appoint chairpersons and members thereof as the need arises, fill vacancies on standing committees except for the nominating committee.

c. The Secretary shall:

(1) Record the proceedings of all meetings of Board of Directors and Executive Committee.

(2) Provide each member of the Board with a copy of the Minutes of each Board of Directors meeting.

(3) Assume such duties as may be assigned by the Chairperson of the Board, the Board of Directors or the Executive Committee.

d. The Treasurer shall:

(1) Be custodian of all funds.

(2) Make a financial report at each meeting of the Board of Directors.

(3) Cosign all checks, promissory notes and contracts.

(4) Disburse rewards as authorized by the Board of Directors, after reasonably satisfying him/herself as to the identity of the recipient.

D. Committees.

1. Standing Committees. There shall be standing committees to deal with the following subjects:

- a. Fund raising;
- b. History and records;
- c. Publicity; and
- d. Standing rules.

Additional committees may be created by amendment to this Plan of Operation. The Committee Chairpersons shall be members of the Board of Directors, but additional members need not be.

2. Special Committees. Special Committees may be created by the Chairperson or the Board of Directors. The Chairpersons shall be members of the Board, but additional members need not be.

3. Executive Committee. There shall be an Executive Committee composed of the Chairperson of the Board and four officers and one additional Director, elected by the Board at the first regular Board meeting following the annual meeting. The Executive Committee, in an emergency, shall have all the powers of the Board between meetings, except the power to amend this Plan of Operation, to dissolve the Crimestoppers Program, or remove a member of the Board. Meetings may be called by the Chairperson or by any two members of the Committee and three members shall constitute a quorum.

**History**

ACAP-51-84, April 12, 1984.

**§ 1364. Contributions and depositories**

A. Contributions. Any Contributions, bequests or gifts made to the Crimestoppers Program shall be accepted or collected and deposited only in such manner as shall be designated by the Board of Directors.

B. Depositories. The Board of Directors shall determine what depositories shall be used by Navajo Nation Crimestoppers Program. All checks and orders for the payment of money from said depositories shall bear the signature of the Chairperson of the Board and shall be countersigned by the treasurer.

**History**

ACAP-51-84, April 12, 1984.

**Cross References**



Gifts, authority of President of Navajo Nation to accept, see 2 N.N.C. § 1010.

**§ 1365. Contracts and debts**

All contracts and evidences of debt may be executed only as directed by the Board of Directors. The Chairperson and the Treasurer shall execute, in the name of the Navajo Nation Crimestoppers Program, all contracts or other instruments so authorized by the Board of Directors and approved by the Budget and Finance Committee of the Navajo Nation Council.

**History**

ACAP-51-84, April 12, 1984.

**Cross References**

Government Services Committee oversight, see 2 N.N.C. § 341 (B).

**§ 1366. Financial examination**

An annual examination of the financial accounts of the Navajo Nation Crimestoppers Program shall be made by an independent auditor appointed by the Chairperson of the Board with the advice and consent of the Board.

**History**

ACAP-51-84, April 12, 1984.

**§ 1367. Fiscal year**

The Crimestoppers Program shall operate on a fiscal year beginning October 1st and ending September 31st of each year.

**History**

ACAP-51-84, April 12, 1984.

**§ 1368. Parliamentary authority**

Robert's Rules of Order, newly revised, shall be the parliamentary authority for all matters or procedures not specifically covered by the Articles of Incorporation, these Bylaws, or by special rules of procedure adopted by the Board of Directors.

**History**

ACAP-51-84, April 12, 1984.

**§ 1369. Amendments**

This Plan of Operation may be amended, from time to time, by the Government Services Committee of the Navajo Nation Council.

**History**

ACAP-51-84, April 12, 1984.

**Note.** Throughout the Plan of Operation for the Crimestoppers Program slight revisions were made for statutory form, clarity and grammatical form.

### **Subchapter 17. Navajo Nation Division of Transportation**

#### **§ 1370. Establishment**

The Navajo Nation Division of Transportation (NNDOT) is established within the Executive Branch of the Navajo Nation government.

#### **History**

CJY-21-09, July 21, 2009.

#### **§ 1371. Purpose**

The purpose of the Navajo Nation Division of Transportation is to exclusively administer the Navajo Nation transportation programs within the Navajo Nation, to provide an effective and efficient transportation system, to ensure the operation and improvement of the transportation system and to provide the necessary resources to accomplish the objectives herein. The Division shall operate pursuant to a plan of operation as recommended by the Transportation and Community Development Committee and approved by the Government Services Committee.

#### **History**

CJY-21-09, July 21, 2009.

### **Subchapter 18. [Reserved]**

### **Subchapter 19. Division of Community Development**

#### **History**

GSCS-70-94, September 7, 1994, adopted a Master Plan of Operation for the Division of Community Development and rescinded GSCO-60-91.

GSCS-34-92 amended the Plan of Operation for Design and Engineering Services in the Division of Community Development.

GSCO-60-91 adopted a comprehensive Plan of Operation for the Division of Community Development. By this resolution ACO-137-84, ACJA-2-85, ACJA-385, ACAP-59-35, ACMA-42-85, ACJN-106-85, ACJA-20-87, ACJY-135-89, ACJA-1-90, and all other inconsistent Advisory Committee resolutions were rescinded.

ACJA-1-90, created the Community Planning Department in the Division of Community Development.

ACAP-89-88, April 21, 1988; amended ACMA-42-85 (Capital Improvement Program).

ACJA-20-87, January 7, 1987, established the Department of Transportation in the Division of Community Development.

ACJA-2-85 adopted a Plan of Operation for Navajo Housing Services Department.

ACMA-42-85, March 13, 1985 adopted a Plan of Operation for the Capital Improvement Program within the Division of Community Development.

ACJN-106-85 rescinded ACO-177-83 and adopted a new Plan of Operation for Navajo Revenue Sharing.

CS-45-84; the 1985 budget included the Chapter claims settlement monies in the Revenue Sharing Office.

ACO-177-83 adopted a Plan of Operation for the Navajo Revenue Sharing Office.

ACS-116-80 established the Housing Services Department in the Division of Community Development.

The Office of Financial Policy Analysis, previously §§ 1451-1454 of this title was discontinued by the 1978 Budget.

CJA-20-74, created the Office of Navajo Revenue Sharing, previously Article I of this Subchapter. The 1978 Budget established the Division of Community Development at § 1451 *et seq.* of this title.

#### **§ 1451. Establishment**

The Division of Community Development (DCD) is established within the Executive Branch of the Navajo Nation government.

#### **History**

GSCS-70-94, September 7, 1994.

#### **§ 1452. Purposes and objectives**

The purposes of the Division of Community Development shall be:

A. To assist communities to become self-sufficient and self-governing entities responsible for working with District, Agency, and central offices;

B. To improve the standard of living for Navajo families and individuals by facilitating increased construction of new homes and rehabilitation of existing homes;

C. To provide infrastructure planning and development for future growth of communities; and

D. To foster the growth of communities by adopting the most current economical and technical advances with limited governmental involvement.

#### **History**

GSCS-70-94, September 7, 1994.

**§ 1453. Personnel and organization**

A. The Navajo Division of Community Development shall be administered by a Division Director, who shall be appointed by the President of the Navajo Nation, confirmed by the Navajo Nation Council, and who shall serve at the pleasure of the President of the Navajo Nation. The Division Director shall hire personnel as may be deemed necessary to carry out the purposes of the Division and as funds are available. All personnel shall be employed and compensated in accordance with the applicable Navajo Nation Personnel Policies Manual.

B. The Division of Community Development shall consist of 10 offices: Division Administration, four Departments and five agencies to execute the Division's purpose. The Departments may consist of sections, programs, and agencies to accomplish the Department purpose. The four departments and five agencies are as follows:

1. Division-Administration;
2. Capital Improvement Office;
3. Design and Engineering Services Department;
4. Community Housing and Infrastructure Department;
5. Solid Waste Management Program;
6. Local Governance Support Center-Fort Defiance Agency;
7. Local Governance Support Center-Eastern Agency;
8. Local Governance Support Center-Chinle Agency;
9. Local Governance Support Center-Tuba City Agency;
10. Local Governance Support Center-Shiprock Agency;

**History**

CJY-21-09, July 21, 2009.

GSCJA-05-08/A, January 15, 2008. Amended Subsection B.

GSCMA-13-00, March 7, 2000.

GSCS-70-94, September 7, 1994.

**§ 1454. Authority, duties and responsibilities**

The Division Director of the Division of Community Development shall have the authority for the overall Division's operational planning and direction.

The Division Director shall have the following duties and responsibilities:

A. Executive directives of the President of the Navajo Nation, Navajo Nation Council, and the Transportation and Community Development Committee.

B. Provide written monthly and/or quarterly reports to the Office of the President, Transportation and Community Development Committee of the Navajo Nation Council, annual reports to the Navajo Nation Council, and any other reports deemed necessary.

C. Promulgate Division program policies, time frames and other guidelines to ensure the proper and timely implementation of Division projects.

D. Establish and maintain partnership with local, county, state, federal entities and other authorities on matters related to the objectives of the Division.

E. Provide effective overall management and financial direction to Division departments and programs.

F. Delegate authority pertaining to the operation of the Division and its program to subordinate directors of the Division, to the extent permitted by the laws and policies of the Navajo Nation, as appropriate.

G. Negotiate written agreements on behalf of the Division relevant to community development for oversight committee's recommendation.

H. Seek external funding for programs and projects to enhance community development.

I. Recommend the creation, merger, separation, amendment or abolishment of programs, or specific functions within the Division in accordance with applicable Navajo Nation laws.

J. Recruit, select, supervise, conduct employee performance evaluation, and recommend reclassification of positions for the Administration Staff and Department and Program Directors, in accordance with Personnel Policies Manual of the Navajo Nation.

#### **History**

GSCMA-13-00, March 7, 2000.

GSCS-70-94, September 7, 1994.

#### **§ 1455. Legislative oversight**

Pursuant to 2 N.N.C. §§ 421 and 423 *et seq.*, the Division of Community Development shall operate under the legislative oversight of the Transportation and Community Development Committee of the Navajo Nation Council.

#### **History**

GSCMA-13-00, March 7, 2000.

GSCS-70-94, September 7, 1994.

#### **§ 1456. Amendments**

This Plan of Operation may be amended from time to time by the Government Services Committee of the Navajo Nation Council upon the recommendation of the Transportation and Community Development Committee of the Navajo Nation Council.

#### **History**

GSCMA-13-00, March 7, 2000.

GSCS-70-94, September 7, 1994.

#### **Subchapter 20. [Reserved]**

#### **Subchapter 21. Division of Economic Development**

#### **History**

CAP-36-96, April 18, 1996.

EDCAP-30-92, a Plan of Operation of the Navajoland Tourism Department was adopted.

BFO-44-92 established a revolving account for the Navajoland Tourism Department.

EDCAP-30-92 recommended Government Services Committee approve a new Plan of Operation for Division of Economic Development and that ACAU-196-87 be repealed. This has not been done.

EDCS-88-90, in setting up a revolving account established the Industrial and Tourism Development Department within the Economic Development Division.

EDCJA-14-89, January 27, 1989, the Division was directed to present a new Plan of Operation for the Navajo Wool and Mohair Industries to the Advisory Committee. This was never done.

ACAU-162-88, August 1, 1988, adopted a Plan of Operation for the Navajo Tourism Department.

ACAU-196-87 adopted the Commission for Accelerating Navajo Development Opportunities (CANDO) under the Chairperson as successor for the Division of Economic Development. All programs and departments in the Division with the exception of programs relating to business regulation and non-business lending assistance were transferred to CANDO.

The Revenue Sharing provisions previously codified at Subchapter 21 were superseded by ACJN-106-85, June 12, 1985, and incorporated in the Plan of Operation for the Division of Community Development at 2 N.N.C. §§ 1451 et

seq., now deleted. See History at Subchapter 19.

ACN-142-82, November 15, 1982, amended the Navajo Wool Growers Marketing Program Plan of Operation.

ACMA-37-78, March 29, 1978, adopted a new Plan of Operation for the Navajo Wool Growers Marketing Program and rescinded CO-56-73.

ACMY-144-75, May 28, 1975.

CO-56-73, October 17, 1973, established the Navajo Wool Growers Marketing Program.

CJN-60-71, June 8, 1971, the Navajo Nation government was restructured and the 1972 budget justifications were authorized as the Plans of Operation for the various departments. It was stated at the time that all other inconsistent resolutions were no longer controlling. At that time the Office of Program Development was established with Navajo Tourism Development, Navajo Small Business Development, Governmental Relations Section, Industrial & Economic Development, and a Planning and Development Section.

**Note.** There is no comprehensive Plan of Operation for the Division of Economic Development.

#### **§ 1501. Establishment**

The Navajo Division of Economic Development is hereby established as a Division of the Executive Branch of the Navajo Nation Government.

#### **History**

CAP-36-96, April 18, 1996.

#### **§ 1502. Purposes**

The purpose of the Navajo Division of Economic Development shall be to provide an environment within the Navajo Nation that is conducive to promoting and developing businesses in the commercial, tourism, industrial and other sectors of the Navajo economy, thereby creating job and business opportunities.

#### **History**

CAP-36-96, April 18, 1996.

#### **§ 1503. Personnel**

The Navajo Division of Economic Development shall be administered by an Executive Director, who shall be appointed by the President of the Navajo Nation, with the consent of the Navajo Nation Council, and who shall serve at the pleasure of the President of the Navajo Nation. The Executive Director shall cause to be hired all such personnel as may be deemed necessary to carry out the purposes of the Division. All personnel shall be subject to the applicable Personnel Policies and Procedures of the Navajo Nation.

### **History**

CAP-36-96, April 18, 1996.

### **§ 1504. Organization**

The Navajo Division of Economic Development shall be comprised of such programs, quasi-enterprises and administrative components as may be deemed necessary by the Executive Director to fulfill its purposes, subject to legislative review and approval of the Plan of Operation of the Division.

### **History**

CAP-36-96, April 18, 1996.

### **§ 1505. Legislative Oversight**

The Navajo Division of Economic Development shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council, pursuant to the powers granted that Committee in 2 N.N.C. § 721 *et seq.* The Division shall operate only pursuant to a Plan of Operation approved by the Economic Development Committee and the Government Services Committee of the Navajo Nation Council.

### **History**

CAP-36-96, April 18, 1996.

### **§ 1506. Amendments**

The enabling legislation for the Navajo Division of Economic Development shall be amended by the Navajo Nation Council upon the recommendation of the Economic Development Committee of the Navajo Nation Council.

### **History**

CAP-36-96, April 18, 1996.

## **Subchapter 22. Water Rights Commission**

### **§ 1551. Establishment**

There is hereby established the Navajo Nation Water Rights Commission (herein referred to as the "Commission") in the Executive Branch of the Navajo Nation Government.

### **History**

CAP-39-02, April 19, 2002.

### **§ 1552. Purposes**

The purpose of the Commission is to ensure that the water rights of the



Navajo Nation are vigorously pursued, effectively coordinated, and to enhance the communication between all entities engaged in water rights efforts on behalf of the Navajo Nation.

#### **History**

CAP-39-02, April 19, 2002.

#### **§ 1553. Organization**

The organization of the Navajo Nation Water Rights Commission shall be set forth in the Plan of Operation adopted by the Government Services Committee upon recommendation of the Resources Committee of the Navajo Nation Council.

#### **History**

CAP-39-02, April 19, 2002.

#### **Cross References**

GSCAP-07-04, April 14, 2004. Amending Resolution GSCJN-35-02 and Approving the Revised Plan of Operation for the Navajo Nation Water Rights Commission.

#### **§ 1554. Legislative Oversight**

The Commission shall operate under the legislative oversight of the Resources Committee of the Navajo Nation Council. The Commission shall operate pursuant to a Plan of Operation recommended by the Resources Committee of the Navajo Nation Council and adopted by the Government Services Committee of the Navajo Nation Council.

#### **History**

CAP-39-02, April 19, 2002.

#### **§ 1555. Amendments**

The enabling legislation for the Commission may be amended from time to time by the Navajo Nation Council by majority vote upon the recommendation of the Resources Committee and Government Services Committee of the Navajo Nation Council.

#### **History**

CAP-39-02, April 19, 2002.

### **Subchapter 23. Division of Health**

#### **History**

Previously §§ 1601-1605 of this title, the Water Rights Office was discontinued by the 1978 Budget and organization chart.

By CO-65-77, the 1978 budget changed the department name from Health and Welfare Department to Tribal Assistance and Projects Department, substituted Division of Social Welfare for other Social Services Programs, and established a Division of Health Improvement Services.

CF-20-77 established the Office of Health Improvement Services.

ACAU-142-60, August 11, 1960 established a Health and Welfare Department responsible to the Director.

#### **§ 1601. Establishment**

The Navajo Division of Health is hereby established as a Division of the Executive Branch of the Navajo Nation Government.

#### **History**

CJY-70-95, July 21, 1995.

#### **§ 1602. Purposes**

The purposes of the Navajo Division of Health shall be:

A. To provide to the Navajo people such direct health care services as are approved and authorized by the Navajo Nation Council; and

B. To ensure the highest quality of overall health care for the Navajo people by coordinating with the Indian Health Service and other federal, state and private entities and the appropriate public health and quality assurance regulatory authority.

#### **History**

CJY-70-95, July 21, 1995.

#### **§ 1603. Personnel**

The Navajo Division of Health shall be administered by an Executive Director and Deputy Director. The Executive Director shall be appointed by the President of the Navajo Nation, with the approval and recommendation of the Health and Social Services Committee and the consent of the Navajo Nation Council and shall serve at the pleasure of the President of the Navajo Nation. The Executive Director shall cause to be hired a Deputy Director and such other personnel as may be deemed necessary to carry out the purposes of the Division. All personnel, other than the Executive Director, shall be subject to the Personnel Policies and Procedures of the Executive Branch of the Navajo Nation.

#### **History**

CJY-70-95, July 21, 1995.

#### **§ 1604. Organization**

The Navajo Division of Health shall be comprised of such departments,

programs, offices and administrative components as may be deemed necessary by the Executive Branch to fulfill its purposes, subject to legislative review and approval of the Division's Plan of Operation.

#### **History**

CJY-70-95, July 21, 1995.

#### **§ 1605. Legislative Oversight**

The Navajo Division of Health shall operate under the legislative oversight of the Health and Social Services Committee of the Navajo Nation Council, pursuant to the powers granted the Committee in 2 N.N.C. §§ 191 and 451 *et seq.* The Division shall operate pursuant to a Plan of Operation approved by the Health and Social Services Committee and the Government Services Committee of the Navajo Nation Council.

#### **History**

CJY-70-95, July 21, 1995.

#### **§ 1606. Amendments**

The enabling legislation for the Navajo Division of Health is subject to amendment, revision and other necessary modification by the Navajo Nation Council with review, input and recommendation by the Health and Social Services Committee of the Navajo Nation Council and the Navajo Division of Health.

#### **History**

CJY-70-95, July 21, 1995.

### **Subchapter 24. [Reserved]**

### **Subchapter 25. Division of Social Services**

#### **History**

CJA-03-01, January 24, 2001.

On January 14, 1992, the Health and Social Services Committee of the Navajo Nation Council recommended the amendment of the enabling legislation for the Division of Social Services codified at 2 N.N.C. § 1651 *et seq.*, and further recommended the approval of a new Plan of Operation for the Division of Social Services by the Government Services Committee. Neither the Government Services Committee nor the Navajo Nation Council have acted upon the 1992 recommendation of the Health and Social Services Committee.

ACJA-5-81 reconfirmed the Division of Social Welfare as the Navajo Nation's agency responsible for implementing the provisions of the Indian Child Welfare Act of 1978, P.L. 96-608.

The Office of Law Enforcement, formerly § 1651 of this title, was redesignated

the Division of Public Safety by the 1978 Budget, at page XI-I. The provisions relating to the Division of Public Safety are codified 2 N.N.C. § 1351 *et seq.*

ACMA-18-78 delegated the responsibility of providing social services to needy Navajo individuals to the Division of Social Welfare as the key agency for the Navajo Nation in Social welfare programming and family and child services.

By CO-65-77, adopting the 1978 Budget, the Navajo Government was reorganized. A Division of Social Welfare was established in place of other Social Services Programs.

CF-77-74, approved a Plan of Operation for the Navajo Office of Social Services within the Division of Human Development which was subsequently amended by ACMY-77-74, May 15, 1974.

ACAU-142-60, August 11, 1960 established a Health and Welfare Department responsible to the Director, other Social Services Programs.

#### **§ 1651. Establishment**

There is hereby established the Navajo Division of Social Services within the Executive Branch of the Navajo Nation.

#### **History**

CJA-03-01, January 24, 2001.

#### **§ 1652. Purposes**

The purpose of the Navajo Division of Social Services shall be to provide the Navajo people with such essential social services as approved and authorized by the Navajo Nation Council and to ensure the highest quality of social welfare programs for the Navajo people by coordinating with the Bureau of Indian Affairs and other federal, state and private entities.

#### **History**

CJA-03-01, January 24, 2001.

#### **§ 1653. Personnel**

The Navajo Division of Social Services shall be administered by an Executive Director whose appointment shall be made by the President of the Navajo Nation and confirmed by the Navajo Nation Council upon recommendation of the Health and Social Services Committee of the Navajo Nation Council and who shall serve at the pleasure of the President of the Navajo Nation. The Executive Director may employ a Deputy Director and shall employ such other personnel as may be deemed necessary to carry out the purposes of the Division. All personnel shall be subject to the Personnel Policies and Procedures of the Executive Branch of the Navajo Nation.

#### **History**

CJA-03-01, January 24, 2001.

#### **§ 1654. Organization**

The Navajo Division of Social Services shall be comprised of such Departments, Programs, Offices and administrative components as may be deemed necessary by the Executive Director to fulfill its purpose, subject to legislative review and approval of the Division's Plan of Operation.

#### **History**

CJA-03-01, January 24, 2001.

#### **§ 1655. Legislative Oversight**

The Navajo Division of Social Services shall operate under the legislative oversight of the Health and Social Services Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 451 *et seq.* The Division shall operate pursuant to a Plan of Operation approved by the Health and Social Services Committee and the Government Services Committee of the Navajo Nation Council.

#### **History**

CJA-03-01, January 24, 2001.

#### **§ 1656. Amendments**

Sections 1651 through 1655 may be amended from time to time by the Navajo Nation Council upon recommendation by the Health and Social Services Committee of the Navajo Nation Council after consultation with the Navajo Division of Social Services.

#### **History**

CJA-03-01, January 24, 2001.

### **Subchapter 26. [Reserved]**

### **Subchapter 27. Division of Human Resources**

#### **History**

The Division of Human Resources was formerly the Division of Labor.

GSCO-63-91 adopted the Plan of Operation for the Navajo Nation Band Program within the Division of Human Resources, initially established pursuant to ACMY-196-71. CS-57-89 separated the Navajo Tribal Band Program from the Office of Navajo Women and placed it under the Division of Human Resources.

GSCO-59-91 adopted the Plan of Operation for the Navajo Occupational Safety and Health Administration within the Division of Human Resources, initially established pursuant to ACAP-85-87.

GSCS-54-91 adopted the Plan of Operation for the Office of Navajo Women and

Families within the Division of Human Resources. See now 2 N.N.C. § 1121, Navajo Women's Commission.

GSCAU-49-91 adopted the amended Plan of Operation for the Department of Navajo Veterans' Affairs within the Division of Human Resources. CNIA-25-71 initially established the Department of Navajo Veterans' Affairs within the Executive Branch. The Plan of Operation for the Department of Navajo Veterans' Affairs was first adopted by ACJY-91-82 which was subsequently rescinded by ACAU-104-84 and ACJY-167-87. ACJY-91-82 was also rescinded by ACNIA-36-88 which amended ACJY-167-87.

GSCJY-39-91 adopted the amended Plan of Operation for the Office of Navajo Labor Relations within the Division of Human Resources established pursuant to CJA-4-72, as amended by ACJY-134-86 and ACJY-159-87.

GSCJN-35-91 adopted the Plan of Operation for the Public Employment Program within the Division of Human Resources. GSCJN-35-91 amended the Plan of Operation for the Chapter Support Services Department's Plan of Operation into which the Public Employment Program had been originally incorporated pursuant to ACJY-111-86. In adopting the Plan of Operation for the Chapter Support Services Department, ACJY-111-86 also rescinded ACJA-3-85 which adopted the Public Employment Program's first Plan of Operation.

GSJN-31-91 adopted the Plan of Operation for the Navajo Department of Employment and Training within the Division of Human Resources and rescinded ACJY-161-87 which approved the original Plan of Operation for the Navajo Department of Employment and Training.

GSCMA-20-91 directed that the "Personnel Policies Manual" included as part of the amended Plan of Operation for the Department of Personnel Management under 2 N.N.C. § 2351 *et seq.*, as adopted by GSCN-57-90, shall become effective on April 1, 1991. GSCMY-30-94 approved the amendment to the "Personnel Policies Manual" to include provisions for medical and family leave.

GSCJA-3-91 adopted the Plan of Operation for the Navajo Tribal Retirement Program within the Division of Human Resources. GSCN-57-90 adopted the amended Plan of Operation for the Department of Personnel Management, within the Division of Human Resources, then codified at 2 N.N.C. § 2351 *et seq.*, thereby amending the Plan of Operation of the Department of Personnel Management pursuant to CJY-43-76; amended the Personnel Policies and Procedures of the Navajo Tribe pursuant to ACJN-297-73; and amended the Personnel Policies and Procedures of the Navajo Tribe pursuant to CAU-50-59, which established the Department of Personnel Management and adopted the original version of the Personnel Policies of the Navajo Nation.

GSCAU-43-90 adopted the Plan of Operation for the Office of Broadcast Services within the Division of Human Resources.

GSCAU-39-90 adopted the Plan of Operation for the Division of Human Resources.

CS-49-88 created a new Division of Human Resources thus replacing the former Division of Labor.

ACJY-161-87 repealed CF-22-75 and the amendments to the Plan of Operation for

the Division of Labor under Page X-1, 1978 Tribal Budget adopted pursuant to CO-65-77, and approved further amendments to the Plan of Operation for the Division of Labor.

ACD-181-82 adopted the Plan of Operation for the Navajo Office of Census and Vital Statistics, which was subsequently incorporated into the Division of Human Resources as the Navajo Office of Vital Records pursuant to GSCAU-3990. CAU-50-59 established the Navajo Office of Census and Statistics Services for which no Plan of Operation was adopted. ACAU-163-77 adopted a Plan of Operation for the Central Records Office.

CF-22-75 established the "Navajo Manpower Administration" which was renamed the "Office of Labor" in 1976 which Plan of Operation was originally codified at 15 N.N.C. §§ 1-6. The Office of Labor was subsequently redesignated the "Division of Labor" which Plan of Operation was amended under Page X-1, 1978 Tribal Budget, adopted pursuant to CO-65-77 and then codified at 2 N.N.C. § 1701.

#### **§ 1701. Establishment**

There is established the Division of Human Resources within the Executive Branch of the Navajo Nation government.

#### **History**

CJY-39-05, July 21, 2005.

GSCAU-39-90, August 14, 1990.

#### **§ 1702. Purpose**

The Division of Human Resources shall consolidate all human resources programs and activities of the Navajo Nation government within a single division to facilitate effective management and delivery of human resource programs and services in a comprehensive manner.

#### **History**

CJY-39-05, July 21, 2005.

GSCAU-39-90, August 14, 1990.

#### **§ 1703. Personnel and organization**

##### **A. Personnel.**

1. There is hereby established the position of the Executive Director and such other positions that are necessary and provided in the budget approved by the Navajo Nation Council for the Division of Human Resources.

2. All Division of Human Resources personnel shall be hired and compensated pursuant to the policies and guidelines of the Navajo Nation Personnel Policies and Procedures Manual, except the Executive Director who shall be appointed by and serve at the pleasure of the President of

the Navajo Nation and confirmed by the Navajo Nation Council.

B. Organization.

1. The Division of Human Resources shall be comprised of programs and administrative components as may be deemed necessary subject to legislative review and approval of the department's and/or program's plans of operation.

2. The Division of Human Resources shall consist of the following departments and offices:

- a. Department of Personnel Management.
- b. Navajo Department of Workforce Development.
- c. Navajo Department of Retirement Services.
- d. Department of Veterans Affairs.
- e. Office of Broadcast Services.
- f. Office of Navajo Labor Relations.
- g. Office of Navajo Women and Families.
- h. Navajo Office of Vital Records.
- i. Navajo Occupational Safety and Health Administration.
- j. Department of Child Support Enforcement.
- k. Staff Development and Training Program.
- l. Navajo Nation Band.

**History**

CJY-39-05, July 21, 2005.

GSCAU-39-90, August 14, 1990.

**§ 1704. Responsibility and authority**

A. The Division of Human Resources provides centralized and decentralized human resource program services to the Navajo Nation government. The Division management is accountable to the President of the Navajo Nation for performance of its functional responsibilities in an effective and efficient manner. All management personnel within the Division shall have sufficient authority established by their plans of operation to perform their job responsibilities not inconsistent with the Master Plan or Navajo law.

B. The Executive Director of the Division of Human Resources shall have the following responsibilities and authorities:



1. Be responsible for the efficient management and administration of the Division of Human Resources and its departments and programs;

2. Provide quarterly reports of all activities within the Division of Human Resources and its departments and programs to the President of the Navajo Nation and the Human Services Committee of the Navajo Nation Council;

3. Supervise and direct all department directors and program managers within the Division of Human Resources;

4. Develop, recommend and implement (upon adoption by the appropriate Navajo Nation legislative body) policies, rules and regulations governing matters delegated to the Division of Human Resources and its departments and programs;

5. Set priorities and participate in overall Division of Human Resources departments' and programs' performance based budget planning process;

6. Conduct periodic performance review of Division of Human Resources departments and programs for effectiveness and progress to ensure compliance with the annual fiscal year performance based budget requirements;

7. Coordinate with Division of Human Resources departments and programs, administrative, financial and operating policies for the Division of Human Resources; and

8. Represent the Division of Human Resources at executive level planning sessions.

#### **History**

CJY-39-05, July 21, 2005.

GSCAU-39-90, August 14, 1990.

#### **§ 1705. Legislative oversight**

The Division of Human Resources shall operate under the legislative oversight of the Human Services Committee of the Navajo Nation Council.

#### **History**

CJY-39-05, July 21, 2005.

GSCAU-39-90, August 14, 1990.

#### **§ 1706. Amendments**

Sections 1701 through 1706 may be amended by the Government Services Committee of the Navajo Nation Council upon the recommendation of the Human

Services Committee of the Navajo Nation Council.

#### **History**

CJY-39-05, July 21, 2005.

GSCAU-39-90, August 14, 1990.

#### **Subchapter 28. [Reserved]**

#### **Subchapter 29. [Reserved]**

#### **History**

CS-28-83, September 28, 1983.

This Subchapter formerly governing the establishment, purposes, powers and operations of the Division of Chapter Development, were derived from ACD-157-81, December 9, 1981. See 2 N.N.C. § 4041 *et seq.*, and § 4061 *et seq.* See 2 N.N.C. § 1451, *et seq.*, Division of Community Development.

#### **Subchapter 30. [Reserved]**

#### **Subchapter 31. Department of Diné Education**

##### **§ 1801. Establishment**

A. There is established the Department of Diné Education within the Executive Branch of the Navajo Nation government.

B. The Department of Diné Education (Department) is the administrative agency within the Navajo Nation with responsibility and authority for implementing and enforcing the educational laws of the Navajo Nation. The Department is subject to and carries out the laws adopted by the Navajo Nation Council. In exercising its responsibilities, the Department shall seek to work cooperatively with schools serving the Navajo Nation.

#### **History**

CJY-37-05, July 19, 2005.

GSCJN-12-04, June 14, 2004.

GSCAP-35-01, April 13, 2001.

GSCO-81-95, October 13, 1995.

GSCJA-2-95, January 9, 1995.

##### **§ 1802. Staffing and organization**

A. The Department is under the immediate direction of the Navajo Nation Superintendent of Schools, subject to the overall direction of the Navajo

Nation Board of Education. The Navajo Nation Superintendent of Schools is appointed by the Navajo Nation Board of Education, subject to confirmation by the Navajo Nation Council.

B. The Navajo Nation Superintendent of Schools shall serve at the pleasure of the Navajo Nation Board of Education. All personnel other than the Navajo Nation Superintendent of Schools shall be subject to all of the Personnel Policies and Procedures of the Navajo Nation.

C. The Department shall be comprised of such programs and administrative components as may be deemed necessary, subject to availability of appropriations, and legislative approval of Department and/or program plans of operation.

### **History**

CJY-37-05, July 19, 2005.

GSCJN-12-04, June 14, 2004.

GSCAP-35-01, April 13, 2001.

GSCO-81-95, October 13, 1995.

GSCJA-2-95, January 9, 1995.

**Note.** Renumbered; previously at 2 N.N.C. § 1804.

### **§ 1803. Responsibility and authority**

In carrying out its responsibilities the Department, through the Superintendent of Schools, is authorized and directed to:

A. Establish cooperative arrangements with other divisions and programs within the Navajo Nation and with education organizations and entities.

B. Negotiate cooperative arrangements and intergovernmental agreements with local, state and federal agencies and governmental bodies, subject where required, to the approval of the Navajo Nation Council or designated standing committee.

C. Inquire into the educational situation of Navajo students in any school or educational program serving the Navajo Nation or receiving program funds for the education of Navajo youth or adults. The authority to make inquiries granted to the Department in this Subsection extends to all affected school sites.

D. Determine the impact of educational programs on Navajo students by inquiring into areas of concern, such as achievement data, test results, budgets, language proficiency, special educational programs, supplemental programs, staffing, social and economic variables, curriculum, health and safety, adequacy and accessibility of facilities, and other areas of inquiry relevant to the educational situation of Navajo students.

E. Comply with federal and, where appropriate, state requirements regarding confidentiality of records.

F. Report the results of its inquiries to the Education Committee of the Navajo Nation Council and to the Navajo Nation Board of Education (Board) and local community school boards, school board association, communities and other entities serving the Navajo Nation affected by the subject matter of these inquiries.

G. Make recommendations in its reports for the improvement of Navajo education.

H. Upon a directive from the Board, assume control of community controlled schools in situations where problems have been identified that hamper the education of students in the school and the problems are determined to be beyond the school's ability to resolve.

I. Report quarterly to the Board on the state of Navajo education.

J. Shall implement the procedures, policies, directives and guidance as approved by the Board related to the education of Navajo children and the enforcement of Navajo Nation laws.

K. The Department shall be available to work with schools, school districts, governing boards, local communities and other appropriate entities to develop plans for the implementation of Navajo educational laws, to coordinate utilization of available resources and to assist in the development of new resources. The Department shall assure that its staff have and receive appropriate professional training in order to keep informed of current educational methodologies, laws, regulations, and research.

#### **History**

CJY-37-05, July 19, 2005.

GSCJN-12-04, June 14, 2004.

GSCAP-35-01, April 13, 2001.

GSCO-81-95, October 13, 1995.

GSCJA-2-95, January 9, 1995.

**Note.** Renumbered; previously at 2 N.N.C. § 1805.

#### **United States Code**

Educational programs, administration by local educational agencies, see 20 U.S.C. § 1232d *et seq.*

Indian self-determination and educational assistance, see 25 U.S.C. § 450 *et seq.*

**§ 1804. Legislative oversight**

The Education Committee of the Navajo Nation Council is the oversight committee for the Department of Diné Education pursuant to 2 N.N.C. § 484(B) (4).

#### **History**

CJY-37-05, July 19, 2005.

GSCJN-12-04, June 14, 2004.

GSCAP-35-01, April 13, 2001.

GSCO-81-95, October 13, 1995.

GSCJA-2-95, January 9, 1995.

**Note.** Renumbered; previously at 2 N.N.C. § 1806.

#### **§ 1805. Amendments**

Amendments to the enabling legislation for the Department of Diné Education shall only be made by the Navajo Nation Council. The plan of operation for the Department of Diné Education may be amended by the Government Services Committee of the Navajo Nation Council upon the recommendation of the Education Committee of the Navajo Nation Council and at the request of the Navajo Nation Board of Education.

#### **History**

CJY-37-05, July 19, 2005.

GSCJN-12-04, June 14, 2004.

GSCAP-35-01, April 13, 2001.

GSCO-81-95, October 13, 1995.

GSCJA-2-95, January 9, 1995.

**Note.** Renumbered; previously at 2 N.N.C. § 1807.

#### **§ 1806. Promulgation/implementation of rules**

The Department, upon approval of the Navajo Nation Board of Education and Education Committee of the Navajo Nation Council, may promulgate policies, procedures, rules and regulations for all programs within the Department not inconsistent with Navajo Nation, and applicable federal and state laws.

#### **History**

CJY-37-05, July 19, 2005.

GSCAP-35-01, April 13, 2001.

GSCO-81-95, October 13, 1995.

GSCJA-2-95, January 9, 1995.

**Note.** Renumbered; previously at 2 N.N.C. § 1808.

**§§ 1821 to 1823. [Superseded]**

**History**

GSCJA-2-95, January 9, 1995. See 2 N.N.C. § 1801, *et seq.*

**§§ 1831 to 1836. [Superseded]**

**History**

GSCJA-2-95, January 9, 1995. See 2 N.N.C. § 1801, *et seq.*

**Subchapter 32. [Reserved]**

**Subchapter 33. [Reserved]**

**History**

Division of Water and Sanitation was rescinded by ACJY-1 12-83, July 14, 1983, and CS-28-83, September 28, 1983, see History preceding 2 N.N.C. §§ 1901, *et seq.*

**Subchapter 34. [Reserved]**

**Subchapter 35. Division of Natural Resources**

**§ 1901. Establishment**

The Division of Natural Resources is established as a division within the Executive Branch of the Navajo Nation government.

**History**

CAP-41-94, April 20, 1994.

ACAP-57-88, April 13, 1988.

1981 Budget Resolution changed the name of the Division of Natural Resources to the Division of Resources.

ACMA-67-78, May 11, 1978.

1977 Budget Resolution.

1976 Organizational Chart.

## **§ 1902. Purposes**

The purposes of the Division of Natural Resources shall be:

A. To provide for the protection, restoration, conservation, management and sustainable development of all Navajo natural, cultural and historic resources, under the guidance and direction of the people of the Navajo Nation and the Navajo Nation Council.

B. To ensure that the highest quality of natural, cultural and historic resources are available for the enjoyment and use of present and future generations of Navajo People.

### **History**

CAP-41-94, April 20, 1994.

ACAP-57-88, April 13, 1988.

1981 Budget Resolution.

ACMA-67-78, May 11, 1978.

1977 Budget Resolution.

1976 Budget Resolution.

## **§ 1903. Personnel**

The Division of Natural Resources shall be administered by an Executive Director, who shall be appointed by the President of the Navajo Nation upon the confirmation of the Navajo Nation Council and who shall serve at the pleasure of the President of the Navajo Nation. All personnel other than the Executive Director shall be subject to all of the Personnel Policies and Procedures of the Navajo Nation.

### **History**

CAP-41-94, April 20, 1994.

ACAP-57-88, April 13, 1988.

1981 Budget Resolution.

ACMA-67-78, May 11, 1978.

1977 Budget Resolution.

1976 Organizational Chart.

## **§ 1904. Organization**

The Division of Natural Resources shall be comprised of such programs and administrative components as may be deemed necessary, subject to legislative

review and approval of department and/or program Plans of Operation.

#### **History**

CAP-41-94, April 20, 1994.

ACAP-57-88, April 13, 1988.

1981 Budget Resolution.

ACMA-67-78, May 11, 1978.

1977 Budget Resolution.

1976 Organizational Chart.

**Note.** Slightly reworded for statutory and grammatical form.

#### **§ 1905. Legislative oversight**

The Division of Natural Resources shall operate under the legislative oversight of the Resources Committee of the Navajo Nation Council pursuant to 2 N.N.C. § 691 *et seq.* The Division shall operate only pursuant to plans of operation approved by the Resources Committee and the Government Services Committee of the Navajo Nation Council.

#### **History**

CAP-41-94, April 20, 1994.

#### **Subchapter 36. [Reserved]**

#### **History**

CAP-41-94, April 20, 1994, adopted Enabling Legislation for the Division of Natural Resources and repealed and deleted certain Division of Natural Resources' department and program plans of operation from the Navajo Nation Code, including the Division of Water Resources, previously codified at 2 N.N.C. §§ 1921-1925.

ACJA-6-86, January 15, 1986. Amended the Plan of Operation for the Division of Water Resources.

ACJY-112-83, July 14, 1983. Adopted a Plan of Operation for the Division of Water Resources.

#### **Subchapter 37. Environmental Protection Agency**

#### **§ 1921. Establishment**

There is established the Navajo Nation Environmental Protection Agency within the Executive Branch of the Navajo Nation government.



## History

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

**Note.** Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

### § 1922. Purposes

The Navajo Nation Environmental Protection Agency is established for the following purposes:

A. To establish on behalf of the Navajo Nation environmental policies which shall govern activities which may have an impact on the environment of the Navajo Nation.

B. To protect the public health and the environment of the Navajo Nation through legislative proposals, monitoring and data collection, rule making as may be authorized by the Navajo Nation Council, enforcement actions, public education, obtaining funding, and other appropriate means.

C. To represent the Navajo Nation with respect to environmental issues and concerns in interactions with federal, state, local and Navajo Nation entities and agencies.

D. To exercise inherent Navajo sovereign authority over the Navajo Nation in part by obtaining primacy for regulation of all activities which may have an impact on the environment within the Navajo Nation.

E. To provide a central repository of information, studies, plans, and statements relating to environmental protection within and near the Navajo Nation for the Navajo Nation government.

## History

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

**Note.** Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

### **§ 1923. Personnel**

A. The Environmental Protection Agency shall be administered by a Director who shall be appointed by the President of the Navajo Nation, subject to confirmation by the Navajo Nation Council, upon the recommendation of the Resources Committee of the Navajo Nation Council. The Director of the Navajo Nation Environmental Protection Agency shall report directly to the President of the Navajo Nation.

B. The Director is authorized to hire additional professional, technical and clerical positions as needed to carry out the purposes stated herein. These positions shall be filled in accordance with Navajo Nation personnel policies and procedures and within applicable budget rules established for conducting the annual Navajo Nation budget process.

### **History**

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

**Note.** Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

### **§ 1924. Authority**

In implementing the purposes of the Environmental Protection Agency, the Director shall have the power:

A. To adopt, give final approval, and enforce rules, provided that these rules shall be adopted only after notice and comment, pursuant to rules promulgated by the Director and approval of the Resources Committee of the Navajo Nation Council.

B. To issue cease and desist orders, compliance orders or such other orders as the Director shall deem necessary to enforce Environmental Protection Agency regulations to prohibit or to put a stop to activities that may pose an imminent and substantial danger to the public health or the environment.

C. To implement by regulation, rules for administrative appeal of any

adverse action taken by the Navajo Nation Environmental Protection Agency pursuant to the authority of this Section and to issue final agency decisions.

D. To levy civil penalties for each day of violation of any order issued by the Director; provided, however, that any person or entity as defined in 2 N.N.C. § 1925 shall have the right to appeal any civil penalty to the courts of the Navajo Nation as specifically provided in the Chapters administered by the Navajo Nation Environmental Protection Agency. No appeal shall operate to stay an order unless the court determines, after a hearing, that there is no basis in fact to support the order or that the order is not in compliance with applicable law.

E. To take such other actions as may be necessary or appropriate to implement the purposes of the Environmental Protection Agency.

F. To carry out any other powers consistent with the purposes of the Environmental Protection Agency that may be authorized in its Plan of Operation upon recommendation of the Resources Committee and approval of the Government Services Committee of the Navajo Nation Council.

#### **History**

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

**Note.** Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

#### **§ 1925. Jurisdiction**

The Navajo Nation Environmental Protection Agency has regulatory, monitoring, and enforcement authority over all natural resources relating to the quality of the environment within the Navajo Nation, as defined in 7 N.N.C. § 254, and over any person, including but not limited to Navajo citizens, enterprises, corporations, associations, partnerships, Chapters, tribal government entities or other entities; non-Navajo individuals, corporations, associations, partnerships, other entities, successors and assigns; states; counties; local governments and other agencies; and the United States where not prohibited by applicable laws, doing business within or otherwise affecting the environment of the Navajo Nation.

#### **History**

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources.

Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

**Note.** Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C. §§ 1921-1927.

### **§ 1926. Legislative oversight**

The Resources Committee of the Navajo Nation Council shall serve as the legislative oversight committee for the Navajo Nation Environmental Protection Agency, pursuant to 2 N.N.C. § 695(B)(13) and this Section.

#### **History**

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

**Note.** Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

### **§ 1927. Amendments**

Sections 1921-1926 may be amended by the Navajo Nation Council, upon recommendation from the Resources Committee and the Government Services Committee of the Navajo Nation Council. Amendments by the Government Services Committee shall be subject to approval by the Resources Committee of the Navajo Nation Council.

#### **History**

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

**Note.** Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C. §§ 1921-1927.

### **Subchapter 38. [Reserved]**

### **Subchapter 39. Department of Justice**

#### **Article 1. Generally**

##### **History**

**Note.** Sections 1961-1963 of this title, relating to the Department of Justice, were formerly codified at 2 N.N.C. §§ 1301, 1993, 1994 respectively.

"Office of General Counsel" was rescinded and all references to such office are now incorporated in the Department of Justice.

##### **§ 1961. Establishment; purpose; composition**

A. There is established the Department of Justice within the Executive Branch of the Navajo Nation government.

B. The purpose of the Department of Justice is to provide legal services to the Navajo Nation government and to administer its programs.

C. The Department of Justice shall consist of the Attorney General, the Deputy Attorney General; the staff budgeted for the Department by the Navajo Nation Council, and the following programs:

1. Office of the Navajo Public Defender;
2. Office of the Prosecutor;
3. Juvenile Justice; and
4. Navajo-Hopi Legal Services.

##### **History**

CF-7-90, February 1, 1990.

CAP-34-93, April 22, 1993 authorized the Office of the Navajo Public Defender and rescinded the Legal Aid and Defender Office.

CF-8-82, February 5, 1982.

1978 Budget.

**Note.** Slightly reworded for purposes of statutory form.

## **§ 1962. Personnel**

A. There is established the position of Attorney General and Deputy Attorney General of the Navajo Nation, and such other positions as may from time to time be budgeted by the Navajo Nation Council or by any other source acceptable to the President of the Navajo Nation.

B. The Attorney General and Deputy Attorney General shall be licensed attorneys. The Attorney General and Deputy Attorney General shall be appointed by the Navajo Nation Council, upon the recommendation of the President, to serve at a negotiated salary. The appointment shall be effective upon the approval of the Navajo Nation Council, for a term concurrent with the term of the President. The Attorney General and Deputy Attorney General shall serve at the pleasure of the Navajo Nation Council. All other attorneys shall serve at a negotiated salary and at the pleasure of the Attorney General.

C. The Deputy Attorney General shall serve in the stead of the Attorney General, with full authority of the Attorney General, in the event of the death, disability, or removal of the Attorney General, until a new Attorney General is approved by the Navajo Nation Council.

D. All other personnel shall be hired and compensated pursuant to usual Navajo Nation Personnel Policies and Procedures.

### **History**

CF-7-90, February 1, 1990.

CMA-6-89, March 1, 1989.

CF-8-82, February 5, 1982.

1978 Budget, page IX-1.

CJA-15-72, January 26, 1972.

## **§ 1963. Authority, responsibilities and duties**

The Attorney General is authorized and directed to:

A. Report and be responsible to the Navajo Nation Council through the President for the accomplishment of the purposes and objectives of the legal needs of the Navajo Nation.

B. On behalf of the Navajo Nation and without prior approval of the Navajo Nation Council, or any Committee thereof, the President or any other official of the Navajo Nation, to negotiate and execute attorney contracts, within the approved Navajo Nation budget for attorneys' fees and expenses, to provide for legal counsel to the Navajo Nation government or any other legal representation deemed necessary to protect the interests of the Navajo Nation.

C. Monitor the work of all retained legal consultants and law firms.

D. Formulate overall administrative and operating policies pertaining to the Department of Justice, and to take such action as the Attorney General shall deem necessary for the accomplishment and enforcement thereof.

E. Exercise supervisory control and direction over all personnel within the Department of Justice.

F. Represent the Department of Justice in executive level planning.

G. Represent the Navajo Nation government regarding its legal interests in the Nation's dealings and relations with all persons and organizations outside the Navajo Nation government.

H. Conduct such special projects and programs as may be assigned.

I. Delegate authority to members of his or her staff.

J. Develop programs and budgets for the Department of Justice of the Navajo Nation.

K. Perform all duties and responsibilities of the office in accordance with the highest standards of legal ethics as required of members of the Navajo Nation Bar Association and by the American Bar Association Code of Professional Responsibility.

#### **History**

CF-7-90, February 1, 1990.

CMA-6-89, March 1, 1989.

CF-8-82, February 5, 1982.

1978 Budget, Page IX-1.

CJA-15-72, January 26, 1972.

#### **§ 1964. Attorney General; Chief Legal Officer**

A. The Attorney General is the Chief Legal Officer of the Navajo Nation and shall have charge of the Department of Justice and of all legal matters in which the Navajo Nation government has an interest.

B. The Attorney General shall render legal services to the Navajo Nation government, including its Chapters, branches, and entities, subject to available resources, as may be required.

C. No division, program, enterprise, or other entity of the Navajo Nation government shall retain or employ legal counsel except as may be approved by the Attorney General. The branches shall not retain or employ legal counsel for external litigation except as may be approved by the Attorney General. Navajo Nation Chapters may employ their own counsel, subject to available funds, under the terms and conditions approved by the Chapter membership.

D. The Attorney General shall adopt reasonable rules and regulations to allow for the hiring of independent and additional outside counsel as needed, as provided in this subpart.

E. The Attorney General may retain private counsel to handle any particular matter or types of matters as he deems appropriate, subject to the availability of funds appropriated for such purposes. Such counsel may be retained to represent the Navajo Nation government in distant forums, to provide specialized legal expertise not available from within the Department of Justice, and to respond to exceptional demand for legal services.

F. The Attorney General shall defend and initiate all actions, including appeals, in which the Navajo Nation is a party, including any action brought in the name of Navajo Nation government officials for conduct arising out of their official duties, and may compromise or settle any action or claim by or against the Navajo Nation government. Before concluding any such compromise or settlement which involves a particular branch, division, department or program, the Attorney General shall consult with such branch, division, department, or program.

Where no branch or division is named, or otherwise particularly involved, the Attorney General shall consult with the President prior to concluding any such compromise or settlement.

G. All communications between elected tribal officials, officers, employees, or agents of the Navajo Nation government and its attorneys shall be protected by the attorney-client privilege and shall not be admissible or discoverable in any judicial or administrative proceeding. No waiver of the attorney-client privilege shall be effective against the Navajo Nation government without the express approval of the Attorney General. The Attorney General is authorized to waive the attorney-client privilege when such waiver will advance the overall legal interests of the Navajo Nation government.

H. If the Attorney General determines that he/she is disqualified from providing legal representation or legal services on behalf of any entity of the Navajo Nation government in relation to any matter, the Attorney General shall give written notification to the entity affected. If the entity has received such notification from the Attorney General, the entity is authorized to make expenditures, subject to available appropriations, to employ attorneys to provide the representation or services.

I. The Attorney General in his or her discretion is authorized to represent an officer or employee of the Navajo Nation against whom a civil action is brought in his or her individual capacity until such time as it is established as a matter of law that the alleged activity or events which form the basis of the complaint were not performed, or not directed to be performed, within the scope or course of the officer's or employee's duty or employment.

#### **History**

CF-7-90, February 1, 1990.

#### **Annotations**



## **1. Construction and application**

"See also 2 N.N.C. § 1964(I) (authorizing the Attorney General to represent an official sued in their personal capacity until 'it is established' as a matter of law that the official's activities were not in the scope of his or her 'duty or employment')[.] We read these provisions to require an explicit determination by the district court that the actions of the official or employee were or were not in the scope of his or her authority before moving forward to consider immunity defenses." *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 11 (Nav. Sup. Ct. March 11, 2004).

### **§ 1965. Opinions of the Attorney General**

A. Any branch, division, department, enterprise, Chapter or other entity of the Navajo Nation government, or any elected official of the Navajo Nation government may request the Attorney General to issue an opinion concerning any question of law relating to their respective entity or offices. No adverse action may be taken by the Navajo Nation government against any official or employee of the Navajo Nation government for conduct taken in reasonable reliance upon the advice given in such an opinion.

B. The Attorney General shall, at least annually, publish the official opinions of the Attorney General. The Attorney General shall provide copies to the President, the Speaker, the Chief Justice, and each delegate of the Navajo Nation Council.

#### **History**

CF-7-90, February 1, 1990.

## **Article 2. Office of the Prosecutor**

#### **History**

**Note.** Sections 1971-1983 of this title, relating to the Office of the Prosecutor, were formerly codified at 2 N.N.C. §§ 1171-1183.

### **§ 1971. Generally**

The Office of the Prosecutor is continued as a department in the Justice Department of the Navajo Nation government, directly under the Office of the Attorney General.

#### **History**

ACS-157-83, September 22, 1983.

CF-8-82, February 5, 1982.

ACF-9-79, February 15, 1979.

**Note.** Slightly reworded for consistency and statutory clarity.

## **§ 1972. Purpose**

The purpose of the Office of the Prosecutor is to prosecute to completion all cases involving alleged violations of the Navajo Nation Code by Indian persons, to conduct investigations and other activities necessary for the conduct of its affairs, and to assume certain responsibilities with respect to civil matters, including extradition and exclusion proceedings.

### **History**

ACS-157-83, September 22, 1983.

ACF-9-79, Exhibit A, February 15, 1979.

**Note.** Slightly reworded for grammatical form.

## **§ 1973. Chief Prosecutor**

A. The Office of the Prosecutor, as established by this article, shall be headed by a Chief Prosecutor, who shall be a member of the Navajo Nation and have original domicile upon the Navajo Reservation, or land under the jurisdiction of the Navajo Nation Courts for a term of six months immediately preceding his or her appointment as Chief Prosecutor.

B. The Chief Prosecutor shall be appointed by the Attorney General and he or she shall serve at his or her pleasure.

C. The Chief Prosecutor shall serve until his or her successor is appointed.

D. Any attorney/advocate positions within the Office of the Prosecutor, other than the Chief Prosecutor's position, shall be appointed by the Chief Prosecutor and shall serve at the pleasure of the Chief Prosecutor. All other personnel shall be hired and compensated pursuant to the Navajo Nation Personnel Policies and Procedures.

### **History**

ACS-157-83, September 22, 1983.

CF-8-82, February 5, 1982.

ACF-9-79, February 15, 1979.

**Note.** Slightly reworded for purposes of statutory clarity.

## **§ 1974. Duties, responsibilities and authority**

The Prosecutor shall:

A. Report to the Attorney General with respect to all activities of the office and be responsible to him or her for all administrative and operational matters not relating to the investigation and prosecution of suspects, criminal defendants and cases.

B. Investigate, prosecute and dispose of all cases within his or her jurisdiction, acting independently and upon his or her own authority within the guidance of law and professional ethics in the performance of his or her duties.

C. Formulate overall administrative and operating policies of the Office of the Prosecutor and take action as he or she shall deem necessary for the accomplishment and enforcement thereof.

D. Exercise supervisory control and direction of all sections under the Office of the Prosecutor.

E. Represent the Office of the Prosecutor in executive level planning.

F. Represent the Navajo Nation government, within the areas of the Prosecutor's responsibility as authorized by the Attorney General.

G. Plan and participate with other areas of law enforcement toward full realization of benefits from federal and state programs for technical and financial assistance.

H. Develop programs and budgets for the Office of the Prosecutor, conduct periodic reviews of program and budget executions of the Office of the Prosecutor and participate in overall program and budget review.

I. Delegate authority to members of the staff.

J. Conduct special programs or projects as may be assigned by the Attorney General not inconsistent with the duties and responsibilities contained herein.

#### **History**

ACS-157-83, September 22, 1983.

CF-8-82, Exhibit B, February 6, 1982.

ACF-9-79, Exhibit A, § 2, February 15, 1979.

**Note.** Slightly reworded for statutory clarity and grammar.

**§§ 1975 to 1977. [Deleted]**

#### **History**

**Note.** §§ 1975-1977, "Personnel"; "Offices; hours" and "Admission to practice; Oath", were deleted from the Code.

#### **§ 1978. Assistance of, and coordination with, other agencies**

A. The Office of the Prosecutor shall have the authority to call upon the Navajo Division of Law Enforcement or any of its personnel for information, records, reports, etc., and to conduct investigations for the Office of the

Prosecutor.

B. The Office of the Prosecutor shall have the authority to call upon all Navajo divisions, enterprises, departments and commissions for assistance in carrying out its work. Such divisions, enterprises, departments and commissions shall provide the Office of the Prosecutor such information and assistance as is necessary to permit the Office of the Prosecutor to carry out its responsibilities and duties under law.

C. The Office of the Prosecutor shall have the authority to call upon United States Governmental Offices serving the Navajo Nation in the name of the Navajo Nation for assistance in carrying out its work.

#### **History**

CF-8-82, February 5, 1982.

ACF-9-79, February 15, 1979.

#### **§ 1979. Investigations**

The Office of the Prosecutor shall have complete authority to initiate and conduct investigations into any alleged violations of the Navajo Nation Code and for the security of the Navajo Nation government, the Navajo Nation Chapter Houses and Officers, the Navajo Nation Courts including the Supreme Court of the Navajo Nation, and any other department, enterprise and entity of the Navajo Nation government.

#### **History**

ACS-157-83, September 22, 1983.

ACF-9-79, February 15, 1979.

**Note.** Slightly reworded for purposes of statutory clarity. Reference to the "Court of Appeals" changed to the "Supreme Court".

#### **§ 1980. Civil case intervention**

The Office of the Prosecutor shall have the authority to intervene in civil matters involving the interests of the Navajo Nation government, and shall further have the authority to initiate civil actions on behalf of the Navajo Nation government in the Courts of the Navajo Nation, against individuals who violate the laws of the Navajo Nation. The Office of the Prosecutor shall have the authority to initiate civil actions seeking restitution on behalf of the Navajo Nation government against individuals who have caused damage to Navajo Nation property or who have deprived the Navajo Nation government of any property belonging to said government.

#### **History**

ACF-9-79, February 15, 1979.

#### **§ 1981. Extradition and civil exclusion proceedings**

A. The Office of the Prosecutor shall have the authority to execute and initiate extradition proceedings against Indian residents of Navajo Indian Country.

B. The Office of the Prosecutor, on behalf of the Navajo Nation, shall have the authority to execute and initiate civil exclusion proceedings to exclude nonmembers from tribal land, pursuant to 17 N.N.C. §§ 1901 and 1902.

#### **History**

ACF-9-79, February 15, 1979.

#### **§ 1982. Authority to subpoena witnesses and documents**

The Office of the Prosecutor shall have the authority to require the production of books, papers and other documents and may issue subpoenas to compel the attendance and testimony of witnesses. If any person shall refuse to obey any subpoena as issued or shall refuse to testify or produce any books, papers or other documents required by the subpoena, the Office of the Prosecutor may petition any court of the Navajo Nation to issue any appropriate order to enforce the subpoena.

#### **History**

ACF-9-79, February 15, 1979.

#### **Annotations**

##### **1. Construction and application**

" ... 2 N.T.C. § 1982 supports the activities of the Special Prosecutor, and we too are hesitant to usurp the legislative function in granting power to secure evidence through the use of subpoenas. [¶ ] There is no statute or rule of law which prohibits the Special Prosecutor from conducting a criminal investigation when criminal charges are pending against an individual." *MacDonald, Sr. v. Navajo Nation ex rel. Rothstein*, 6 Nav. R. 290, 298 (Nav. Sup. Ct. 1990).

##### **2. Scope of subpoena**

"In addressing the objections to the particularity, time periods, and breadth of subpoenas,.... 1. The subpoena may command only the production of things relevant to the investigation; 2. Specification of things to be produced must be made with reasonable particularity; and 3. Production of records covering only a reasonable period of time may be required." *MacDonald, Sr. v. Navajo Nation ex rel. Rothstein*, 6 Nav. R. 290, 293 (Nav. Sup. Ct. 1990).

#### **§ 1983. Criminal investigation equipment**

Consistent with applicable federal law and regulations and the duly approved budget of the Office of the Prosecutor, the Chief Prosecutor is authorized to acquire such criminal investigation equipment as he/she deems appropriate. The Chief Prosecutor is further authorized, consistent with

applicable federal law and regulations, to permit his/her staff to utilize such equipment in carrying out their duties and responsibilities. The Chief Prosecutor and his/her assistants may carry firearms for their own protection while on official duty, provided however, that no employee of the Office of the Prosecutor shall carry a firearm unless such employee has first received instruction and Certification in the use of the firearm by the Division of Public Safety.

#### **History**

ACS-157-83, September 22, 1983.

CF-8-82, February 5, 1982.

ACF-9-79, February 15, 1979.

#### **§ 1984. Prohibiting interference**

The Office of the Prosecutor has an independent responsibility to enforce appropriate provisions of the Navajo Nation Code. No employees, including Executive Branch personnel, shall intercede, or interfere, attempt to intercede or interfere in the legal functions of the Office of the Prosecutor. All inquiries concerning the status of a particular case or policy shall be in writing; additionally, all responses shall be in writing.

#### **History**

ACS-157-83, September 22, 1983.

**Note.** Slightly reworded for statutory and grammatical clarity.

#### **§ 1985. Special Investigative Team (white collar crime)**

Consistent with recommendations of the Bureau of Indian Affairs and the Navajo Nation Special Counsel, a Special Investigative Team shall be established. The Special Investigative Team shall specialize in the areas of white collar or public integrity criminal violations. The Special Investigative Team shall seek Navajo Nation-level prosecutions and recovery of misused Navajo Nation funds, equipment and property. The more serious violations shall be referred to federal authorities in accordance with the United States Attorney's guidelines, after Navajo Nation investigators have concluded their reports.

#### **History**

ACS-157-83, September 22, 1983.

#### **§ 1986. Central records system**

The Office of the Prosecutor shall establish a Central Records Keeping System. The system shall include the date and agency to whom the referral is made, the prosecutor to whom the case is assigned, case status, presiding judge, previous criminal history, title of investigation and case disposition.

### **History**

ACS-157-83, September 22, 1983.

**Note.** Slightly reworded for statutory and grammatical clarity.

### **§ 1987. Case dismissal log and reporting**

Each district Office of the Prosecutor shall maintain a log of all cases dismissed. Each log shall contain the case number or docket number, case title, individual's name, date dismissed, and explanation of dismissal. Copies of each district case dismissal log shall be submitted to the Office of the Prosecutor's Central Office monthly.

### **History**

ACS-157-83, September 22, 1983.

### **§ 1988. Juvenile Justice Section**

A. Duties of the Juvenile Justice Administrator will be to supervise District Juvenile Representatives, coordinate case load monitoring, give legal advice for the handling of juvenile cases, evaluate staff and program, and coordinate with federal, state, and Tribal agencies.

B. Each of the five districts will have Juvenile Representatives. The responsibilities of the Juvenile Representative will include juvenile delinquency proceedings both civil and criminal, case disposition recommendations, Indian Child Welfare case management and other duties as assigned by the juvenile Justice Administrator.

C. One Assistant Juvenile Representative will be under the direct supervision of the District Juvenile Representative at the district level. The Assistant Juvenile Representative will have duties as assigned by the District Juvenile Representative.

D. For administrative purposes, the District Prosecutors will handle leave requests, time and attendance records for the Juvenile Representatives. Should administrative problems arise, the District Prosecutor shall bring them to the attention of the juvenile justice Administrator. All other supervision and substantive case supervision will be conducted by the Juvenile Justice Administrator.

E. Authority for hiring and dismissal shall remain with the Chief Prosecutor thus bringing the Juvenile Justice Administrator and juvenile representatives under the codified exclusive authority of the Chief Prosecutor.

### **History**

ACS-157-83, Exhibit A, September 22, 1983.

**Note.** Slightly reworded for statutory and grammatical clarity.

### **§ 1989. Grievance procedure**

An interdepartmental grievance procedure will be established within four weeks after approval of this article. Such procedure will include an appeal to the Attorney General. Secretarial and clerical support staff will be given the right to utilize Navajo Nation grievance procedures.

#### **History**

ACS-157-83, September 22, 1983.

### **Article 3. Office of the Navajo Public Defender**

#### **History**

CAP-34-93, April 22, 1993.

CF-8-82, February 5, 1982.

**Note.** The Legal Aid and Defender Office formerly at this article was changed to the Office of the Navajo Public Defender by CAP-34-93, April 22, 1993.

#### **§ 1991. Establishment**

There is established the Office of the Navajo Public Defender within the Executive Branch of the Navajo Nation government, and under the oversight of the Government Services Committee of the Navajo Nation Council.

#### **History**

CAP-34-93, April 28, 1993.

CF-8-82, February 5, 1982.

CJA-15-72, January 26, 1972, 1978 Budget, page IX-1.

#### **§ 1992. Purpose**

The purpose of the Office of the Navajo Public Defender is to provide legal defense services to individual indigent persons charged with criminal offenses and to fulfill the requirement for pro bono services by all attorneys and advocates employed by the Navajo Nation government. The public defender shall at all times serve his or her clients independent of any political considerations or private interests and provide legal services to indigent persons accused of crimes which are commensurate with those available to nonindigent persons. By providing these services through the expenditure of public funds, attorneys and advocates employed by the Navajo Nation government should not hereafter be appointed to pro bono representation in the courts of the Navajo Nation, except for those employed by the Office of the Navajo Public Defender pursuant to this Act.

#### **History**

CAP-34-93, April 28, 1993.



CF-8-82, February 5, 1982.

1978 Budget, page IX-1.

CJA-15-72, Exhibit A, § II, January 26, 1972.

**Note.** Slightly reworded for statutory consistency and clarity.

**§ 1993. Personnel**

There are hereby established the following positions:

- A. Director
- B. Staff attorneys
- C. Tribal court advocates
- D. Appropriate clerical personnel
- E. Investigators

F. Such other positions as may from time to time be budgeted by the Navajo Nation Council.

**History**

CAP-34-93, April 28, 1993.

CF-8-82, February 5, 1982.

CJA-15-72, January 26, 1972.

**Note.** Slightly reworded for purposes of statutory clarity.

**§ 1994. Public Defender Commission**

A. There shall be established a Public Defender Commission consisting of three members who shall serve without compensation. Each of the following entities shall appoint one of the commission members:

1. The Navajo Nation Supreme Court;
2. The President of the Navajo Nation;
3. The Board of Bar Commissioners of the Navajo Nation Bar Association.

B. At least two of the members shall be admitted to the practice of law before the courts of the Navajo Nation. No member of the Commission shall at any time be a judge, prosecutor, public defender, or employee of a law enforcement agency.

C. The Public Defender Commission shall appoint and discharge, for good cause only, the Director of the Office of the Navajo Public Defender. The Director shall be appointed to serve a term of three years and shall serve until his or her successor is appointed and qualified. The Director may be reappointed for one or more subsequent three-year terms. Vacancies in the office shall be filled by the Public Defender Commission for the remainder of the unexpired term.

#### **History**

CAP-34-93, April 28, 1993. Added § 1994 and renumbered former § 1994 at § 1996.

#### **§ 1995. Qualifications for personnel**

A. The Director shall be licensed to practice law before the Navajo Nation Courts and before the courts of one of the States of Arizona, New Mexico, or Utah. The Director shall have been licensed in at least one of those jurisdictions for not less than three years prior to his or her appointment. The Director shall devote full time to the performance of his or her duties and shall not engage in the private practice of law.

B. A range for compensation of the Director shall be fixed by the Navajo Nation Council. The Public Defender Commission shall set the precise amount of compensation through negotiation, giving consideration to such factors as the experience of the Director. This compensation, once set, may not be reduced during the term of the Director's appointment.

C. The Director shall employ and fix the compensation of the staff attorneys, tribal court advocates, investigators, clerical personnel, and any other employees necessary to discharge the functions of the public defender office. All salaries shall be reviewed and approved by the Public Defender Commission. Staff Attorneys must be licensed in a state court jurisdiction, and both attorneys and advocates shall become licensed to practice before the courts of the Navajo Nation within a reasonable time after beginning their employment with the office. Staff attorneys and tribal court advocates shall serve on a full-time basis, at the pleasure of the Director, and shall not otherwise engage in the practice of law.

#### **History**

CAP-34-93, April 28, 1993. Added new § 1995.

#### **§ 1996. Duties of Director**

The Director, in addition to any other duties outlined in this part, is hereby authorized and directed to:

A. Represent individual indigent persons who are charged with criminal offenses in the Navajo Nation courts, and advise and counsel these individuals in their legal affairs;

B. Report and be responsible to the Public Defender Commission with regard to administrative matters, in a manner not inconsistent with the Code of

Professional Responsibility;

C. Formulate overall administrative and operating policies pertaining to the Office of the Navajo Public Defender and to take such action as he or she shall deem necessary for the accomplishment and enforcement thereof;

D. Coordinate the pro bono appointment system of other attorneys and advocates for the representation of indigent persons not represented by the Office of the Navajo Public Defender.

#### **History**

CAP-34-93, April 28, 1993.

CF-8-82, February 5, 1982.

1978 Budget, page IX-1.

CJA-15-72, January 26, 1972.

#### **§ 1997. Representation of indigent persons**

A. The Office of the Navajo Public Defender shall represent as counsel, without charge, each indigent person who is under arrest for or charged with committing a criminal offense under the Navajo Nation Code which may lead to the imposition of a sentence of incarceration if:

1. The defendant requests it; or

2. The court, on its own motion or otherwise, so orders and defendant does not affirmatively reject, on record, the opportunity to be represented by legal counsel in the proceeding.

B. The determination of indigence shall be made by the district court to which the case is assigned pursuant to uniform rules promulgated by the Navajo Nation Supreme Court.

#### **History**

CAP-34-93, April 28, 1993.

#### **§ 1998. Duties of the Office of the Navajo Public Defender**

A. When representing an indigent person, the Office of the Navajo Public Defender, only after conditions of § 1997 have been met, shall:

1. Counsel and defend him/her, whether he/she is held in custody, filed on as a delinquent, or charged with a criminal offense, at every state of the proceedings following arrest, detention, or service of process; and

2. Prosecute any appeals or other remedies before or after conviction which the office considers to be in the interest of justice.

B. In no case, however, shall the Navajo Public Defender be required to prosecute any appeal or other remedy unless the Navajo public defender is satisfied first that there is arguable merit to the proceeding.

**History**

CAP-34-93, April 28, 1993.

**§ 1999. Appointment of other attorney in place of public defender**

The court may, upon the application of the Director of the Office of the Navajo Public Defender, appoint an attorney other than the public defender to represent the indigent person at any state of the proceedings or on appeal. The application may be based upon any good cause, including, but not limited to, a determination by the Director that the then available resources of the office are insufficient to adequately meet the need for representation in a particular case. The court may appoint alternate counsel, who shall serve without compensation, pursuant to the pro bono appointment system then in effect, which is coordinated by the Director under § 1996 (D).

**History**

CAP-34-93, April 28, 1993.

**§ 1999A. Recoupment of fees and costs**

In any case when a court determines that a defendant is able to repay all or part of the expenses of court-appointed counsel or any ancillary expenses incurred in representing such defendant, the court shall assess such fees or costs against such defendant.

**History**

CAP-34-93, April 28, 1993

**§ 1999B. Amendments**

These provisions may be amended by the Navajo Nation Council upon the initiative or recommendation of, or through legislation supported or sponsored by the Government Services Committee of the Navajo Nation Council, as provided in 2 N.N.C. § 343(B).

**History**

CAP-34-93, April 28, 1993.

**Article 4. [Reserved]**

**History**

CAP-34-93, April 22, 1993.

CF-8-82, February 8, 1982. Rescinded former Article 4, "Office of the General

Counsel".

## **Article 5. [Reserved]**

### **History**

CO-59-93, October 20, 1993. Rescinded former Article 5, "Navajo Hopi Legal Services Program" and incorporated the program within the Department of Justice.

ACAU-140-83, August 10, 1983.

## **Article 6. Special Prosecutor**

### **§ 2021. Application for appointment of a Special Prosecutor**

A. The Attorney General shall conduct a preliminary investigation pursuant to the provisions of this Section whenever he/she receives information sufficient to constitute grounds to investigate whether any of the persons listed in Subsection (B) of this Section has committed a violation of any federal or state criminal law or any law or regulation of the Navajo Nation, or committed any act upon which the Navajo Nation may have a civil cause of action. The Attorney General may take no longer than 60 days to conduct such preliminary investigation.

B. The persons referred to in Subsection (A) of this Section are:

1. The President of the Navajo Nation;
2. The Vice-President of the Navajo Nation;
3. Any member of the Executive Staff of the Office of the President or the Vice-President.
4. The Chairperson of any Standing Committee of the Navajo Nation Council;
5. The Attorney General, in which case the Deputy Attorney General shall perform the functions of the Attorney General pursuant to the provisions of §§ 2021-2024 of this title;
6. The Director or Acting Director or Deputy Director of any Division, Department, Program or Office of the Executive Branch of the Navajo Nation; and
7. Any other official, employee or agent of the Navajo Nation, where the Attorney General determines that investigation or prosecution or civil litigation against such person by the Attorney General or other officer or employee of the Department of Justice may result in a personal, financial, or political conflict of interest.

C. In determining whether grounds sufficient to investigate exist, the Attorney General shall consider the degree of specificity of the information

received and the credibility of the source of the information.

D. Upon completion of the preliminary investigation, if the Attorney General finds that there are no reasonable grounds to believe that further investigation or prosecution is warranted, or that the matter may be handled by the Attorney General, the Office of the Prosecutor or other officials, or employees of the Department of Justice without resulting in personal, financial or political conflict of interest, the Attorney General may take such lawful action or inaction as he/she deems appropriate.

E. Upon completion of the preliminary investigation, if the Attorney General finds that there are reasonable grounds to believe that further investigation or prosecution is warranted, and that the matter cannot be handled by the Attorney General, the Office of the Prosecutor or any other official or employee of the Department of Justice without resulting in personal, financial, or political conflict of interest, the Attorney General shall apply to the Special Division of the Window Rock District Court for appointment of a Special Prosecutor.

F. An application pursuant to Subsection (E) of this Section shall contain sufficient information to assist the special division to select a Special Prosecutor and to define that Special Prosecutor's jurisdiction. The Attorney General shall recommend at least three persons among whom the Special Division shall appoint such Special Prosecutor, shall recommend appropriate compensation, and shall recommend the extent of such Special Prosecutor's jurisdiction.

G. If for any reason the Special Division fails to comply with the provisions of § 2022(A) of this title, then the Attorney General shall exercise the powers of the Special Division under of § 2022 (A) and (C) of this title.

H. Whenever a Special Prosecutor is currently in office, and whenever the Attorney General receives information sufficient to cause him/her to apply for appointment of a Special Prosecutor pursuant to Subsection (E) of this Section, in lieu thereof the Attorney General may apply to the Special Division to enlarge the jurisdiction of such Special Prosecutor to include any such new matter.

I. No application or any other documents or materials supplied to the Special Division in connection with an application or appointment of a Special Prosecutor shall not be revealed to any person outside the Special Division or the Department of Justice without leave of the Special Division, or the written release of the Attorney General.

J. Whenever a matter is within the jurisdiction of a Special Prosecutor, the Attorney General, the Chief Prosecutor, and all officers and employees of the Department of Justice, shall suspend all investigations and proceedings regarding such matter, except insofar as such Special Prosecutor and the Attorney General agree in writing that such investigations and proceedings may continue.

K. Notwithstanding the provisions of Subsection (J) of this Section, the Attorney General may appear in any proceeding before any court or legislative or administrative body as an amicus curiae concerning any issues of law raised

by any case or proceeding.

### **History**

CMA-8-89, March 1, 1989.

### **Cross References**

Window Rock District Court, Special Division, see 7 N.N.C. § 291 *et seq.*

### **Annotations**

#### **1. Construction with other laws**

"The [Special Prosecutor] Act blends well with the Sovereign Immunity Act because it provides a remedy for the Navajo Nation against officers or employees who exceeded their authority." *MacDonald, Sr. v. Navajo Nation ex rel. Rothstein*, 6 Nav. R. 290, 296 (Nav. Sup. Ct. 1990).

#### **2. Construction and application**

"If the Attorney General funds from the preliminary investigation that there are reasonable grounds for further investigation or prosecution and there is a conflict of interest by the Attorney General or prosecution office, he or she may apply to the Special Division of the Window Rock District Court for appointment of a special prosecutor." *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 11 (Nav. Sup. Ct. 1992).

#### **3. Investigations**

"Once a special prosecutor assumes jurisdiction, the attorney general and chief prosecutor must suspend all investigations except insofar as such special prosecutor and attorney general agree in writing that such investigations and proceedings may continue." *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 6 (Nav. Sup. Ct. 1992).

### **§ 2022. Duties of the Special Division**

A. Within 10 days of receipt of an application pursuant to § 2021 (E) of this title, the Special Division shall appoint an appropriate Special Prosecutor from among the persons recommended by the Attorney General, and shall determine such Special Prosecutor's jurisdiction.

B. The Special Division may request, and upon request shall receive, the assistance of the Attorney General in securing the appointment of a Special Prosecutor.

C. The Special Division shall set the fees and expenses to be paid to a Special Prosecutor upon his or her appointment, in an amount agreed between the proposed Special Prosecutor and the Special Division. The Special Division may request, and upon request shall receive, assistance and cooperation from the Division of Administration and Finance and the Budget and Finance Committee of the Navajo Nation Council, in determining and arranging for funding such fees and expenses. The Special Division shall enter into an appropriate contract

with the Special Prosecutor, in the name of the Navajo Nation, and shall comply with the requirements as may be applicable of 25 U.S.C. § 81. Notwithstanding any other provision of law, the presiding judge of the Special Division is hereby delegated the authority to execute, and shall execute the contract on behalf of the Navajo Nation. Such contract shall be a valid, binding and enforceable obligation of the Navajo Nation.

D. If a vacancy in office arises because of the death of a Special Prosecutor, the Special Division shall appoint a successor in the same manner as the initial appointment was made. The Special Division may appoint either a person recommended to the vacant office in the initial application, or one of three other persons to be recommended by the Attorney General at the Special Division's request.

E. If a vacancy in office arises because of the removal pursuant to § 2024 (B), (C) or (D) of this title, the Special Division shall appoint an acting Special Prosecutor to serve until any judicial review of such removal pursuant to § 2024 (D) of this title is either completed or barred by time, after which time the Special Division shall take appropriate action. The Special Division may appoint either a person recommended to the vacant office in the initial application, or one of three other persons to be recommended by the Attorney General.

F. Upon the request of a Special Prosecutor, the Special Division may enlarge the jurisdiction of such Special Prosecutor whenever it appears that there exist new matters related to matters within his or her original jurisdiction which, had they been known by the Special Division at the time of such Special Prosecutor's appointment, would have been included within his or her jurisdiction.

#### **History**

CMA-8-89, March 1, 1989.

#### **Cross References**

Window Rock District Court, Special Division, see 7 N.N.C. § 291 *et seq.*

#### **§ 2023. Authority and duties of a Special Prosecutor**

A. A Special Prosecutor appointed pursuant to § 2022 of this title shall have full power and independent authority to exercise all functions and powers of the Attorney General and the Office of the Prosecutor, as defined in 2 N.N.C. §§ 1963(A), (B), (G), (I), and (K); 1972; 1974(B); 1978-1984, with respect to all matters within his or her jurisdiction.

B. A Special Prosecutor shall have full power and authority to appear before any court of the Navajo Nation, the same as if he/she were admitted to the bar of such court, with respect to any matter within his or her jurisdiction or the duties and responsibilities of his or her office.

C. A Special Prosecutor shall have full power and independent authority to initiate or participate in any proceeding pursuant to 2 N.N.C. §§ 3751-3761, or before the Board of Election Supervisors, the Tax Commission or the Labor



Commission, with respect to any matter within his or her jurisdiction.

D. Upon the authorization of the Navajo Nation Council, and subject to its continuing authority and supervision, a Special Prosecutor shall have the power and authority to commence a civil or administrative action against any person or entity, before any federal or state court or administrative body, with respect to any matter within his or her jurisdiction.

E. Notwithstanding the provisions of 17 N.N.C. § 1801, a criminal complaint signed and sworn before a judge of any court of the Navajo Nation by a Special Prosecutor shall be deemed a valid complaint.

F. With the prior consent of the Special Division, a Special Prosecutor shall have the power and authority to appoint, fix the compensation of, and assign the duties to and thereafter supervise such employees, including investigators, attorneys and consultants, as such Special Prosecutor deems necessary.

G. A Special Prosecutor may request, and upon request shall receive assistance from any Branch, Division, Department, Office or Program of the Navajo Nation, which may include access to any records, files or other materials relevant to any matter within his or her jurisdiction. Upon agreement by the Attorney General, a Special Prosecutor may utilize the resources and personnel of the Department of Justice where necessary to perform such Special Prosecutor's duties.

H. A Special Prosecutor shall have all necessary and proper power and authority incident to the exercise of his or her other powers and authority.

### **History**

CMA-8-89, March 1, 1989.

### **Cross References**

Window Rock District Court, Special Division, see 7 N.N.C. § 291 *et seq.*

### **Annotations**

#### **1. Construction and application**

"The special prosecutor has full power and independent authority to exercise all functions and powers of the Attorney General and the Office of the Prosecutor and has specific authority to proceed against any person or entity in a civil or administrative action." *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 5 (Nav. Sup. Ct. 1992).

"That includes the power to obtain the production of documents or compel testimony by subpoena and to petition the courts to issue subpoena enforcement orders." *MacDonald, Sr. v. Navajo Nation ex rel. Rothstein*, 6 Nav. R. 290, 291 (Nav. Sup. Ct. 1990).

#### **§ 2024. Termination and removal of a Special Prosecutor**

A. The appointment of a Special Prosecutor shall terminate when:

1. The Special Prosecutor notifies the Attorney General and the Special Division that the investigation and prosecution of all matters within such Special Prosecutor's jurisdiction have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions; and

2. The Special Prosecutor files a report in full compliance with Subsection (F) of this Section.

B. The Special Division, either on its own motion or upon the suggestion of the Attorney General, may terminate the appointment of a Special Prosecutor, upon the grounds provided in Subsection (A) (1) of this Section.

C. A Special Prosecutor may be removed upon the two-thirds (2/3) vote of the Navajo Nation Council, or by action of the Attorney General, and only for good cause, physical disability, mental incapacity, or other condition that substantially impairs the performance of such Special Prosecutor's duties.

D. A Special Prosecutor may seek judicial review of any termination of his appointment by the Navajo Nation Council, the Special Division, or the Attorney General, by filing within five days thereof a petition of review with the Supreme Court of the Navajo Nation. Notwithstanding any other provision of law, the Supreme Court shall have and shall accept jurisdiction to hear and determine said petition and to take such remedial action as it deems appropriate.

E. Upon the termination of a Special Prosecutor's appointment pursuant to Subsections (B), (C) or (D) of this Section, such Special Prosecutor shall promptly file a report with the Special Division, the Navajo Nation Council and the Attorney General in full compliance with Subsection (F) of this Section.

F. The report required by Subsections (A) (2) and (E) of this Section shall set forth fully and completely a description of the work of the Special Prosecutor, including the status and disposition of an cases brought, the reasons for not prosecuting any matter within such Special Prosecutor's jurisdiction which was not prosecuted, and an accounting of all funds received and expenditures made in the performance of his or her duties.

#### **History**

CMA-8-89, March 1, 1989.

#### **Cross References**

Window Rock District Court, Special Division, see 7 N.N.C. § 291 *et seq.*

#### **Subchapter 40. [Reserved]**

#### **Subchapter 41. Navajo Tax Commission**

#### **§ 3351. Establishment**

The Navajo Tax Commission is hereby established as a part of the Executive Branch of the Navajo Nation government.

### **History**

CJA-6-74, § 1, January 16, 1974.

### **§ 3352. Membership**

A. The Commission shall consist of five members, at least three of whom shall be Navajos.

B. The President of the Navajo Nation shall, at the times required under Subsection (C) and (E), nominate a person qualified by virtue of education, experience, or office, and upon confirmation by the Government Services Committee of the Navajo Nation Council, such person shall be appointed to serve a term as a Commissioner.

C. The terms of office of commissioners shall be five years; provided, however, that in order to stagger the expiration of terms of office, March 31 of each year shall be the common anniversary date, the three present Commissioners shall continue to serve out their appointed terms, and, of the two new Commissioner appointees, one shall be appointed for a term ending in 1990, and the other for a term ending in 1991.

D. A Commissioner shall be removed only for cause by the President of the Navajo Nation and upon ratification by the Government Services Committee of the Navajo Nation Council; provided that the person so removed may then appeal the removal to the Supreme Court of the Navajo Nation. For the purposes of this Subsection, "cause" means:

1. Incapacity. Physical or mental incapacity, where such incapacity extends or is expected to extend longer than six months.

2. Nonfeasance. Failure to perform the duties of office, including, but not limited to, repeated and unexcused failure to attend the meetings and other official functions of the Commission.

3. Ex parte violation. Participation in ex parte consultations with any representative of a taxpayer who is an appellant in a dispute before or with the Commission.

4. Certain other acts. Any act that is a felony in the jurisdiction where committed, or any act involving moral turpitude that is a misdemeanor in the jurisdiction where committed.

5. A vacancy in the Commission, whether caused by death, removal, or resignation shall be filled by an interim appointment to complete the vacated term made in accordance with this Section.

### **History**

CN-59-87, November 18, 1987.

CJA-6-74, § 2, January 16, 1974.

**1987 amendment.** Amended generally and added Subsection (d). "Court of Appeals" was deleted as the correct name for this Court is "The Supreme Court of the Navajo Nation".

**§ 3353. Powers**

A. The Navajo Tax Commission shall have the following powers:

1. To review and study all sources of wealth and income within the Navajo Nation and the possible revenues from the taxation of those sources, in order to develop an appropriate, comprehensive system of taxation.

2. With the authorization of the Navajo Nation Council, to lay and collect taxes on income from whatever source derived, to lay and collect taxes on property, both tangible and intangible, and to lay and collect taxes on sales, inventories and wages completed or earned, and other measures of economic activity or engagement within the Navajo Nation.

3. To adopt such other rules and regulations as it deems necessary for the proper functioning of the Commission, to implement the taxes enacted by the Navajo Nation Council, and to defend, enforce, and collect the taxes and accomplish their proper and efficient administration, including delegating authority and duties to appropriate offices, officers, and representatives.

4. To employ or engage, either directly or through delegation, those persons qualified by education and experience necessary to discharge the duties of the Commission, the offices or officers.

B. The official business of the Commission shall be conducted by a quorum of members, at meetings duly called by the presiding officer or a designee.

1. A quorum shall comprise three Commissioners and any substantive action of the Commission shall be taken by the affirmative vote of a majority of the Commissioners present.

2. Except for special or emergency meetings which may be called when and if circumstances warrant, at least one official regular business meeting shall be held by the Commission during each calendar quarter.

3. From time to time, the Commissioners shall select their presiding officers and may delegate other specific duties among themselves.

**History**

CN-59-87, November 18, 1987.

CJA-6-74, § 3, January 16, 1974.

**1987 amendment.** Amended generally and added Subsection (A)(4) and Subsection (B).

**Note.** Slightly reworded for statutory form.

**§ 3354. Compensation**

A Commissioner shall be compensated for services and expenses by payment of an honoraria of two hundred fifty dollars (\$250.00) per day, or fraction thereof, and by reimbursement of actual and reasonable expenses incurred, in connection with attendance at Commission meetings and the performance of other official Commission duties.

**Subchapter 42. [Reserved]**

**Subchapter 43. Navajo Telecommunications Regulatory Commission**

**History**

Formerly "Film and Media Commission." By FY 1985 Budget Resolution, the regulatory function was delegated to the Navajo Telecommunication Regulatory Commission and non-regulatory functions related to filming or radio/television activities were placed in the Broadcast Services Department.

ACAP-62-85, April 11, 1985.

**§ 3451. Establishment**

There is hereby established under the Office of the President and Vice-President within the Executive Branch of the Navajo Nation government, and in accordance with Resolution ACMA-36-84 of the Advisory Committee of the Navajo Nation Council, the Navajo Telecommunications Regulatory Commission, hereinafter called the "Commission".

**History**

ACAP-62-85, April 11, 1985.

**Cross References**

Navajo Telecommunications Regulatory Act, 21 N.N.C. § 501 *et seq.*

**§ 3452. Purpose**

The purpose of the Commission shall be to act upon and regulate any and all matters of the telecommunications industry on the Navajo Nation, including but not limited to computer, video, television, telegraph, radio, cable television, satellite dishes, two-way radio, and other related telecommunication services transmitted by electricity, wire land lines, wireless technology, cable, fiber optics, microwave, satellite or radiowave, to provide for the orderly growth and development of the telecommunications industry, and the operations thereby.

## History

CAP-17-03, April 23, 2003, Amended purpose to include additional technologies.

ACAP-62-85, April 11, 1985.

## Cross References

Navajo Telecommunications Regulatory Act, 21 N.N.C. § 501 *et seq.*

### § 3453. Powers, authorities and duties

A. The Commission shall have all the powers necessary and appropriate as delegated through legislative enactments by the Government Services Committee of the Navajo Nation Council pursuant to the inherent power of a government to impose restrictions on private rights to protect public welfare, order and security, to carry out the purpose and goals set forth in § 3452. This delegation of authority shall be inclusive of the entire regulatory scheme, but exclusive of any telecommunications services or development activity, except where telecommunications regulation may apply to such activities.

B. The enumerated powers of the Commission are:

1. To establish and adopt a regulatory policy subject to Navajo Nation Council enactment which will govern any and all Navajo Nation telecommunications activities, not inconsistent with federal Communications Commission regulation.

2. To establish, promulgate, and enforce rules, regulations, policies, and issue orders and resolutions, which are consistent with the Navajo regulatory code and this Plan of Operation, as necessary for the accomplishment of its purpose, authority, functions, and responsibilities.

3. To establish methods, procedures, schedules, and conditions of accessing permits, respective fees, and reasonable rates of compensation for particular telecommunication services on the Navajo Nation.

4. To approve and enter into such agreements, contracts, or written understandings as necessary or appropriate in accomplishing the duties and purpose of the Commission. All such contracts and agreements shall be in the name of the Navajo Nation and shall be subject to normal procedures established for contracts and agreements.

5. To establish procedures and requirements for hearings and investigations pertinent to the functions and powers of the Commission, consistent with normal due process; to hear complaints concerning noncompliance with regulations established as the conditions of engaging in any telecommunications activities on the Navajo Nation, or any valid complaint from any entity which is aggrieved by any action by the Commission or staff.

6. The Commission in furtherance of its powers shall have the authority to recommend and impose fines or other sanctions according to

established schedules, on any entity for violation of all telecommunications laws, regulations, rules, orders and policies.

#### **History**

CAP-17-03, April 23, 2003, Amended Subsections (B) (1), (B) (3), (B) (6) generally.

ACAP-62-85, April 11, 1985.

**Note.** Slightly reworded for purposes of statutory clarity.

#### **Cross References**

Navajo Telecommunications Regulatory Act, 21 N.N.C. § 501 *et seq.*

#### **§ 3454. Membership of the Commission**

A. The Commission shall consist of seven Commissioners, all of whom shall be appointed by, and serve at the pleasure of the President of the Navajo Nation, and confirmed by the Government Services Committee of the Navajo Nation Council, and shall serve their terms of office according to their appointments.

B. Each appointment shall be for a period of four years, with the exception of those appointments made in 2002, which appointments shall be made at the discretion of the President of the Navajo Nation as follows, two appointments for a period of two years, two appointments for a period of three years and three appointments shall be for a period of four years.

C. No Commission member shall have a financial, political or any other interest or motive in any sector of the telecommunications industry on the Navajo Nation, as provided for in the Navajo Nation Ethics in Government Law. The Commission members shall carry out their duties and responsibilities in a manner which protects and promotes the best interests of the Navajo Nation.

D. The Chairperson and Vice-Chairperson of the Commission shall be selected by the Commission from its membership by majority vote, for such term as is determined appropriate. The Chairperson and the Vice-Chairperson shall have the following duties and responsibilities:

1. To call meetings, special sessions, hearings, or inquiries; and to preside at all these events.

2. To represent the Commission in all matters relating to telecommunications activities.

#### **History**

CAP-17-03, April 23, 2003, Amended Subsections (B), (C) and (D), generally.

ACAP-62-85, April 11, 1985.

**Note.** Slightly reworded for statutory form and to state the correct citation from the referenced law.

### **Cross References**

Navajo Nation Ethics in Government Law, see 2 N.N.C. §§ 3751-3761.

Navajo Telecommunications Regulatory Act, 21 N.N.C. § 501 *et seq.*

### **§ 3455. Staff Personnel**

The President of the Navajo Nation shall employ an Executive Director of the Commission who shall serve at the pleasure of the President of the Navajo Nation and be subject to confirmation by the Government Services Committee of the Navajo Nation Council. All other staff shall be employed by the Executive Director in accordance with the Personnel Policies Manual of the Navajo Nation.

### **History**

CAP-17-03, April 23, 2003, Added Section 3455, Staff Personnel.

### **Cross References**

Navajo Telecommunications Regulatory Act, 21 N.N.C. § 501 *et seq.*

## **Subchapter 44. Motor Vehicle Review Board**

### **§ 3551. Establishment**

The Motor Vehicle Review Board (hereinafter referred to as MVRB) was established by Advisory Committee Resolution ACS-360-72 and is hereby continued as a non-budgeted entity within the Executive Branch of the Navajo Nation Government.

### **History**

IJRJY-124-04, July 26, 2004.

ACD-172-82, December 21, 1982.

### **§ 3552. Purpose**

The MVRB is to determine and establish appropriate policies and procedures for meeting transportation needs in conducting business on behalf of the Navajo Nation.

### **History**

IJRJY-124-04, July 26, 2004.

ACD-172-82, December 21, 1982.

### **§ 3553. Composition**

A. The MVRB shall consist of six voting members. The Chairperson shall



vote only as a tie breaker. The Fleet Management Department (FMD) Director shall participate as a non-voting member and shall provide support services. In the event the Director is unable to attend, he or she shall send a designated representative.

B. The Branch Chiefs of the Navajo Nation shall each designate two members to the MVRB for a term of four years.

C. The MVRB shall select the Chairperson and the Vice Chairperson from the MVRB membership.

#### **History**

IGRJY-124-04, July 26, 2004.

ACD-172-82, December 21, 1982.

**Note.** Slightly reworded at Subsection A.

#### **§ 3554. Meetings and board expenses**

A. A quorum shall consist of four voting members. A motion will pass only if it receives a majority of votes of those members present and voting, as such shall constitute the final action of the MVRB.

B. Members of the MVRB shall receive reimbursement for actual and reasonable expenses incurred when attending official meetings pursuant to the Navajo Nation Travel Policies and Procedures.

#### **History**

IGRJY-124-04, July 26, 2004.

ACD-172-82, December 21, 1982.

**Note.** Reorganized into Subsections A and B.

#### **§ 3555. Authority, duties and responsibilities**

The MVRB shall function independently, but in cooperation with all three branches subject to the Plan of Operation. The Board shall have the following duties:

A. The MVRB shall hear all requests for and authorize the assignment of Navajo Nation vehicles. The MVRB shall periodically review each department's usage and may adjust vehicle assignments accordingly. Conditions of assignment may include, but not limited to, hours of permissible use, authorized drivers, parking requirements, decals, equipment modification and take home authorization.

B. The MVRB shall determine standards and criteria for suspension and revocation of Navajo Nation Motor Vehicle Operator's Permits.

C. The MVRB shall develop, implement and enforce rules and regulations

regarding the use of Navajo Nation vehicles. The MVRB shall have the authority to revoke any vehicle assignment(s) if it deems departmental responsibility for proper use has not been exercised.

D. The MVRB shall have the authority to conduct hearings to suspend or revoke Navajo Nation Operator's Permits or vehicle assignments.

E. The MVRB shall have the authority to recommend that the Navajo Nation proceed with legal action to recover the cost of damages from the operator who has caused the accident.

#### **History**

IGRJY-124-04, July 26, 2004.

ACD-172-82, December 21, 1982.

**Note.** Slightly reworded.

#### **§ 3556. Restrictions**

No member shall have individual authority to act independently on behalf of the MVRB by reason of membership on the MVRB.

#### **History**

IGRJY-124-04, July 26, 2004.

ACD-172-82, December 21, 1982.

#### **§ 3557. Amendments**

This Plan of Operation may be amended upon the recommendation of the MVRB subject to approval by the Government Services Committee of the Navajo Nation Council.

#### **History**

IGRJY-124-04, July 26, 2004.

**Note.** Slightly reworded.

### **Subchapter 45. [Reserved]**

#### **History**

CAP-41-94, April 20, 1994. Adopted Enabling Legislation for the Division of Natural Resources and repealed and deleted certain Division of Natural Resources' department and program plans of operation from the Navajo Nation Code, including the Office of Navajo Tribal Land Administration, previously codified at 16 N.N.C. § 201, *et seq.*

GSCMY-36-94, May 25, 1994. Adopted a Plan of Operation for the Navajo Land

Department.

1978 Budget Resolution. Changed name from "Office of Navajo Land Administration" to the "Land Administration Department" and moved it from 2 N.N.C. Subchapter 13, §§ 1301-1302 to 2 N.N.C. Subchapter 45, §§ 2151-2152.

1973 Budget Resolution.

CMA-42-66, March 3, 1966.

CAU-50-59, August 6, 1959.

**Note.** This Subchapter 45, § 2151, *et seq.*, "Land Administration Department", is also deleted pursuant to the direction given by the Office of the Attorney General's memorandum dated January 4, 1991, regarding codification of enabling legislation.

#### **Subchapter 46. [Reserved]**

#### **Subchapter 47. [Reserved]**

##### **History**

**Note.** Former §§ 2201-2202 "Information Services Department" responsible for official records of the Navajo Nation government, under ACAU-163-77, is now called "Records Management" in the Division of General Services. See 2 N.N.C. Subchapter 17.

#### **Subchapter 48. [Reserved]**

##### **History**

**Note.** Formerly "Navajo Office of Census and Vital Statistics", now the "Navajo Office of Vital Records" in the Division of Human Resources. See 2 N.N.C. § 1701 *et seq.*

#### **Subchapter 49. [Reserved]**

##### **History**

The Computer Services Department has been reorganized under the Division of General Services within the Executive Branch of the Navajo Nation. Pursuant to the Office of Attorney General's memorandum dated January 4, 1991, this Plan has been deleted from the Code. See the 1978 Budget and ACAP-95-76, April 21, 1976.

#### **Subchapter 50. [Reserved]**

#### **Subchapter 51. [Reserved]**

##### **History**

Formerly "Tribal Assistance and Projects Department" responsible for health,

education and welfare programs, as delineated in the 1978 budget has since been rescinded by subsequent inconsistent acts authorizing the Division of Health, the Division of Education and the Division of Social Services to plan, organize and administer the Navajo Nation's health, education and welfare programs.

**Subchapter 52. [Reserved]**

**Subchapter 53. [Reserved]**

**History**

Formerly "Personnel Services Department", the "Personnel Management Office" is now in the Division of Human Resources. See 2 N.N.C. § 1701 *et seq.*, and GSCN-57-90, November 27, 1990.

**Subchapter 54. [Reserved]**

**Subchapter 55. [Reserved]**

**History**

Formerly "Commerce and Business Regulation Department" discontinued by the 1981 Budget. See Division of Economic Development, 2 N.N.C. Subchapter 21.

**Subchapter 56. [Reserved]**

**Subchapter 57. [Reserved]**

**History**

"Revenue Sharing Department" superseded by ACJN-106-85, June 12, 1985. See Division of Community Development. 2 N.N.C. § 1451 *et seq.*

**Subchapter 58. [Reserved]**

**Subchapter 59. [Reserved]**

**History**

"Tax Assistance Department" discontinued by the 1981 Budget.

**Subchapter 60. [Reserved]**

**Subchapter 61. [Reserved]**

**History**

The 1978 Budget discontinued the Transportation Department and redesignated it as the Transportation Branch of the General Services Department of the Division of Administration and Finance. See now the Department of Transportation within the Division of Community Development, 2 N.N.C. § 1451 *et seq.*

**Subchapter 62. [Reserved]**

**Subchapter 63. [Reserved]**

**History**

The 1978 Budget, page III-1, discontinued the "Maintenance Engineering Department" and replaced it with the "Maintenance Engineering Branch" of the General Services Department of the Division of Administration and Finance. See now the Division of General Services, 2 N.N.C. Subchapter 17.

**Subchapter 64. [Reserved]**

**Subchapter 65. [Reserved]**

**History**

The "Design and Engineering Services Department" is now in the Division of Community Development, See 2 N.N.C. § 1451 *et seq.* and GSCS-70-94, September 7, 1994. See also, ACAP-59-85, April 11, 1985. 1977 Budget. 1974 Budget. 1972 Budget.

**Subchapter 66. [Reserved]**

**Subchapter 67. [Reserved]**

**History**

Formerly Community Development Program, see now 2 N.N.C. § 1451 *et seq.* and GSCS-70-94, September 7, 1994, adopting a Master Plan of Operation for the Division of Community Development.

**Subchapter 68. [Reserved]**

**Subchapter 69. [Reserved]**

**History**

CAP-41-94, April 20, 1994. Adopted Enabling Legislation for the Division of Natural Resources and repealed and deleted certain Division of Natural Resources' department and program plans of operation from the Navajo Nation Code, including the Department of Recreational Resources, (Parks and Recreation Department) codified at 19 N.N.C. §§ 301-304.

1978 Budget Resolution.

1977 Budget Resolution.

1976 Budget Resolution.

CJA-16-72, January 27, 1972.

**Note.** This Subchapter 69, § 2801 *et seq.*, "Parks and Recreation Department", is also deleted pursuant to the direction given by the Office of the Attorney

General's memorandum dated January 4, 1991, regarding codification of enabling legislation.

**Subchapter 70. [Reserved]**

**Subchapter 71. [Reserved]**

**History**

Formerly Property and Purchasing was discontinued by the 1978 Budget. (See now Division of Finance, 2 N.N.C. Subchapter 11.)

**Subchapter 72. [Reserved]**

**Subchapter 73. [Reserved]**

**Subchapter 74. [Reserved]**

**Subchapter 75. [Reserved]**

**Subchapter 76. [Reserved]**

**Subchapter 77. [Reserved]**

**Subchapter 78. [Reserved]**

**Subchapter 79. [Reserved]**

**Subchapter 80. [Reserved]**

**Subchapter 81. [Reserved]**

**History**

**Note.** This Subchapter 81, § 3101, *et seq.*, formerly "Range Resources Department" is now part of the Division of Natural Resources, see 2 N.N.C. § 1901 *et seq.* See the Office of the Attorney General's memorandum dated January 4, 1991 regarding codification of enabling legislation.

**Subchapter 82. [Reserved]**

**Subchapter 83. [Reserved]**

**History**

CAP-41-94, April 20, 1994. Adopting Enabling Legislation for the Division of Natural Resources and repealed and deleted certain Division of Natural Resources' department and program plans of operation from the Navajo Nation Code, including the Department of Range Management (Range and Livestock Department), previously codified at 2 N.N.C. § 401 *et seq.* 1977 Budget Resolution. CMA-34-66, March 2, 1966. CAU-50-59, August 6, 1959. CS-82-57, September 18, 1957. CF-29-57, February 16, 1957.

**Note.** Subchapter 83, § 3151, *et seq.*, formerly the "Range and Livestock Department" is deleted. See by the Office of the Attorney General's memorandum dated January 4, 1991, regarding codification of enabling legislation.

**Subchapter 84. [Reserved]**

**Subchapter 85. [Reserved]**

**History**

Previously codified Sections on the Navajo Tribal Special Education Department under the Division of Education within the Executive Branch deleted. See Attorney General's memorandum dated January 4, 1991 regarding codification of enabling legislation. See now 2 N.N.C. § 1801 *et seq.*

**Subchapter 86. [Reserved]**

**Subchapter 87. [Reserved]**

**History**

Formerly "Navajo Water Commission". Discontinued by ACJ-1 12-83, July 14, 1983 and CS-28-83, September 28, 1983.

**Subchapter 88. [Reserved]**

**Subchapter 89. [Reserved]**

**Subchapter 90. [Reserved]**

**Subchapter 91. [Reserved]**

**History**

The Navajo Tax Commission formerly codified at Subchapter 91 is now found at Subchapter 41.

**Subchapter 92. [Reserved]**

**Subchapter 93. [Reserved]**

**History**

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act. See 2 N.N.C. § 1921, *et seq.*

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

#### **Cross References**

Navajo Nation Environmental Protection Agency, see 2 N.N.C. § 1921 *et seq.*

**Subchapter 94. [Reserved]**

**Subchapter 95. [Reserved]**

#### **History**

Navajo Telecommunications Regulatory Commission formerly codified at Subchapter 95 is now found at Subchapter 43.

**Subchapter 96. [Reserved]**

**Subchapter 97. [Reserved]**

#### **History**

Formerly the "Records Management Committee". Records Management is now in the Division of General Services. See ACAU-163-77.

**Subchapter 98. [Reserved]**

**Subchapter 99. [Reserved]**

#### **History**

Motor Vehicle Review Board formerly codified at Subchapter 99 is now found at Subchapter 44.

**Subchapter 100. [Reserved]**

**Subchapter 101. [Reserved]**

#### **History**

Formerly Legal Aid & Defender Services. Discontinued by CAP-34-93, April 28, 1993.

See now 2 N.N.C. § 1991.

**Subchapter 102. [Reserved]**

**Subchapter 103. [Reserved]**

#### **History**

Formerly "Cartographic Facility". Discontinued by ACN-211-77, November 2, 1977 and ACD-223-77, December 21, 1977.



**Subchapter 104. [Reserved]**

**Subchapter 105. [Reserved]**

**History**

"Energy Impact Mitigation Commission" (EIMC) §§ 3701-3704, was discontinued by CS-28-83, passed September 28, 1983.

**Subchapter 106. [Reserved]**

**Subchapter 107. [Reserved]**

**Chapter 6. Ethics in Government Law**

**Subchapter 1. Title and Purpose; Definitions**

**§ 3741. Title**

This Chapter may be cited as the Navajo Nation Ethics in Government Law.

**History**

CJY-23-92, July 20, 1992.

CF-11-88, February 4, 1988.

CAU-40-84, August 9, 1984.

**Note.** This Section was formerly § 3751. Amended generally by CJY-23-92.

**§ 3742. Legislative purpose and intent**

A. Purpose. Where government is founded upon the consent of the governed, the people are entitled to have complete confidence in the loyalty and integrity of their government. The purpose of the Navajo Nation Ethics in Government Law, therefore, is to require accountability to the people of the Navajo Nation by their elected, appointed and assigned public officials and employees in exercising the authority vested or to be vested with them as a matter of public trust, by:

1. Establishing and requiring adherence to standards of conduct to avoid such conflicts of interest as the use of public offices, employment or property for private gain, the granting and exchange of favored treatment to persons, businesses or organizations; and the conduct of activities by such officials and employees which permits opportunities for private gain or advantage to influence government decisions;

2. Requiring public officials and employees to abstain from using any function of their office or duties in a manner which could place or appear to place their personal economic or special interests before the interests of the general public.

B. Intent. It is the intention of the Navajo Nation Council that the provisions of this Navajo Nation Ethics in Government Law be construed and applied in each instance, so as to accomplish its purposes of protecting the Navajo People from government decisions and actions resulting from, or affected by, undue influences or conflicts of interest.

### **History**

CAP-49-99, April 23, 1999. Subsection (A)(2) repealed in elimination of economic disclosure statement requirements.

CJY-23-92, July 20, 1992.

**Note.** Formerly § 3752.

### **§ 3743. Definitions**

As used in this Chapter:

A. "Business" includes any enterprise, organization, trade, occupation or profession whether or not operated as a legal entity for profit, including any business, trust, holding company, corporation, partnership, joint venture, or sole proprietorship, consultant or other self-employed enterprise.

B. "Business with which the person is associated" includes any business in which the person or a member of the person's immediate family is a director, officer, partner, trustee or employee, holds any position of management or receives income in any form such as wages, commission, direct or indirect investment worth more than one thousand dollars (\$1,000) or holds any ownership, security or other beneficial interest, individually or combined, amounting to more than ten percent (10%) of said business.

C. "Candidate for public office" means any person who has publicly announced such intent, authorized promotion for, or filed a declaration of candidacy or a petition to appear on the ballot for election as a public official; and any person who has been nominated by a public official or governmental body for appointment to serve in any public capacity or office.

D. "Committee" means the Ethics and Rules Committee of the Navajo Nation Council.

E. "Compensation" or "income" means any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense or any combination thereof.

F. "Confidential information" means information which by law or practice is not available to the public at large.

G. "Conflict of interest" means the reasonable foreseeability that any personal or economic interest of a public official, or employee, will be affected in any materially different manner from the interest of the general

public, by any decision, enactment, agreement, award or other official action or function of any governmental body or political subdivision of the Navajo Nation.

H. "Dependent business" means any business, as defined herein, in which the person or members of the person's immediate family, individually or combined, have any direct or indirect ownership, investment, security or other beneficial interest amounting to more than twenty percent (20%) of such business.

I. "Employee" means any person or entity working for, or rendering or exchanging any services or performing any act for or on behalf of another person, organization or entity in return for any form of pay or other compensation or thing of value received or to be received at any time temporarily, permanently or indefinitely, in any capacity; whether as agent, servant, representative, consultant, advisor, independent contractor or otherwise.

J. "Employment" means the status or relationship existing or created by and between a person designated or acting as an "employee" as defined herein and the person, organization, group or other entity for whom or on whose behalf any such work, acts, services or other benefit has been, is being or will be rendered or performed for pay or any other form of compensation.

K. "Economic interest" means an interest held by a person, members of the person's immediate family or a dependent business, which is:

1. Any ownership, income, investment, security or other beneficial interest in a business, or
2. Any employment or prospective employment for which negotiations have already begun.

L. "Gift" includes any gratuity, special discount, favor, hospitality, payment, loan, subscription, economic opportunity, advance, deposit of money, services, or other benefit received without equivalent consideration and not extended or provided to members of the public at large.

M. "Governmental body" means any branch, entity, enterprise, authority, division, department, office, commission, council, board, bureau, committee, legislative body, agency, and any establishment of the Executive, Administrative, Legislative or Judicial Branch of the Navajo Nation, and certified Chapters of the Navajo Nation.

N. "Immediate family" includes spouse, children and members of the household of public officials, public employees and candidates for public office, as defined in this Chapter.

O. "Ministerial action" means an action that a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to, or in the exercise of, the person's own judgment upon the propriety of the action being taken.

P. "Official discretionary action" means any official function of public

office or employment, including any vote, decision, opinion, allocation, recommendation, approval, disapproval, finding, delegation, authorization, contract, commitment, settlement, disbursement, release or other action which involves the exercise of discretionary authority, for, on behalf of or in any manner affecting any interest or property of the Navajo Nation, including any governmental body, political subdivision or member thereof.

Q. "Public employee" means any employee, as defined herein, temporarily, periodically, permanently or indefinitely in the employment of the Navajo Nation, and/or any governmental body thereof as defined herein, including intergovernmental personnel.

R. "Public office" means any elected or appointed office or position of permanent or temporary employment in any governmental body of the Navajo Nation as defined herein.

S. "Public official" means any person holding an elective or appointed office in any governmental body of the Navajo Nation as defined herein, including grazing committee members.

#### **History**

CJY-23-92, July 20, 1992.

CF-11-88, February 4, 1988

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3758. The definition section of this Chapter was placed at the beginning as such sections generally do not appear at the end of statutes.

#### **Cross References**

Navajo Nation Election Code, see 11 N.N.C. § 1 *et seq.*

### **Subchapter 2. Standards of Conduct and Restricted Activities of Public Officials and Employees**

#### **History**

**Note.** Subchapter 2 was formerly designated § 3753.

#### **§ 3744. Conduct in conformity with applicable rules and laws**

Public officials and employees shall at all times conduct themselves so as to reflect credit upon the Navajo People and government; and comply with all applicable laws of the Navajo Nation with respect to their conduct in the performance of the duties of their respective office or employment.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(A).

**§ 3745. General prohibitions; conflicts of interest**

A. No public official or employee shall use, or attempt to use, any official or apparent authority of their office or duties which places, or could reasonably be perceived as placing, their private economic gain or that of any special business interests with which they are associated, before those of the general public, whose paramount interests their office or employment is intended to serve.

B. It is the intent of this Subsection (B) that public officials and employees of the Navajo Nation avoid any action, whether or not specifically prohibited by the Standards of Conduct set out herein, which could result in, or create the appearance of

1. Using public office for private gain;
2. Giving preferential treatment to any special interest organization or person;
3. Impeding governmental efficiency or economy;
4. Losing or compromising complete independence or impartiality of action;
5. Making a government decision outside official channels; or
6. Adversely affecting the confidence of the people in the integrity of the government of the Navajo Nation.

**History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(B).

**§ 3746. Use of confidential information for private gain**

No public official or employee shall use or disclose confidential information gained in the course of or by reason of their official position or activities, to further their own economic and personal interest or that of anyone else.

**History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(C).

**§ 3747. Restrictions against incompatible interests or employment**

A. Public officials and employees shall not:

1. Have direct or indirect financial or other economic interests nor engage in such other employment or economic activity which, as determined in accordance with the provisions of this Chapter and other applicable laws of the Navajo Nation, necessarily involve inherent substantial conflict, or appears to have such substantial conflict, with their responsibilities and duties as public officials or employees of the Navajo Nation; nor

2. Engage in, directly or indirectly, financial or other economic transactions as a result of, or primarily depending upon, information obtained through their public office or employment; nor

3. Acquire any economic or other financial property, contractual or other economic interest at a time when they believe or have reason to believe, that it will directly and substantially affect or be so affected by their official actions or duties.

B. Subject to the restrictions and conditions set forth in this Chapter, public officials and employees are free to engage in lawful financial transactions to the same extent as the general public. Governmental bodies and agencies of the government of the Navajo Nation may, however, adopt further approved restrictions upon such transactions or employment as authorized herein and by other applicable laws of the Navajo Nation, in light of special circumstances or their particular duties.

C. No business or other entity shall employ a public official or employee if such employment is prohibited by or otherwise violates any provision of this Chapter.

D. The term "employment", within the meaning of this Section, includes professional services and other services rendered by a public official or employee, whether rendered as an employee, consultant or other independent contractor.

**History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(D).

**§ 3748. Abstention from official action**

A. When a public official or employee is required to take official action on a matter in which such public official or employee has a personal economic interest, they should first consider eliminating that interest. If that is not feasible nor required under § 3747 above, such public official or employee

shall:

1. Prepare and sign a written statement describing the matter requiring action and the nature of the potential conflict, as soon as such public official or employee is aware of such conflict and they shall deliver copies of such statement to the responsible party for inclusion in the official record of any vote or other decision or determination and also to the Ethics and Rules Committee;

2. Abstain from voting, sponsoring, influencing or in any manner attempting to influence any vote, official decision or determination which would favor or advance such person's personal economic interest in such matter; and

3. Abstain from voting or otherwise participating in the official decision or determination of such matter, unless otherwise directed by the authorized presiding official of the governmental body making such decision or determination, or otherwise legally required by law, (such as the vote of an elected representative delegate which is cast on behalf of his or her electorate constituents), or unless such person's vote, position, recommendation or participation is contrary to their personal economic interest.

B. Unless otherwise provided by applicable law, the abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of such person for purposes of establishing a quorum necessary for a governmental body, agency or commission to take such action or vote upon such matter.

C. Public employees shall also deliver a copy of such statement to the Committee and to their immediate superior, if any, who shall assign the matter to another. If such employee has no immediate superior, he or she shall take such steps as the Committee shall prescribe or advise, to abstain from influencing actions and decisions in the matter.

D. In the event that a public official's or employee's participation is otherwise legally required for the action or decision to be made, such person and the presiding official or immediate superior requiring such participation shall fully report the occurrence to the Committee.

#### **History**

CJY-23-92, July 20, 1992.

CF-11-88, February 4, 1988.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(E).

#### **Annotations**

##### **1. Construction and application**

"... Navajo Nation employees who are also elected officials are prohibited from claiming a salary while attending a meeting as an elected official, and are required to take annual leave or leave without pay to tend to their elected position duties. No 'flex time' is mentioned in the statute." *Barton v. Navajo Nation Ethics and Rules Office*, No. SC-CV-48-01, slip op. at 3 (Nav. Sup. Ct. September 15, 2003).

"While the ethics law prevents conflicts of interests, it also provides solutions that the parties can use." *Kirk, et al. v. Office of Navajo Labor Relations*, 7 Nav. R. 363, 365 (Nav. Sup. Ct. 1998).

**§ 3749. Navajo Nation government contracts; restrictions and bid requirements**

A. No public official or employee or any member of such person's immediate family shall be a party to, nor have an interest in the profits or benefits of, any governmental contract of the Navajo Nation or of any investment of funds of the Navajo Nation, unless the contract or the investment meets the following requirements:

1. The contract is let by notice and competitive bid or procurement procedures as required under all applicable laws, rules, regulations and policies of the Navajo Nation, for necessary materials or services for the governmental agency or entity involved;

2. If the continuous course of a business commenced before the public official or employee assumed his or her current term of office or employment;

3. The entire transaction is conducted at arm's length, with the governmental agency's full knowledge of the interest of the public official or employee or a member of his or her immediate family;

4. The public official or employee has taken no part in the determination of the specifications, deliberations or decision of a governmental agency with respect to the public contract; and

5. The public official or employee is not a member, office holder, employee or otherwise directly associated with the same governmental agency or entity primarily responsible for letting, performing, receiving, regulating or otherwise supervising the performance of the contract.

B. The requirements of § 3749(A) shall not apply to the negotiation, execution, award, transfer, assignment or approval of mineral or non-mineral leases, permits, licenses and like transactions other than contracts involving the investment, award or payment of government funds; provided, that such leases, permits, licenses and like transactions shall be subject to all other provisions of this Section and to all other applicable laws, rules and regulations of the Navajo Nation and its governmental bodies; and provided further that § 3749 (A) shall likewise fully apply to all contracting and other activities, conducted thereunder, which are subject to this Chapter. Provisions in accordance with the purposes and intent of this Chapter shall be incorporated as part of the rules, regulations and guidelines applicable to the negotiation, approval and assignment of such leases, permits, licenses and like



transactions.

C. In the absence of bribery or a purpose to defraud, a public official or employee or a member of his or her immediate family shall not be considered as having an interest in a public contract or the investment of public funds, when such a person has a limited investment interest of less than ten percent (10%) of the ownership of net assets, or an interest as creditor of less than ten percent (10%) of the total indebtedness of any business or other entity which is the contractor on the public contract involved or in which public funds are invested, or which issues any security therefor.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(F).

#### **Cross References**

Contract requirements, see 2 N.N.C. § 223.

Navajo Business Preference Law, see 5 N.N.C. § 201 *et seq.*

#### **§ 3750. Restrictions on assisting or representing other interests before governmental bodies for compensation**

No public official or employee except an employee of a governmental body duly established and authorized for such purposes by the Navajo Nation shall represent or otherwise assist any person or entity other than the Navajo Nation or a governmental body or political subdivision thereof, for compensation, before any governmental body where the matter before the governmental body is of a non-ministerial nature. This Section shall not be construed to prohibit the duties of elected or appointed public officials to represent their constituents' interests before government agencies or entities nor the performance of ministerial functions, including but not limited to the filing or amendment of tax returns, applications for permits and licenses, and other documents or reports. It does, however, prohibit representation of such other interests for any fee or compensation in seeking to obtain any legislation, contract, payment of any claim or any other governmental benefit.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(G).

#### **§ 3751. Restrictions on assisting or representing other interests subsequent to termination of public office or employment**

A. No former public official or employee nor partner, employee or other

associate thereof shall, with or without compensation, after the termination of such public office or employment, knowingly act as agent or attorney for or otherwise represent any other person or entity (except the Navajo Nation, its governmental bodies or political subdivisions) by formal or informal appearance nor by oral or written communication, for the purpose of influencing any governmental body of the Navajo Nation or any officer or employee thereof, in connection with any proceeding, contract, claim, controversy, investigation, charge or accusation, in which such former public official or employee personally and substantially participated, through approval, disapproval, recommendation, rendering of advice, investigation or otherwise, while so acting or employed.

B. With respect to any such matter which was actually pending among such former public official's or employee's responsibilities, but in which such person did not participate as set forth in Subsection (A), the prohibitions set forth hereunder shall apply for the period of two years following the termination of such public office or employment.

C. Nothing in this Chapter shall prevent a former public official or employee from appearing and giving testimony under oath, nor from making statements required to be made under penalty of perjury, nor from making appearances or communications concerning matters of a personal and individual nature which pertain to such former public official or employee or are based upon such person's own special knowledge of the particular subject involved, not otherwise privileged from disclosure by other applicable law; and provided further, that no compensation is thereby received other than that which is regularly provided for witnesses by law or regulation.

D. The Navajo Nation, its governmental bodies and political subdivisions shall not enter into any contract with, nor take any action favorably affecting or economically benefitting in any manner differently from members of the public at large, any person, business, governmental or other entity, which is assisted or represented personally in the matter by a former public official or employee whose official act, while a public official or employee, directly contributed to the making of such contract or taking of such action by the Navajo Nation or any governmental body or political subdivision thereof.

E. Nothing contained in this Subsection shall prohibit a former public official or employee from being retained or employed by the governmental entity which he or she formerly served.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(H).

#### **§ 3752. Unauthorized compensation or benefit for official acts**

A. No public official or employee shall accept or receive any benefit, income, favor or other form of compensation for performing the official duties of their office or employment, beyond the amount or value which is authorized

and received in his or her official capacity for performing such duties.

B. This Section shall not be construed to prohibit the receipt of authorized compensation for the performance of other distinct and lawful public duties by public officials or employees.

C. No public official or employee, however, shall accept any benefit, income, favor or other form of compensation for the performance of the duties of any other office or employment not actually performed or for which such official or employee is not otherwise properly authorized or entitled to receive.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(1).

#### **Annotations**

##### **1. Construction and application**

"... Navajo Nation employees who are also elected officials are prohibited from claiming a salary while attending a meeting as an elected official, and are required to take annual leave or leave without pay to tend to their elected position duties. No 'flex time' is mentioned in the statute." *Barton v. Navajo Nation Ethics and Rules Office*, No. SC-CV-48-01, slip op. at 3 (Nav. Sup. Ct. September 15, 2003).

##### **§ 3753. Unauthorized personal use of property or funds of the Navajo Nation**

No public official or employee shall use any property of the Navajo Nation or any other public property of any kind for other than as authorized and approved for official purposes and activities. Such persons shall properly protect and conserve all such property, equipment and supplies which are so entrusted, assigned or issued to them.

#### **History**

CJY-23-92, July 20, 1992. CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(J).

#### **Annotations**

##### **1. Construction and application**

*Re: conflicts of interest:* "This statute prohibits any conflict of interest, defined as having a direct or indirect interest in an activity which creates, or appears to create, a substantial conflict with the duties of office. It requires proof of an interest or stake in an activity which conflicts with one's duty to serve the public and not use the public position for personal

gain." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 444 (Nav. Sup. Ct. 1991).

## **2. Transparency requirements**

*Re: gifts and loans:* "The statute prohibits the practice of businesses who have done business with the Navajo Nation giving a gift or benefit to influence continued favors. There, the Navajo Nation had to prove the identity of the official, the identity of the giver, and the nature of the gift or benefit." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 443-444 (Nav. Sup. Ct. 1991).

### **§ 3754. Staff misuse prohibited**

No public official or employee shall employ, with funds of the Navajo Nation, any unauthorized person(s) nor persons who do not perform duties commensurate with such compensation, and shall utilize authorized employees and staff only for the official purposes for which they are employed or otherwise retained.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(K).

### **§ 3755. Anti-nepotism**

No public official or employee shall employ, appoint, or otherwise cause to be employed, nor nominate, nor otherwise influence the appointment or employment to any public office or position with the Navajo Nation or any governmental or political subdivision thereof, any person or persons related by consanguinity or affinity within the third degree, nor any member of the same household as said public official or public employee. Assignment of such persons to duties, positions, governmental offices or other entities shall in all instances be made in strict compliance with the current provisions of the Personnel Policies and Procedures of the Navajo Nation, as amended from time to time.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(L).

### **§ 3756. Restrictions against gifts or loans to influence official acts**

Except as otherwise provided herein or by applicable rule or regulation adopted hereunder by the Ethics and Rules Committee of the Navajo Nation Council, or by other applicable law, no public official or employee shall solicit or accept for himself/herself or another, any gift, including economic

opportunity, favor, service, or loan (other than from a regular lending institution on generally available terms) or any other benefit of an aggregate monetary value of one hundred dollars (\$100.00) or more in any calendar year, from any person, organization or group which:

A. Has, or is seeking to obtain, contractual or other business or financial relationships or approval from any governmental office or entity with which the public official or employee is associated or employed; or

B. Conducts operations or activities which are regulated or in any manner supervised by any governmental office or entity with which the public official or employee is associated or employed; or

C. Has any interest which, within two years, has been directly involved with, or affected by, the performance or non-performance of any official act or duty of such public official or employee or of the government office or entity with which the public official or employee is associated or employed or which the public official or employee knows or has reason to believe is likely to be so involved or affected.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(M).

#### **§ 3757. Permitted gifts, awards, loans, reimbursements and campaign contributions**

Section 3756 shall not be construed to prohibit:

A. An occasional non-pecuniary gift, insignificant in value;

B. Gifts from and obviously motivated by family or social relationships, as among immediate family members or family inheritances;

C. Food and refreshments customarily made available in the ordinary course of meetings where a public official or employee may properly be in attendance;

D. An award or honor customarily-and publicly presented in recognition of public service; and/or

E. A political campaign contribution, in accordance with all applicable election laws and provided that such gift or loan is actually used in the recipient's political campaign for elective office of a governmental body or political subdivision thereof and provided further that no promise or commitment regarding the official duties of office or employment is made in return for such contribution.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(N).

**§ 3758. Adoption of supplemental codes of conduct for official and employees of governmental entities of the Navajo Nation**

A. The chief executive or administrator of every governmental entity of the Navajo Nation which is subject to the provisions of this Chapter is authorized to submit for approval and adoption by the Committee such supplemental rules, regulations and standards of conduct for the public officials and employees of such entity, which are necessary and appropriate to the special conditions relating to their particular functions, purposes and duties and not in conflict with the purposes and other provisions of this Chapter. Upon adoption, such supplemental standards, rules and regulations shall be implemented in the same manner and to the extent applicable, as are all other standards, rules and regulations provided and adopted in accordance with the provisions of this Chapter.

B. The Ethics and Rules Committee is also authorized to adopt supplemental rules, regulations, and standards of conduct for all elected officials as defined by the Navajo Nation Code.

C. Other Navajo Nation Political Governing Bodies.

1. Other political governing bodies of the Navajo Nation are authorized and directed to draft, adopt, implement and administer standards of conduct, disclosure requirements and other procedures, rules and regulations in conformity with the purposes and provisions of this Chapter.

2. Any lawful authorization for any sponsorship or conduct of participation or involvement in any business activity by any political subdivision of the Navajo Nation shall be conditioned upon its prior adoption of such provisions, and enforcement thereof, as approved by the Committee.

D. The Committee and the Navajo Nation Department of Justice shall provide such assistance as needed and requested by such governmental entities and political governing bodies of the Navajo Nation, in the preparation and drafting of such supplemental and implementing provisions as authorized and which are not in conflict with the purposes and provisions of this Chapter.

**History**

CAP-19-02, April 16, 2002. Subsection (B) added and (C) amended.

CJY-23-92, July 28, 1992.

CF-11-88, February 4, 1988.

CD-93-85, December 4, 1985.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3753(0).

### **Subchapter 3. [Repealed]**

#### **History**

CAP-49-99, April 23, 1999. Subchapter 3 repealed in elimination of economic disclosure statement requirements.

### **Subchapter 4. Implementation and Compliance with Ethics in Government Law; Duties and Responsibilities; Investigation, Hearings, Findings, Reports and Recommendations**

#### **History**

**Note.** This Subchapter was formerly § 3756.

#### **§ 3766. Ethics and Rules Committee of the Navajo Nation Council—Powers and duties**

In accordance with all powers and authority as provided in 2 N.N.C. §§ 831-835 and in addition, the Committee shall have the specific duties, responsibilities and authority to:

A. Adopt, amend and publish rules and regulations to implement all provisions of this Chapter. Before such rules and regulations are enacted a 45-day public notice and comment period shall be allowed.

B. Ensure that all appropriate measures are taken for protecting the confidentiality of all statements, records, documents, other materials and information designated as such by this Chapter or by any other applicable rules or regulations of the Navajo Nation or other competent jurisdiction.

C. Provide written advisory opinions to guide the conduct and address specific questions when requested by officials and employees who are subject to this Chapter.

1. All opinions shall be confidential and maintained on record within the Ethics and Rules Office;

2. All opinions shall be binding upon the Committee, with regard to matters related to the specific request, until amended or revoked by the Committee.

D. The Committee may initiate and/or receive, review and/or investigate complaints filed with the Ethics and Rules Office.

E. The Committee shall conduct Administrative Hearings to determine violations or noncompliance with this Chapter. All Committee hearings shall follow Rules of Procedures established and adopted by the Committee. The

director shall be charged with the responsibility of representing the Navajo Nation in bringing forth all complaints filed under this Chapter.

#### **History**

CAP-49-99, April 23, 1999. Subsections (B) through (H) repealed in elimination of economic disclosure statement requirements.

CJY-23-92, July 20, 1992.

CD-93-85, December 4, 1985.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3756(A)(1)-(A)(10)(B). Also, new § 3766(F) slightly reworded for clarity.

#### **§ 3767. Retaliation prohibited**

A. Retaliation against any party or witness to a complaint shall be prohibited. Retaliation shall include any form of adverse or punitive action. This protection shall also be afforded to any person(s), including Ethics and Rules Office staff, offering testimony or evidence or complying with directives of the Committee.

B. Any violations shall be subject to penalties under this Chapter, as well as obstruction and contempt violations of both the civil and criminal codes of the Navajo Nation.

#### **History**

CF-11-88, February 4, 1988.

CJY-23-92, July 20, 1992.

**Note.** Formerly § 3756(A)(10). Also heading "Retaliation Prohibited" was added for organizational purposes.

#### **§ 3768. Dismissals**

Upon recommendation of the Ethics and Rules Office, the Committee may dismiss any complaint which the Committee determines has insufficient facts to constitute a violation or noncompliance to this Chapter; or if there is insufficient evidence to support the allegations; or if the Committee lacks personal and subject matter jurisdiction.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3756(A)(11). Also, heading "Dismissals" was added for organizational purposes.



**§ 3769. Statute of Limitations**

No action shall be brought under this Chapter more than four years after cause of action has accrued.

**History**

CAP-50-99, April 23, 1999. Amended to reflect changes in appellate procedures.

**Note.** Formerly § 3756(A) (12).

CJY-23-92, July 20, 1992.

**§ 3770. Administrative hearings**

A. The Committee, in the capacity of a quasi-judicial body, shall conduct administrative hearings on any alleged violation or noncompliance.

B. The Ethics and Rules Office shall act in the capacity of complainant on matters to be heard by the Committee.

C. The Hearing body may impose or recommend any sanctions, civil damages, restitution, or other penalties provided in this Chapter, or refer their findings to other appropriate entities for action.

**History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3756(A) (13). Also, heading "Administrative Hearings" was added for organizational purposes.

**§ 3771. Appeals to Supreme Court**

A. The Supreme Court of the Navajo Nation shall have jurisdiction to hear appeals from final decisions. Appeals shall be limited to questions of law.

B. A notice of appeal shall be filed within 10 working days of the issuance of a written decision.

**History**

CAP-50-99, April 23, 1999. Amended to reflect changes in appellate procedures.

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3756(A) (14). Also, heading "Appeals to District Courts" was added for organizational purposes.

**§ 3772. Deliberations by the committee**

In any complaint where the accused is the President, Vice-President, Chief Justice, or other judges of the Navajo Nation, Chapter official or a Council Delegate, the Ethics and Rules Committee, upon completion of the administrative hearing, shall deliberate in executive session and by resolution render its findings of facts, conclusions of law and recommendations for sanction.

**History**

CAP-50-99, April 23, 1999. Amended to reflect changes in appellate procedures.

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3756(A)(15)(a). Also, heading "Recommendations to the Navajo Nation Council for Certain Officials" was added for organizational purposes.

**§ 3773. [Repealed]**

**§ 3774. Committee's power as a quasi-judicial body**

A. The Committee shall hold in contempt any person found disobeying any lawful order, process writ, finding or direction of the Committee.

B. The Committee is authorized to administer oaths and issue subpoenas to compel attendance and testimony of witnesses, or to produce any documents relevant to the matter before the Committee.

C. The Committee shall maintain a complete record of all hearings, including all testimony and documents presented as evidence.

D. The Committee shall not be bound by formal rules of evidence.

E. The Committee shall conduct all hearings in open session. All records, transcripts, and other documents in the possession of the office shall remain confidential unless such information are submitted by the office as evidence.

F. The Committee shall cause a copy of any order or decision to be delivered to the appropriate branch of the government.

**History**

CJY-23-92, July 20, 1992

**Note.** Formerly § 3756(B).

**§ 3775. Committee conflict of interest**

No Committee member shall hear matters before the Committee which involve a member of his/her immediate family and/or personal economic interest.

### **History**

CJY-23-92, July 20, 1992.

**Note.** Formerly § 3756(C).

### **§ 3776. Independent legal counsel**

Subject to all applicable laws, the Committee may obtain independent legal counsel to assist and advise the Committee.

### **History**

CJY-23-92, July 20, 1992

**Note.** Formerly § 3756(D).

### **§ 3777. Special prosecutors**

A. Notwithstanding any provision in this Chapter, any Special Prosecutor appointed pursuant to 2 N.N.C. §§ 2021-2024 shall have the following powers and authority in connection with any administrative proceeding under this Chapter, exercisable in the name of the Navajo Nation, with respect to any matter within such Special Prosecutor's jurisdiction:

1. To file a complaint with the Committee alleging a violation of this Chapter by any person subject thereto;
2. To prosecute the complaint and represent the Navajo Nation's interest in any and all proceedings thereon;
3. To exercise an unconditional right to intervene and be substituted as the complainant in any proceeding pending under this Chapter, without regard to the stage of such proceedings; and

B. In the event of any administrative proceeding under this Chapter in which the Navajo Nation, through a Special Prosecutor, is a complainant against a person, any other complaint filed against such person hereunder (whether filed before or after the date on which the Navajo Nation became complainant) shall abate and shall be dismissed without prejudice, as to any common allegation of prohibited conduct.

### **History**

CAP-50-99, April 23, 1999. Amended to reflect changes in appellate procedures.

CJY-23-92, July 20, 1992.

**Note.** Formerly § 3756(E) and (F). Also, heading "Special Prosecutors" added for organizational purposes.

### **§ 3778. [Repealed]**

**§ 3779. Other relief not barred**

Nothing herein shall be construed as foreclosing the right of the Navajo Nation, through a Special Prosecutor or otherwise, to initiate proceedings to secure the relief and sanctions referred to in §§ 3781 or 3782 of this Chapter.

**History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3756(1).

**Cross References**

Civil penalties, see 2 N.N.C. §§ 3780, 3781 (D) and 3782(F).

**Subchapter 5. Sanctions and Penalties**

**§ 3780. Administrative sanctions; collection of judgments**

A. Upon finding that there has been violation of any provision of this Chapter, the Committee may impose any or all of the following penalties or sanctions:

1. Removal, discharge or termination from public office or employment in accordance with applicable Navajo Nation law and procedure.

2. Disqualification for all elective public offices of the Navajo Nation and/or appointment to or employment in any public office of the Navajo Nation, for five years from the effective date of removal, discharge or any other termination of public office or employment of the Navajo Nation.

3. Suspension from public office or employment and forfeiture of all compensation and benefits accruing therefrom, for not less than 30 days nor for more than one year.

4. Accordingly, any public employee of the Navajo Nation shall be subject to discipline, including suspension without pay or other benefits and dismissal as provided by other laws, regulations and personnel policies or procedures applicable thereto.

5. Issuance of a written public reprimand, which shall be entered into such person's permanent record of employment or office and upon the permanent record of the public office or entity of which such person is a member or employee, according to provision of applicable Navajo Nation law and procedures.

6. Issuance of a private reprimand to such person, with or without suspension of any or all other sanctions provided herein.

7. Imposition of restitution or such other civil penalties as hereinafter provided under § 3781.

B. Any person who is found to have violated any provisions of this Chapter shall forfeit any elective public office. This forfeiture provision shall not apply to any person against whom the only sanction imposed under § 3780(A) is for a suspension from public office, or a written public reprimand, or private reprimand, or restitution of less than one thousand dollars (\$1,000).

C. No sanctions or penalty provided herein shall limit any other powers of the Navajo Nation Council, Navajo Nation Courts, Judicial, Executive or Legislative Branches of the Navajo Nation, nor of any other entity or administrative officials or employees under other applicable law, rules, regulations or procedures.

D. Judgments issued pursuant to the Ethics in Government Law which include the payment of money may be collected in any manner authorized for recovery of debts owed the Navajo Nation, including but not limited to garnishment proceedings as authorized by Navajo Nation law and offset provisions of the Navajo Nation Business and Procurement Act, 12 N.N.C. § 1501 *et seq.*

#### **History**

CAP-22-05, April 20, 2005.

CAP-51-99, April 23, 1999. Subsection (B) amended.

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3757(A).

#### **Annotations**

##### **1. Jurisdiction, generally**

" ... [S]ection 3780(C) does not give this Court appellate jurisdiction over final decisions of the Ethics and Rules Committee finding Navajo Nation Council delegates in violation of the Ethics in Government Law." *Vandever, v. The Navajo Nation Ethics and Rules Office*, 7 Nav. R. 356, 357 (Nav. Sup. Ct. 1998).

##### **§ 3781. Other civil damages**

A. A person found in violation of this mandate shall be further subject to, and personally liable for the following provisions, without regard to the imposition of any administrative sanction or criminal conviction:

1. Any public official or employee who violates any economic disclosure or reporting requirement of this Chapter may be held liable to the Navajo Nation for civil damages in an amount not to exceed the value of any interest not properly reported.

2. Any public official or employee who realizes an economic benefit as a result of violation of any prohibition or restriction set forth in Subchapter 2 and 3 of this Chapter shall be liable to the Navajo Nation for civil damages in an amount not exceeding three times the amount or value of the benefit or benefits so obtained.

B. If two or more persons are responsible for any violation, each of them shall be liable to the Navajo Nation for the full amount of any civil damages prescribed herein, the full amount of which may be imposed upon and collected from each of them individually.

C. Any civil penalties imposed hereunder shall be collected in any manner authorized for recovery of debts or obligations owed to the Navajo Nation and shall be paid into the General Fund of the Navajo Nation.

D. No imposition of any or all civil damages provided herein shall be a bar to institution of any civil, criminal or misdemeanor action, liability, judgment, conviction or punishment otherwise applicable hereto, nor shall determination of any such civil damages be barred thereby.

#### **History**

CJY-23-92, July 20, 1992, added Subsection (A).

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3757(B).

#### **§ 3782. Misdemeanor violations; punishments**

The Navajo Nation, through the Office of the Prosecutor or Special Prosecutor shall be responsible for the enforcement of the following Subsection.

A. Any person who is convicted or found guilty of knowingly and willfully violating any provision of Subchapter 2 of this Chapter is guilty of a misdemeanor and for a first offense shall be fined not more than five hundred dollars (\$500.00) and may be sentenced to imprisonment for not more than 180 days, or both.

B. Any person knowingly and willfully filing any complaint authorized under this Chapter or by any other applicable law, without just cause and with malice or other improper purpose, including personal, political or other harassment or embarrassment, shall be guilty of a misdemeanor and for a first offense shall be fined not more than five hundred dollars (\$500.00) and may be sentenced to imprisonment for not more than 180 days, or both.

C. Upon conviction of any subsequent offense prescribed in Subsection (A) or (B) of this Section, such person shall be fined not less than five hundred dollars (\$500.00) and shall be sentenced to imprisonment of not less than 30 days nor more than 180 days.

D. A person convicted of a misdemeanor under this Chapter shall not be a

candidate for elective public office, nor be eligible for any appointive office of the Navajo Nation, nor any of its governmental entities or political governing bodies; for five years following the date of conviction.

E. A plea of nolo contendere shall be deemed a conviction for purposes of this Chapter.

F. No criminal or misdemeanor action, judgment, conviction or punishment hereunder shall operate to bar any action for civil damage or penalty or imposition of any administrative sanction provided hereunder, nor be barred thereby.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3757(C).

#### **§ 3783. Severability**

If any provision of this Chapter or the application of such provision to any person, firm, association, corporation or circumstances shall be held invalid, the remainder of the Chapter and the application of such provision to persons, firms, associations, corporations or circumstances other than those as to which it is held invalid shall not be affected thereby.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3759.

#### **§ 3784. Effective date**

The effective date of all provisions of this Navajo Nation Ethics in Government Law shall be October 8, 1984.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3760.

#### **§ 3785. Prior inconsistent law superseded**

Upon the effective date of this Navajo Nation Ethics in Government Law, all prior inconsistent enactments, laws, rules, policies, ordinances and regulations of the Navajo Nation and all branches, divisions, departments,

offices and political subdivisions thereof, are superseded hereby and/or amended to comply herewith.

#### **History**

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

**Note.** Formerly § 3761.

### **Subchapter 6. Ethics and Rules Office**

#### **§ 3786. Establishment**

There is hereby established the Ethics and Rules Office within the Navajo Nation government.

#### **History**

ACJA-3 5-89, January 26, 1989.

ACJN-109-85, June 12, 1985.

CAU-40-84, August 9, 1984.

ACMA-35-84, March 14, 1984.

CJA-1-83, January 25, 1983.

**Note.** This Section was redesignated as "3786" (formerly § 3771).

#### **§ 3787. Purpose and objectives**

The purposes and objectives of the Ethics and Rules Office shall be:

A. To provide administrative assistance to the Ethics and Rules Committee of the Navajo Nation Council in ensuring adherence to legislative mandates under the Navajo Nation Ethics in Government Law, Ethics and Rules Committee Plan of Operation, and other applicable laws of the Navajo Nation;

B. To represent the interests of the Navajo Nation in maintaining the highest standards of ethical conduct by the elected and appointed public officials, officers and representatives of the Navajo Nation in the performance of their public and official duties and functions (includes candidates and public employees);

C. To maintain and make available for official information complete and current written records of all laws, resolutions, rules, regulations and other official enactments, rulings, decisions or opinions relating to requirements, prohibitions or standards of ethical conduct;

D. To protect the interests of the Navajo People in ensuring fair, honest



and efficient conduct of the government of the Navajo Nation, in accordance with the laws of the Navajo Nation and the will of the Navajo People, through review, recommendation and sponsorship of projects, legislation, rules and standards in furtherance of these ends; and

E. To assist the Ethics and Rules Committee with its statutory duties and responsibilities.

#### **History**

IGRD-316-08, December 17, 2008.

ACJN-109-85, June 12, 1985.

**Note.** Formerly § 3772.

#### **§ 3788. Personnel and organization**

A. There is established the position of Director for the Ethics and Rules Office and administrative/secretarial staff as may be budgeted by the Navajo Nation Council.

B. The Ethics and Rules Committee and the Executive Director of the Office of Legislative Services shall have the authority to employ the Director of the Ethics and Rules Office.

C. The Director shall have the authority to hire the administrative/secretarial staff, pursuant to the Navajo Nation Personnel Policies Manual.

D. All Ethics and Rules Office personnel, including the Director, shall be subject to and entitled to the benefits of the Navajo Nation Personnel Policies Manual.

E. The Director of the Ethics and Rules Office shall be administratively responsible to the Executive Director, Office of Legislative Services, in carrying out policies authorized and directed by the Ethics and Rules Committee of the Navajo Nation Council, as provided under Section 3787 of this Subchapter.

#### **History**

IGRD-316-08, December 17, 2008.

ACJN-109-85, June 12, 1985.

**Note.** Reference to organizational chart omitted for purposes of statutory form; this Section was formerly § 3773.

#### **§ 3789. Duties, responsibilities and authority**

A. The Director shall be a member, in good standing, of the Navajo Nation Bar Association; he or she shall have the authority necessary and proper to carry out the purposes set forth in § 3787 of this Chapter and the Navajo

Ethics in Government Law.

B. Under general direction, the Director of the Ethics and Rules Office shall have the duties, responsibility, and authority to assist the Ethics and Rules Committee of the Navajo Nation Council to:

1. Provide recommendations to the Ethics and Rules Committee concerning rules and regulations necessary to implement provisions of the Navajo Nation Ethics in Government Law and to publish same after proper approval;

2. Maintain records of written advisory opinions issued by the Ethics and Rules Committee on the requirements of the Navajo Nation Ethics in Government Law, upon request from persons whose conduct is subject thereto and who have specific need to use such opinions;

3. Assist investigators of the Ethics and Rules Office with receiving, examining and investigating reports of alleged violations of the Navajo Ethics in Government Law or rules and regulations thereto;

4. Determine, with the assistance of Presenting Officers, whether formal ethics complaints will be filed with the Ethics and Rules Committee; delegate any or all duties and responsibilities over certain cases to Presenting Officers;

5. Present, on behalf of the Navajo Nation, all cases before the Ethics and Rules Committee;

6. Educate officials, employees and programs of the Navajo Nation, including chapters, on the intent, purpose and requirements of the Navajo Ethics in Government Law;

7. Assist in conducting public hearings on matters involving ethics in government; and

8. Prepare the annual proposed annual budget for the Ethics and Rules Office and the Ethics and Rules Committee.

#### **History**

IGRD-316-08, December 17, 2008.

ACJN-109-85, June 12, 1985.

**Note.** Slightly reworded for purposes of statutory clarity; this Section was formerly § 3774.

#### **§ 3790. Political practices prohibited**

The staff shall not, for the purpose of personal gain, use any information or conduct any proceedings for the intent of causing harm or injury to the political standing or reputation of any member of the Navajo Nation Council, the President and Vice-President of the Navajo Nation, or any other employee, or officer of the Navajo Nation.

### **History**

ACJN-109-85, June 12, 1985.

**Note.** Formerly § 3775.

### **§ 3791. Legislative oversight**

The Ethics and Rules Committee shall be the legislative oversight committee for the Ethics and Rules Office pursuant to 2 N.N.C. § 834(B) (7).

### **History**

IGRD-316-08, December 17, 2008.

**Note.** Former § 3791, "Office location and hours" as approved by ACJN-109-85, June 12, 1985, was deleted and amended by IGRD-316-08, December 17, 2008.

ACJN-109-85, June 12, 1985.

**Note.** Formerly § 3776.

### **§ 3792. Construction**

Nothing contained in this Plan of Operation shall be construed to limit the authority of the Ethics and Rules Committee of the Navajo Nation Council and/or their representatives in ensuring adherence to and carrying out the legislative intent of the Navajo Nation Ethics in Government Law and the Ethics and Rules Committee's Plan of Operation, and all applicable laws of the Navajo Nation.

### **History**

ACJN-109-85, June 12, 1985.

**Note.** Formerly § 3777.

### **§ 3793. Amendments**

This Plan of Operation may be amended by the Ethics and Rules Committee of the Navajo Nation Council subject to the approval of Intergovernmental Relations Committee of the Navajo Nation Council.

### **History**

ACJN-109-85, June 12, 1985.

**Note.** Formerly § 3778. Also, reference to "Advisory Committee" deleted and substituted therein is the "Intergovernmental Relations Committee" pursuant to 2 N.N.C. § 824(B) (1), CD-68-89, December 15, 1989.

## **Chapter 7. Navajo Nation Ethics in Government Law Garnishment Act of**

2005

**§ 3800. Title**

This Act shall be entitled and referred to as the Navajo Nation Ethics in Government Law Garnishment Act of 2005.

**History**

CAP-22-05, April 20, 2005.

**§ 3801. Purpose**

The purpose of this Act is to allow the remedy of garnishment in the collection of judgments issued by the Ethics and Rules Committee pursuant to the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.*

**History**

CAP-22-05, April 20, 2005.

**§ 3802. Findings**

The Navajo Nation Council finds that:

A. The Ethics and Rules Committee of the Navajo Nation Council conducts hearings for alleged violations of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.* These hearings involve public elected officials and Navajo Nation employees.

B. Sanctions for violations of the Navajo Nation Ethics in Government Law include removal from or disqualification for elected office, termination of employment, payment of fines and restitution, reprimand and other penalties.

C. Nonpayment of fines and restitution ordered pursuant to the Ethics in Government Law is a growing concern.

**History**

CAP-22-05, April 20, 2005.

**§ 3803. General**

A. The remedy of garnishment shall be available for only collection of civil damages, restitution, fines, and/or penalties pursuant to a judgment, *i.e.*, order or decision, duly issued under the Navajo Nation Ethics in Government Law.

B. The remedy of garnishment is applicable to any of the following:

1. Nonrestricted earnings owing to a judgment debtor by a garnishee.

2. Nonrestricted assets, including nonrestricted monies, held by a garnishee on behalf of a judgment debtor.

3. Personal property of a judgment debtor that is in the possession of a garnishee.

4. Shares and securities of a corporation or a proprietary interest in a corporation belonging to a judgment debtor, if the garnishee is a corporation.

C. A judgment creditor, or the Navajo Nation Office of Ethics and Rules on behalf of a judgment creditor, in whose favor a money judgment is awarded by the Ethics and Rules Committee of the Navajo Nation Council for violations of the Navajo Nation Ethics in Government Law may apply for writ of garnishment for its enforcement at any time within 10 years after entry of the judgment.

D. A judgment creditor may apply for as many writs of garnishment as are necessary to collect the entire amount of the judgment.

E. Jurisdiction over garnishment actions initiated pursuant to a judgment issued under the Navajo Nation Ethics in Government Law shall lie solely with the courts of the Navajo Nation.

### **History**

CAP-22-05, April 20, 2005.

### **§ 3804. Definitions**

For the purpose of garnishment under this Act, the following words shall have the following meanings, unless the context otherwise requires:

A. Assets. Interests in personal property and monies including, among other items, chattels, cash, bank accounts, securities, notes, and accounts receivable, but not including earnings or interests in real property.

B. Disposable Earnings. That part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be exempted or withheld, e.g., FICA, Medicare, federal income tax.

C. Earnings. Compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise.

D. Federal Minimum Hourly Wage Rate. The highest federal minimum hourly wage rate for an eight-hour day and a 40-hour week. It is immaterial whether the garnishee is exempt from paying the federal minimum hourly wage rate.

E. Garnishee. The third person or entity, including Navajo Nation enterprises, entities, authorities, and corporations, in control or possession of the earnings or assets which are the subject of the garnishment proceeding.

F. Garnishment. Legal procedure through which the earnings or any other asset of a judgment debtor are required to be withheld by a third party and, upon subsequent court order, released to a judgment creditor for payment of a

debt which has been reduced to judgment under the Navajo Nation Ethics in Government Law.

G. Judgment Creditor. A person or entity, including the Navajo Nation and its branches, divisions, departments, programs, enterprises, boards, commissions, and chapters, that has a money judgment in its favor pursuant to an order or decision duly issued under the Navajo Nation Ethics in Government Law that is due and unpaid.

H. Judgment Debtor. A person against whom a money judgment has been awarded pursuant to an order or decision duly issued under the Navajo Nation Ethics in Government Law.

I. Order of Garnishment. Court order directing the garnishee to pay, transfer and/or release nonrestricted earnings or assets of the judgment debtor in the amount or a portion of the amount stated in the writ of garnishment plus costs and fees to the judgment creditor in a specified manner and at a specified time.

J. Restricted Earnings and Assets. That portion of earnings and/or assets that are exempt from attachment in a garnishment proceeding, including those earnings and assets deemed exempt and restricted by this Act.

K. Writ of Garnishment. Preliminary court order issued through the Clerk of Court directing the garnishee not to pay, transfer and/or release nonrestricted earnings or assets of the judgment debtor in the amount or a portion of the amount stated in the writ of garnishment and directing the garnishee to file an answer to the writ of garnishment and directing the garnishee to serve the writ of garnishment on the judgment debtor.

### **History**

CAP-22-05, April 20, 2005.

### **§ 3805. Issuance of writ of garnishment; answer; objection; order**

In accordance with the rules for garnishment proceedings, as enacted pursuant to 7 N.N.C. § 601:

A. Upon the filing of a proper petition, a writ of garnishment in the amount of the judgment or portion thereof as stated in the petition shall be issued by the Clerk of Court and directed to the garnishee.

B. The garnishee shall file an answer to the writ of garnishment and serve the writ of garnishment, as well as the answer, on the judgment debtor.

C. The judgment debtor or other interested person or entity may file an objection to the writ of garnishment or the answer of the garnishee.

D. If the answer shows that the garnishee was holding nonexempt monies or personal property of the judgment debtor or that the judgment debtor is an employee of the garnishee entitled to future earnings and if no objection to the writ of garnishment is filed, the court will, without hearing issue an order of garnishment.

E. If an objection to the writ of garnishment is filed and/or the conditions precedent of Subsection (D) are not met, the court will hear the matter without a jury prior to issuing an order of garnishment or ordering the garnishment stopped.

#### **History**

CAP-22-05, April 20, 2005.

#### **§ 3806. Limitations upon transfers by garnishee**

A. From and after service of the writ of garnishment and until the court issues the garnishment stopped, the garnishee shall not pay, transfer or release any unrestricted asset in the garnishee's possession or under the garnishee's control to which the judgment debtor has an interest or pay and/or release unrestricted earnings owing to the judgment debtor.

B. The garnishee shall be liable to the judgment creditor for any such payment, transfer, or release prohibited above.

#### **History**

CAP-22-05, April 20, 2005.

#### **§ 3807. Possession by judgment debtor**

A. At any time before an order of garnishment is issued, the judgment debtor may take possession of any earnings or assets withheld by the garnishee by filing with the court (1) a bond payable to the garnishee in the amount, including costs and fees, set forth in the application for the writ of garnishment, or (2) a bond payable to the garnishee for the value of the earnings and assets to be garnished. The bond shall be conditioned upon the payment of any judgment that may be given against the garnishee or for payment of the value of the property garnished.

B. When the judgment debtor provides a bond, he may make any objection which the garnishee could make in such action. With or without bond, the judgment debtor may assert any legal objections he may have to the writ of garnishment.

C. If judgment debtor takes possession of property under this Section and judgment on garnishment is given in favor of the judgment creditor, it shall be against the judgment debtor and the sureties on the judgment debtor's bond for the amount of such judgment.

#### **History**

CAP-22-05, April 20, 2005.

#### **§ 3808. Restrictions on discharge from employment by reason of garnishment**

A. No employer may discharge any employee by reason of the fact that his or her earnings have been subject to garnishment.

B. An employer who willfully violates Subsection (A) of this Section shall be assessed a civil liability of not more than one thousand dollars (\$1,000) payable to the employee.

#### **History**

CAP-22-05, April 20, 2005.

#### **§ 3809. Exemptions and restrictions**

The following earnings and assets shall be restricted and exempt from garnishment:

- A. Benefits paid by the Social Security Administration;
- B. Railroad retirement benefits under the Railroad Retirement Act of 1974, 45 U.S.C. § 231;
- C. Retirement benefits, including Civil Servant's Retirement benefits under 5 U.S.C. § 8331 *et seq.* and benefits payable by the Navajo Nation pursuant to Navajo Nation defined contribution and/or defined benefit retirement plans;
- D. Military annuities under 10 U.S.C. § 1440;
- E. Social welfare benefits including, but not limited to:
  - 1. Aid to Families with Dependent Children, or its successor; and
  - 2. General Assistance;
- F. All monies received by or payable to the judgment debtor pursuant to a child support order;
- G. Earnings payable by the judgment debtor pursuant to a child support order;
- H. Earnings and assets restricted or excepted under 15 U.S.C. § 1671 *et seq.*; and,
- I. Interests in real property.

#### **History**

CAP-22-05, April 20, 2005.

#### **§ 3810. Maximum allowable earnings subject to garnishment**

The maximum amount of earnings subject to garnishment shall not exceed the lesser of:

- A. Fifteen percent (15%) of the judgment debtor's disposable income for any pay period; or



B. The amount by which the judgment debtor's disposable income exceeds 30 times the federal minimum wage (based on a 40 hour work week) in effect at the time the earnings are payable.

#### **History**

CJY-18-07, July 19, 2007.

CAP-22-05, April 20, 2005.

### **Chapter 8. Personnel**

#### **§ 3900. Drug and Alcohol Testing Policies**

The Navajo Nation Council hereby sanctions the adoption of drug and alcohol testing policies for all Navajo Nation employees who perform safety-sensitive functions. Such policies may vary in scope and detail depending on contractual requirements and/or employment functions to be performed by Navajo Nation employees.

#### **History**

CD-111-95, December 21, 1995.

### **Chapter 9. Navajo Nation Chapters**

#### **Subchapter 1. [Repealed]**

#### **Subchapter 3. [Repealed]**

#### **History**

CAP-34-98, April 20, 1998. Enactment of the Navajo Nation Local Governance Act.

### **Subchapter 5. Chapter Development Committees**

#### **History**

The Chapter Managers Program formerly at Subchapter 7 was discontinued by CJY-621-91, July 23, 1991. See now 2 N.N.C. § 990 *et seq.*, the Community Services Program and the role of Community Services Coordinators.

#### **§ 4041. Establishment**

Chapter Development Committees are hereby established.

#### **History**

ACMA-25-82, March 10, 1982.

#### **§ 4042. Purpose**

The purposes of a Chapter Development Committee are:

A. To advise, make recommendations, and assist the Chapter concerning all matters related to comprehensive Chapter planning and development for Chapter projects funded through the Navajo Nation government and other funding sources.

B. To review, prioritize and submit written recommendations at the direction of the Chapter for proposed Chapter development projects, to be prepared to offer alternatives to those projects, and to defend and explain those alternatives.

C. To promote coordination and working relationships among local residents, pursuant to the direction of the Chapter government, and the divisions and departments of the Navajo Nation government.

D. To utilize the services of Community Development Specialists from the Division of Community Development and the services of the Navajo Nation, Bureau of Indian Affairs, United States Public Health Service, and other agency personnel to obtain technical advice, assistance, and recommendations in order to carry out community planning and projects.

E. To submit necessary reports, correspondence, forms, and other documents, as required, to the Chapter, to the Division of Chapter Development, and to other agencies requiring such information.

F. To assist the Chapter in implementing approved Chapter projects, if the Chapter so delegates.

G. To assist with the review and make recommendations to the Chapter for developmental land use permits, including business site leases, homesite leases, and mission site leases within the Chapter planning area.

#### **History**

ACMA-25-82, March 10, 1982.

**Note.** Slightly reworded for purposes of statutory form.

References to "Division of Chapter Development" at Subsections (D) and (E) deleted pursuant to GSCO-60-91; substituted therefore is "Division of Community Development."

#### **§ 4043. Authority**

A Chapter Development Committee shall serve solely as an advisory committee of the Chapter in order to recommend various Socio-economic Chapter development projects. The Chapter Development Committees shall in no way have any authority over the local Navajo Chapters.

#### **History**

AMA-25-82, March 10, 1982.

#### **§ 4044. Creation**

All Chapter Development Committees shall be created by Chapter resolution at a duly called meeting of the Chapter at which a quorum is present.

#### **History**

ACMA-25-82, March 10, 1982.

#### **§ 4045. Membership; qualifications**

A. Membership. Each Chapter Development Committee shall consist of at least five members, and additional non-voting technical advisers, if desired by the Chapter.

B. Qualifications. Each Chapter Development Committee member must be at least 18 years of age and an enrolled member of the Navajo Nation.

#### **History**

ACMA-25-82, March 10, 1982.

#### **§ 4046. Selections; certification; tenure; compensation; removal**

A. Selection. All members of the Chapter Development Committee shall be selected at a duly called Chapter meeting at which a quorum is present and their selection shall be set forth in a certified written resolution.

B. Certification. The Division of Community Development shall certify the selection of the Committee exclusively for purposes of compensation of five committee members, upon receipt of a certified Chapter resolution setting forth the designated Chapter Development Committee members.

C. Tenure. Chapter Development Committee members shall serve one year terms to coincide with funding cycles.

D. Compensation.

1. The Division of Community Development shall provide a stipend of twenty dollars (\$20.00) (subject to program funds) to each of five Committee members to insure the greatest possible effort on the part of the Committee members in executing the purposes of the Chapter Development Committee. Additional Committee members and/or technical advisers can be compensated by the Chapter out of Chapter funds, if the Chapter so desires.

2. The monies provided by the Division of Community Development shall be contingent upon the availability of federal funding sources.

E. Removal.

1. Grounds. Any member of the Chapter Development Committee may be removed:

a. Upon recommendation to the Chapter by the other members of

the Chapter Development Committee.

b. Upon any other grounds established by the Chapter by means of a duly certified Chapter resolution.

2. Removal.

a. Any member of a Chapter Development Committee may be removed by majority vote of the quorum of a Chapter at a duly called Chapter meeting.

b. The Division of Community Development must be notified by certified Chapter resolution within two weeks of the removal of a Committee member in order to facilitate termination of compensation payments.

**History**

ACMA-25-82, March 10, 1982.

**Note.** References to "Division of Chapter Development" at Subsections (B) and (D) deleted pursuant to GSCO-60-91; substituted therefore is "Division of Community Development."

**§ 4047. Officers; selection; duties; removal**

A. Selection. At its initial meeting, the members of each Chapter Development Committee shall select a Chairperson, a Vice-Chairperson, and a Secretary.

B. Duties.

1. The Chairperson shall call and preside over all duly called meetings of the Committee.

2. The Vice-Chairperson shall preside at all Chapter Development Committee meetings in the absence of the Chairperson and perform such other duties as assigned by the Chairperson.

3. The Chapter Development Committee Secretary shall maintain all minutes of Committee meetings, the permanent files of the Committee, and shall perform other duties as assigned by the Chairperson.

C. Removal. The officers of the Chapter Development Committee shall serve a one year term in their official capacity, unless removed as an officer by a majority vote of the other Chapter Development Committee members.

**History**

ACMA-25-82, March 10, 1982.

**§ 4048. Meetings; quorum; procedure**

A. A Chapter Development Committee shall have one compensated meeting per

month, but additional meetings may be compensated out of Chapter funds if the Chapter so desires. All Chapter Development Committee meetings shall be open to the public. Notice of all Chapter Development Committee meetings shall be posted at least one week in advance.

B. A simple majority of the Committee members shall constitute a quorum.

C. "Robert's Rules of Order" shall be utilized at all Chapter Development Committee meetings, and all actions shall be taken by certified resolutions, or written memoranda, setting forth the action taken and filed with the Chapter Secretary and the Division of Community Development.

#### **History**

ACMA-25-82, March 10, 1982.

**Note.** Reference to "Division of Chapter Development" at Subsection (C) deleted pursuant to GSCO-60-91; substituted therefore is "Division of Community Development."

### **Subchapter 7. [Reserved]**

#### **History**

§ 4061-4068, the Chapter Manager's Program was repealed and was replaced with the Community Services Program by CJY-61-9 1, July 19, 1991. See 2 N.N.C. Article 5, § 990.

### **Subchapter 9. Kayenta Township Home Rule**

#### **§ 4081. Establishment**

There is established the Kayenta Township created as a home rule municipality under the governance of the Kayenta Township Commission.

#### **History**

CAU-47-03, August 29, 2003, Overrode veto of Resolution CJY-42-03.

CJY-42-03, July 25, 2003, Amended section to create Kayenta Township as home rule municipality.

CN-86-85, November 5, 1985.

#### **§ 4082. Purposes; goals**

A. The Navajo Nation recognizes that the Kayenta Township has undergone the first stages of rapid and accelerated development.

B. The Kayenta Chapter and Kayenta Township have through joint planning, executing and evaluating developed an improved system of local government. The Navajo Nation fully supports this effort.

C. The establishment of the Kayenta Township as a home rule municipality is for the purpose of authorizing the local governance of Kayenta Township by the Kayenta Township Commission.

#### **History**

CAU-47-03, August 29, 2003, Overrode veto of Resolution CJY-42-03.

CJY-42-03, July 25, 2003, Amended section generally.

CN-86-85, November 5, 1985.

#### **§ 4083. Jurisdiction; authority**

A. The Kayenta Township shall be governed by the Kayenta Township Commission (KTC).

B. The KTC shall have jurisdiction over all that area authorized and designated by the Navajo Nation Council in November 1985 (Resolution CN-86-85), and the official survey plat filed with Navajo County and submitted to the Bureau of Indian Affairs; said area shall be subject to amendment pursuant to Kayenta Township ordinance and concurrence by the Kayenta Chapter.

C. The authority of the KTC shall prevail over all other authority contingent upon its consistency and compliance with all generally applicable laws and regulations of the federal government and the Navajo Nation.

#### **History**

CAU-47-03, August 29, 2003, Overrode veto of Resolution CJY-42-03.

CJY-42-03, July 25, 2003, Amended section generally.

CN-86-85, November 5, 1985.

#### **§ 4084. Duties, authorities and responsibilities of Kayenta Township Commission**

The KTC shall have the duty, authority, and responsibility to perform all functions necessary for local self government, consistent with all generally applicable laws and regulations of the federal government and the Navajo Nation.

#### **History**

CAU-47-03, August 29, 2003, Overrode veto of Resolution CJY-42-03.

CJY-42-03, July 25, 2003, Amended Section generally.

CN-86-85, November 5, 1985.

#### **§ 4085. Code of Ethics**

Officers and members of the KTC shall maintain a high standard of conduct in all dealings. This standard of conduct shall include but is not limited to

conducting all KTC business openly without taint of impropriety, serving the KTC, Kayenta Chapter and the Navajo Nation to the very best of their ability in full compliance with the Navajo Nation Ethics in Government Law.

#### **History**

CAU-47-03, August 29, 2003, Overrode veto of Resolution CJY-42-03.

CJY-42-03, July 25, 2003, Amended section generally.

CN-86-85, November 5, 1985.

#### **§ 4086. Amendments and revisions**

This Subchapter may from time to time be amended as necessary and appropriate by a two-thirds majority of the full Navajo Nation Council with recommendations from the KTC and the Kayenta Chapter.

#### **History**

CAU-47-03, August 29, 2003, Overrode veto of Resolution CJY-42-03.

CJY-42-03, July 25, 2003, Amended section to create Kayenta Township as home rule municipality.

CN-86-85, November 5, 1985.

### **Title 3**

#### **Agriculture and Livestock**

##### **United States Code**

Loans of livestock by United States to Indians, cash settlements, disposition of moneys received in settlement of, 25 U.S.C. §§ 442, 443.

Relief in stricken agricultural areas, expenditures not considered in offsetting gratuities in suits of Tribes against United States, 25 U.S.C. § 475a.

#### **Chapter 1. Agricultural Leases, Assignments, and Permits**

##### **Subchapter 1. Leases**

##### **§ 1. Authority to negotiate and grant**

A. The Resources Committee of the Navajo Nation Council is authorized and empowered, with the approval of the General Superintendent, to negotiate and grant leases of economic unit sized tracts of Navajo Nation land to qualified members of the Navajo Nation for agricultural purposes.

B. The President of the Navajo Nation, with the approval of the General Superintendent, is authorized to enter into lease agreements upon approval of

the Resources Committee on behalf of the Navajo Nation.

### **History**

CJN-37-59, June 5, 1959.

**Note.** References to "Advisory Committee" changed to "Resources Committee" pursuant to 2 N.N.C. § 691 *et seq.*

### **Cross References**

Powers of the Resources Committee, see 2 N.N.C. § 691 *et seq.*

Powers and Duties of the President, see 2 N.N.C. § 1005 *et seq.*

### **United States Code**

Lease of Indian lands generally, see 25 U.S.C. § 391 *et seq.*

### **Code of Federal Regulations**

Agricultural leases, see 25 CFR § 162.200 *et seq.*

### **Annotations**

See annotations under Licenses and Permits in digest.

## **1. Easements**

*RE: dispute involving Red Lake Irrigation Project:* " ... [N]o prescriptive right can be acquired in property belonging to the Navajo Nation or dedicated to a community use. To allow prescription is similar to authorizing only a few individuals to utilize public property to the exclusion of others. This process would disrupt the beneficial use of that property and result in numerous disputes." *Yazzie v. Jumbo*, 5 Nav. R. 75, 77 (Nav. Sup. Ct. 1986).

## **§ 2. Regulations, procedures, and forms; adoption**

The Resources Committee is authorized to adopt regulations, procedures, and forms to govern the granting of agricultural leases to individual applicants.

### **History**

CJN-37-59, June 5, 1959.

ACJL-100-59, July 17, 1959, approved United States Department of Interior, Bureau of Indian Affairs Lease Form 5-180-January 1957 with addendum attached. The same Resolution also approved form of application for lease which was to be made a part of each lease.

**Note.** References to "Advisory Committee" changed to "Resources Committee" pursuant to 2 N.N.C. § 691 *et seq.*



### **§ 3. Rentals**

Rentals for leases of tracts of Navajo Nation land for agricultural purposes shall be established by the Resources Committee with the approval of the Commissioner or his/her authorized representative.

#### **History**

CJN-37-59, June 5, 1959.

**Note.** References to "Advisory Committee" changed to "Resources Committee" pursuant to 2 N.N.C. § 691 *et seq.*

### **§ 4. Permits**

Permits issued and in force under provisions of §§ 41-43 of Subchapter 3 shall remain in effect and the procedures set forth in such sections shall continue to be effective should any Navajo Indian desire a permit instead of a lease as provided in this Subchapter.

#### **History**

CJN-37-59, June 5, 1959.

**Note.** ACS-118-80, September 11, 1980. Sections 41-43 of Subchapter 3 referenced above have been rescinded.

### **Subchapter 3. Irrigated lands generally**

**§§ 41 to 43. [Rescinded]**

#### **History**

ACS-118-80, September 11, 1980.

ACO-38-54, October 19, 1954.

### **§ 44. Regulations, procedures, and forms; authority to adopt**

The Resources Committee is authorized to adopt regulations, procedures, and forms to govern the duties of the Land Boards in administering the provisions of §§ 41-43 of this Subchapter.

#### **History**

CJN-37-59, June 5, 1959.

**Note.** References to "Advisory Committee" changed to "Resources Committee" pursuant to 2 N.N.C. § 691 *et seq.* Also, ACS-118-80, §§ 41-43 of Subchapter 3 referenced above have been rescinded.

### **§ 45. Hogback and Navajo Irrigation Projects**

A. There is established a policy of establishing farm units containing sufficient land to sustain and provide Navajo families with an adequate livelihood.

B. The farm units for the Hogback and Navajo Irrigation Projects are established at not less than 120 acres each.

C. The Resources Committee of the Navajo Nation Council, in full cooperation with the appropriate offices of the Bureau of Indian Affairs, shall formulate forms and implement procedures it may deem necessary for the orderly allocation of the farm units as set forth in Subsection (B) of this Section, and to take whatever other steps which in its opinion are necessary to fully protect the best interests of the Navajo Nation and that of its individual members in carrying out the provisions of this Section.

#### **History**

ACJ-67-58, June 13, 1958.

**Note.** Subsection (A) slightly reworded for statutory form. "Advisory Committee" changed to "Resources Committee" pursuant to 2 N.N.C. § 691 et seq. and for purposes of conformance with the 1989 amendments to Title 2, CD-68-89.

### **Subchapter 4. Major Irrigation Projects Farm Boards**

#### **History**

Scope of Subchapter. Introduction to Plan of Operation for Major Irrigation Projects Farm Boards, in ACD-228-85, states in part: "This Plan of Operation will only cover the major irrigation projects, including Many Farms; Ganado; Red Lake, NM; Cudei, Hogback and Fruitland, which are regularly administered and maintained by the Division of Water Resources and such other projects as are designated by the Resources Committee of the Navajo Tribal Council. All other irrigation projects are classified as Miscellaneous Projects and remain under the jurisdiction of the District Grazing Committee."

#### **§ 61. Establishment**

Farm Boards are hereby established.

A. There are hereby established Farm Boards within the Executive Branch of the Navajo Nation Government.

B. Farm Boards shall be established through the Government Services Committee of the Navajo Nation Council upon the recommendation of the Resources Committee, provided the following criteria are met:

1. A proposed Plan of Operation is submitted and approved by the Navajo Nation Department of Agriculture; and

2. A certified Chapter(s) of the Navajo Nation supports the formation of a Farm Board; and

3. The Farm Board is comprised of farm lands which meet one of the following projects:

a. "Lake Projects" means that the farm lands are located near lakes, man-made or natural or reservoirs.

b. "River Projects" means that farm lands are located near rivers, or perennial streams.

c. "Miscellaneous Projects" means that farm lands are located in areas that receive high amounts of rain fall, from 0-18, more or less, inches per year, and have the capacity to sustain viable crops: or areas that receive run off water from mountains, i.e. intermittent streams, and have capacity to sustain viable crops.

C. A Farm Board may be comprised of several chapters or districts, but a Chapter shall have no more than one Farm Board.

D. Unless otherwise stated, applicable District Grazing Committees or District Land Boards shall maintain authority over farmlands not under the jurisdiction of a Farm Board.

### **History**

CAU-67-97, August 7, 1997.

ACD-228-85, December 12, 1985.

CJA-1-81, January 28, 1981.

ACS-118-80, September 11, 1980.

CAU-51-80, August 7, 1980.

**Note.** Slightly reworded.

### **§ 62. Purposes**

It is the purpose of the Farm Boards:

1. To build up locally the capacity and responsibility to ensure the proper and full protection, conservation, management, sustainable and economic use and development of local farmland and irrigation water systems.

2. To promote coordination among the Navajo Nation, private entities, state and federal agencies, local Navajo farmers and farm communities for ensuring proper operation, maintenance, rehabilitation and improvement of local irrigation systems.

3. To promote coordination among the Navajo Nation, private entities, state and federal agencies to provide Navajo farming communities with adequate research, education and training in all aspects of agricultural production, irrigation management, marketing and

financial mismanagement, and other areas related to agriculture within the Navajo Nation.

4. To promote full utilization of idle farmland.

#### **History**

CAU-67-97, August 7, 1997.

ACD-228-85, December 12, 1985.

ACS-118-80, September 11, 1980.

**Note.** Slightly reworded for purposes of statutory form.

References to "Division of Water Resources" have been changed to "Division of Natural Resources" pursuant to CAP-41-94, April 20, 1994.

#### **Cross References**

Division of Community Development, 2 N.N.C. § 1451.

Division of Natural Resources, 2 N.N.C. § 1901 *et seq.*

#### **§ 63. Personnel Officers**

Each Farm Board shall select from its membership, the following officers:

A. Chairperson. The Chairperson shall preside over Farm Board meetings and insure that the business of the Farm Board is conducted in an orderly manner.

B. Vice-Chairperson. The Vice-Chairperson shall perform the duties of the Chairperson in the absence of the Chairperson as well as other duties that may be delegated to him or her.

C. Secretary. The Secretary shall be responsible for keeping the records of the Farm Board.

#### **History**

CAU-67-97, August 7, 1997.

ACJA-27-89, January 24, 1989.

ACD-228-85, December 12, 1985.

ACS-118-80, September 11, 1980.

#### **§ 64. Meetings**

A. Monthly meetings. Each Farm Board must hold at least two scheduled meetings per month to address issues of farming, land use permits, land use matters, and disputes.

B. Special Meetings. Special meetings may be called by over one-half of the Farm Board members, subject to availability of funds.

C. Quorum. A quorum shall consist of a simple majority of the Farm Board members.

#### **History**

CAU-67-97, August 7, 1997.

ACD-228-85, December 12, 1985.

ACD-18-80, September 11, 1980.

**Note.** Reference to "Division of Water Resources" has been changed to "Division of Natural Resources" pursuant to CAP-41-94, April 20, 1994.

#### **Cross References**

Resources Committee of the Navajo Nation Council, see 2 N.N.C. § 691, *et seq.*

#### **§ 65. Powers**

Subject to applicable laws, each Farm Board shall have the following powers:

##### A. Enumerated Powers.

1. To review and approve the granting, assignment, reassignment, cancellation, relinquishment, transfer, agriculture leasing and subleasing of agricultural land use permits with the concurrence of the Division of Natural Resources and Department of Agriculture;

2. To review and recommend approval to the Resources Committee of the Navajo Nation Council of the granting of agricultural land use permits, and the construction of irrigation project boundary fences, irrigation canal rights-of-way, water use assessments or other matters involving agricultural land or irrigation water management in accordance with applicable laws;

3. To assess and collect fees for water assessments, which shall revert directly to the Farm board collecting such assessments and be used to improve local irrigation operations and maintenance;

4. To mediate and maintain official written records of any disputes which may arise among agricultural land use permit holders. Copies of all such official written records shall be furnished to the Navajo Nation's Division of Natural Resources and to the Bureau of Indian Affairs.

5. To serve as mediators by resolving disputes of land use rights, fences, land boundaries, rights-of-way, weed or pest control, water use assessments or other agricultural related disputes, within the Navajo

Reservation, except disputes involving divorce, separation, and probate which shall be resolved by the Navajo Nation Courts. The Board may submit recommendations to the Court in agricultural matters regarding divorce, separation, and probate. Unresolved disputes shall be submitted to the Office of Hearings and Appeals, although the Board may submit its own recommendations.

6. To resolve inter-district agricultural-related disputes by holding joint meetings with the adjoining Farm Boards. Unresolved matters shall be submitted to the Office of Hearings and Appeals.

7. To submit in writing to the Resources Committee of the Navajo Nation Council, any recommendations and suggestions of general interest and any problem which the Farm Board is unable to resolve or beyond its authority.

#### B. Management Functions

1. To develop and recommend for Resources Committee approval, such policies, procedures, rules and regulations as may be required to implement the provisions of this plan of operation.

2. To develop, review and implement standard procedures manuals and short and long-range plans for the rehabilitation, improvement, operation and maintenance of irrigation systems, in coordination with appropriate Navajo Nation, private, state and federal agencies.

3. To oversee plans, budgets, staffing, decisions and activities of Navajo Nation agriculture land with the responsibility for management, operations, maintenance and repairs on irrigation projects under the authority of the local Farm Board.

4. To cooperate and enter into agreements, consistent with applicable Navajo Nation laws, with Navajo Nation, private, state, and federal agencies to carry out programs for the construction, rehabilitation, improvement, operation and maintenance of any irrigation structures or systems.

5. To conduct surveys, investigation, research, education and demonstrations relating to methods and results of agricultural production, farm management and crop marketing, irrigation management and other measures as well as aiding agricultural productivity and irrigation water management, in coordination and cooperation with appropriate Navajo Nation, private, state and federal agencies.

6. Subject to the availability of funds to employ administrative, clerical and technical staff personnel.

7. To acquire, administer, and make available on such terms as the Farm Board may prescribe, all plant materials, supplies, tools, machinery, equipment and other property necessary for the implementation of proper economic agriculture and irrigation system rehabilitation, improvement, operations and maintenance, in coordination with appropriate Navajo Nation and federal agencies.

8. To perform other duties as may be directed by the Resources Committee of the Navajo Nation Council, the President of the Navajo Nation, and the Navajo Nation Council.

9. To sign Homesite applications pursuant to rules and regulations adopted by the Resources Committee of the Navajo Nation Council and Navajo Nation laws.

#### **History**

CO-59-03, October 21, 2003.

CAU-67-97, August 7, 1997.

ACD-228-85, December 12, 1985.

ACS-118-80, September 11, 1980.

**Note.** Slightly reworded for purposes of statutory form. Also, "Enumerated Powers" and "Management Functions" designated as Subsections (A) and (B), respectively. Accordingly, sections thereunder were redesignated by numerical sequence.

References to "Division of Water Resources" have been changed to "Division of Natural Resources" pursuant to CAP-41-94, April 20, 1994.

#### **§ 66. Accountability**

A. Farm Board members shall be accountable to their respective local Chapters by attending Chapter meetings and submitting monthly reports.

B. Farm Board members shall be accountable to the Executive Director, Division of Natural Resources, or his/her designee by submitting monthly reports.

#### **History**

CAU-67-97, August 7, 1997.

**Note.** Central Farm Board plan of operation was removed from the Code and currently exists as an uncodified administrative regulation/code.

#### **§ 67. Compensation**

A. Farm Board members shall be paid from funds provided annually in the Navajo Nation budget for that purpose, subject to the availability of funds.

B. Farm Board members shall be compensated at a rate determined by the Navajo Nation Council for per diem for attending official meetings. Per diem shall be made pursuant to the submittal of an official claim form together with a roll sheet and meeting agenda. Compensation of the Farm Board may be withheld for failure to cooperate with officials of the Navajo Nation or attending chapter meetings or any other official scheduled meetings.

### **History**

CAU-67-97, August 7, 1997.

CMA-16-90, March 29, 1990.

ACD-228-85, December 12, 1985.

### **§ 68. Legislative Oversight**

Farm Boards shall operate under the legislative oversight of the Resources Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 695(B) (15).

### **History**

CAU-67-97, August 7, 1997.

**Note.** Reference to "2 N.N.C. § 695(B) (14)" changed to "2 N.N.C. § 695(B) (15)" pursuant to CAP-17-03 and CO-59-03.

### **§ 69. Amendments**

The Plan of Operation of the Farm Boards may be amended from time to time by the Navajo Nation Council upon the recommendation of the Resources Committee and the Government Services Committee of the Navajo Nation Council.

### **History**

CAU-67-97, August 7, 1997.

ACD-228-85, December 12, 1985.

ACS-118-80, September 11, 1980.

**Note.** Reference to "Advisory committee" was deleted and substituted therein is the "Government Services Committee" pursuant to CD-18-89, 2 N.N.C. § 343(B) (2).

## **Subchapter 5. [Reserved]**

## **Subchapter 7. Small Irrigation Projects; District Grazing Committees**

### **Article 1. Land Assignments**

#### **§ 151. Applications for land assignment; land use permit**

A. Applications for assignments of land outside the six major irrigation projects shall be made to the Grazing Committee which has jurisdiction over the District in which the land is located. The Grazing Committee shall review all applications, select the best applicant, and forward his/her application to the General Superintendent recommending approval and issuance of a land use permit.



B. No land assignment shall be made to a person under 18 years of age.

C. Before an owner's claim to a tract of farm land is valid he/she must have in his/her possession a land use permit describing the tract of land signed by the General Superintendent.

#### **History**

ACS-144-59, September 23, 1959.

#### **§ 152. Plan of operation**

Land users should have a Plan of Operation for tracts of land under their use. Such a plan may be developed in cooperation with Navajo Nation Range and Livestock Department (or its successor) and Bureau of Indian Affairs Branch of Land Operation in the subagency.

#### **History**

ACS-144-59, September 23, 1959.

**Note.** "Agriculture and Livestock Department" changed to "Range and Livestock Department" to conform with CMA-34-66, 2 N.N.C. § 3151.

#### **§ 153. Cancellation of land use permits**

Land use permits may be canceled by the General Superintendent upon recommendation of the local Grazing Committee for reason of non-use for two years, failure to pay assessments, request for relinquishment, or any other valid reason presented by the local District Grazing Committee to the Office of Hearings and Appeals and the General Superintendent.

#### **History**

CO-59-03, October 21, 2003.

ACS-144-59, September 23, 1959.

#### **§ 154. Death of assignee**

A. Upon the death of an assignee, his/her land use permit shall be transferred to his/her most logical heir as determined by the Navajo Nation Court. The Court shall make every effort to assign the land assignment as one unit or combine it with another. The Court should make every effort to keep the land assignment in one tract and not subdivide it.

B. The disposition of personal property and improvements placed by the deceased upon the land assigned must be determined by the Navajo Nation Court. Probable heirs shall be advised to file a probate petition to bring such matters to the attention of the Court for settlement.

#### **History**

ACS-144-59, September 23, 1959.

## **Cross References**

Decedents' estates generally, 8 N.N.C. § 1 *et seq.*

## **Annotations**

### **1. Construction and application**

"The Navajo Nation has long disapproved of fragmenting agricultural and grazing lands." *In re: Estate of Wauneka, Sr.*, 5 Nav. R. 79, 82 (Nav. Sup. Ct. 1986).

## **Article 2. Regulation by District Grazing Committees**

### **§ 171. Authority**

A. The Grazing Committee of each District shall have the authority to enforce and carry out the duties and responsibilities for small irrigation projects and scattered farm acreage within their districts and outside the six major irrigation projects as a part of their regular duties.

B. No fences shall be built on Navajo Nation land without the approval of the Grazing Committee.

## **History**

ACS-144-59, September 23, 1959.

## **Cross References**

Grazing Committees generally, see § 831 *et seq.* of this title.

## **Annotations**

### **1. Allotment fencing**

"Given that fencing on all lands, including allotments in the Eastern Navajo Agency, are subject to some local Navajo board or committee's approval, the Court concludes that, read together, the purpose of the various provisions is to deal with fencing within the Nation comprehensively. To foster a uniform, predictable system of regulating fencing within the Reservation, this purpose is facilitated by requiring district grazing committee approval of allotment fencing within the Reservation. Under this analysis, elected officials within local communities may hear and decide disputes when land owners propose to fence their land off from other users. Such fencing affects not just the parcel proposed to be fenced, but affects all other surrounding land users." *Gishie v. Morris, et al.*, No. SC-CV-36-06, slip op. at 5 (Nav. Sup. Ct. June 4, 2008).

### **§ 172. Procedures for fencing of lands**

The Navajo Nation Council hereby instructs and directs the District Grazing Committees to follow the procedures set forth herein whenever any lands are proposed to be fenced.

A. Advise each and every stockman who has customary use rights or interest in the area proposed to be fenced.

B. Give each and every stockman who has such an interest an opportunity to protest such proposed fencing.

C. Advise each and every stockman of his/her rights to appeal according to the procedures set forth in the Navajo Nation Code.

D. Advise the Central Grazing Committee in writing of the decision of the District Grazing Committees to recommend a fencing project (list of names and addresses of all parties who may be affected by such a fencing project and further advise the Central Grazing Committee that the District Grazing Committees have fully complied with the requirements set forth herewith).

E. Refrain from recommending fencing to the Agency Superintendent until concurrence and approval of such fencing project has been obtained from the Chapter officers and the Council delegate of the district.

F. All stockmen who have fenced their customary use areas shall confine the grazing of their livestock to within the fenced area at all times. No relative from a distant area or from another district shall move his/her livestock into the fenced area.

#### **History**

CO-59-03, October 21, 2003.

CMY-34-67, May 9, 1967.

#### **Annotations**

##### **1. Customs**

"The Navajo Nation has long disapproved of fragmenting agricultural and grazing lands." *In re: Estate of Wauneka, Sr.*, 5 Nav. R. 79, 82 (Nav. Sup. Ct. 1986).

##### **2. Allotment fencing**

"Given that fencing on all lands, including allotments in the Eastern Navajo Agency, are subject to some local Navajo board or committee's approval, the Court concludes that, read together, the purpose of the various provisions is to deal with fencing within the Nation comprehensively. To foster a uniform, predictable system of regulating fencing within the Reservation, this purpose is facilitated by requiring district grazing committee approval of allotment fencing within the Reservation. Under this analysis, elected officials within local communities may hear and decide disputes when land owners propose to fence their land off from other users. Such fencing affects not just the parcel proposed to be fenced, but affects all other surrounding land users." *Gishie v. Morris, et al.*, No. SC-CV-36-06, slip op. at 5 (Nav. Sup. Ct. June 4, 2008).

#### **§ 173. Duties and responsibilities**

The District Grazing Committees shall have the following duties and responsibilities:

A. Make every effort to assign a tract large enough to comprise an economic unit.

B. Devise plans for the proper distribution of available irrigation water and recommend penalties for failure to comply with water use regulations. Such regulations and penalties shall be made by each Grazing Committee in writing and explained to all assignees of the project.

C. Arbitrate land disputes and recommend action to be taken to the Office of Hearings and Appeals.

D. Cooperate with the Bureau of Indian Affairs and Navajo Nation personnel in carrying out their program and policies.

E. In cooperation with the Navajo Nation Range and Livestock Department (or its successor) and Bureau of Indian Affairs Branch of Land Operations, plan an education program for families in their jurisdiction.

F. Perform other duties as assigned by the Central Grazing Committee.

#### **History**

CO-59-03, October 21, 2003.

ACS-144-59, September 23, 1959.

**Note.** "Agriculture and Livestock Department" changed to "Range and Livestock Department" to conform Section to CMA-34-66, 2 N.N.C. § 3151.

#### **§ 174. Meetings**

One regular meeting shall be held each month which may be part of a meeting for grazing matters. Special meetings may be called by the Chairperson but notices must be posted in conspicuous places at least 10 days before such meeting date.

#### **History**

ACS-144-59, September 23, 1959.

#### **§ 175. Expenses**

The expenses for conducting the business under this Subchapter shall be paid from the regular Grazing Committee fund using the same procedures as for Grazing Committee business.

#### **History**

ACS-144-59, September 23, 1959.

#### **§ 176. Appeal of decisions**

Appeal of decisions of the local Grazing Committee shall be made to the Office of Hearings and Appeals.

#### **History**

CO-59-03, October 21, 2003.

ACS-144-59, September 23, 1959.

#### **Annotations**

##### **1. Allotment fencing**

"The Council clearly authorizes OHA to hear fencing disputes on appeal from a recommendation of a district grazing committee." *Gishie v. Morris, et al.*, No. SC-CV-36-06, slip op. at 3 (Nav. Sup. Ct. June 4, 2008).

### **Subchapter 9. Farm or Grazing Land; Land Boards**

#### **Article 1. Land Assignments**

##### **§ 211. Application for land assignment; land use permit**

A. An application for a land assignment or permit for farm or range land shall be made to the Land Board in the District where the land is located. The Land Board shall review all applications and select the best applicant and forward his/her application either to the General Superintendent or his/her authorized representative on Navajo Nation trust lands or the President of the Navajo Nation on all other lands under Navajo Nation control, recommending approval and issuance of a land use permit.

B. No land assignment or permit shall be made to a person under 18 years of age.

C. Before an owner's claim on a tract of farm or grazing land is valid he/she must have in his/her possession a land use permit describing the tract of land signed either by the General Superintendent or his/her authorized representative or the President of the Navajo Nation.

#### **History**

ACS-144-59, September 23, 1959.

##### **§ 212. Plan of operation**

Each land user should have a Plan of Operation for all tracts of land under his/her use. Such plans must be developed in cooperation with the Navajo Nation Range and Livestock Department (or its successor) and Bureau of Indian Affairs, Branch of Land Operation in the subagency.

#### **History**

ACS-144-59, September 23, 1959.

**Note.** "Agriculture and Livestock Department" changed to "Range and Livestock Department" to conform Section to CMA-34-66, 2 N.N.C. § 3151.

#### **§ 213. Fencing of range land**

Range land in Navajo Nation trust status or lands leased or purchased by the Navajo Nation may be fenced only after an applicant has received a written permit signed by the Subagency Superintendent. All applications to fence must be submitted to the District Land Board and forwarded with recommendations to the Subagency Superintendent for the issuance of fencing permits for approved applications.

#### **History**

ACS-44-59, September 23, 1959.

#### **Cross References**

Fences generally, see §§ 2401, 2402 of this title.

#### **§ 214. Disputes; settlement**

Any farming disputes, boundary disputes, grazing disputes, rights-of-way disputes, water disputes, weed and plant disease control disputes, etc., shall be taken before the Land Board for settlement.

#### **History**

ACS-144-59, September 23, 1959.

#### **§ 215. Transfer of assignment; construction of buildings**

No land user may give or transfer any part of his/her land assignment permit or lease to another person without the recommendation of the Land Board and approval of either the General Superintendent or his/her authorized representative or the President of the Navajo Nation, nor shall anyone except himself/herself be allowed to construct buildings on his/her assignment.

#### **History**

ACS-144-59, September 23, 1959.

#### **Cross References**

Death of assignee, transfer on, see § 217 of this title.

#### **§ 216. Cancellation of land use permits**

Land use permits may be canceled either by the General Superintendent or the President of the Navajo Nation upon recommendation of the local Land Board for reason of non-use for two years, failure to pay assessments, request for relinquishment, or any other valid reason presented by the local Land Board to

the Office of Hearings and Appeals.

#### **History**

CO-59-03, October 21, 2003.

ACS-144-59, September 23, 1959.

#### **§ 217. Death of assignee**

A. Upon the death of an assignee, his/her land use permit shall be transferred to his/her most logical heir as determined by the Navajo Nation Court. The Court shall make every effort to assign the land assignment as one unit or combine it with another. The Court should make every effort to keep the land assignment in one tract and not subdivide it.

B. The disposition of personal property and improvements placed by the deceased upon the land assigned must be determined by the Navajo Nation Court. Probable heirs shall be advised to file a probate petition to bring such matters to the attention of the Court for settlement.

#### **History**

ACS-144-59, September 23, 1959.

#### **Cross References**

Decedents' estates generally, see 8 N.N.C. § 1 *et seq.*

Transfer of assignment generally, see § 215 of this title.

#### **Annotations**

##### **1. Construction and application**

"In *Begay v. Keedah*, 6 Nav. R. 416, 421 (Nav. Sup. Ct. 1991), this Court acknowledged the following Navajo Nation policies gleaned from Navajo statutes to be considered when determining the award of a grazing permit: 1) animal units in grazing permits must be sufficiently large to be economically viable, 2) land must be put to its most beneficial use, 3) the most logical person should receive land use rights, 4) use rights must not be fragmented, and 5) only those who are personally involved in the beneficial use of land may be awarded it. *Id.* The Court now holds that these factors are to be considered and applied consistent with the Navajo Fundamental Law which defines the role and authority of Diné women in our society." *Riggs v. Estate of Tom Attakai*, No. SC-CV-39-04, slip op. at 3 (Nav. Sup. Ct. June 13, 2007).

"The Navajo Nation has long disapproved of fragmenting agricultural and grazing lands." *In re: Estate of Wauneka, Sr.*, 5 Nav. R. 79, 82 (Nav. Sup. Ct. 1986).

#### **Article 2. Land Boards**

##### **§ 231. Number of Boards**

There shall be three District Land Boards. There shall be one each for Districts 15, 16 and 19. Ramah, Canonicito and Alamo will be included with District 16, until such time as a different management plan is specifically adopted for one or more of those communities. There shall be a total of twenty individual Board members participating in the three Boards, divided as indicated in § 234(A).

### **History**

CD-92-85, December 4, 1985.

ACS-144-59, September 23, 1959.

**Note.** See also CD-59-64, which directed drafting a Land Code, which included the functions and responsibilities of the District 15, 16 and 19 Land Boards. ACMY-73-66, as amended by ASC-187-68, accepted the Cooperative Agreement for the Administration of the Checkerboard Area. The Resources Committee of the Navajo Nation Council, by Resolution dated March 15, 1966, delegated to the District Land boards implementation of the Land code.

### **§ 232. Definitions**

The terms used herein shall be given the same meanings as they have in the Off-Reservation Grazing Code.

A. "Commissioner" means the Commissioner of Indian Affairs.

B. "Area Director" means the Director of the Navajo Area, Bureau of Indian Affairs.

C. "Superintendent" means the Superintendent of the Eastern Navajo Agency of the Bureau of Indian Affairs.

D. "Individually Owned Lands" means land or any interest therein held in trust by the United States for the benefit of individual Navajo Indians and land or any interest therein held by individual Indians subject to federal restrictions against alienation or encumbrance.

E. "Tribal Trust Land" means land or any interest therein held by the United States in trust for the Navajo Nation, and land that is held by the Navajo Nation subject to federal restrictions against alienation or encumbrance. This term also includes assignments of Navajo Nation land. Unless the terms of the assignment provide for the leasing of the land by the holder of the assignment, the Navajo Nation must join with the assignee to issue a grazing permit.

F. "Tribal Fee" means land owned in fee simple by the Navajo Nation.

G. "Government Land" means land, other than Navajo Nation land, acquired or reserved by the United States for Indian Bureau administrative purpose which are not immediately needed for the purposes for which they are acquired or reserved, and land transferred to or placed under the jurisdiction of the Bureau of Indian Affairs but does not include unreserved public domain land



leased to the Navajo Nation under Section 15 of the Taylor Grazing Act.<sup>1</sup>

H. "Tribal Lease Lands" means land leased to the Navajo Nation under Section 15 of the Taylor Grazing Act,<sup>1</sup> and the state lands leased to the Navajo Nation but shall not include land within Navajo Nation ranches.

I. "Permit" means a revocable privilege granted to an individual, in writing, to enter on and use a specified tract of land for a specified purpose.

J. "Animal Unit" means one mature cow (or calf, six months or over) or other approved equivalent. Example: five sheep = one cow; five sheep = one horse (or as amended).

K. "Range Unit"—A range unit shall consist of such lands as the District Land Board, after consultation with land users and the Bureau of Indian Affairs range technicians, shall consider the nearest to fitting the conditions required by Range Management, land status, conservation, and Indian needs.

L. "Grazing Community"—A grazing community shall consist of range units combined into a larger administrative unit, as determined by the District Land Boards based on common interests.

M. "Immediate Family" means the Indian's descendants as controlled by the state laws of descent wherein the land is situated.

N. "Allocation" means the assignment of range use without competitive bidding, including the determination of who may graze livestock, the number and kind of livestock, and the place such livestock will be grazed.

O. "District Land Board" means a board comprised of representative Navajo Indian membership elected for the purpose of administering grazing and resolving problems attendant thereto, and representing one of the Land Management Districts in the Eastern Agency.

P. "Joint Agency Land Board" means a board comprised of the combined membership of all District Land Boards in the Off-Reservation area.

Q. "Tribal Office" means the Tribal Land Office of Crownpoint or such other office as may assume these responsibilities.

R. "Indians" means enrolled Navajo Indians.

S. "Resources Committee" means the duly appointed Resources Committee of the Navajo Nation Council.

T. "Livestock" means all neat animals (horses and cattle) and sheep, goats and swine.

### **History**

CD-92-85, December 4, 1985.

**Note (2006).** Letter designation of subsections were corrected from "M. Immediate Family" to "T. Livestock".

## United States Code

Taylor Grazing Act, see 43 U.S.C. § 315 *et seq.*

### § 233. Purposes and objectives of the District Land Boards

It is the purpose of the District Land Boards to:

A. Preserve, through proper grazing management, the land, water, forest, forage, wildlife and recreational values in the Off Reservation area and improve and build up these resources where they may have deteriorated.

B. Promote use of the range resources by Indians to enable them to earn a living, in whole or in part, through the grazing of their own livestock.

C. Balance the rights and equities of the individual landowners and land users with the demands of Navajo Nation programs through the granting of grazing privileges in a manner which will yield a fair return to land users consistent with undiminished future use.

### History

CD-92-85, December 4, 1985.

### § 234. Representatives, qualifications, and election procedures

A. District Land Board Composition. There shall be a total of 20 District Land Board representatives. In the event that the volume of work justifies additional members, additional representatives may be authorized by the Government Services Committee of the Navajo Nation Council. The Land Board members shall represent the following Chapters:

1. District 15 - Seven Representatives.

- a. Standing Rock (1)
- b. Dalton Pass (Nahodishgish) (1)
- c. White Rock (1)
- d. Lake Valley and Becenti (1)
- e. Crownpoint and Littlewater (1)
- f. Whitehorse Lake (1)
- g. Pueblo Pintado and Torreon (1)

2. District 16 - Nine Representatives.

- a. Mariano Lake and Smith Lake (1)
- b. Thoreau, Baca and Casamero Lake (1)

- c. Pinedale and Iyanbito (1)
- d. Church Rock, Bread Springs, and Red Rock (1)
- e. Manuelito and Chichiltah (1)
- f. Rock Springs and Tsayatoh (1)
- g. Ramah (1)
- h. Alamo (1)
- i. Tóhajjilee (1)

3. District 19 - Four Representatives.

- a. Huerfano (2)
- b. Nageezi (1)
- c. Counselor and Ojo Encino (1)

B. Qualifications for Land board Members.

[This Section has been superseded by CAP-23-90. Qualifications for Land Board members are listed in the Election Code, 11 N.N.C. § 8(D)(1)].

C. Nominations and Election Procedures for the Land Boards.

[This Section has been superseded by CAP-23-90. Candidacy and election procedures for Land Board members are now in the Election Code at 11 N.N.C. § 21 *et seq.*]

### **History**

CAP-23-90, April 6, 1990.

CD-68-89, December 15, 1989.

CAP-24-87, April 29, 1987.

CD-92-85, December 4, 1985.

**Note.** "Advisory Committee" changed to "Government Services Committee".

### **Cross References**

Navajo Nation Election Code, see 11 N.N.C. § 1 *et seq.*

### **§ 235. Officers of the District Land Boards**

A. Positions and Responsibilities. Each District Land Board shall select from its membership the following officers:

1. Chairperson. The Chairperson shall preside over the meeting and insure that the business of the boards is conducted in an orderly manner.

2. Vice-Chairperson. The Vice-Chairperson shall perform the duties of the Chairperson in the absence of the Chairperson as well as other duties which may be delegated to him/her.

3. Secretary. The Secretary shall be responsible for the records of the Board and shall insure that the Bureau or Navajo Nation employees which assist with the minutes or record keeping do so in a proper manner.

B. Election and Terms. The officers of the district Land boards shall be elected by majority vote of the Board members at the first regular meeting following the election of the Boards' members. The officers shall serve four year terms.

#### **History**

CD-92-85, December 4, 1985.

#### **§ 236. Removal of Board members [Superseded]**

#### **History**

**Note.** Sections pertaining to grounds and procedure for removal of Land Board members have been superseded by CAP-23-90. Removal procedures for all elected officials covered by the Navajo Nation Code at 11 N.N.C. § 240 *et seq.* See also, removal provisions of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.*

#### **§ 237. Duties and responsibilities of the District Land Boards**

Duties and responsibilities of the District Land Boards are as follows:

A. Review all applications for grazing permits, determine eligibility, allocate grazing privileges through the permit system, and designate use areas.

B. Make every effort to permit a land tract large enough to comprise an economic unit.

C. Arbitrate land disputes, and in cases of disputes or protests that they are unable to solve, refer them in writing to the Eastern Navajo Joint Land Board.

D. In cooperation with the Division of Natural Resources and the Bureau of Indian Affairs, Branch of Land Operations, plan and implement an educational program for stockmen in their jurisdiction.

E. Cooperate and work with the Navajo Nation offices, state land office, Bureau of Indian Affairs, and the Bureau of Land Management on mutual issues including individual problems arising from mineral development or other governmental proposals.

F. Cancel grazing permits when related to forage depletion, death of permittee, failure to pay grazing fees, failure to use permits for an extended period or other reasons within their authority.

G. Act on all proposed range improvements and conservation plans for range units within the District.

H. Enforce the applicable grazing regulations and perform duties as required in said Code.

I. Organize and conduct dipping, spraying and dusting programs and assist livestock owners in organizing livestock sale programs.

J. Assist the Superintendent or his/her authorized representative in obtaining an annual livestock inventory.

K. Establish range units, after consultation with the Indians and consideration of all relevant factors, and adjust such units as may be necessary.

L. Include Navajo Nation trust, unreserved public domain land leased by the Navajo Nation, and other Navajo Nation controlled land within the range units under permit.

M. Establish grazing fees after consultation with and review by the Bureau of Indian Affairs.

N. Modify, cancel, and reissue grazing permits.

O. Authorize any improvement to be placed on any range unit prior to its construction and grant permission for removal of existing improvements. No improvements shall be constructed or removed in the absence of such authorization.

P. Review, investigate, conduct a formal hearing, and levy appropriate penalties for any livestock trespass.

Q. Approve and authorize any stud horses allowed in the District.

R. Perform other duties as assigned by the Eastern Navajo Agency Joint Land Board, the Resources Committee of the Navajo Nation Council, or the Office of the President of the Navajo Nation.

S. Assist the Navajo Nation with land acquisition and the administration of these lands after they are acquired.

T. Assist on the Navajo Irrigation Project and with energy development in such matters as livestock, land exchange, relocation of families, etc.

U. Provide input and counseling to individuals and provide comment and advice to governmental agencies on issues arising from proposed land exchanges, mineral development, or other land use in the Eastern Agency.

## **History**

### **Annotations**

#### **1. Powers of Land Board**

"The Land Board possesses the authority to settle boundary disputes, water disputes, right of way disputes, etc." *Yazzie v. Jumbo*, 5 Nav. R. 75, 77 (Nav. Sup. Ct. 1986).

#### **2. Allotment fencing**

"Given that fencing on all lands, including allotments in the Eastern Navajo Agency, are subject to some local Navajo board or committee's approval, the Court concludes that, read together, the purpose of the various provisions is to deal with fencing within the Nation comprehensively. To foster a uniform, predictable system of regulating fencing within the Reservation, this purpose is facilitated by requiring district grazing committee approval of allotment fencing within the Reservation. Under this analysis, elected officials within local communities may hear and decide disputes when land owners propose to fence their land off from other users. Such fencing affects not just the parcel proposed to be fenced, but affects all other surrounding land users." *Gishie v. Morris, et al.*, No. SC-CV-36-06, slip op. at 5 (Nav. Sup. Ct. June 4, 2008).

#### **§ 238. Enumerated powers and responsibilities for individual Board members**

The Land Board members, in addition to their general duties and powers as members of the Boards, shall be responsible for conducting certain specific actions within the communities they represent. These include, but are not limited to, the following:

A. To conduct all local investigations and surveys necessary for the various recommendations and decisions that involve land within their Chapter(s).

B. To conduct the dipping, vaccinating, roundup, branding, inspecting, recording and counting activities within their Chapter(s).

C. To attempt to mediate all local disputes and to perform necessary investigations for appeals.

D. To verify permitted land users consent for all lease or permit applications and to investigate all proposals regarding improvements.

E. To enforce applicable Navajo grazing regulations.

F. To perform such other duties as may be delegated by the District Land Board, the Joint Land Board, the Director of the Division of Natural Resources, the Resources Committee, or the Navajo Nation Council.

### **History**

### **§ 239. Meetings and procedures**

A. Each District Land Board shall establish a meeting schedule which will provide for at least one meeting day per month. These scheduled meetings are to be known as the "regular meetings" for that District Land Board. These meetings shall be scheduled with as much advance notice as is practical under the circumstances.

B. The schedule of "regular meetings" shall be posted at all Chapters within the District, with copies forwarded to the Resources Committee and Director, Division of Natural Resources, listing the exact date, time, and location for such meetings. Any amendments shall also be posted and forwarded in this manner.

C. All "regular meetings" shall be open to the public and shall be conducted informally, in an orderly manner. In the event that rules have been adopted for the resolution of any particular type of issue, such as regulations for settlement of land and grazing disputes, those rules shall be applied.

D. The Board may at its discretion call "special meetings" or call for "executive sessions" as necessary. All special meetings and executive sessions shall be conducted in an orderly manner. Special meetings shall be open to the public.

E. All substantive actions by the Board shall be initiated and undertaken by written resolution, or memorialized in a written memorandum setting forth the action taken. Said writing shall be signed by the presiding officer and retained by the Secretary of the Board.

F. A quorum shall consist of a simple majority of all committee members for that district. All decisions shall be made by a majority vote if no consensus can be reached. All Board members, including officers, shall be eligible to vote.

### **History**

CD-92-85, December 4, 1985.

### **§ 240. Compensation**

A. The Land Board Members shall be paid from funds provided annually in the Navajo Nation budget.

B. Land Board Members shall be compensated at a rate of six hundred dollars (\$600.00) per month. All Land Board members may be paid on a regular basis and may be subject to appropriate payroll deductions for insurance coverage as determined and approved by the Navajo Nation Insurance Commission pursuant to the provisions of 2 N.N.C. § 932 (A). In addition, Land Board members shall receive a travel allowance of sixty-six dollars (\$66.00) per month (300 miles per month at 22 cents per mile).

C. Land Board Members attending their respective Chapter, District and/or agency meeting may receive fifty dollars (\$50.00) per diem for each meeting

wherein official business is conducted, subject, however, to Navajo Nation Council appropriations and availability of funds.

### **History**

CMA-16-90, March 29, 1990.

CD-92-85, December 4, 1985.

### **§ 241. Eastern Agency Joint Land Board**

A. Composition and officers of the Joint Land Board:

1. The Eastern Agency Joint Land Board shall consist of all of the members of the three District Land Boards.

2. The Joint Land Board shall, at its first regular meeting following the election of the District Land Board Members, select the following officers:

a. Chairperson. The Chairperson shall preside over the meeting and insure that the business of the Board is conducted in an orderly manner. The Chairperson is authorized to call any necessary special meetings.

b. Vice-Chairperson. The Vice-Chairperson shall perform the duties of the chairman, in the absence of the chairman, as well as other duties which may be delegated by the Board.

c. Secretary. The secretary shall be responsible for the records of the Board and shall insure that the Bureau of Indian Affairs or Navajo Nation employees which assist with the minutes or record keeping do so in a proper manner.

B. In fulfilling its duties and responsibilities, the Joint Land Board shall:

1. Act as Board of Appeals on all protests, disagreements, disputes or appeals from decisions of the District Land Boards.

2. Recommend to the Resources Committee of the Navajo Nation Council a uniform grazing fee on all Navajo Nation and Bureau of Indian Affairs controlled lands.

3. Review range and forage conditions and needs from information furnished by Branch of Land Operations personnel and make recommendations and decisions on problems posed.

4. Review, on an annual basis, the Off-Reservation Range Code, Land Code, and Cooperative Agreement, for the purpose of making recommended changes.

5. Serve as principal coordinator between District Land Boards, the Navajo People, and the Bureau of Indian Affairs, in all matters



pertaining to livestock control and improvement, and proper management of the range resources.

6. Refer all appeals that cannot be solved to the Office of Hearings and Appeals for a final decision.

C. Meetings and procedures of the Joint Land Board:

1. The Joint Land Board shall establish a meeting schedule which will provide for at least one meeting day per month. These scheduled meetings are to be known as the "regular meetings" for the Joint Land Board. These meetings shall be scheduled with as much advance notice as is practical under the circumstances.

2. The schedule of "regular meetings" shall be announced at the District Land Boards meetings with notices forwarded to the Resources Committee, the Director, Division of Natural Resources, listing the exact date, time and location for such meetings. Any amendments shall also be announced and forwarded in this manner.

3. All "regular meetings" shall be open to the public and shall be conducted informally, in an orderly manner. In the event that rules have been adopted for the resolution of any particular type of issue, such as Regulations for Settlement of Land and Grazing Disputes, those rules shall be applied.

4. The Board may at its discretion call "special meetings" or call for "executive sessions" as necessary. All special meetings and executive sessions shall be conducted in an orderly manner. Special meetings shall be open to the public.

5. All substantive actions by the Board shall be initiated and undertaken by written resolution, or memorialized in a written memorandum, setting forth the action taken. Said writing shall be signed by the presiding officer and retained by the Secretary of the Board.

6. A quorum shall consist of a simple majority of all Board members. All decisions shall be made by a majority vote if no consensus can be reached. All Board members, including officers, shall be eligible to vote.

### **History**

CO-59-03, October 21, 2003.

CD-92-85, December 4, 1985.

ACS-324-7 1, September 28, 1971.

### **§ 242. Amendments**

This Plan of Operation may be amended, as necessary, to insure the proper administration of grazing and land use within the Eastern Agency, by the Government Services Committee of the Navajo Nation Council, with the

recommendation of the Joint Land Board and the Resources Committee of the Navajo Nation Council.

#### **History**

CD-68-89, December 15, 1989.

CD-92-85, December 4, 1985.

**Note.** "Advisory Committee" changed to "Government Services Committee". "Resources Committee of the Navajo Nation Council" was added pursuant to 2 N.N.C. § 695.

### **Chapter 2. [Reserved]**

#### **History**

CAP-41-94, April 20, 1994.

**Note.** Previous Chapter 2, "Department of Range Management" deleted.

### **Chapter 3. Range Land Leases for Pasture of Livestock**

#### **§ 501. Authority**

The President of the Navajo Nation, with the advice and assistance of the Director of the Division of Natural Resources and the Department Manager of Department of Agriculture, is authorized and directed to select eligible Navajo stock owners, in accordance with the policy of the Navajo Nation contained in 16 N.N.C. § 1 et seq. for the purpose of leasing to such stock owners off-Reservation range lands for the pasture of livestock under the terms and conditions set out in the lease and Plan of Operation.

#### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACS-185-60, September 19, 1960.

**Note.** Slightly reworded for the purposes of statutory form.

#### **Cross References**

Grazing generally, see § 701 of this title.

#### **§ 502. [Reserved]**

#### **History**

ACJA-21-89, January 13, 1989.

ACO-161-86, October 14, 1986.

**Note.** Form deleted pursuant to § 506 of this title.

### **§ 503. Navajo Nation Ranches**

A. Since 1954 the Navajo Nation has acquired a number of "Ranches" through acquisition. These "Ranches" are made up of Fee Patent Lands, Trust Lands, Allotted Lands, BLM Leased Lands, State Leased Lands, and other forms of land, in the States of New Mexico and Arizona.

B. Rationale and guidelines for the management of these Ranches, and all lands subsequently acquired by the Navajo Nation, unless specifically exempt, are contained in 3 N.N.C. §§ 1, 2, 3, 4, 501, 502, 503 and 504, 16 N.N.C. §§ 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 401, 451, 452, 453, 454, 601, 602, and 603, and ACJY-97-80 and CJA-1-81.

#### **History**

ACO-161-86, October 14, 1986.

**Note.** The list of Tribal Ranches has been deleted.

### **§ 504. Establishment-Navajo Nation Ranch Program**

There is established a Navajo Nation Ranch Program within the Department of Agriculture, Division of Natural Resources. Except as otherwise stated herein, the Resources Committee of the Navajo Nation Council is empowered to exercise oversight of activities related to the utilization of the Navajo Nation Ranches. Utilization of Navajo Nation Ranches or unobligated lands shall not be deemed an entitlement program.

#### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACO-161-86, October 14, 1986.

#### **Cross References**

Powers of the Resources Committee, 2 N.N.C. § 695.

### **§ 505. Purpose**

The Navajo Nation Ranch Program shall exist to fulfill the following purposes:

A. Provide for productive and optimum use of lands under the direct control of the Navajo Nation designated as Ranch lands.

B. To ensure that sufficient revenues are realized to pay taxes, land use fees, and cost of administration.

C. To carry out select purposes for land acquisition, pursuant to 16 N.N.C. § 1 *et seq.*

### **History**

ACO-161-86, October 14, 1986.

**Note.** Slightly reworded for purposes of statutory form.

### **Cross References**

Land Acquisition, 16 N.N.C. § 1 *et seq.*

### **§ 506. Powers**

A. The Resources Committee of the Navajo Nation Council is authorized to adopt a form of lease, as recommended by the Attorney General, Navajo Nation Department of Justice, that will ensure that the provisions of this Plan of Operation and provisions of the Navajo Nation Code are carried out.

B. The President of the Navajo Nation, with the advice and assistance of the Navajo Nation Ranch Program, Department of Agriculture, through the Executive Director, Division of Natural Resources and the Resources Committee, shall select eligible Navajo stock owners for the purposes of leasing Navajo Nation Ranches, in accordance with the criteria established in § 511 of this Plan of Operation.

C. The Resources Committee is authorized to establish use fees for Navajo Nation Ranch Lands and to adjust these fees as may be necessary to achieve a reasonable economic value for the use of these lands and to accomplish the purposes for which the land was acquired, as stated in the preceding Section. These fees may be adjusted annually for such reasons as unforeseen natural disasters and shall be adjusted at least every five years, based on the recommendation of the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources.

### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACO-161-86, October 14, 1986.

**Note.** Reference to "Advisory Committee" changed to "Resources Committee" pursuant to 2 N.N.C. § 695(B).

### **Cross References**

Powers of the Resources Committee, 2 N.N.C. § 695(B).

### **§ 507. Operation**

The following guidelines shall govern the operation, management and use of Navajo Nation Ranches:

A. Sound ranch management principles shall be adhered to at all times to ensure that Navajo Nation resources are adequately maintained.

B. Sound practice of livestock management shall be adhered to at all times.

C. Leasing of lands shall be done in such a manner as to ensure the optimum use of the resource and to protect the Navajo Nation's interests. For this purpose, the Resources Committee shall be authorized to determine the size of each unit to be leased, as recommended by the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources.

D. The Resources Committee shall be authorized to set aside lands for special management purposes such as a bull pasture, livestock impoundment pasture, or special range demonstration areas. In such instance, a Plan of Operation shall be prepared and attached to the set aside action to govern the management of these lands and shall be approved by the Government Services Committee of the Navajo Nation Council.

E. Under no circumstances whatsoever shall Navajo Nation funds, equipment, or employees be used for the care of livestock belonging to the Lessee, except as provided herein.

F. Timber, firewood (alive, or dead and down), all trees, shrubs, vegetation, fish, wildlife, water, surface rights, to ingress, egress, right-of-way, subsurface rights, mineral exploration rights and any other natural, recreational, or any other such rights, resources and proceeds from such resources shall remain the sole property and within the sole and exclusive jurisdiction of the Navajo Nation. However, the leaseholder shall be provided advance notice of the intent of the Nation in exercising these rights.

G. Should any violation of this Plan of Operation or the Navajo Nation Ranch Lease Agreement occur, the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Navajo Division of Resources, shall take immediate action to protect the interests of the Navajo Nation to the fullest extent, including the power to take immediate control over said leased lands to the extent necessary to protect Navajo resources.

H. The Navajo Nation Ranch Program will establish a management plan for bull pasture, livestock impoundment pasture and other activities consistent with the purposes of the Plan of Operation as specified in § 505.

#### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACO-161-86, October 14, 1986.

CD-68-89, December 15, 1989.

**Note.** "Advisory Committee" changed to "Government Services Committee".

#### **§ 508. Terms of lease**

A. The Lessee shall be responsible for all costs associated with the minor upkeep as well as responsibility for maintenance of fences, minor

maintenance of livestock water delivery systems, cattle guards, corrals, roads, and any other improvements, fixtures or structures contained within his/her leased area at the time of the lease or installed thereafter, except those major repairs as provided for in Paragraph (B) below.

B. The Lessee may request, through the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, major repairs for water systems, windmills, and water tanks to the extent that such repairs are beyond the means of the Lessee. These will be referred to the Department of Water Resources (or its successor), with a recommendation from the Executive Director, and the repairs may be made, subject to the availability of funding and the existing priorities for similar work, by the Department of Water Resources (or its successor). Upkeep, maintenance (and use) of headquarters structures, housing and corrals will remain the responsibility of the Division of Natural Resources.

C. The Lessee shall be responsible for the care of his/her livestock in accordance with the Navajo Nation Livestock and Foreign Animal Disease Response Act, 3 N.N.C. § 1501 *et seq.* Neglect of livestock shall be cause for termination of the lease.

D. The Lessee shall accept the lands and improvements such as fences, cattle guards, corrals, windmills, water tanks, and forage in an "as is" condition upon acceptance of the lease.

E. A lien may be granted on any and all livestock grazed on Navajo Nation Ranches in the event of default of payment or failure to satisfy other provisions of the lease agreement.

F. Any and all improvements, including reconstruction of fences, erection of corrals and/or other structures, shall be subject to the approval of the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, or his/her designee.

G. Livestock with brands so specified in the lease agreement shall be the only livestock authorized to graze or be held on Navajo Nation Ranches.

H. Lease agreements shall be non-transferable and are not to be sublet or assigned to heirs. At the time of application, the Lessee may designate an alternate Lessee for the purpose of completing the full term of the lease period in the event that Lessee cannot (for reasons beyond his control, illness or death) complete the full term of the lease. The designated alternate Lessee must meet the eligibility criteria as set forth in § 511 of this Plan of Operation and must sign the application and lease agreement and abide by the rules and regulations of the lease agreement. If the alternate Lessee is not designated by the applicant, Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, may designate an alternate Lessee in the event that the Lessee is unable to complete the full term of the lease.

I. All Lease agreements shall be for a period of 10 years with the option for renewal for another 10 year term, provided that a recommendation is made by the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources. Such recommendation shall be

based on payment history, good performance, evaluation and demonstrate sound stewardship of the Navajo Nation Ranches. At any time during the term of the lease, the lease may be terminated for any violation of the terms herein.

J. Upon expiration or any earlier termination (not due to any default on the part of the Lessee), of the lease agreement, the Navajo Nation will conduct a field inspection of all improvements on the leased premises to determine which improvements will remain on the premises. Fair compensation will be provided for such improvements pursuant to 16 N.N.C. § 1401. Any other improvements shall become the property of the Navajo Nation, after 90 days from the termination date, if the Lessee does not exercise the option to remove said improvements. Any removal of improvements shall be approved by the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, per the field inspection.

### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACO-161-86, October 14, 1986.

### **§ 509. Payment**

A. The annual grazing fee shall be due and payable in two equal payments; the first payment shall be due on or before November 15, and the second payment is due on or before January 15 of the same lease year.

B. Minimum lease fee shall be established by the Resources Committee based on the recommendation of the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, in accordance with the provisions of this Plan of Operation, on a per animal per month basis, and may be subject to adjustment to be made as needed or necessary, to cover costs as provided herein. The Lessee(s) will be informed in writing of any modifications made in the rental fee 60 days prior to the beginning of the succeeding year. Such modification will be attached as an amendment to the original lease and become a part of the lease.

C. In the event of any livestock reduction, the Lessee shall provide proof of reduction by sales receipts and/or other proof of dispersal of livestock transactions. In order for adjustments to be applied by Accounts Receivable any current invoice must be satisfied. The Lessee shall submit in writing to the Navajo Nation Ranch Program a request with supporting documents that reflects the reduction.

D. A minimum annual rental shall be stated in the lease agreement, and in no event shall the annual billing be less than the minimum rental, with the exception of § 506(C).

E. Any additional livestock over the stocking rate allowed per the lease agreement will be assessed at five times the current grazing fee and the Lessee shall remove all excess livestock within 30 days or the lease will be terminated.

F. All funds received in payment of lease fees shall be deposited into an

Enterprise Fund and used:

1. To cover such costs and amortization as provided in § 505(A) of this Plan of Operation.

2. For range conservation or improvements; and

3. Administrative costs.

G. Assessment, billing and collection of grazing fees and default procedures for delinquency and non-payment of fees.

1. The Navajo Nation Ranch Program, Division of Natural Resources, shall:

- a.<sup>1</sup> Prepare and submit a "Livestock Assessment and Fee Request" document to Accounts Receivable, Division of Finance, based on the applicable rental rate and the number of animals authorized on the leasehold. The Livestock Assessment and Fee Request document will contain the following information: (1) Name and address of the Lessee(s); (2) Lease agreement number; (3) Total Amount Due; (4) Number of livestock the fees were assessed on; and (5) Ranch/Unit Number.

2. Accounts Receivable, Division of Finance shall:

- a. Prepare and send the invoice to the Lessee(s) within 15 days of receipt of the "Livestock Assessment and Fee Request" document from the Navajo Nation Ranch Program, Department of Agriculture through the Division of Natural Resources, on or before October 31. The annual billing shall be the same as the previous year in the event that Accounts Receivable is unable, for whatever reason, to prepare a new billing by October 31. In such event, a new bill either allowing for a credit and refund or requesting additional funds shall be prepared as soon as possible.

- b. Receive payments, issue receipts, deposit receipts in the established Enterprise Fund, and submit payment information to the Navajo Nation Ranch Program.

H. Delinquency and Non-Payment Procedures: Accounts Receivable, Division of Finance, shall adopt the following procedure to collect delinquent accounts:

1. If full payment has not been received after 30 days from the due date of January 15, the account shall be considered delinquent.

2. If the bill is not paid by February 15, Accounts Receivable shall send a 30 day notice, charging the regular fee plus a two percent (2%) late charge of total fees due.

3. If the bill is not paid by March 1, Accounts Receivable shall send a 45 day late notice, charging the regular fee plus a late charge at four percent (4%) of total fees due.

4. If there is no response to the 45 days late notice by March 30,



Accounts Receivable shall send a final notice, charging the regular fees plus a late charge of six percent (6%) of total fee due.

5. After April 15, if all payments are not made or acceptable arrangements for payments are not made, the lease agreement shall be terminated.

6. After the lease is terminated, Accounts Receivable shall continue efforts to receive payments on the account to May 15. If all payments are not made, Accounts Receivable and the Navajo Nation Ranch Program shall turn the delinquent account over to the Department of Justice for collection purposes.

I. Collection. The Department of Justice shall follow established Navajo Nation Procedures for handling the collection of delinquent accounts.

### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACJA-21-89, January 13, 1989.

ACO-161-86, October 14, 1986.

### **§ 510. Termination of lease agreement and temporary use agreement**

A. Should any violation or noncompliance of this Plan of Operation or the lease agreement occur, the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, shall immediately begin administrative proceedings to remedy such violations or to terminate the lease agreement.

B. If any violation or noncompliance occurs, the Lessee shall be given written notice of such violation and action necessary to remedy the violation. Violation of nonpayment of grazing fee payment shall be handled under § 509; and termination of the lease agreement, if such violation is not remedied, shall be handled under this Section.

C. The Lessee will have 30 days to remedy the violation and give written notice of the remedial actions to the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, within the 30 days to avoid termination of the lease.

D. The Navajo Nation Ranch Program, Department of Agriculture through the Division of Natural Resources shall conduct a field inspection and determine whether the violation has been removed to the satisfaction of the stipulation of this Plan of Operation and the lease agreement. If it is determined that the violation/non-compliance has not been remedied or removed, the lease shall be terminated.

E. At any time during the term of the lease agreement, the Lessee can terminate the lease agreement for any reason(s) by providing written notice to the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, at least 60 days prior to

the "date of termination". The Lessee shall notify the Navajo Nation Ranch Program, Department of Agriculture through the Division of Natural Resources of the date that he/she will be vacating the leased premises.

F. The Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, shall acknowledge and will formally accept the relinquishment or termination of the lease agreement by providing a written statement within a reasonable time of the date of Lessee's written notice.

G. Any determination shall not relieve the Lessee from his/her obligations to pay any accrued rent. The Lessee is responsible for settling all grazing fee accounts within the 60 days before the termination becomes effective.

H. The Lessee shall not remove any livestock or other improvement (structures) from the leased premises until the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, has formally acknowledged, in writing, that no rental or other damage payments are due. If any payments are due, the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, shall exercise the rights of seizing all livestock or creating a lien for payment of said grazing fees due [per § 508(E)].

#### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACO-161-86, October 14, 1986.

#### **§ 511. Eligibility**

All applicants must meet the following eligibility criteria:

A. Enrolled members of the Navajo Nation.

B. Non-Navajos are not eligible.

C. Applicants are not eligible if they hold other grazing permits, with more than 75 sheep units, issued by the Navajo Nation, BIA, or BLM within the Navajo Nation, including the Eastern Navajo Agency. For purposes of this Section, both interests of the husband and wife will be used to determine eligibility.

D. Allottees are eligible if they meet the other requirements and if they own less than a full interest in an allotment of 160 acres or more, or if they own cumulative interest in various allotments that, together, do not exceed such an interest.

E. All applicants must be at least 21 years of age, and demonstrate their ability to pay the established fees and manage land and livestock. Applicants shall submit, along with the application, a proposed Ranch Management Plan which shall include acceptable livestock management and range conservation plans for the unit(s) they are applying for.

F. Applicants are eligible to lease no more than two range units as so specified by the Resources Committee, based on recommendations by the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources.

G. Former leaseholders whose leases were terminated due to default shall not be eligible to reapply for a period of ten years from the date of default.

H. Former leaseholders whose leases were cancelled due to adverse disposition of Navajo Nation lands shall be given first preference to other ranch lands when available.

I. In the event that two or more applicants apply for the same unit and equally meet the qualifications, tie-breaker bidding shall be allowed. The applicant bidding the highest fee, above the minimum, shall be recommended to the Resources Committee.

#### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACO-161-86, October 14, 1986.

#### **§ 512. Adverse disposition**

A. The Navajo Nation, through its normal governmental operations may authorize such actions as mineral exploration, development, power lines extensions, oil well projects, drilling projects and other energy development projects, right-of-ways and other "adverse disposition" which would severely impair or limit the use of the land for grazing purposes stated herein.

B. If any such adverse disposition of all or any portion of a lease is authorized, to the extent that the grazing capacity of the leasehold area is reduced, the lease shall be terminated or the leasehold description revised and the stocking rate adjusted accordingly.

C. For the purposes of this Section, the Lessee shall be entitled to compensation for the loss of grazing rights to the extent of advance payment for those rights (calculated in acreage) actually lost as determined by the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources.

#### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACO-161-86, October 19, 1986.

#### **§ 513. Unobligated land**

A. Lands which are not adequate to comprise an economic ranch unit, or for which there are no qualified applicants, may be determined to be "unobligated lands" by action of the Resources Committee, based upon the

recommendation of the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources.

B. These lands shall be managed in the best interest of the Navajo Nation as determined by the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources.

C. Former leaseholders who may not be eligible under the terms of this Plan of Operation may be given preference in the use of unobligated lands.

#### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACO-161-86, October 14, 1986.

#### **§ 514. Temporary use**

A. The Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, shall have the authority to allow temporary use of Navajo Nation Ranches when it is deemed in the best interest of the resource to do so, or continuity of use is required to retain federal or state grazing rights, or under special circumstances when so directed by the Resources Committee.

B. All temporary use authorizations shall be in writing to coincide with the general terms of the lease agreement and this Plan of Operation, shall not exceed a term of six months and shall not be renewable without the approval of the Resources Committee.

#### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACO-161-86, October 14, 1986.

#### **§ 515. Amendment**

This Plan of Operation may be amended from time to time as recommended by the Navajo Nation Ranch Program, Department of Agriculture through the Executive Director, Division of Natural Resources, to the Resources Committee of the Navajo Nation Council who then in turn recommends final action by the Government Services Committee of the Navajo Nation Council.

#### **History**

GSCJA-04-08%E0A, January 18, 2008.

ACO-161-86, October 14, 1986.

**Note.** "Advisory Committee" changed to "Government Services Committee" pursuant to CD-68-89.

## **Chapter 4. [Reserved]**

### **History**

CAP-41-94, April 20, 1994.

**Note.** Previous Chapter 4, §§ 601-604, "Navajo Agricultural Resources Department" deleted.

## **Chapter 5. Grazing**

### **Cross References**

Grazing offense, 17 N.N.C., § 350, §§ 460-466, and § 524.

### **United States Code**

Rules and regulations, restriction on number of livestock grazed on range units, 25 U.S.C. § 466.

### **Code of Federal Regulations**

Grazing permits, see 25 CFR § 166.1 *et seq.*

Navajo grazing regulations, see 25 CFR § 167.1 *et seq.*

## **Subchapter 1. Grazing Regulations**

### **§ 701. Authority**

It is within the authority of the Secretary of the Interior to protect Indian Tribal lands against waste. Subject to regulations of this Chapter, the right exists for Indian Tribes to authorize the granting of permits upon their Tribal lands and to prescribe by appropriate Tribal action the conditions under which their lands may be used.

### **History**

ACO-339-71, October 8, 1971.

ACS-187-68, September 11, 1968.

ACMY-73-66, May 13, 1966.

CD-59-64, December 10, 1964.

CJ-3-56, January 27, 1956.

CJ-22-54, June 9, 1954.

ACM-14-54, March 29, 1954.

**Note.** CJ-3-56 adopted, as an ordinance of the Navajo Nation Part 72 (§§ 72.1-

72.17) of Title 25 of the Code of Federal Regulations, entitled "Navajo Grazing Regulations", which was reorganized as Part 152 (§§ 152.1-152.17) of Title 25 of the Code of Federal Regulations.

## **§ 702. General regulations**

Part 151 of Title 25 of the Code of Federal Regulations authorizes the Commissioner of Indian Affairs to regulate the grazing of livestock on Indian lands under conditions set forth therein. In accordance with this authority and that of the Navajo Nation Council, the Central Grazing Committee and the District Grazing Committees, the grazing of livestock on the Navajo Reservation shall be governed by the regulations in this Chapter.

### **History**

CJN-83-66, June 22, 1966.

ACAP-35-66, April 7, 1966.

CD-70-61, December 8, 1961.

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

ACF-14-53, February 20, 1953.

### **Cross References**

1957 Navajo Reservation Grazing Handbook.

## **§ 703. Purpose**

It is the purpose of the regulations in this Chapter to aid the Navajo Indians in achievement of the following objectives:

A. The preservation of the forage, the land, and the water resources on the Navajo Reservation, and the building up of those resources where they have deteriorated.

B. The protection of the interests of the Navajo Indians from the encroachment of unduly aggressive and antisocial individuals who may or may not be members of the Navajo Nation.

C. The adjustment of livestock numbers to the carrying capacity of the range in such a manner that the livestock economy of the Navajo Nation will be preserved.

D. To secure increasing responsibility and participation of the Navajo People, including Navajo Nation participation in all basic policy decisions, in the sound management of one of the Navajo Nation's greatest assets, its grazing lands, and to foster a better relationship and a clearer understanding between the Navajo People and the federal government in carrying out the grazing regulations.

E. The improvement of livestock through proper breeding practices and the maintenance of a sound culling policy. Buck and bull pastures may be established and maintained either on or off the Reservation through District Grazing Committee and Central Grazing Committee action.

#### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

#### **Cross References**

1957 Navajo Reservation Grazing Handbook.

#### **§ 704. Effective date; scope; exceptions**

The grazing regulations in this Chapter are effective as of the date of approval hereof, for the Navajo Reservation, the area described in Executive Order of December 16, 1882, except land Management District No. 6, all lands within the boundaries of the Navajo Reservation held in trust by the United States for the Navajo Nation and all the trust lands hereafter added to the Navajo Nation. The regulations in this Chapter do not apply in individually owned allotted lands within the Navajo Nation nor to Navajo Nation purchases, allotted or privately owned Navajo Indian lands outside the exterior boundaries of the Navajo Reservation.

#### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

**Note.** 1957 Navajo Reservation Grazing Handbook, p.10, Executive Order of December 16, 1882, provided as follows: "It is hereby ordered that the tract of country, in the territory of Arizona, lying and being within the following described boundaries, viz: beginning on the one hundred and tenth degree of longitude west from Greenwich, at a point 36° 30' north, thence due west to the one hundred and eleventh degree of longitude west, thence due south to a point of longitude 35° 30' north; thence due east to the one hundred and tenth degree of longitude west, thence due north to place of beginning, be and the same is hereby withdrawn from settlement and sale, and set apart for the use and occupancy of the Moqui, and such other Indians as the Secretary of the Interior may see fit to settle thereon".

#### **Cross References**

Lands added to Reservation. McCracken Mesa Range Management Unit in District 12, see 16 N.N.C. § 1601 *et seq.*

#### **Annotations**

##### **1. Allotment fencing**

"Given that fencing on all lands, including allotments in the Eastern Navajo Agency, are subject to some local Navajo board or committee's approval, the Court concludes that, read together, the purpose of the various provisions is to deal with fencing within the Nation comprehensively. To foster a uniform, predictable system of regulating fencing within the Reservation, this purpose is facilitated by requiring district grazing committee approval of allotment fencing within the Reservation. Under this analysis, elected officials within local communities may hear and decide disputes when land owners propose to fence their land off from other users. Such fencing affects not just the parcel proposed to be fenced, but affects all other surrounding land users." *Gishie v. Morris, et al.*, No. SC-CV-36-06, slip op. at 5 (Nav. Sup. Ct. June 4, 2008).

#### **§ 705. Land management districts**

The Commissioner of Indian Affairs has established and will retain the present land management districts within the Navajo Indian Reservation, based on the social and economic requirements of the Navajo Indians and the necessity of rehabilitating the grazing lands. District boundary changes may be made when deemed necessary and advisable by the District Grazing Committees, Central Grazing Committee and Navajo Nation Council, with approval by the Superintendent, Area Director, and the Commissioner of Indian Affairs.

#### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

CJ-8-40, June 6, 1940.

#### **Cross References**

1957 Navajo Reservation Grazing Handbook.

Grazing Committees generally, see § 831 *et seq.* of this title.

#### **Code of Federal Regulations**

Land management districts, see 25 CFR 167.5.

#### **§ 706. Carrying capacities**

A. The Commissioner of Indian Affairs on June 26, 1943 promulgated the authorized carrying capacity for each land management district of the Navajo Reservation.

B. Recommended adjustments in carrying capacities shall be referred by the Superintendent to District Grazing Committee, Central Grazing Committee, and the Navajo Nation Council for review and recommendations prior to presentation to the Area Director and the Commissioner of Indian Affairs for approval.

C. Upon the request of the District Grazing Committee, Central Grazing



Committee and Navajo Nation Council to the Superintendent, recommendations for future adjustments to the established carrying capacities shall be made by range technicians based on the best information available through annual utilization studies and range condition studies analyzed along with numbers of livestock and precipitation data. The recommendations of the range technicians shall be submitted to the Superintendent, the Area Director and the Commissioner of Indian Affairs.

D. Carrying capacities shall be stated in terms of sheep units yearlong, in the ratio of horses, mules, and burros one to five; cattle one to four; goats one to one. The latter figure in each case denotes sheep units. Sheep, goats, cattle, horses, mules, and burros one year of age or older shall be counted against the carrying capacity.

#### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

**Note.** Promulgation of carrying capacity. The promulgation of the Commissioner of Indian Affairs of June 26, 1943, determined the carrying capacity of land management districts of the Navajo Reservation pursuant to 25 CFR 71.5 (151.1), setting out the area of the range in acres, length of grazing season, acres per cow unit, number of cattle and cow months under maximum stocking, and the ratio of cattle to sheep for each district.

#### **Cross References**

1957 Navajo Reservation Grazing Handbook.

Carrying capacity of McCracken Mesa Range Management Unit of District 12, see 16 N.N.C. § 1606.

#### **Code of Federal Regulations**

Carrying capacities, see 25 CFR 167.6.

#### **§ 707. Records**

A. The District Grazing Committee, the Superintendent, and his authorized representatives shall keep accurate records of all grazing permits and ownership of all livestock. Master files shall be maintained by the Superintendent or his/her authorized representatives.

B. The District Grazing Committee shall be responsible for and assist in organizing the sheep and goat dipping and horse and cattle branding program and obtaining the annual livestock count.

C. In order to obtain true records of ownership the permittee shall personally appear at the dipping vat or tallying point designated by the Grazing Committee with his or her sheep and goats and at branding and tallying points for cattle and horses. Should the permittee be unable to appear personally he or she shall designate a representative to act for and in his or

her behalf. The sheep and goats will be dipped and the cattle and horses will be branded and recorded in the name of the permittee.

D. The Superintendent shall prepare and keep current a register containing the names of all permittees using the range, the number of each class of stock by age classes grazed annually and the periods during which grazing shall be permitted in each part thereof. An annual stock census will be taken to insure that the carrying capacity is not exceeded. All classes of livestock 12 months of age or over will be counted against range use and permitted number, except that yearling colts will not be counted against permitted numbers, on all permits with less than six horses.

### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

### **Cross References**

1957 Navajo Reservation Grazing Handbook.

Control of livestock disease, see § 712 of this title.

False report of livestock ownership or refusal to make true report of such ownership as offense, 17 N.N.C. § 464.

Grazing permits generally, see § 781 *et seq.* of this title.

Livestock brands generally, see §§ 2001, 2002 of this title.

### **Code of Federal Regulations**

Records, see 25 CFR 167.7.

### **§ 708. Grazing rights**

A. The Superintendent shall determine grazing rights of bona fide livestock owners based on recommendations of District Grazing Committees. Grazing rights shall be recognized for those permittees having ownership records as established in accordance with 3 N.N.C. § 707 or who have acquired grazing rights by marriage, inheritance, purchase or division of permits. Whenever the permitted number of sheep units within a district is less than the carrying capacity, new permits to the carrying capacity limit may be granted as provided in 3 N.N.C. § 781.

B. All enrolled members of the Navajo Nation over 18 years of age are eligible to acquire and hold grazing permits. Minors under 18 years of age can get possession of grazing permits only through inheritance or gift, and in each case trustees must be appointed by the Navajo Nation courts to manage the permits and livestock of such minors until they become 18 years of age and can hold grazing permits in their own right.

C. No person can hold a grazing permit in more than one district on the

Navajo Reservation.

D. Determination of rights to grazing permits involved in cases of divorce, separation, threatened family disruption, and permits of deceased permittees shall be the responsibility of the Court of the Navajo Nation under existing laws, rules, and regulations.

#### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

#### **Cross References**

1957 Navajo Reservation Grazing Handbook.

#### **Code of Federal Regulations**

Grazing rights, see 25 CFR 167.8.

#### **§ 709. Grazing fees**

Grazing fees shall not be charged at this time.

#### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

#### **Cross References**

1957 Navajo Reservation Grazing Handbook.

#### **Code of Federal Regulations**

Grazing fees, see 25 CFR 167.12.

#### **§ 710. Trespass**

A. The owner of any livestock grazing in trespass in Navajo Nation ranges shall be subject to action by the Courts of the Navajo Nation; however, upon recommendations of the District Grazing Committee, first offenses may be referred to the Office of Hearings and Appeals and the Superintendent or his/her authorized representative for proper settlement out of court.

B. The following acts are considered as trespass:

1. Any person who sells an entire permit must dispose of an his/her livestock or be in trespass. Any person selling a portion of his/her permit must not run more stock than covered by his/her remaining permit, or be subject to immediate trespass.

2. All persons running livestock in excess of their permitted number must either obtain permits to cover their total livestock numbers or reduce to their permitted number; or be in trespass. Additional time may be granted in unusual individual cases as determined and approved by the District Grazing Committee, Central Grazing Committee, and the Superintendent or his/her authorized representative.

3. Failure to comply with the provisions in 3 N.N.C. § 781 shall be considered as trespass.

4. Any person who willfully allows his/her livestock to drift from one district to another shall be subject to trespass action. The grazing of livestock in customary use areas extending over district boundary lines, when such customary use areas are defined and agreed upon by the District Grazing Committees involved, shall not be considered as willful trespass.

5. The owner of any livestock who violates the customary or established use units of other permittees shall be subject to trespass action.

#### **History**

CO-59-03, October 21, 2003.

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

**Note.** Amendments. 1959, 24 F.R. 1178, February 17, 1959, amended Paragraph (B) (2) by substituting "1959" for "1958".

#### **Cross References**

1957 Navajo Reservation Grazing Handbook.

For criminal offenses involving livestock, see generally 17 N.N.C. §§ 350, 460 to 466 and 524.

Trespass by livestock generally, see § 2402 of this title.

Violations of regulations covering buying and movement of livestock as trespass, see § 711 of this title.

#### **Code of Federal Regulations**

Trespass, see 25 CFR 167.13.

#### **§ 711. Movement of livestock to market**

Annually prior to the normal lamb buying season, the Central Grazing Committee after consultation with District Grazing Committees shall issue regulations covering the buying period and the procedures and methods to be used in moving livestock to market. All movements of livestock other than

trucking from buying areas to loading or shipping points must be authorized by trailing permits issued by the District Grazing Committees on the approved forms. Failure to comply with this Section and with annual lamb buying regulations will be considered as trespass.

#### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

#### **Cross References**

1957 Navajo Reservation Grazing Handbook.

Trespass generally, see § 710 of this title.

#### **Code of Federal Regulations**

Movement of livestock, see 25 CFR 167.14.

#### **§ 712. Control of livestock disease**

A. The District Grazing Committees with the approval of the Superintendent shall require livestock to be dipped, vaccinated, inspected and be restricted in movement when necessary to prevent the introduction and spread of contagious or infectious disease in the economic interest of the Navajo stock owners. Upon the recommendation of the District Grazing Committee livestock shall be dipped annually when such dipping is necessary to prevent the spread of contagious diseases. These annual dippings shall be completed on or before September 1st each year. Livestock, however, may be dipped at other times when necessary. The Superintendent or his/her authorized representative and the District Grazing Committee may also require the rounding up of cattle, horses, mules, etc., in each District for the purpose of inspection for disease, vaccinating, branding and other related operations.

B. No livestock shall be brought onto the Reservation without a permit issued by the Superintendent or his/her authorized representative following inspection, in order to safeguard Indian livestock from infectious and contagious disease and to insure the introduction of good quality sires and breeding stock.

C. Any unusual disease conditions beyond the control measures provided herein shall be immediately reported by the District Grazing Committee to the President of the Navajo Nation and the Superintendent who shall attempt to obtain specialists and provide emergency funds to control and suppress the disease.

#### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

### **Cross References**

1957 Navajo Reservation Handbook.

### **Code of Federal Regulations**

Control of livestock disease and introduction of livestock, see 25 CFR 167.15.

### **§ 713. Fences**

Favorable recommendation from the District Grazing Committee and a written authorization from the Superintendent or his/her authorized representative must be secured before any fences may be constructed in non-agricultural areas. The District Grazing Committee shall recommend to the Superintendent that the removal of unauthorized existing fences, or fences enclosing demonstration areas no longer used as such, if it is determined that such fences interfere with proper range management or an equitable distribution of range privileges. All enclosures fenced for the purpose of protecting agricultural land shall be kept to a size commensurate with the needs for protection of agricultural land and must be enclosed by legal four strand barbed wire fence or the equivalent.

### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

### **Cross References**

1957 Navajo Reservation Grazing Handbook.

Fences on cultivated lands, see §§ 2401, 2402 of this title.

### **Code of Federal Regulations**

Fences, see 25 CFR 167.16.

### **Annotations**

#### **1. Allotment fencing**

"Given that fencing on all lands, including allotments in the Eastern Navajo Agency, are subject to some local Navajo board or committee's approval, the Court concludes that, read together, the purpose of the various provisions is to deal with fencing within the Nation comprehensively. To foster a uniform, predictable system of regulating fencing within the Reservation, this purpose is facilitated by requiring district grazing committee approval of allotment fencing within the Reservation. Under this analysis, elected officials within local communities may hear and decide disputes when land owners propose to fence their land off from other users. Such fencing affects not just the parcel proposed to be fenced, but affects all other surrounding land users." *Gishie v. Morris, et al.*, No. SC-CV-36-06, slip op. at 5 (Nav. Sup. Ct. June 4, 2008).

## **§ 714. Construction near permanent livestock water developments**

A. The District Grazing Committee shall regulate the construction of all dwellings, corrals and other structures within one-half mile of Government or Navajo Nation developed permanent livestock waters such as springs, wells, and charcos or deep reservoirs.

B. A written authorization from the District Grazing Committee must be secured before any dwellings, corrals, or other structures may be constructed within one-half mile of Government or Navajo Nation developed springs, wells and charcos or deep reservoirs.

C. No sewage disposal system shall be authorized to be built which will drain into springs or stream channels in such a manner that it would cause contamination of waters being used for livestock or human consumption.

### **History**

CJ-3-56, January 27, 1956.

### **Cross References**

ACN-83-57, November 8, 1957.

Navajo Reservation Grazing Handbook.

### **Code of Federal Regulations**

Construction near permanent livestock water developments, see 25 CFR 167.17.

## **Subchapter 3. Grazing Permits**

### **§ 781. Generally**

A. All livestock grazed on the Navajo Reservation must be covered by an authorized grazing permit issued by the Superintendent based upon the recommendations of the District Grazing Committee. All such grazing permits will be automatically renewed annually until terminated. District Grazing Committees shall act on all grazing permit changes resulting from negotiability within their respective districts. The number of livestock that may be grazed under each permit shall be the number originally permitted plus or minus any changes as indicated by transfer agreements and court judgment orders.

B. Any permittee who has five or more horses on his/her current permit will be required to apply any acquired sheep units in classes of stock other than horses. If the purchaser wishes more than his/her present number of horses, he/she must have his needs evaluated by the District Grazing Committee. Yearling colts will be counted against permitted number on all permits with six or more horses. Yearling colts will not be counted against permitted number on all permits with less than six horses. In hardship cases the District Grazing Committee may reissue horses removed from grazing permits through negotiability to permit holders who are without sufficient horses on their present permits to meet minimum needs.

C. No permittee shall be authorized to graze more than 10 head of horses or to accumulate a total of over 350 sheep units.

#### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

#### **Cross References**

1957 Navajo Reservation Grazing Handbook.

#### **Code of Federal Regulations**

Grazing permits, see 25 CFR 167.9.

#### **Annotations**

##### **1. Construction and application**

Livestock grazing is not allowed on Navajo trust land without a valid grazing permit. *Yazzie v. Catron*, 7 Nav. R. 19, 21 (Nav. Sup. Ct. 1992).

##### **§ 782. Special permits**

The problem of special grazing permits shall be settled by the Bureau of Indian Affairs working in cooperation with the Navajo Nation Council, or any committee designated by it, with a view to terminating these permits at a suitable date and with the least hardship to the Indians concerned.

#### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

#### **Cross References**

1957 Navajo Reservation Grazing Handbook.

#### **Code of Federal Regulations**

Special grazing permits, see 25 CFR 167.10.

##### **§ 783. Tenure of permits; unused permits**

A. All active regular grazing permits shall be for one year and shall be automatically renewed annually until terminated. Any Navajo eligible to hold a grazing permit as defined in 3 N.N.C. § 708 may become a livestock operator by obtaining an active grazing permit through negotiability or inheritance or both.



B. In many districts, and portions of all districts, unused grazing permits or portions of grazing permits are beneficial in aiding range recovery. Each District Grazing Committee will handle each matter of unused grazing permit or portions of grazing permits on individual merits. Where ample forage is available operators will be encouraged to fill their permits with livestock or dispose of their unused permits through negotiability. In those areas where forage is in need of rehabilitation permittees will not be encouraged to stock to their permitted numbers until the range has sufficiently recovered to justify the grazing of additional livestock.

#### **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

#### **Cross References**

1957 Navajo Reservation Grazing Handbook.

#### **Code of Federal Regulations**

Tenure of grazing permits, see 25 CFR 167.11.

#### **§ 784. Transfer**

Upon recommendation of the District Grazing Committee and with the approval of the Superintendent, grazing permits may be transferred from one permittee to another in accordance with instructions provided by the Resources Committee of the Navajo Nation Council, or may be inherited; provided that the permitted holdings of any individual permittee shall not exceed 350 sheep units or the equivalent thereof. Should inheritance or other acquisition of permits increase the holdings of any permittee to more than 350 sheep units, said permittee shall dispose of all livestock in excess of 350 sheep units not later than November 15 following date of inheritance or other acquisition, and that portion of his or her permit in excess of 350 sheep units within one year from date of inheritance.

#### **History**

CD-70-61, December 8, 1961.

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

#### **Cross References**

1957 Navajo Reservation Grazing Handbook.

#### **Code of Federal Regulations**

Grazing permits, transfer or inheritance, see 25 CFR 167.9(d).

## **Annotations**

### **1. Construction and application**

"A grazing permit can be sold, inherited or otherwise transferred and can be sub-leased to anyone eligible to receive it through inheritance." *Yazzie v. Catron*, 7 Nav. R. 19, 21 (Nav. Sup. Ct. 1992).

### **§ 785. Descent and distribution**

Upon the death of a permittee or licensee, ownership of livestock upon which grazing permit is based shall first be determined. Upon a judicial finding as to the decedent's ownership of all or a portion of the livestock then the permit or license or that portion of said permit or license for livestock, so owned by the decedent shall be subject to the following rules of descent:

A. Permittees and licensees may execute a will designating the person or persons to receive the permit or license, which must be approved by the Court of the Navajo Nation after the death of said permittee or licensee. In the absence of such an instrument approved by the Court, and unless stipulated to the contrary under agreement of the potential heirs approved by the Court, the Court is hereby authorized to distribute such permits or licenses in accordance with moral and legal rights as determined by the said Court.

B. Permits or licenses in Grazing District No. 7 shall descend as heretofore set forth subject to confirmation by the Range Conservation Committee of Grazing District No. 7, New Mexico.

C. In no event shall any agreement or will be approved or distribution made by the Court of the Navajo Nation to a person or persons not enrolled with the Navajo Nation.

D. In no event shall a grazing permit or license covering Navajo Nation lands or grazing lands in District No. 7 be subdivided into less than 10 sheep units in one permit. In such case and in the absence of an approved agreement or an approved will, the Court of the Navajo Nation shall order a sale of the grazing permit or license to a Navajo Indian of the same district, to be approved by the General Superintendent or his/her authorized agent, with a preference right of purchase granted to the heirs.

E. The district Council Delegate(s) and the district supervisor who are familiar with the relationship of such deceased permittee may with the permission of the Court make recommendations to the Court pursuant to any grazing permit or license in dispute.

## **History**

ACN-83-57, November 8, 1957.

Res. 1922-195 1, p. 240, July 26, 1946.

**Note.** 1922-1951, p. 237, July 11, 1943, app. by Indian Office November 3, 1943.

## **Cross References**

1957 Navajo Reservation Grazing Handbook.

## **Annotations**

### **1. Oral wills**

This Section's provision that permittees and licensees may "execute" a will designating the person to receive the permit or license does not require the will to be in writing, and an oral will is sufficient. *In the Matter of Estate of Benally* (CA. 1978) 1 Nav. R. 219.

### **2. Trusts, generally**

Discussion of "customary trust". See *In the Matter of the Estate of Benally*, 5 Nav. R. 174, 180 (Nav. Sup. Ct. 1987).

### **§ 786. Subletting**

By request of a permittee to sublet all or a part of his or her regular grazing permit to a member of his/her family or to any person who would receive such permit by inheritance, such subletting of permits may be authorized by the District Grazing Committee and the Superintendent or his/her authorized representative.

## **History**

ACN-83-57, November 8, 1957.

CJ-3-56, January 27, 1956.

## **Cross References**

1957 Navajo Reservation Grazing Handbook.

## **Annotations**

### **1. Construction and application**

"All grazing permit transfers and subleases are subject to the approval of the District Grazing Committee and the Agency Superintendent." *Yazzie v. Catron*, 7 Nav. R. 19, 22 (Nav. Sup. Ct. 1992).

### **§ 787. [Reserved]**

## **History**

ACN-96-56, November 30, 1956.

**Note.** Form deleted; contact the Division of Natural Resources for an updated form.

## **Cross References**

1957 Navajo Reservation Grazing Handbook.

### **Subchapter 5. Grazing Committees**

#### **Article 1. Central Grazing Committee**

##### **§ 831. Designation**

The Central Grazing Committee shall be the Resources Committee of the Navajo Nation Council.

##### **History**

CD-70-61, December 8, 1961.

ACN-83-57, November 8, 1957.

ACF-14-53, February 20, 1953.

CJ-6-53, January 13, 1953.

## **Cross References**

Resources Committee designated as the Central Grazing Committee, see 2 N.N.C. § 695(B) (1).

Off-Reservation Land Boards as Grazing Committees, see § 241 of this title.

##### **§ 832. Duties**

The duties and responsibilities of the Central Grazing Committee shall be as follows:

A. Furnish all District Grazing Committees and Navajo Partitioned Land District Grazing Precincts with information, instructions, and materials necessary for them to carry out their duties. Advise and direct District Grazing Committees and Navajo Partitioned Land District Grazing Precincts in the proper performance of their assignments.

B. Review recommendations, suggestions, and problems submitted by District Grazing Committees and Navajo Partitioned Land District Grazing Precincts. Appeals of individuals or groups to District Grazing Committee and Navajo Partitioned Land District Grazing Precinct action will be submitted to the Office of Hearings and Appeals.

C. Take appropriate action within the authority of the Central Grazing Committee.

D. In matters beyond the authority of the Central Grazing Committee, prepare recommendations and resolutions for Navajo Nation Council consideration.

E. Provide leadership and coordination between the Navajo stockmen and the Bureau of Indian Affairs on all matters pertaining to livestock disease control, surplus livestock removal programs, livestock inventories, branding activities and the use and management of the Navajo Range resources.

#### **History**

CO-31-09, October 20, 2009. Navajo Partitioned Land District Grazing Precincts Act.

CD-70-61, December 8, 1961.

ACN-83-57, November 8, 1957.

#### **Cross References**

Resources Committee designated as the Central Grazing Committee, See 2 N.N.C. § 695(B) (1).

#### **Annotations**

##### **1. Grazing disputes**

"The Court holds the OHA has jurisdiction to hear and decide a grazing dispute which predates Navajo Nation Council Resolution CO-59-03 where an official decision is inadequate to conduct an appellate review." *Charley and Looking Glass v. Benally, et al.*, No. SC-CV-19-07, slip op. at 8 (Nav. Sup. Ct. December 10, 2008).

#### **Article 2. Navajo Nation Resources Committee**

##### **§ 851. Generally**

The Resources Committee has functions in grazing matters as set forth in 3 N.N.C. § 852.

#### **History**

ACN-83-57, November 8, 1957.

**Note.** Slightly reworded for purposes of statutory form.

#### **Cross References**

Resources Committee of the Navajo Nation Council, see 2 N.N.C. § 691 et. seq.

##### **§ 852. Duties**

The duties and responsibilities of the Navajo Nation Resources Committee shall be as follows:

A. Meet periodically with the various District Grazing Committees and

Navajo Partitioned Land District Grazing Precincts at their regular meetings to inform them of current programs, provide them with instructions, materials, and supplies necessary for them to carry out their duties; and serve generally as Reservation-wide coordinators of District Grazing Committees and Navajo Partitioned Land District Grazing Precincts and their activities.

B. Assemble recommendations and suggestions submitted by District Grazing Committees, Navajo Partitioned Land District Grazing Precincts, groups, and individuals for action.

C. Serve as principal coordinators between the District Grazing Committees, and Navajo Partitioned Land District Grazing Precincts and the Bureau of Indian Affairs in all matters pertaining to livestock disease control, surplus livestock removal programs, livestock inventories, branding activities and programs for the use, improvement and management of the Navajo range resources.

### **History**

CO-31-09, October 20, 2009. Navajo Partitioned Land District Grazing Precincts Act.

CO-59-03, October 21, 2003.

ACN-83-57, November 8, 1957.

### **Cross References**

Resources Committee of the Navajo Nation Council, 2 N.N.C. § 691 *et seq.*

Article 3. District Grazing Committee

### **§ 870. Definitions**

"Navajo Partitioned Lands" means that portion of the Former Joint Use Area awarded to the Navajo Nation under the Judgment of Partition issued April 18, 1979, by the United States District Court for the District of Arizona, and now a separate administrative area within the Navajo Nation.

### **History**

CO-31-09, October 20, 2009. Navajo Partitioned Land District Grazing Precincts Act.

### **§ 871. Establishment**

The District Grazing Committees and Navajo Partitioned Land District Grazing Precincts are established within the Executive Branch of the Navajo Nation. The Grazing Management Office, Division of Natural Resources within the Executive Branch of the Navajo Nation government shall provide technical assistance to the District Grazing Committees and the Navajo Partitioned Land District Grazing Precincts. Unless reauthorized by the Navajo Nation Council, the Navajo Partitioned Land District Grazing Precincts shall exist for a period of five years from the date of enactment of these amendments at which time the

Navajo Partitioned Lands shall be administered by the regular District Grazing Committees.

#### **History**

CO-31-09, October 20, 2009. Navajo Partitioned Land District Grazing Precincts Act.

CAP-38-98, April 22, 1998.

CA-30-52, April 24, 1952.

#### **§ 872. Composition**

A. Each Land Management District except for those which are organized under the Eastern Agency Land Boards, shall have one District Grazing Committee composed of one Committee member from each certified Chapter within that District.

B. With respect to the Navajo Partitioned Lands there are established three Navajo Partitioned Land District Grazing Precincts as follows:

NPL Precinct 1: (Fort Defiance Agency NPL) Jeddito, Low Mountain, Teesto, Tolani Lake, and Whitecone Chapters.

NPL Precinct 2: (Chinle Agency) Black Mesa, Blue Gap-Tachee, Forest Lake, Hard Rock, Pinon, and Whippoorwill Chapters.

NPL Precinct 3: (Western/Tuba City) Chilchinbeto, Kayenta, Shonto, and Tonalea Chapters.

#### **History**

CO-31-09, October 20, 2009. Navajo Partitioned Land District Grazing Precincts Act.

CAP-38-98, April 22, 1998.

CAU-66-85, August 2, 1985.

#### **Cross References**

Authority of Office of Hearings and Appeals, see CO-59-03 (amendments to Titles 2 and 3).

#### **§ 873. Neighboring vacancy**

In the event of a Grazing Official vacancy, the neighboring grazing official shall assist the community with grazing issues and receive compensation.

#### **History**

CAP-38-98, April 22, 1998.

CJN-31-86, June 23, 1986.

CAU-66-85, August 2, 1985.

ACA-31-55, August 3, 1955.

CA-30-52, April 24, 1952.

**Note.** On election dates and terms, see 11 N.N.C. §§ 3, 6 and 7.

#### **§ 874. Chairperson and Vice-Chairperson**

A member of the District Grazing Committee shall be chosen as the Chairperson and another member of such committee shall be chosen as the Vice Chairperson to act in the absence of the Chairperson.

#### **History**

CAP-38-98, March 17, 1998.

ACN-83-57, November 8, 1957.

#### **§ 875. Duties**

A. The general duties and responsibilities of District Grazing Committees and Navajo Partitioned Land District Grazing Precincts shall be as follows:

1. Organize and conduct sheep and goat dipping, spraying or dusting programs, branding activities, livestock disease prevention programs, surplus livestock removal programs, and conduct or assist the Superintendent and his/her authorized representatives in obtaining the annual livestock tally count.

2. Coordinate and explain the Navajo Grazing Regulations and other grazing related laws to stockmen, explain and complete transfers and subletting of grazing permits, cooperate with Navajo Nation and Bureau conservation programs and planning, including the determination of priorities on major range improvement and development projects.

3. Assist and advise Navajo stockmen at formal Grazing Committee meetings, and by individual contact, in proper grazing practices, proper classes of productive livestock to operate, ways of developing and improving range areas, and proper maintenance of range improvements and developments.

4. Advise and inform individual Navajos of proper procedures to follow in either obtaining or disposing of grazing permits.

5. Cooperate with local stockmen and Bureau personnel on all matters pertaining to range water development, range re-vegetation, erosion control, and range management. This will include the determination of individual or group range use areas for settling range use disputes and for developing range management and improvement plans.



6. Enforce Navajo Grazing Regulations as required in such regulations.

7. Serve as mediators in adjusting and settling range difficulties between parties and groups within their respective districts. In serving as mediators, the District Grazing Committee will hear both sides of a dispute and attempt to get the two parties or groups to agree to a mutual settlement of differences within the terms of the Navajo Grazing Regulations. The Grazing Committee in serving as mediator is not to assume the role of judge and jury. Difficult cases not settled in the above manner shall be referred to the Office of Hearings and Appeals in an attempt to settle differences out of court.

8. Committees of adjoining districts shall hold joint meetings to resolve their inter-district difficulties.

9. All Grazing Committee actions shall be conducted in formally called meetings with a quorum present. This applies to grazing permit transfers and subletting as well as other matters of business. The Chairperson or Vice-Chairperson shall sign all grazing permit transfers and subletting agreements approved by the District Grazing Committee after agreement is reached between the parties as to the method of payment.

10. Submit in writing to the Central Grazing Committee, any recommendations and suggestions of general interest and any problem which the District Grazing Committee is unable to solve or which is beyond its authority.

11. Perform such other duties and functions related to the purposes of the Grazing Committees they may be directed to do by the Central Grazing Committee or the Office of the President, Navajo Nation.

12. Preserve forage, land and water resources within the Navajo Nation and to build up those resources where they have deteriorated.

13. Protect grazing interests of Navajo permittees from the encroachment of non-Navajo individuals or businesses.

14. Adjust livestock numbers to carrying capacities of ranges in such a manner that the livestock economy of the Navajo Nation is preserved.

15. Educate Navajo Grazing Permittees on the improvement of livestock through proper breeding practices and maintenance of a sound culling policy and to recommend to appropriate Navajo Nation offices, departments and the Resources Committee the establishment of buck and bull pastures.

16. Maintain the Land Management Districts and to recommend changes in District boundaries when deemed necessary to the Resources Committee and the Navajo Nation pursuant to the Navajo Grazing Regulations.

17. Maintain livestock inventory data gathered while carrying out the various disease and parasite control program and branding activities and to maintain all Grazing Committee records.

18. Recommend to the Bureau grazing rights of bona fide livestock owners.

19. Recommend approval of transfer of grazing permits.

20. Approve subletting agreements of transfer of grazing permits provided that the sublessor or Grantor will not own and operate more livestock than he or she has remaining on the regular Grazing permit and provided that subletting agreements are made only at District Grazing Committee meetings with a quorum present pursuant to the Navajo Grazing Regulations.

21. Recommend construction of fences and Range Management Units or removal of unauthorized existing fences and to regulate the construction of all dwelling, corrals, and other structures within one-half mile of permanent livestock waters such as springs, wells, and deep reservoirs.

22. Shall have transportation with full insurance coverage and valid state driver's license.

23. Navajo Partitioned Land District Grazing Precincts shall re-issue grazing permits on the Navajo Partitioned Lands, establish range unit boundaries; mediate grazing disputes; inform and educate potential permittees in probating grazing permits cancelled by the U.S. District Court of Arizona in October 1972; develop guidelines for individual and community range management plans; coordinate with departments of the Navajo Nation, the Hopi Tribe and the Bureau of Indian Affairs for effective grazing enforcement; and other related matters.

#### **History**

CO-31-09, October 20, 2009. Navajo Partitioned Land District Grazing Precincts Act. Added Subsection 23.

CAP-38-98, April 22, 1998.

ACN-83-57, November 8, 1957.

CA-30-52, April 24, 1952.

**Note.** Grammatical errors corrected at Subsection (A) (9).

#### **Cross References**

Small irrigation projects, duties and responsibilities for, see § 151, *et seq.* of this title.

#### **Annotations**

##### **1. Authority of committee**

"The law is clear—a district grazing committee has no authority to decide a land dispute. Its only responsibility is to serve as a mediator in a land dispute in an attempt to have the parties agree to a mutual settlement. A district grazing committee is not to act as a judge or jury; a role that requires a decision." *In re: Mary Ellis Joe Customary Use Area*, 6 Nav. R. 177, 179 (Nav. Sup. Ct. 1990).

#### **§ 876. Meetings**

A. Each District Grazing Committee shall establish a meeting schedule for at least three meeting days per month to include the District and Agency meetings. Any additional meetings shall be special meetings. All meetings of the District Grazing Committees and the Navajo Partitioned Land District Grazing Precincts shall commence at 9 a.m.

B. Unless otherwise established by the Resources Committee, all meetings shall be conducted in accordance with the Rules of Order of the standing committees of the Navajo Nation Council.

C. Navajo Partitioned Land District Grazing Precincts meetings shall occur with the same frequency as Agency meetings (monthly). Such monthly meetings are to be held in each of the three Precincts, with District Grazing Committee members attending their respective Precinct meetings. Quarterly meetings involving all of the Precincts shall be held in lieu of a monthly meeting.

#### **History**

CO-31-09, October 20, 2009. Navajo Partitioned Land District Grazing Precincts Act.

CAP-38-98, April 22, 1998.

ACN-83-57, November 8, 1957.

#### **§ 877. Quorum**

A quorum shall consist of over one-half of the Grazing Committee members.

#### **History**

CAP-38-98, April 22, 1998.

ACN-83-57, November 8, 1957.

#### **§ 878. Compensation**

A. The Grazing Committee members shall be paid from funds provided annually in the Navajo Nation budget for that purpose.

B. District Grazing Committee members shall be compensated at a rate of eight hundred dollars (\$800.00) per month. All District Grazing Committee members shall be paid on a regular basis and may be subject to appropriate

payroll deduction for insurance coverage as determined and approved by the Navajo Nation Insurance Commission pursuant to the provisions of 2 N.N.C. § 933(A). In addition, District Grazing Committee members shall receive travel allowance of two hundred dollars (\$200.00) per month.

C. District Grazing Committee members attending their respective Chapter, Precinct, District and/or Agency meetings may be compensated for each meeting wherein official business is conducted, subject to Navajo Nation Council appropriations and availability of funds. District Grazing Committee members shall be paid as follows:

1. A stipend of one hundred twenty-five dollars (\$125.00) each for attendance at Chapter/Planning meetings;

2. A stipend of one hundred twenty-five dollars (\$125.00) each for attendance at Agency Grazing Committee meetings;

3. A stipend of one hundred twenty-five dollars (\$125.00) each for attendance at District Grazing Committee meetings;

4. A stipend of one hundred twenty-five dollars (\$125.00) each for attendance at Agency Council meetings;

5. A stipend of one hundred twenty-five dollars (\$125.00) each for attendance at District Council meetings;

6. A stipend of one hundred twenty-five dollars (\$125.00) each for attendance at Navajo Partitioned Land District Grazing Precinct meetings. Such stipend precludes payment for any stipends for attendance at Agency meetings and is contingent on attendance for the entire Precinct meeting.

D. Compensation of District Grazing Committee members may be withheld by the Division of Natural Resources through the Grazing Management Office for failure to turn in all tribal property at the end of his/her term, or for non-performance of prescribed duties and responsibilities.

#### **History**

CO-31-09, October 20, 2009. Navajo Partitioned Land District Grazing Precincts Act.

CAP-38-98, April 22, 1998

CMA-16-90, March 29, 1990.

CAU-66-85, August 2, 1985.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 879. Accountability**

A. Individual Committee members shall be directly accountable to his/her local Chapter and "administratively" accountable to the Director, Division of Natural Resources, or his/her designee, to whom he or she shall be required to

submit written reports of his or her activities.

B. District Grazing Committee members shall be required to attend Chapter and planning meetings in addition to other Committee meetings and travel as required.

C. The Chairperson of each District Grazing Committee shall present quarterly reports to the Resources Committee. Quarterly reports shall include the activities of the District Grazing Committees related to its Plan of Operation.

#### **History**

CAP-38-98, April 22, 1998.

CAU-66-85, August 2, 1985.

**Note.** Advisors, voice and vote deleted.

#### **§ 880. Amendments**

The District Grazing Committee Plan of Operation may be amended from time to time by the Navajo Nation Council upon the recommendation of the Resources Committee and Government Services Committee of the Navajo Nation Council.

#### **History**

CAP-38-98, April 22, 1998.

### **Subchapter 7. Off-Reservation Grazing**

#### **§ 931. Definitions**

A. "Commissioner" means the Commissioner of Indian Affairs.

B. "Area Director" means the Director of the Navajo Area of Bureau of Indian Affairs.

C. "Superintendent" means the Superintendent of the Eastern Navajo Agency of the Bureau of Indian Affairs.

D. "Individually Owned Land" means land or any interest therein held in trust by the United States for the benefit of individual Navajo Indians and land or any interest therein held by individual Indians subject to federal restrictions against alienation or encumbrance.

E. "Navajo Nation Trust Land" means land or any interest therein held by the United States in trust for the Navajo Nation, and land that is held by the Navajo Nation subject to federal restrictions against alienation or encumbrance. This term also includes assignments of Navajo Nation land. Unless the terms of the assignment provide for the leasing of the land by the holder of the assignment, the Navajo Nation must join with the assignee to issue a grazing permit.

F. "Navajo Nation Fee" means land owned in fee simple by the Navajo Nation.

G. "Government Land" means land, other than Navajo Nation land, acquired or reserved by the United States for Indian Bureau administrative purposes which are not immediately needed for the purposes for which they are acquired or reserved, and land transferred to or placed under the jurisdiction of the Bureau of Indian Affairs but does not include unreserved public domain land leased to the Navajo Nation under § 15 of the Taylor Grazing Act.<sup>1</sup>

H. "Navajo Nation Lease Lands" means land leased to the Navajo Nation under § 15 of the Taylor Grazing Act,<sup>1</sup> and the state lands leased to the Navajo Nation but shall not include land within Navajo Nation ranches.

I. "Permit" means a revocable privilege granted to an individual in writing to enter on and use a specified tract of land for a specified purpose.

J. "Animal Unit" means one mature cow (or calf six months or over) or other approved equivalent. Example: five sheep = one cow; five sheep = one horse (or as amended).

K. "Range Unit" - a range unit shall consist of such lands as the District Land Board, after consultation with land users and the Bureau of Indian Affairs range technicians, shall consider the nearest to fitting the conditions required by Range Management, land status, conservation, and Indian needs.

L. "Grazing Community" - a grazing community shall consist of range units combined into a larger administrative unit, as determined by the District Land Boards based on common interest.

M. "Immediate Family" means the Indian's descendants as controlled by the state laws of descent wherein the land is situated.

N. "Allocation" means the assignment of range use without competitive bidding, including the determination of who may graze livestock, the number and kind of livestock, and the place such livestock will be grazed.

O. "District Land Board" - a board comprised of representative Navajo Indian membership selected for the purpose of administering grazing and problems attendant thereto, and representing a Land Management District in the Off-Reservation area.

P. "Joint Agency Land Board" - a board comprised of the combined membership of all District Land Boards in the Off-Reservation area.

Q. "Navajo Nation Office" means Crownpoint Navajo Nation Range and Livestock Office.

R. "Indians" means enrolled Navajo Indians.

S. "Resources Committee" means the duly appointed Resources Committee of the Navajo Nation Council.

T. "Livestock" means all neat animals (horses and cattle) and sheep, goats and swine.

#### **History**

ACO-300-69, October 1, 1969.

CMY-33-69, May 19, 1969.

#### **United States Code**

Taylor Grazing Act, see 43 U.S.C. § 315 *et seq.*

#### **§ 932. General authority**

A. The General Grazing Regulations, 25 CFR 151, are effective for all Navajo Indian lands and Government lands under the jurisdiction of the Bureau of Indian Affairs except as superseded by special instructions from the Commissioner of Indian Affairs or by properly approved Navajo Nation action. This Subchapter constitutes Navajo Nation action designed to govern the administration of grazing in the Off-Reservation area not included in the Bureau of Land Management Districts, pursuant to the Cooperative Agreement for the Administration of the Checkerboard Area, approved June 28, 1966, by the Navajo Tribal Council Chairperson; July 19, 1966, by the State Director of the Bureau of Land Management; and by the Area Director of the Bureau of Indian Affairs, July 25, 1966. The administration of this Subchapter shall be the responsibility of the Off-Reservation District Land Boards, and the ministerial function shall be executed by the Crownpoint Navajo Nation Range and Livestock Office.

B. The provisions of the Off-Reservation Grazing Code shall become effective upon acceptance and approval by the Navajo Nation Council and the Bureau of Indian Affairs.

#### **History**

CMY-33-69, May 19, 1969.

#### **Annotations**

##### **1. Covered lands**

"Appellant Charlie's grazing permit covers range unit #33 within the checkerboard area of the Eastern Agency of the Navajo Nation. As such, she is subject to the Navajo Nation's Off-Reservation Grazing Code at 3 N.N.C. §§ 932-35." *Castillo, et al. v. Charlie, et al.*, 7 Nav. R. 181, 182 (Nav. Sup. Ct. 1995).

#### **§ 933. Objectives**

It is the purpose of the regulations of this Subchapter to:

A. Preserve, through proper grazing management, the land, water, forest,

forage, wildlife and recreational values in the Off-Reservation area and improve and build up these resources where they have deteriorated;

B. Promote use of the range resources by Indians to enable them to earn a living, in whole or in part, through the grazing of their own livestock; and

C. Balance the rights and equities of the individual landowners and Navajo Nation programs through the granting of grazing privileges in a manner which will yield a fair return to landowners consistent with undiminished future use.

#### **History**

CMY-33-69, May 19, 1969.

#### **§ 934. Establishment of range units**

The conservation, development, and effective utilization of the range resources requires consolidation of small individual and Navajo Nation ownerships and the organization of the total range area into management units. The District Land Board shall establish range units after consultation with the Indians and consideration of the land status, Indian needs, customary use area, and land use problems involved, and adjust such units as needed.

#### **History**

CMY-33-69, May 19, 1969.

#### **§ 935. Grazing capacity**

The Superintendent or his authorized representative shall determine the grazing capacity of each range unit and the season, or seasons, of use to achieve the objectives cited in 3 N.N.C. § 933 and this shall serve as a stocking rate guide in granting permits. The utilization and range conditions of the units shall be reviewed by qualified range experts on a continuing basis. The District Land Boards and Permittees shall be notified of the need to adjust stocking rates for the long range benefit of both livestock and land.

#### **History**

CMY-33-69, May 19, 1969.

#### **§ 936. Grazing on range units authorized by permit**

A. All grazing use on range units shall be authorized only by a grazing permit except use which is exempt pursuant to 3 N.N.C. § 937. Subject to recommendations and approval of the District Land Boards, the Crownpoint Navajo Nation Range and Livestock Office and the Bureau of Indian Affairs, shall prepare all permits, and they shall be approved by the Supervisor of the Crownpoint Navajo Nation Range and Livestock Office and the Superintendent. The following shall be made a part of each permit:

1. A map of the unit showing boundary and existing range improvements;



2. An inventory of range improvements showing ownership; and
3. Range use stipulations.

B. Copies of the permit shall be furnished the permittee, the Crownpoint Navajo Nation Range and Livestock Office, the Navajo Nation Land Investigation Department (for record keeping only), and the Superintendent.

#### **History**

CMY-33-69, May 19, 1969.

#### **§ 937. Grazing exempt from permit**

The following may, without the approval of the Superintendent or the Navajo Nation, graze livestock on his or her individually owned grazing land or other grazing land for which they are responsible, provided the lands are excluded from the Range Unit by fencing out said land: (1) an adult, except those non compos mentis; and (2) an adult, except those non compos mentis, on behalf of his or her minor child and on behalf of a minor child to whom he or she stands in loco parentis when such child does not have a legal representative. The term "graze livestock" means the grazing of livestock which are either owned by a person defined in (1) and (2) above, or if not owned, are under his or her direct management and supervision. Grazing of livestock under any other arrangement is considered a lease or permit subject to approval of the Superintendent.

#### **History**

CMY-33-69, May 19, 1969.

#### **§ 938. Authority to include land in grazing permits**

A. The Superintendent may include individually owned land on a grazing permit on behalf of:

1. A person who is adjudicated by a state, Navajo Nation, or federal court to be non compos mentis;
2. An orphaned minor;
3. An adult whose location or whereabouts is unknown, after reasonable attempts have been made to locate him/her;
4. Heirs or devisees who have not been able to agree on the permitting of their land not in use by any of the heirs or devisees during a three-month period immediately following the date of constructive notice from the Superintendent given by posting general notices in appropriate chapter houses in the area where the land is located, and with the District Land Boards; also published in a newspaper of local general circulation;
5. A Navajo Indian owner defined in 3 N.N.C. § 937, who gives the

Superintendent written authority to grant grazing privileges; and

6. A guardian, conservator, or other fiduciary, appointed by a state, federal, or Navajo Nation court who gives the Superintendent written authority to grant grazing privileges for any land held in trust for a minor, person who is non compos mentis, or is otherwise legally disabled.

B. The Superintendent may include Government land on a grazing permit; provided such land is not already under a revocable permit or lease to the Navajo Nation, in which case, the Navajo Nation must authorize the land to be included.

C. The District Land Board may include Navajo Nation trust, unreserved public domain land leased by the Navajo Nation, and other Navajo Nation controlled land on the grazing permits.

#### **History**

CMY-33-69, May 19, 1969.

**Note.** Words "to locate him/her" were added at end of Subsection (A) (3) for purpose of clarity.

#### **§ 939. Allocation of grazing privileges**

A. Grazing privileges shall be allocated in accordance with 3 N.N.C. § 938, by the District Land Board who will review all applications for permits, determine the eligibility, and designate the use area.

B. Eligibility requirements: An applicant must be a member of the Navajo Nation, 18 years of age or older, show a sincere interest in the livestock business, furnish proof of livestock ownership, and proof of a recognized use area. An applicant may be requested to appear at a hearing. Each applicant must submit a written application on an approved form.

#### **History**

CMY-33-69, May 19, 1969.

#### **§ 940. Establishment and payment of grazing fees**

A. The Area Director shall establish a minimum acceptable grazing fee for grazing privileges on individually owned land. Except as otherwise provided in Subsection (B) of this Section, the rate established shall provide a fair annual return to the landowner. The Superintendent shall provide the Navajo Nation Land Boards with all available information.

B. An adult Indian, in giving the Superintendent written authority to grant grazing privileges on his or her individually owned land, may stipulate a higher rate above the minimum rate set by the Area Director if justified because of above average value. He or she may also stipulate a lower rate than the minimum rate, subject to approval of the Superintendent when the permittee is a member of the landowner's immediate family.

C. Grazing fees for Navajo Nation controlled land shall be established by the District Land Board and it may establish the fee to be paid by the permittee. This condition is given with the provision that each individual landowner receives the minimum rate established by the Area Director or stipulated in the authority under 3 N.N.C. § 938(C) above.

D. Grazing fees shall be payable annually and in advance and date due shall be a provision of the permit. Delinquent fees shall be a first lien on the livestock grazed under permit. Payment shall be made to the Bureau of Indian Affairs for individually owned lands and the Navajo Nation for Tribally controlled lands.

E. Grazing fees shall be established by the District Land Board after consultation and review with representatives of the Bureau of Indian Affairs and the Navajo Nation before commencement of each permit period. The grazing year shall be from May 1 to April 30. Grazing fees shall be payable annually and in advance and will be due on or before May 1. Fees not paid by May 1 will be delinquent upon that date.

#### **History**

CMY-33-69, May 19, 1969.

ACO-300-69, October 1, 1969.

#### **§ 941. Assignment, modification, cancellation and duration of permits**

A. A grazing permit shall not be assigned, sublet, or transferred by the permittee. In event of death of the permittee, the permit shall be cancelled. A new permit on the range unit involved will be issued after review and recommendation of the District Land Board, who shall consider legal heirs and land users pursuant to Navajo custom.

B. The District Land Board may modify or cancel a grazing permit by mutual consent, by a 30 day advance written notice for violation of the terms of the permit, or because of change of status of the land involved.

C. Duration of the permit period shall be determined by the District Land Board subject to a maximum period of five years.

D. Time limit for non-use will be two years. Non-use permit must be renewed each year.

#### **History**

CMY-33-69, May 19, 1969.

#### **§ 942. Conservation and land use provisions**

A. Grazing operations shall be conducted in accordance with recognized principles of good range management. Stipulations or management plans necessary to accomplish this may be made a part of the grazing permit.

B. The Superintendent shall withdraw areas from grazing for reseeding or other conservation practices and to protect the said lands from further damages and shall also issue notices to this effect to all concerned.

#### **History**

CMY-33-69, May 19, 1969.

#### **§ 943. Range improvements**

All improvements placed on range units shall be approved by the District Land Board and shall become affixed to the property unless specifically excepted therefrom under the terms of the permit. Written permission to remove improvements must be secured from the District Land Board prior to removal. The permit will specify the maximum time allowed for removal of improvements so excepted.

#### **History**

CMY-33-69, May 19, 1969.

#### **Annotations**

##### **1. Construction and application**

"The Off-Reservation Grazing Code states, in relevant part, that '[a]ll improvements placed on range units shall be approved by the District Land Board and shall become affixed to the property.' 3 N.N.C. § 943 (1969). This, contrary to Appellants' assertion, a permittee is not barred from constructing improvements to prevent her livestock from straying onto the highway." *Castillo, et al. v. Charlie, et al.*, 7 Nav. R. 181, 182 (Nav. Sup. Ct. 1995).

##### **2. Allotment fencing**

"Given that fencing on all lands, including allotments in the Eastern Navajo Agency, are subject to some local Navajo board or committee's approval, the Court concludes that, read together, the purpose of the various provisions is to deal with fencing within the Nation comprehensively. To foster a uniform, predictable system of regulating fencing within the Reservation, this purpose is facilitated by requiring district grazing committee approval of allotment fencing within the Reservation. Under this analysis, elected officials within local communities may hear and decide disputes when land owners propose to fence their land off from other users. Such fencing affects not just the parcel proposed to be fenced, but affects all other surrounding land users." *Gishie v. Morris, et al.*, No. SC-CV-36-06, slip op. at 5 (Nav. Sup. Ct. June 4, 2008).

#### **§ 944. Special permit requirements and provisions**

All grazing permits shall contain the following provisions:

A. While the lands covered by the permit are in trust or restricted status, all of the permittees obligations under the permit and the obligation of his/her sureties are to the United States as well as to the owner of the land.

B. Nothing contained in the permit shall operate to delay or prevent the termination of federal trust responsibilities with respect to the land by the issuance of fee patent or otherwise during the term of the permit.

C. The permittee agrees he/she will not use or cause to be used any part of permitted area for any unlawful conduct or purpose.

D. This permit authorizes the grazing of livestock only and the permittee shall not utilize the permitted area for hay cutting, hunting, post cutting, or any other use without proper authorization from the Superintendent or the Navajo Nation authorities.

#### **History**

CMY-33-69, May 19, 1969.

**Note.** Paragraph (C) rephrased for purpose of clarity.

#### **§ 945. Bonding and insurance requirements**

A. A satisfactory performance bond may be required in an amount that will reasonably assure performance of the contractual obligation. A bond, when required, may be for the purpose of guaranteeing the estimated construction cost of any improvement to be placed on the land which will become the property of the permitter or to insure compliance with special or additional contractual obligations.

B. The permittee may be required to provide insurance in an amount adequate to protect any improvement on the permitted premises; and may also be required to furnish appropriate liability insurance and such other insurance as may be necessary to protect the permitter's interest.

#### **History**

CMY-33-69, May 19, 1969.

#### **§ 946. Trespass**

A. Definition of "Trespass". The following shall be considered trespass:

1. The grazing of livestock by an owner within a permitted area not covered by the permit issued to the owner of the livestock.

2. Not removing livestock from a grazing unit when the permit is cancelled after direction is given.

3. Permitting or allowing livestock to drift into another permitted unit except as covered in 3 N.N.C. § 937.

4. Grazing of livestock upon Navajo Indian controlled lands within an area closed to grazing of that class livestock.

5. Grazing or driving livestock across any individually owned,

Navajo Nation or Government lands without an approved grazing or crossing permit.

6. Grazing of livestock upon an area withdrawn from use for grazing purposes for reseeding or other conservation practices, or to prevent any further damage to the lands, or refusal to remove livestock from such a withdrawn area.

B. Notification of Trespass. When the trespass is reported or made known to the District Land Board and the Superintendent the Board shall review and investigate the trespass complaint and if the Board determines that the trespass is actually occurring or has actually occurred it shall take the following actions:

1. By letter request the person guilty of the trespass to correct such trespass, and inform the person of the grazing rules and regulations and the penalties that can be invoked if the trespass is not corrected.

2. After the initial notification, if the Board finds that the trespass is not corrected as directed, the Board shall direct the person guilty of the trespass to appear before the Board for a formal hearing to discuss the trespass and make every effort to resolve the trespass.

3. After the person guilty of the trespass has appeared before the Board and has not corrected the trespass as directed, the Board shall declare officially that a trespass exists and impose the penalty or penalties as prescribed in this Subchapter.

4. If a person has been guilty of a previous trespass, is known to be a "habitual trespasser", is known to disregard the authorities and the rules and regulations, and is uncooperative in the proper grazing administration, the Board shall use every means in its power to resolve the trespass or trespasses and if necessary shall immediately impose the penalties as prescribed in this Subchapter without notice or hearing.

C. Penalties: When the District Land Board finds that a person is guilty of a trespass, the Board and the Superintendent with the assistance of the Crownpoint Navajo Nation Range and Livestock Office shall take the following actions at their discretion:

1. Impose upon the owner of any livestock in trespass on Navajo Indian controlled land a penalty of forty cents (40 per head for each sheep unit in trespass, together with the reasonable value of the forage consumed and damages to the property injured or destroyed.

2. Take necessary action to collect for penalties and damages from the owner of livestock determined to be in trespass. All payments for damages shall be credited to landowners where the trespass occurs.

3. If deemed necessary, seize all livestock in trespass in accordance with the Livestock Laws referred to under 3 N.N.C. § 950, and to hold the livestock until the penalties are paid by the trespasser. While holding the livestock the trespasser will also be charged at the rate of fifty cents (50 per sheep unit per day or the actual cost for

"holding fees" for the care, feeding, and protection of the seized livestock, whichever is greater.

#### **History**

CMY-33-69, May 19, 1969.

#### **Cross References**

See Navajo Nation Criminal Code, 17 N.N.C. §§ 350, 460-466, and 524.

#### **Annotations**

##### **1. Construction and application**

"Permitters are not allowed to graze or drive livestock across any individually owned, tribal or government lands without an approved permit." *Castillo, et al. v. Charlie, et al.*, 7 Nav. R. 181, 182 (Nav. Sup. Ct. 1995).

##### **§ 947. Control of livestock diseases**

Whenever livestock on Indian controlled lands become infected with contagious or infectious diseases, or have been exposed thereto, such livestock must be treated and the movement thereof restricted in accordance with applicable Navajo Nation, federal and state laws.

#### **History**

CMY-33-69, May 19, 1969.

##### **§ 948. Use of undesirable sires**

A. Bulls grazed on open range land shall be of a uniform breed, preferably registered breeds, and the breed shall be determined by the permittees within the unit.

B. Rams shall be of the fine wool breeds.

C. Horses allowed to run stud shall be approved by District Land Board members or their designated committee. Failure to abide by this provision will make the permittee guilty of an offense and the permittee shall pay a penalty of ten dollars (\$10.00) per head for each offense.

#### **History**

CMY-33-69, May 19, 1969.

##### **§ 949. Appeals**

An applicant for a grazing permit or a grazing permittee may appeal to the Joint Agency Land Board on any action taken by the District Land Board. In order for an appeal to be considered, the appeal must be presented in writing to the Joint Agency Land Board within 30 days after receipt of the written decision of the District Land Board. The decision of the Joint Land Board may

be appealed to the Office of Hearings and Appeals. The appeal must be presented in writing within 30 days after receipt of the written decision of the Joint Agency Land Board.

#### **History**

CO-59-03, October 21, 2003.

CMY-33-69, May 19, 1969.

#### **§ 950. Livestock laws**

The five articles embodied in the Livestock Laws of the Navajo Reservation and other lands within the jurisdiction of the Navajo Nation Courts, as adopted on June 22, 1966, or as may be amended, shall be adhered to by the permittees of the Off-Reservation Eastern Navajo Agency jurisdiction. Permittees shall abide by any grazing stipulation that might be attached to and made a part of the permit. Such stipulations may include such provisions as the observance of boundaries, tally of livestock, breeding seasons, areas closed to grazing, proper salting, etc.

#### **History**

CMY-33-69, May 19, 1969.

### **Chapter 7. Control and Inspection of Livestock**

#### **History**

**Note.** This Chapter was initially codified at §§ 551 et. seq. of this title.

#### **Subchapter 1. Generally**

##### **§ 1201. Definitions**

A. "Abandonment" means and includes the leaving of an animal by its owners or other person or persons responsible for its care or custody without making effective provisions for its proper care and control.

B. "Animals" means any animal mammal, other than human, and includes birds, reptiles, fish, wild and domesticated animals.

C. "Animal fights" means it is unlawful for any person to promote stage, hold, manage, conduct, or carry on any game, exhibition or contest in which one or more animal are engaged for the purpose of injuring, killing, maiming, or destroying themselves, or any other animals. This does not apply to rodeo events.

D. "Cruelty" means it is unlawful for any person to willfully or maliciously kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise conduct cruelly set upon an animal, except that reasonable force maybe used. Cruelty also includes every act or omission, which causes or unreasonably permits the continuation of unnecessary or unjustifiable pain and



suffering.

E. "Department" means the Department of Resource Enforcement, Navajo Veterinary Livestock Program or the Department of Agriculture.

F. "Deputy Livestock Inspector" as used in this Act shall mean a non-commissioned officer who provides livestock inspection services only and duties shall also include the seizure of livestock under this Title.

G. "Director" means the Director of the Department of Resource Enforcement and the Director of Navajo Nation Department of Agriculture.

H. "Disposal" means the deposit or dumping of any animal (carcass) into or on any land or water so that such animal (carcass) or any constituent (animal parts) thereof may enter the environment or be emitted into the air or discharged into any water, including ground water.

I. "Division" means the Navajo Nation Division of Natural Resources.

J. "Division Director" means Executive Director of Division of Natural Resources.

K. "Equine" as used in this Chapter means horses, mules, burros and asses.

L. "Feral" means any un-owned or free ranging animal, livestock or equine not under control of an owner.

M. "Livestock" as used in this Chapter means cattle, dairy cattle, buffalo, sheep, goats, swine, and llamas, except feral pigs.

N. "Law Enforcement Officer" means any person who has successfully completed training at a recognized police training academy, has been commissioned by a designated Navajo Nation authority as a police officer, ranger, forestry officer, or resource enforcement officer, and is vested by law with a duty to maintain public order or make arrests, whether that duty extends to all offenses or is limited to specific areas of offenses or offenders. This term includes police officers, rangers, forestry officers and resource enforcement officers.

O. "Livestock Officer" means a commissioned Law Enforcement Officer who has the duties and responsibilities to enforce Title 3 and Title 17 related to livestock and who is also an authorized person to conduct livestock inspection service.

P. "Livestock Trader Permit" means a certification of a person, corporation or business who conducts business involving the sale, barter and trade of livestock, equine, hay and feed and other agricultural products.

Q. "Neglect" means failure to provide food, water and normal veterinary care for the animal(s) health and well being. During time of drought and severe weather conditions, the owner is responsible to ensure animal, livestock or equine are properly maintained and not in a state of neglect.

R. "Nuisance" means, but is not limited to defecation, urination, disturbing the peace by the presence of, sound or cry, emitting noxious or offensive odor, or otherwise endangering the well being of the inhabitants and other livestock, or equine of the community.

S. "NNERFAD" means the Navajo Nation Emergency Response to Foreign Animal Disease.

T. "NNVLP" means the Navajo Nation Veterinary Livestock Program who is responsible for the investigation, diagnosis and treatment of disease incidents and/or outbreak.

U. "Poultry" means any domesticated bird, whether live or dead, and includes chickens, turkeys, ducks, geese, guineas, ratites and squabs.

V. "Range" means every character of lands, enclosed or unenclosed, and not withdrawn from grazing, outside/inside of cities and towns, upon which livestock are permitted to graze with a valid Navajo Nation grazing permit and Eastern Navajo grazing permit.

W. "Range equine" means equine customarily permitted to roam upon the ranges of the Navajo Nation, and not in the immediate actual possession or control of the owner although occasionally placed in enclosures for temporary purposes.

X. "Range livestock" means livestock customarily permitted to roam upon the ranges of the Navajo Nation, and not in the immediate actual possession or control of the owner although occasionally placed in enclosures for temporary purposes.

Y. "Ratite" means ostriches, emus, rheas and cassowaries.

Z. "Stray animal" as used in this Chapter, means livestock, equine or ratites whose owner is unknown or cannot be located, or any animal whose owner is known but permits the animal to roam at large on the streets, alleys, fenced paved roads, fenced right of ways, range or premises of another without permission.

AA. "Veterinarian" means accredited Navajo Nation, state or federal veterinarian.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **Cross References**

Definitions under Chapter 9, Health Requirement Offenses; Control of Contagious Diseases; Penalties, see § 1501 of this Title.

Grazing Regulations, see § 701 et seq. of this title.

Resources Committee authority, see 2 N.N.C. § 691 *et seq.*

### **Subchapter 3. Inspection of Livestock**

#### **§ 1251. Livestock Officer and Deputy Livestock inspectors; appointment; powers and duties**

A. The Director of the Division of Natural Resources shall have the authority to appoint livestock officers and deputy livestock inspectors to enforce the provisions of the livestock laws of the Navajo Nation and such other laws that may pertain to the transfer, importation, sale and/or health of livestock. Such livestock officer and deputy livestock inspectors shall be responsible to the Director of Department of Resource Enforcement.

B. Livestock officers and deputy livestock inspectors may authenticate bills of sale of livestock and equine, brands, marks and/or animal identification, deliver certificates of acknowledgment thereof under their hands and seals and take acknowledgments to applications for brands and marks. A service fee and administrative fee per form and inspection fee per head (on bill of sales) will be taken as payment to be determined by the Department administration as deemed necessary.

C. Livestock officers and deputy livestock inspectors shall not grant a certificate of inspection of unbranded hides or livestock, or of hides or livestock upon which the marks and brands cannot be ascertained or which disclose ownership by some person other than the one seeking the certificate of inspection. No certificate of inspection will be given without original documents. No Xerox copies will be accepted as proof of ownership without certified stamp from notary public, courts or Bureau of Indian Affairs (BIA).

D. A livestock officer may stop any person who is in possession of and is conveying, shipping or transporting livestock, equine or hides of livestock to examine brands, marks and other animal identification, certificates of brand inspection and bills of lading or bills of sale relating to the livestock in transit if the officer or inspector has probable cause or reasonable suspicion to believe that the person has violated this Title or Title 17 relating to livestock.

E. Livestock officers and deputy livestock inspectors may enter any premises where livestock are kept or maintained to examine brands or marks or other evidence of ownership or to determine the health or welfare of livestock. If admittance is refused or physically denied and probable cause exists, the livestock officer may immediately request a warrant from the nearest court of the Navajo Nation to allow such entry.

F. Livestock officers are law enforcement officers and shall have the powers of law enforcement officers and carry a Department-issued weapon, with respect to Title 3 and Title 17 relating to livestock, and shall cite, apprehend or arrest any person who violates the livestock laws, and shall, upon reliable information that any person has violated such law, make the necessary affidavits for arrest and examination of the person and shall, upon warrants issued therefor, immediately arrest the person.

G. Deputy livestock inspectors' powers and duties will not include Subsections D and F of this Section.

H. Livestock officers and deputy livestock inspectors' will investigate cases of livestock and equine abandonment, neglect, nuisance and cruelty.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

**Note.** At Subsection A, "Supervisor of the Range and Livestock Department" corrected to "Director of Department of Resource Enforcement."

#### **Cross References**

On arrests, see 17 N.N.C. §§ 1803 and 1804.

#### **§ 1252. Method, place and time of inspection of livestock**

A. Livestock officers and deputy livestock inspectors shall inspect, other than equine previously inspected pursuant to Section 1354 and livestock subject to authorized self-inspection, livestock for health, marks and brands at loading stations, at places of exit from the Navajo Nation and at places where livestock are gathered to be sold, slaughtered, transported, conveyed, shipped or driven from their range for any purpose whatsoever, except when livestock are being moved from pasture to a destination within the Navajo Nation without leaving the exterior boundaries of the Navajo Nation and no change of ownership, slaughter or other disposition is involved and the owner is utilizing self-inspection approved by the department/division. Livestock officers and inspectors need not inspect outgoing livestock from feedlots, dairies and producers utilizing self-inspection but may conduct periodic inspections to ascertain compliance with this Chapter.

B. Brand inspection shall be made by daylight only and in a manner which enables the livestock officer or deputy livestock inspector personally to see, inspect and record each and every mark, brand and/or other animal identification. Inspections of livestock for health at a slaughterhouse may be made by other than daylight if adequate artificial light is provided.

C. Upon being advised that livestock is subject to inspection, livestock officers and inspectors shall arrange for the inspection of the livestock and inspect such livestock within 96 hours.

D. Feed lots, dairies and producers utilizing self-inspection approved by the Division shall comply with this Section and procedures established.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

**§ 1253. Record of inspection; disposition of record and copies**

A. Livestock officers and deputy livestock inspectors shall make a record of all inspections disclosing the place and date of the inspection, its purpose, the kind, sex and description necessary to identify the livestock, the number of head running in every brand and mark and/or other animal identification, the name of the seller if the livestock is to be sold, the name of the shipper if the livestock is to be shipped, change of premise and other necessary information.

B. Feedlots, dairies and producers utilizing self-inspection approved by the Division shall comply with this Section and procedures established by the Division.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

**§ 1254. Inspection as to ownership of livestock**

A. Livestock officers and deputy livestock inspectors, in making inspections, shall require from livestock auctions or the owner or person in charge of the livestock a list of the brands and marks or necessary evidence of ownership and shall determine by inspection of the livestock that the person in charge is the owner or an approved livestock auction or is authorized in writing to handle the livestock. If a person claims to own offspring of an equine that the person leased, the livestock officer or inspector shall require that the owner of the equine obtain an ownership and hauling certificate for the offspring and transfer ownership of the offspring to the lessee.

B. Feedlots, dairies and producers utilizing self-inspection approved by the Department/Division shall comply with this Section and procedures.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

**§ 1255. Seizure of livestock to be shipped by unauthorized person**

If livestock to be shipped by rail or other conveyance or transport is

upon inspection found not to belong to the shipper, or if the handler is not authorized in writing to sell, ship, transport or drive the livestock, it shall be taken by the livestock officer and deputy livestock inspector.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **§ 1256. Certificate of inspection; delivery**

A. Upon completion of an inspection, the livestock officer and deputy livestock inspector shall deliver to the person in charge of the livestock a certificate on a form provided by the Department disclosing the date of inspection, the purpose for which inspected, the number, sex and kind of animals inspected, all their brands, animal identification and the fee collected. The certificate of inspection shall have clearly imprinted on its face the legend: "This certificate of inspection is not and shall not be used as a bill of sale."

B. Feedlots, dairies and producers utilizing self-inspection approved by the Department/Division shall comply with this Section and procedures.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **§ 1257. Service charge and inspection fee; self-inspection; civil penalties**

A. Livestock officers and deputy livestock inspectors shall collect from the person in charge of cattle inspected a service charge plus an inspection fee per head for making inspections for the transfer of ownership, change of premise, sale, slaughter or transportation of cattle.

B. Livestock officers and deputy livestock inspectors shall collect from the person in charge of sheep inspected a service charge plus an inspection fee per head for making inspections for the transfer of ownership, change of premise, sale, slaughter or transportation of sheep.

C. Livestock officers and deputy livestock inspectors shall collect from the person in charge of dairy cattle inspected a service charge plus an inspection fee per head for making inspections for the transfer of ownership, change of premise, sale, slaughter or transportation of dairy cattle.

D. The Department may approve self-inspection by feedlots and dairies. Movement shall be documented on forms provided by the Department. Feedlots and dairies, which utilize self-inspection, shall pay an outgoing inspection fee of 50 cents (\$.50) per head.

E. Service charges and inspection fees collected by the livestock officers and inspectors, feedlots and dairies utilizing self-inspection shall be remitted to the Division. Service charges and inspection fees incurred by feedlots and dairies shall be remitted to the Department within 10 days after the end of the month in which the livestock were inspected.

F. Qualified deputy livestock inspectors shall be compensated for their time as livestock inspector to half of the service charge for each livestock inspection done by said person.

G. Service charge will be determined by the administrator of the Department with consultation with surrounding state and Navajo Nation control that is in charge of livestock inspection service.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJA-1-84, January 19, 1984.

CJN-83-66, June 22, 1966.

#### **§ 1258. Transportation of livestock, equine, animal, poultry and/or ratite by person without certificate of inspection or health certification or validated auction invoice; classification**

A. Except as otherwise provided in this Chapter, it is unlawful for any person, firm or corporation to carry, transport or convey livestock, equine and ratite by any conveyance without first having such livestock, equine and ratite inspected, and having in immediate possession the duplicate record of the inspection, an auction invoice issued pursuant to Section 1261 or a registration or identification card issued pursuant to Section 1264 or Section 1265, and any person who commits any such unlawful act is guilty of an offense.

B. It is unlawful for any person to transport livestock, equine and ratite without his/her issued certificate of inspection and any person who commits any such unlawful act is guilty of an offense.

C. It is unlawful for any person to transport livestock, equine and ratite without the required health documents/certificates as required by law and any person who commits any such unlawful act is guilty of an offense.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **Cross References**

Penalty, see § 1267 of this Title.

**§ 1259. Alteration of certificate or record of inspection**

Any person who intentionally alters a certificate, auction invoice, bill of sale, or record of inspection or copy thereof issued by a livestock officer or deputy livestock inspector or other agent of the Department, is guilty of an offense.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

**Cross References**

Penalty, see § 1267 of this Title.

**§ 1260. Substitution of livestock, equine, ratite and animals after issuance of certificate of inspection**

Any person who removes livestock, equine, ratite and animals and substitutes another therefor or adds other animals to a lot of livestock for which an inspection certificate has been issued for shipment, sale or slaughter, is guilty of an offense.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

**Cross References**

Penalty, see § 1267 of this Title.

**§ 1261. Inspection of livestock to be slaughtered, sold or transported; fees; violation; classification**

A. Except as otherwise provided in this Section, livestock, other than equine previously inspected pursuant to Section 1264 and livestock inspected at feedlots or dairies shall not be slaughtered, sold, purchased, driven, transported, shipped or conveyed unless the animals have been inspected by a livestock officer or deputy livestock inspector for health, brands, animal identification and marks before they are slaughtered, sold, purchased, driven, transported, change of premise, shipped, or conveyed and the inspection fee paid.

B. The owner or agent of the owner of the livestock to be slaughtered,



sold, driven, transported, changed of premise, shipped, or conveyed as provided in Subsection A of this Section shall notify the nearest livestock officer or inspector of that intention.

C. Equine consigned to either licensed livestock auctions or other special auctions approved by the Department from out of state or from Indian reservations in this state or from other state or federal agencies without prior inspection shall be inspected on delivery at an auction. Auction buyers of these equine shall obtain a new ownership and hauling certificate within 30 days pursuant to Section 1264. All equine sold at auctions shall be inspected out on an inspection certificate or auction invoice and the seller shall pay a service fee per head.

D. Equine bearing the registered brand of the owners and/or other animal identification from points of origin in this state, which do not have an ownership and hauling certificate, shall be inspected before being transported to an auction or to immediate slaughter on an inspection form provided by the Department. The seller shall pay a service fee per head and an administrative service charge.

E. All livestock sold at auctions shall be inspected on an inspection certificate or auction invoice validated by the Department. Equine may be transported within this state on either document for 30 days after purchase at auctions described in this Section.

F. The owner or producer of livestock excluding equine may slaughter or transport to another person to slaughter such livestock without having the animal inspected and without paying the inspection fee or service charge if the meat of such slaughtered livestock is solely for home consumption, ceremonial use by such owner providing that such owner contacts a livestock officer or inspector within a 48 hour period prior to slaughter and is able to establish proof of ownership either by a prior inspection certificate, by a recorded brand on the animal or other animal identification or that the animal was raised by said owner. If proof of ownership cannot be established to the satisfaction of the livestock officer or inspector then the livestock officer or inspector may require an inspection prior to slaughter.

G. The Director may waive an inspection for brands and marks before the slaughter of an animal if a Navajo Nation, federal or state certified meat inspector on the premises certifies on a form provided by the Department that, as determined by an ante mortem inspection, the animal is in a distressed condition and for humane reasons should be slaughtered immediately if it is otherwise fit for slaughter and if the hide, carcass and certification are segregated and held pending inspection for brands and marks. The Department Director may waive inspections under this Subsection only for individual animals, and a separate certification shall be made for each animal.

H. Livestock officers or inspectors shall not inspect livestock for health before they are slaughtered at an establishment, which is subject to federal meat inspections as provided under Chapter 7 of this Title.

I. A person violating this Section is guilty of an offense.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1267 of this Title.

#### **§ 1262. Mobile slaughtering units; custom slaughtering; brand inspections**

A. A mobile slaughtering unit or a locker plant slaughtering livestock on a custom basis shall notify the local livestock officer or inspector before any slaughtering operation. If brand inspection of an animal is not conducted before slaughter, the mobile slaughterer or the locker plant slaughtering the animal shall retain the hide for a 48 hour period for inspection by a livestock officer or inspector.

B. Mobile slaughtering units and locker plants which slaughter livestock shall maintain accurate records of the number of animals slaughtered, their source and ownership and the brands on the animals. These records shall be available for inspection by a livestock officer or inspector during regular business hours.

C. All locker plants and mobile slaughtering units licensed by the Navajo Nation or federal agencies shall collect the brand inspection fees and all other fees provided for by law and rules of the Director for each animal slaughtered and remit the fees to the Department.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1267 of this Title.

#### **§ 1263. Unbranded livestock kept in close confinement; shipment, sale and inspection**

A. Owners of livestock, other than equine, who do not have a recorded brand and who maintain their animals in close confinement not exceeding 10 acres may transport their animals to livestock auctions with the requirements of this Chapter.

B. Animals shipped, conveyed or transported under this Section shall be accompanied by proof of ownership, such as auction invoices or inspection certificates which the owner received at the time of purchase.

C. Any livestock, other than equine, that are transported, shipped or conveyed pursuant to this Section and that have not been inspected by a

livestock officer or inspector within the previous 48 hours shall be inspected at a livestock inspection station by a livestock officer or deputy livestock inspector before the sale, slaughter or change of ownership and all applicable inspection fees shall be paid.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1264. Ownership and hauling certificates for equine; inspection; exemption; cancellation; civil penalty; fees**

A. Except as otherwise provided in this Act, owners or persons in charge of equine shall obtain ownership and hauling certificates before weaning for equine that are born on the Navajo Nation or within 30 days of the entrance date of all equine into the Navajo Nation. A person who fails to obtain a certificate within the prescribed time is subject to a civil penalty of two dollars and fifty cents (\$2.50) per day in excess of 30 days that the equine is in the Navajo Nation without a certificate, but not exceeding a total of one hundred and fifty dollars (\$150.00).

B. Livestock officers or deputy livestock inspectors shall collect from the owner or person in charge of equine an inspection fee of twenty-five dollars (\$25.00) per head for a permanent Navajo Nation Hauling Card.

C. Notwithstanding other Sections of this Title, ownership and hauling certificates issued pursuant to Subsection A of this Section shall be valid for the life of the animal or until transferred pursuant to Section 1265.

D. Ownership and hauling certificates issued with respect to any equine shall be surrendered to the Department if any of the following occurs:

1. The equine dies;
2. The equine is sold and shipped out of state; or
3. The equine is sent to slaughter or is disposed of for humane reasons.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1267 of this Title.

#### **§ 1265. Transfer of ownership and hauling certificates; issuance of new**

**ownership and hauling certificates; fees; civil penalty**

A. The seller of any equine who has a valid ownership and hauling certificate for such animal and the buyer of such animal, except a person who has been issued an equine trader's permit pursuant to Section 1268, shall both complete and date a transfer request form. One copy of the transfer request form shall be given to the seller.

B. Within 30 days of the transfer of ownership of any equine, provided for in Subsection A of this Section, the buyer shall forward to the Department the ownership and hauling certificate, the original copy of the completed transfer request form and twenty-five dollars (\$25.00) per head fee. Upon receipt, the Department shall issue a new ownership and hauling certificate to the transferee and a blank transfer request form. Such certificate shall be valid for the life of the animal or until sold. A person who fails to transmit the required transfer documents to the Department within the prescribed time is subject to a civil penalty of two dollars and fifty cents (\$2.50) per day in excess of 30 days that the documents are not furnished to the Department, but not exceeding a total of one hundred and fifty dollars (\$150.00).

C. A Livestock trader permittee who purchases an equine on the Navajo Nation must receive from the seller the ownership and hauling certificate and the original and buyer's copy of a transfer request form with the seller's portion completed. When the equine is sold, the buyer shall complete the buyer's portion of the form and comply with the requirements of Subsection B of this Section.

D. A livestock trader permittee shall sign and enter his permit number on the transfer document when he transfers ownership of an equine.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**Cross References**

Penalty, see § 1267 of this Title.

**§ 1266. Seasonal inspection for exhibition and summer/winter pastures livestock; fees**

A. Seasonal inspection certificates may be issued for exhibition livestock for any purpose other than slaughter, sale or trade. The fee for a seasonal brand inspection certificate is five dollars and fifty cents (\$5.50) per head of livestock in excess of 10.

B. A livestock officer or inspector shall issue a seasonal inspection certificate on the request of the livestock's owner or his agent. The certificate shall state the date of issuance, the sex, color and breed, the brand or brands and their location and any other identifying marks/devices and the name of the owner of the livestock. The words "Seasonal Brand Inspection" shall be written across the face of the certificate.

C. The certificate is valid for the calendar year of the date of issuance and shall accompany the livestock while in transit.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1267 of this Title.

#### **§ 1267. Penalties**

Unless otherwise provided any person who violates any Sections of this Chapter and is convicted of such violation shall be subject to the following punishments: For violation of Sections 1258 to 1266, he/she shall be sentenced to labor for a period not to exceed 90 days or shall be fined a minimum fine of one hundred dollars (\$100.00) sum and not to exceed one thousand dollars (\$1,000.00), or both.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**Note.** Slightly reformatted for statutory consistency.

#### **§ 1268. Livestock Trader Permit**

A. The Department of Agriculture shall issue a Livestock Trader Permit to an applicant who pays a fee of two hundred and fifty dollars (\$250.00) and who complies with the requirements of this Section. The permit is valid for one year from the date of issuance and may be renewed on payment of an annual renewal fee of two hundred and fifty dollars (\$250.00) and on compliance with the requirements of this Section.

B. Applications for initial and renewal permits shall contain the following information:

1. The full name of the applicant;
2. The applicant's business and residence addresses with the appropriate premise identification coordinates;
3. The date and place of the applicant's birth;
4. Statement of Intent;
5. Information concerning livestock trading permits held in other states and their status;

6. Information concerning any felony convictions within seven years before the date of application, including any convictions subsequently set aside or resulting in restoration of civil rights;

7. Any other information, which the Department may require;

8. Bond information. All livestock traders will be bonded before issuance of a Livestock Trader Permit; and

9. Livestock trader must be knowledgeable and comply with individual animal identification and registration of change of premise for each livestock and equine purchase by such livestock trader.

C. The Director may adopt rules specifying additional information, which may be reasonably required to be submitted on an application for a Livestock Trader Permit or renewal of a permit to allow the Department to determine the fitness of the applicant to receive a permit or renewal of a permit.

D. The Director may deny, refuse to renew, suspend or revoke a Livestock Trader Permit pursuant to this Section and Section 1269, for any of the following reasons:

1. A violation of any Section of this Act or of any rule adopted pursuant to this Act;

2. The revocation or suspension for cause of and Livestock Trader Permit issued by the Department or by any other state within five years before the date of application;

3. A conviction of a felony involving a crime related to the livestock trade occupation within seven years before the date of application for a Livestock Trader Permit; or

4. To maintain requirements of the BIA livestock buyer specifications under the Code of Federal Regulations applicable to both, Non-Indians and Indians.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1274 of this Title.

#### **§ 1269. Inventory and monthly report of livestock traders; mandatory requirements**

Livestock trader permittee shall maintain inventory records of all livestock sold. The records shall include the date sold, the ownership, premise number and hauling certificate number and the name and address of the

buyer. At the end of each month, each livestock trader permittee shall report to the Department the number of livestock bought and sold during the month. Each livestock trader permittee shall also surrender to the Department each month all bill of sales, ownership documents, and hauling certificates in his possession belonging to all livestock that have been moved out of the Navajo Nation. Authorized representatives of the Department may review the inventory records of any livestock trader permittee during normal business hours.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1274 of this Title.

#### **§ 1270. Failure to possess a Livestock Trader Permit**

Any person who trades livestock and fails to possess a Livestock Trader Permit in his/her possession, is guilty of an offense.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1274 of this Title.

#### **§ 1271. Failure to comply with Livestock Trader Permit requirements**

Any livestock trader who fails to comply with Livestock Trader Permit requirements shall be guilty of an offense.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1274 of this Title.

#### **§ 1272. Failure to stop at a livestock checkpoint**

Any person who is transporting livestock, equine, buffalos or ratites and fails to stop at a livestock checkpoint is guilty of an offense and shall be fined a minimum of fifty dollars (\$50.00) and not to exceed one hundred dollars (\$100.00) or 30 days in jail or both.

## **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

### **§ 1273. Cruelty of animal-extreme cruelty of animal, penalties, exception**

#### A. Cruelty to animals prohibited:

1. Cruelty: It is unlawful for any person to willfully or maliciously kill, beat, sexually abuse, maim, poison, disfigure or scald any animal, except that reasonable force may be employed only to drive off and repel vicious or trespassing animals.

2. Molesting Animals: It is unlawful for any person to tease, annoy, disturb or molest any animal, which is on the property of its owner, or under the control of its owner.

#### 3. Neglect:

a. It is unlawful for any owner of an animal to fail, refuse, or neglect to provide said animal with proper and adequate food and water. Any animal habitually kept outside shall be provided, by its owner, with a structurally sound, enclosure large enough to accommodate the animal in a manner suitable for that species, or other shelter suitable to the species.

b. An owner must keep the premise where an animal is kept free of garbage, hazardous materials, insect infestation, and other debris that may endanger the animal's health & safety.

c. An owner must provide an injured animal or sick animal with adequate veterinary care so as to reduce suffering.

4. Abandonment: It is unlawful for any person to abandon any livestock, equine, or animal within the Navajo Nation.

5. Animal Fights: It is unlawful for any person to promote stage, hold, manage, conduct, or carry on any game, exhibition or contest in which one or more animals are engaged for the purpose of injuring, killing, maiming or destroying themselves, or any other animal.

#### B. This Section does not apply to:

1. The practice of veterinary medicine as provided in any applicable Navajo Nation veterinary laws;

2. The treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices; and



3. Use of commonly accepted rodeo practices, unless otherwise prohibited by law.

C. Penalties:

1. Any person in violation of Subsection 1273(A)(1) Cruelty will be fined a minimum of five hundred dollars (\$500.00) not to exceed five thousand dollars (\$5,000.00) or sentenced to one year in jail or both.

2. Any person in violation of Subsection 1273(A)(2) Molesting Animal(s) will be fined a minimum of five hundred dollars (\$500.00) not to exceed two thousand and five hundred dollars (\$2,500.00) or sentenced to six months in jail or both.

3. Any person in violation of Subsection 1273(A)(3) Neglect will be fined a minimum of two hundred and fifty dollars (\$250.00) not to exceed five thousand (\$5,000.00) or sentenced to six months in jail or both.

4. Any person in violation of Subsection 1273(A)(4) Abandonment will be fined a minimum of five hundred dollars (\$500.00) not to exceed two thousand and five hundred dollars (\$2,500.00) or sentenced to six months in jail or both.

5. Any person in violation of Subsection 1273(A)(5) Animal Fighting will be fined a minimum of five hundred dollars (\$500.00) not to exceed two thousand and five hundred (\$2,500.00) or sentenced to six months in jail or both.

D. Courts may also forfeit animals under this Section to the Navajo Nation. Section 1306 shall be applied for restitution purposes. Restitution shall be included but not limited to the following: transportation costs, salary, veterinary medical fees and general feed and care requirements of the forfeited animals.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**§ 1274. Penalties**

Any person who fails to comply with Sections 1268 to 1271 and is convicted of this violation shall be fined a minimum of two hundred and fifty dollars (\$250.00) and not to exceed one thousand and five hundred dollars (\$1,500.00), or have his/her livestock buying privilege within the jurisdiction of the Navajo Nation suspended for one year or both.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

## Subchapter 5. Seizure of Livestock

### **§ 1301. When a livestock officer and deputy livestock inspector may seize livestock**

Livestock officers and deputy livestock inspectors shall seize livestock, except unweaned animals running with their mother, wherever found, when the livestock officer questions the livestock's ownership. The question of ownership may be raised in the following circumstances:

- A. The livestock is not branded as required by this Chapter;
- B. The ownership of the livestock is questioned by the inspector or other person;
- C. The livestock has brands so mutilated, indistinct, burned or otherwise disfigured as to be difficult of ascertainment;
- D. The livestock bears a brand which is not recorded;
- E. The livestock is freshly branded and not found with its mother;
- F. The livestock has a brand or mark not the recorded brand or mark of the owner;
- G. The livestock is that which is known as "leppys", "orejanas", "sleepers", "dogies", or "mavericks";
- H. Circumstances raising questions as to the livestock's ownership;
- I. Circumstances involving livestock abandonment, neglect and cruelty;
- J. Circumstances where the livestock endangers public safety and right-of-way areas; or
- K. When an owner or user allows his or her livestock or livestock under his or her control to occupy or graze upon the lands of another, where notice of trespass is given by actual communication, posting, fencing, or other means calculated to give notice by a livestock officer.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

### **§ 1302. Keeping livestock following seizure; expenses; use of livestock in criminal prosecution; sale of unclaimed livestock; non-liability of the Navajo Nation**

A. When a livestock inspector has seized livestock, as provided by this Subchapter, he/she shall safely keep and care for it for a period of seven

days, during which any person may inspect the livestock.

B. The expenses of seizure, feeding and caring for livestock for the seven day period shall be a charge against the Department and paid from any fund available for that purpose, including the Livestock Custody Fund.

C. At any time prior to the expiration of seven days after the seizure of livestock, the appropriate law enforcement officials may take charge of and keep the livestock at the expense of the Navajo Nation when deemed to be of evidentiary value in any criminal prosecution arising from the seizure.

D. The Director may contract with any person to handle, feed and care for livestock taken into custody under this Section. The Navajo Nation is not liable for the injury or death of any person or livestock or damage to property due to performance of the contract.

E. If the appropriate law enforcement officials have not possessed the seized livestock upon the expiration of the seven days after its seizure, it shall be sold by the inspectors for cash at a livestock auction or to a livestock buyer after five days notice given by posting written notice in three public places in the District where the livestock is held. Proceeds from the sale shall be transmitted to the Department to be deposited in the Livestock Custody Fund and upon final determination of all actions arising from the seizure of the livestock the Department shall pay the proceeds to the persons entitled thereto under the judgment of the court. The Department shall cause to be posted in three public places in the district where the livestock are held stating that the livestock will be sold at public auction for cash to the highest bidder. The notice shall be posted for seven days after the livestock have been seized and at least five days before the sale. The notice shall state the location where the livestock will be sold. Proceeds from the sale shall be transmitted to the Department to be deposited in the Livestock Custody Fund established by Section 1302, and upon final determination of all actions arising from the seizure of the livestock the Department shall pay the proceeds, less the veterinary cost, hauling charges and expense of feeding and caring for such livestock, to the persons entitled thereto under the judgment of the court.

F. The amount received by the Department of Resource Enforcement shall be remitted to the Controller of the Navajo Nation, and deposited in a special fund designated the Livestock Custody Fund. The Livestock Custody Fund may be used by the Department of Resource Enforcement for the enforcement of any of Sections of this Chapter.

G. Any livestock or equine seized by a livestock officer or deputy livestock inspector, if not vaccinated or proof of vaccination is not provided shall have said livestock or equine vaccinated before transporting said livestock or equine to the seizure pens.

H. Whenever a livestock officer or deputy livestock inspector finds any animal is or will be without proper care because of injury, illness, and/or incarceration of as a result of the absence of the owner or person responsible for the care of such animal, the livestock officer or deputy livestock inspector may enter the property or premises where said animal is located and may take up such animal for protective care; and in the event of sickness or

injury of the animal, under the instruction of an accredited veterinarian, the livestock officer or deputy livestock inspector may take such as called for to prevent undue pain and suffering, including immediate destruction of the animal.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

ACD-166-82, December 21, 1982.

#### **§ 1303. Report of seizure; filing and docketing**

A. Livestock officers or deputy livestock inspectors shall forthwith report any seizure of livestock pursuant to this Subchapter to the appropriate law enforcement officials and to the Department.

B. The report of the livestock officer or deputy livestock inspector relating to the seizure of livestock shall give a general description of the livestock seized, brands and other animal identifications, if any, together with the place of and reason for the seizure and the probable value of the livestock and request that the owner and claimant be cited to appear and prove ownership.

C. The Department shall file the report and shall file an action in the Navajo Nation Court in the name of the Navajo Nation, and against the reputed owners of the livestock, if known, and if not known, against the unknown owners.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

**Note.** See §§ 1301 and 1302 herein.

#### **§ 1304. Setting time for hearing on ownership of seized stock; issuance of citation**

A. The clerk of the court shall enter a brief statement thereof on the docket and set a time for hearing evidence of the ownership of the livestock, which shall be not less than seven and not more than 15 days after the date the report is filed.

B. The clerk shall issue a citation directing all persons claiming the livestock, or any portion thereof, to appear at the time set, and offer proof

of ownership.

C. The citation shall be addressed to those whom it may concern. It shall set forth substantially the facts given in the report. The citation shall be delivered to and served by the livestock officer and deputy livestock inspector who made the seizure. The citation is returnable and shall be heard as a civil action.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **§ 1305. Service of citation on owner of stock seized; proceedings on default**

A. If the livestock seized is branded and marked with an adopted and recorded brand, mark, or other animal identification, the citation shall be served upon the person who owns the brand or mark as shown by the record in the brand book if such person can be found on the Navajo Nation. The service shall be at least one day before the day set for the hearing and a copy of the citation shall be posted in at least three public and conspicuous places in the District at least five days before the day set for the hearing.

B. At the time set for hearing, the livestock inspector, or other officer, shall make return of the citation to the court. If it appears that due service of the citation has been made, as required by this Section, and no one appears to claim the livestock so seized, or any portion thereof, within the time provided, the court shall thereupon adjudge the livestock forfeited to the Navajo Nation and shall order it sold as provided in this Subchapter.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **§ 1306. Hearing on claim; release or sale of seized stock; appeals**

A. If any person appears at the time fixed for the hearing and claims the livestock, or any portion thereof, the claim shall be stated and the judge of the court shall enter upon the minutes of the court the fact that the claim is made and the hearing shall proceed as in civil actions.

B. Livestock determined by the court to be owned by any person shall be released from seizure, upon payment of the pick up and hauling charges and expenses of feeding and caring for such livestock, and livestock not so adjudged, or the ownership of which is doubtful, shall be forfeited to the Navajo Nation and ordered sold by the livestock officer or deputy livestock inspector at public auction at a convenient public place in the district where

seized, upon a fixed date after notice, as provided in 7 N.N.C. § 709.

C. An appeal from the judgment may be taken as in civil actions and shall be governed by the same rules.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **§ 1307. Sale of seized stock; disposition of proceeds**

A. Livestock officers or deputy livestock inspectors shall execute the order of sale made pursuant to 3 N.N.C. § 1306 and deliver a bill of sale to the purchaser, describing the livestock sold and the amount sold for, and forward to the Department a duplicate of the bill of sale. Upon delivery of the bill of sale, title to the livestock shall pass to the purchaser.

B. Livestock officers or deputy livestock inspectors shall immediately after the sale is made, or after release to the owner who pays the hauling charges and expenses of feed and care of such livestock, remit the proceeds thereof to the Department, together with an itemized statement of the expense of the seizure and sale, which shall be paid as other claims.

C. The amount received by the Department shall be remitted to the Controller of the Navajo Nation, and deposited in a special fund designated the Livestock Custody Fund.

D. The Livestock Custody Fund may be used by the Department for the enforcement of this Chapter.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **§ 1308. Holding and sale of stray animals; repossession before and after sale; non-liability of Navajo Nation**

A. When a livestock officer or deputy livestock inspector finds a stray animal he/she shall attempt to locate the owner, and if located notify him/her where the animal may be found. If the owner does not take immediate possession of the animal, or if the owner or claimant thereof is unknown or cannot be located, the inspector shall seize the stray animal and sell it at public auction to the highest bidder for cash, after giving at least five days notice of the sale.

B. The Department shall cause notice to be posted and shall describe the animal to be sold and shall state the time and place of sale, said notice shall be posted in at least three public and conspicuous places in the district

wherein the animal was found at least five days before the date set for the sale. If the owner of the animal is known and can be located, a copy of the notice shall also be delivered to the brand owner's residence at least five days before the sale. The notice shall state the location where the stray animal will be held and the location where the animal will be sold.

C. The owner of a stray animal may take possession of the animal at any time prior to sale by proving ownership, paying the inspection fee, and all expenses incurred in keeping and caring for the animal. This will include trailer transportation plus pick up costs, mileage and Department personnel man hours used in seizing this stray animal and any other cost incurred in maintaining said livestock.

D. If the owner of the stray does not claim the animal before the day of sale, or if the owner is unknown or cannot be located, the livestock officer or deputy livestock inspector shall sell the animal pursuant to the notice, and shall deliver a bill of sale and a livestock inspection certificate to the purchaser. The owner of an animal sold may take possession of it at anytime before the purchaser thereof sells it by paying to the purchaser the purchase price paid at the sale, together with the expense of keeping and caring for the animal from the date of sale to the time the owner takes possession of the animal.

E. Livestock officer or deputy livestock inspector shall immediately after the sale is made remit the proceeds thereof to the Department, together with an itemized statement of the expenses of the seizure and sale, which shall be made as other claims. The amount received by the Department shall be remitted to the Controller of the Navajo Nation and deposited in a special fund entitled Livestock Custody Fund.

F. Livestock that are received at auction markets without proper documentation but with no evidence of criminal intent by the shipper may be sold, but the livestock officer or deputy livestock inspector shall impound the proceeds of the sale in the Livestock Custody Fund established by Section 1302. On presentation of proper documentation of ownership, the Department shall pay the proceeds, less any charges incurred, to the person who is entitled to the proceeds.

G. This Section shall also apply to cruelty, molested, neglect, abandonment and animal fight livestock or equine.

H. The Director may contract with any person to handle, feed and care for stray animals taken into custody under this Section. The Navajo Nation is not liable for the injury or death of any person or stray animal or damage to property due to performance of the contract.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **Cross References**

Livestock brands generally, see §§ 2001, 2002 of this title.

Other offenses relating to livestock brands, see 17 N.N.C. § 461.

Penalty, see § 1356 of this title.

C.J.S. Animals §§ 264 to 270, 272 to 290, 309 to 314, 428, 434, 505.

#### **§ 1309. Representation of livestock officer by Navajo Nation prosecutor**

The Navajo Nation prosecutor of the district wherein the livestock is seized shall represent the livestock officer or deputy livestock inspector and the interests of the Navajo Nation in proceedings under this Act.

##### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1310. Notification required on seizure by government agencies**

All Navajo, federal, state and local governmental agencies shall notify the Department within two hours of any seizure of any livestock or property in or on which livestock is present or when a person responsible for the care of any livestock is taken into custody and the person from the tribal, federal, state or local governmental agency knows that the person taken into custody is responsible for the care of any livestock.

##### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1311. Livestock or equine roundup procedures and requirements**

##### **A. Procedures:**

1. District Grazing Committee members and Eastern Land Board members (hereinafter "members") must assess the livestock body condition, availability of forage, water and situation in their respective chapters and present their evaluation at the next chapter meeting.

2. By resolution, the chapter will identify a team to coordinate roundup activities to conduct the roundup and recommend said livestock to be sold. The chapter will designate a lead person for this team.

3. Upon receipt of chapter authorization, the chapter members shall identify all available resources including, but not limited to, funds, feed, water troughs, manpower, vehicles, and trailers. The chapter



official shall provide assistance on an as needed basis. The members shall also coordinate the roundup with the Resource Enforcement Department, livestock officer or local deputy livestock inspector, and the Department of Agriculture.

4. Chapter members and livestock owners shall be given 10 days notice of the dates, times, and location of the roundup. Such notice shall include posting of three written notices at public places within the communities. Public services announcements may be used for radio at the discretion of the chapter.

5. It is mandatory for a livestock officer or deputy livestock inspector to be present at all roundups and livestock sales to perform inspections and ensure compliance with the livestock laws of the Navajo Nation as codified at Sections 1201 through 1523.

6. Process for the disposition of livestock gathered during the roundup:

a. All unclaimed and unbranded livestock shall be hauled to designated holding pens.

b. Owners shall have five days to claim their stray animals which were impounded. Proof of ownership shall be required with original documents only.

c. After the five-day claim period, the Department of Resource Enforcement shall sell the remaining livestock.

d. The designated livestock officer or deputy livestock inspector shall be responsible for maintaining accurate records of the description, animal identification (when applicable) and type of livestock gathered during the roundup, the purchase price, date, and location of the sale. All records will be submitted to the Department at the end of the roundup.

e. All proceeds from the sale of the livestock or equine shall be placed in the Livestock Custody Fund account for 20 days. These funds shall be disbursed to persons having a rightful claim to any livestock sold. Expenses for the transportation, care, feeding and sale of the livestock shall be deducted from any payments due.

f. After the 20-day period, the remaining funds, less expenses for the transportation, care, feeding and sale of the livestock as submitted by the Department of Resource Enforcement, Navajo Nation Veterinary and Livestock Program, Department of Agriculture, and chapter, shall be deposited and maintained in the Livestock Custody Fund account to be used by Department of Resource Enforcement, Navajo Nation Veterinary and Livestock Program, Department of Agriculture and Grazing Management Program.

g. Claims are to be submitted within 20 days of the seizure.

B. Voluntary Sales.

1. Chapter member(s) who choose to sell excess livestock during a roundup shall be responsible for the transportation of their livestock to the sale site. Participants in the scheduled livestock sales shall abide by the sale procedures established by Navajo Nation Code and the Resource Enforcement Department.

2. It is recommended that all livestock owners evaluate their livestock and use the following factors in deciding to market any or all of their livestock:

a. Excess or unwanted animals.

b. Cull animals.

(1) Old or sick animals.

(2) Infertile or sterile animals.

(3) Undesirable breeding stock.

3. Any person refusing to cull animals as specified in this Section shall be sentenced to imprisonment for a term not to exceed 30 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

4. Forfeiture. Any animal found to be cull will be forfeited to the Navajo Nation and destroyed upon order of a court of the Navajo Nation.

#### C. Emergency Conditions.

1. If the Navajo Nation President declares an emergency and the Navajo Nation is in the midst of a severe drought and immediate action must be taken to alleviate the emergency conditions.

2. All unbranded livestock rounded up will be sold immediately and branded livestock shall be sold within two days of the roundup.

3. It is also imperative that Navajo livestock owners voluntarily participate in these livestock sales by marketing excess or unwanted animals.

#### D. Interference with authorized roundups.

1. A person commits an offense pursuant to this Section if he or she interferes with or obstructs an authorized roundup which has for its purpose the removal of unowned horses or other livestock, or is for the purpose of determining ownership or is designed to protect Navajo Nation land from destruction or injury.

2. Any person found guilty of violating this Section shall be sentenced to imprisonment for a term not to exceed 30 days, or be ordered to pay a fine a minimum of five hundred dollars (\$500.00) but not to exceed five thousand dollars (\$5,000.00) or both.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

### **§ 1312. Report by livestock officer or inspector; preliminary disposition of proceeds of sale**

A. Upon making the sale as provided by Sections 1306 and 1307, the livestock officer or inspector shall notify the Division of the name of the purchaser, the time and place of sale, the amount for which the animal was sold and a description of the animal showing the marks and brands, if any, or other identifying marks and brands, shall pay to the Department the net proceeds realized at the sale.

B. The Department shall place the amount realized from the sale of stray animals in the Livestock Custody Fund established by Section 1302.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

### **§ 1313. Payment of proceeds of sale to owner of stray**

Upon making satisfactory proof of ownership of any animal sold as a stray within 20 days after the sale, the Department shall pay to the owner of the animal the net proceeds realized at the sale less any expenses incurred by the Navajo Nation and its entities.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

## **Subchapter 7. Offenses; Penalties**

### **Cross References**

Animals; livestock, see 17 N.N.C. §§ 350, 460-466, and 524.

### **United States Code**

Driving stock to feed on lands without consent of tribe, 25 U.S.C. § 179.

Injuries to stock by Indians, reparation, 25 U.S.C. § 229.

## Code of Federal Regulations

Grazing permits, see 25 CFR § 166.1 *et seq.*

### **§ 1351. Gathering livestock or equine for tournament or contest without consent of owner**

Any person who knowingly gathers range livestock or equine for the purpose of a tournament or contest for amusement or reward, or competition for prizes, or who engages in a steer tying contest or exhibition of steer-tying, or who casts, ropes or throws a horse, cow or other kind of animal without the written consent of the owner, except in the necessary work done on the range or elsewhere in handling such animals, is guilty of an offense.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **Cross References**

Penalty, see § 1365 of this Title.

### **§ 1352. Driving livestock or equine from range without consent of owner; classification**

When livestock of a resident of the Navajo Nation is driven off its range, without consent of the owner, by any person as a drover of any herd or drove knowingly, such drover of livestock or equine and every person engaged in the care or management of such herd or drove, is guilty of an offense.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **Cross References**

Penalty, see § 1365 of this Title.

C.J.S. Animals §§ 237 to 243, 518.

### **§ 1353. Taking livestock or equine without consent of owner; classification**

A person who knowingly takes from a range, ranch, farm, corral, yard or stable any livestock or equine and uses it without the consent of the owner or the person having the animal lawfully in charge is guilty of an offense.

## History

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

## Cross References

Penalty, see § 1365 of this Title.

### **§ 1354. Branding or altering brand of livestock or equine of another; classification**

A. The Navajo Nation requires every individual owning livestock and equine to adopt and record a brand and earmark with which to brand and mark such livestock; said brand can be obtained with a grazing permit or applied for from the state.

B. All Navajo-owned livestock and equine over six months of age grazing on the Navajo Nation must be branded and maintain individual animal identification.

C. State brands can be acquired only under the provisions herein.

D. The Navajo Nation adopts the individual district brands plus the -N, location left shoulder, as the official brand as assigned by Bureau of Indian Affairs and/or District Grazing Committee and will accept a state brand and the specified state brand location if obtained within the requirements of this Chapter.

E. Each Navajo livestock and equine owner who has or obtains a registered individual state brand shall report to his/her respective District Grazing Committee showing proof of such active state brand registration in order that said brand may be recorded on his/her grazing permit.

F. Any person(s) or agent(s) who brands or marks any livestock or equine with a brand other than the recorded brand of the owner, or who alters any brand or mark upon any livestock or equine, with intent to convert the ownership of the animal(s) to his/her own use, is guilty of an offense and is liable to the owner of the animal for three times (3x) the value there of.

G. A person who refuses to brand or mark his/her livestock or equine is guilty of an offense. Branding and/or marking are required to show proof of ownership.

H. A person who commits a false report of ownership and willfully makes a false report as to the total number of livestock and/or equine owned, or refused to make a true report of livestock and/or equine ownership is guilty of an offense and shall be fined a minimum of two hundred and fifty dollars (\$250.00) but not to exceed five thousand dollars (\$5,000.00).

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

**Note.** Slightly reworded for statutory clarity.

### **Cross References**

Livestock brands generally, see §§ 2001, 2002 of this title.

Other offenses relating to livestock brands, see 17 N.N.C. § 353.

Penalty, see § 1365 of this Title.

C.J.S. Animals §§ 6, 23 to 60, 382, 519 to 522.

### **§ 1355. Obliterating or changing brand, mark or ear mark**

A person who intentionally obliterates, disfigures, extends or changes a recorded brand, or by other and additional marks, figures or characters converts a recorded brand into some other brand, is guilty of an offense.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

### **Cross References**

Livestock brands generally, see §§ 2001, 2002 of this Title.

Other offenses in this Chapter, see §§ 1258, 1259, and 1260 of this title.

Other offenses relating to livestock brands, see 17 N.N.C. § 353.

Penalty, see § 1365 of this Title.

### **§ 1356. Prima facie guilt of owner of brand to which another brand is altered**

When it is proved that a recorded brand has been converted or changed into another brand claimed or owned by any person, it shall be prima facie evidence in the courts and before the Department of the Navajo Nation that the claimant or owner of the latter brand obliterated, disfigured and changed the prior recorded brand.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Offenses relating to animals and livestock, see 17 N.N.C. §§ 350, 460-466, and 524.

Penalty, see § 1365 of this Title.

#### **§ 1357. Unlawfully killing, selling or purchasing livestock or equine of another; classification; civil penalty; exception**

A. Any person who knowingly kills or sells livestock or equine of another person, the ownership of which is known or unknown, or who willfully, knowingly purchases livestock or equine of another person, the ownership of which is known or unknown, from a person not having the lawful right to sell or dispose of such animals, is guilty of an offense.

B. A person who knowingly attempts to take or does take all or any part of a carcass of any such livestock or equine, pursuant to Subsection A, for such person's own use, the use of others or for sale is guilty of an offense.

C. In addition to any other penalty imposed by this Section, a person depriving the owner of the use of his/her livestock or equine under Subsection A or B of this Section shall be liable to the owner for damages equal to three times (3x) the value of such livestock or equine.

D. This Section shall not apply to animals under the stray laws or livestock roundups procedures.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **Cross References**

Other offenses in this Chapter, see §§ 1258, 1259, and 1260 of this title.

Penalty, see § 1365 of this Title.

#### **§ 1358. Possession of livestock or equine without bill of sale**

The possession of livestock or equine without a written and bill of sale can be used as prima facie evidence for a charge of unlawful possession, handling, driving or killing of livestock or equine.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

### **§ 1359. Proof of branding with brand of accused as tending to show conversion by the accused**

For violations of the livestock laws of the Navajo Nation, the prosecutor may prove, as tending to show a conversion by the accused, that the animals in question were branded into a brand or were marked into a mark claimed by the accused to be his brand or mark, although neither the brand nor the mark is recorded.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

### **§ 1360. Abandonment of livestock or equine and animals at boarding facility or veterinary facility**

When livestock or equine or animal left at a boarding facility or any livestock, equine or animal left at a veterinary facility has not been reclaimed within the period of time previously agreed upon at the time of delivery of the livestock or animal to the boarding facility or veterinarian, the boarding facility or veterinarian may give written notice by certified mail to the last known address of the owner, possessor or custodian of the livestock, equine or animal, and if the livestock, equine or animal is not reclaimed within 14 days from the date of the mailing of the notice, the livestock, equine or animal shall become the property of the boarding facility or veterinary facility to dispose of as the boarding facility or veterinary facility sees fit.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

### **§ 1361. Dogs killing, injuring or chasing livestock or equine; liability of owner; classification**

A. If any person discovers a dog killing, wounding or chasing livestock or equine, or discovers a dog under circumstances which show conclusively that it has recently killed or chased livestock or equine, he/she may pursue and kill the dog.

B. The owner of a dog is liable for all damages caused by the dog chasing, killing or wounding livestock or equine; provided that the livestock or equine is within an area of authorized use. In the case of a dog killing or wounding livestock or equine, the owner of the dog is liable for damages to the



owner of the livestock or equine to three times (3x) the value of the livestock or equine killed or wounded including but not limited to veterinary expense and other fees associated with damages.

C. No person shall keep any dog after it is known that dog is liable to kill or injure livestock, and it shall be the duty of the owner to kill, or have killed, the dog upon order of the Navajo Nation Animal Control Program after a finding that the dog has killed or injured livestock; provided, however, that it shall be the right of any owner of livestock so killed or injured by the actions of any dog or any person witnessing, such actions to kill such animal while it is upon property controlled by the owner of the livestock. If a dog is observed attacking livestock and wildlife (game animals), individuals authorized by the Director can take appropriate action to prevent these actions.

D. An owner of a dog who recklessly allows or causes the dog to:

1. Wound or kill livestock or equine owned by another person is guilty of an offense.

2. Chase livestock or equine owned by another person, causing injury to the livestock or equine, is guilty of an offense.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1365 of this Title.

#### **§ 1362. Person allowing livestock or equine to run at large within fence roadway or residential area or withdrawn area**

The owner or person in charge of livestock or equine, who recklessly allows or permits livestock or equine to run at large within a fence roadway, or residential area, or withdrawn areas, is guilty of an offense.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1365 of this Title.

#### **§ 1363. Failure to remove livestock or equine from fence roadway or residential area or withdrawn area**

A. The owner or person in charge of livestock or equine, who fails to

remove his/her livestock equine from fenced roadway, or residential area, or withdrawn areas, is guilty of an offense.

B. The owner or person in charge of livestock or equine who places, allows or enters a withdrawn forest land for the purpose of grazing is guilty of an offense.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1365 of this Title.

### **§ 1364. Failure to remove injured or dead livestock or equine**

A. The owner or person in charge of livestock or equine, who fail to removed his/her injured or dead livestock or equine after being notified by an officer, is guilty of an offense.

B. If the livestock or equine owner fails to removed a dead or injured livestock or equine, they will be responsible for all removal cost, care and disposal fees.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **Cross References**

Penalty, see § 1365 of this Title.

### **§ 1365. Penalties**

Unless otherwise provided, any person who violates this Chapter and is convicted of such violation shall be subject to the following punishments:

A. For violation of Sections 1351 to 1364, he/she shall be sentenced for a period not to exceed 180 days jail or shall be fined a minimum of two hundred dollars (\$200.00) not to exceed five thousand dollars (\$5,000.00), or both.

B. In addition, damages resulting from grazing in withdrawn areas, the offender will be required to pay the Navajo Nation the fair market value of the damaged property and/or restoration costs.

C. Restitution of three times (3x) the value of the livestock, equine and ratite can be included to the owner of the livestock, equine and ratite.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJN-83-66, June 22, 1966.

#### **Cross References**

Offenses relating to animals and livestock, see 17 N.N.C. §§ 350, 460-466, and 524.

#### **§ 1366. Lawful fence defined**

A. A fence shall be deemed a lawful fence when it is constructed and maintained with good and substantial posts firmly placed in the ground at intervals of not more than 20 feet, upon which posts are strung and fastened at least four strands of barbed wire the usual type tightly stretched and secured to the posts and spaced so that the top wire is 50 inches above the ground and the other wires at intervals below the top wire of 12, 22, and 32 inches. If the posts are set more than 20 feet apart, the wires shall be supported by stays placed not more than seven to 10 feet from each other or from the posts, extending from the top wire of the fence to the ground, and each wire of the fence securely fastened thereto.

B. All fences constructed other than as provided in Subsection A, or of other materials equally as strong and otherwise effective to turn livestock as the fences described in Subsection A, shall also be deemed lawful fences within the meaning of this Section.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1367. Failure to close or maintain gates**

A person violates this Section when he/she fails to close or maintain gates intended for the exclusive use of persons for convenience and the gates are left in such a condition which allows livestock to access roadways. The gates are to be maintained in such a manner as to preclude the possibility of livestock entering right-of-way areas and must be kept in a closed condition at all times. If he/she fails to comply with this Section, he/she is guilty of an offense and shall be fine of one hundred dollars (\$100.00) not to exceed five hundred dollars (\$500.00).

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1368. Resisting or obstructing a livestock officer or deputy livestock**

## **inspector**

If any person interferes with the duty and responsibility of a Navajo Nation bona fide commissioned livestock officer or deputy livestock inspector in the performance of his/her duties and responsibilities is guilty of an offense and shall be sentenced to 365 days in jail or a minimum fine of five hundred dollars (\$500.00) not to exceed five thousand dollars (\$5,000.00) or both.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

## **§ 1369. Failure to obtain premise identification**

Any person within the Navajo Nation who fails to obtain premise identification from their respective Navajo Nation office is guilty of an offense and shall be fined a minimum of one hundred dollars (\$100.00) not to exceed five hundred dollars (\$500.00).

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

## **§ 1370. Failure to properly tag livestock with individual identification**

A. Any person within the Navajo Nation who fails to tag their livestock with their individual RFID tag for cattle identification number is guilty of an offense and shall be fined a minimum of twenty-five dollars (\$25.00) per head not to exceed one thousand, seven hundred and fifty dollars (\$1,750.00).

B. Any person within the Navajo Nation who fails to properly tag their sheep and goats with the approved Navajo Nation Animal Identification System is guilty of an offense and shall be fined ten dollars (\$10.00) per head and shall not exceed three thousand and five hundred dollars (\$3,500.00).

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

## **§ 1371. Failure to comply with grazing requirements**

Any person who fails to comply with grazing requirements of the Navajo Nation is guilty of an offense and shall be fined a minimum of two hundred and fifty dollars (\$250.00) and not to exceed five thousand dollars (\$5,000.00).

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**§ 1372. Unlawful introduction of livestock or equine on Navajo Nation land without a valid Navajo Nation or Eastern Land grazing permit**

A. No person shall introduce or allow his or her livestock or equine to graze on Navajo Nation land without a valid Navajo Nation or Eastern Navajo grazing permit.

B. No person shall willfully graze livestock and equine in excess of the permitted number on Navajo Nation range, or refuse to graze his or her livestock and equine in accordance with range-management plans which have implemented deferred grazing, or have reserved specific areas for seasonal use.

C. Sentence. Any person found guilty of violating this Section shall be fined a minimum of two hundred dollars (\$200.00) but not to exceed five thousand dollars (\$5,000.00).

D. Restitution. The courts, in addition, may require the offender to pay the Navajo Nation the fair market value of the damaged property and/or restoration cost or any other cost associated with removal of said livestock or equine. In lieu of cash, a fine, if levied, may be collect in livestock.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**§ 1373. Use of undesirable sires; penalties**

A. Bulls grazed on open range shall be of a uniform breed, preferably registered breeds, and limited to a 90-day breeding season, and the breed shall be determined by the permittee.

B. Ram shall be of the fine wool or meat type breed.

C. All stallions and studs must be maintained in an enclosed fence, and shall not be permitted to roam at large on open range.

D. Stallions that are not used for breeding shall be castrated.

E. Any person who fails to comply with requirements of this Section shall be guilty of an offense and fined a minimum of one hundred dollars (\$100.00) and not to exceed five hundred dollars (\$500.00) per offense.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

## **Chapter 8. Navajo Stallion Service**

### **§ 1401. Establishment**

There is established the Navajo Nation Stallion Service under the auspices of the Navajo Nation, Division of Natural Resources, Agricultural Resources Department.

#### **History**

ACJA-6-83, January 5, 1983.

**Note.** Slightly reworded for purposes of statutory form.

### **§ 1402. Goals; objectives**

A. The goals of the Navajo Stallion Service are to:

1. Improve the quality, usability and income potential of the horses produced on the Navajo Nation.

2. Offer training and education as to horse selection, breeding, herd health, and management programs to Navajo stockmen.

B. The objectives of the Navajo Stallion Service are to:

1. Offer a choice of quality stallions for breeding purposes to Navajo stockmen at the lowest possible cost.

2. Prepare and distribute information concerning stallions available, horse production management, horse education and selection, horse health programs and related subjects to any interested party.

3. Provide technical, veterinary, and management assistance to stockmen in an effort to further their livestock production both as to quality improvements and increased profitability.

4. Maintain the program as an on-going financially self-sufficient project of the Navajo Nation.

#### **History**

ACJA-6-83, January 5, 1983.

**Note.** Slightly reworded for purposes of statutory form.

### **§ 1403. Financial considerations**

In an effort to make the program financially self-sufficient and to keep the total cost to the mare owner as low as possible so that the service is available to all Navajo stockpersons, the following will be done:

A. A revolving account will be set up. This account will be used to

acquire feed, supplies, equipment, and cover other costs of operation. These expenditures will be used to expedite the operation of the project and all financial records and receipts are to be kept to provide accountability. The source of funds is to be all payments made by mare owners for mare care and operational expenses.

B. Mare owners will be charged a minimal amount to cover mare feed, routine breeding costs, cost of maintaining the stallions and other costs of operating the program. Initially this is projected to be fifty dollars (\$50.00) for the first ten days the mare is at the facility and then two dollars (\$2.00) per day thereafter. Since charges cover the care and feeding of the mares and operational expenses for the program, it will be non-refundable. The fee shall be adjusted annually by action of the Resources Committee on recommendation from the staff veterinarian through the Director of the Division of Natural Resources.

#### **History**

ACJA-6-88, January 5, 1983.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1404. Management**

The Agricultural Resources Department, staff veterinarian, and Livestock Program Manager, shall share management responsibilities and duties as best suited to their talents and abilities.

#### **History**

ACJA-6-83, January 5, 1983.

#### **§ 1405. Facilities**

The program will utilize the facilities of the Navajo Nation Fairgrounds to operate the service and house the mares. These facilities have been examined and deemed appropriate by the Division of Natural Resources staff veterinarian.

#### **History**

ACJA-6-83, January 5, 1983.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1406. Operational procedures**

A. Mares will be accepted for breeding from February 1 through June 1. All mares must be removed from the facility by June 30.

B. Mares will be booked to stallions on a first come, first serve basis. At the time of booking the mare owner will fill out and sign a breeding agreement and pay the non-refundable expense fee. The number of mares booked to each stallion will be limited to what is deemed acceptable to the staff

veterinarian. Mares will be accepted as long as stallions are not overworked and facilities are not overcrowded. Bookings will be limited to three mares per breeding season, per individual. (The person doing the booking must have a valid Navajo census number and be at least 18 years of age.)

C. At the time of entry each mare will be given worming, vaccination, and dental care if needed. Each mare will also receive a uterine culture before breeding. These items will be covered by the expense fee paid at time of booking. Any additional veterinary services requiring use of drugs or supplies will be paid by the mare owner on an "at cost" basis.

D. Accurate records as to entry and release dates, breeding, and treatment will be kept on all mares.

E. Since the purpose of the program is to improve livestock quality, all mares must be of acceptable size, conformation, and disposition. All incoming mares will be screened by the staff veterinarian and the Livestock Program staff to determine eligibility. This will be done via an objective Mare Evaluation Form based on suitable criteria. Any mare with an infectious or communicable disease will be barred from the program to safeguard the well being of the other horses in the facility.

F. All mares will be provided with satisfactory means of identification such as numbered halters or neckbands which they will wear at an times while at the facility.

G. Any of the above conditions may be waived or modified by the Resources Committee to compensate for special situations or needs. The owner of a mare that has been rejected for breeding based on the Mare Evaluation Form may appeal the decision of the staff veterinarian to the Resources Committee through the Director, Division of Natural Resources.

H. It will be the mare owner's responsibility to maintain contact with the program and to remove the mare from the facility when the staff veterinarian so advises; any mare left for 30 days after the staff veterinarian has determined that she is ready to be dismissed becomes the property of the Stallion Service Program to be disposed of as the program director sees fit. No mare is to be released until all mare care, veterinary charges, and any other outstanding charges are paid in full.

#### **History**

ACJA-6-83, January 5, 1983.

**Note.** Slightly reworded for purposes of statutory form.

### **Chapter 9. Health Requirement Offenses; Control of Contagious Diseases; Penalties**

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.



## § 1501. Definitions

A. "Abandonment" means and includes the leaving of an animal by its owners or other person or persons responsible for its care or custody without making effective provisions for its proper care and control.

B. "Animals" means any animal mammal, other than human, and includes birds, reptiles, fish, wild and domesticated animals.

C. "Animal fights" means it is unlawful for any person to promote stage, hold, manage, conduct, or carry on any game, exhibition or contest in which one or more animal are engaged for the purpose of injuring, killing, maiming, or destroying themselves, or any other animals. This does not apply to rodeo events.

D. "Cruelty" means it is unlawful for any person to willfully or maliciously kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise conduct cruelly set upon an animal, except that reasonable force maybe used. Cruelty also includes every act or omission, which causes or unreasonably permits the continuation of unnecessary or unjustifiable pain and suffering.

E. "Department" means the Department of Resource Enforcement, Navajo Veterinary Livestock Program or the Department of Agriculture.

F. "Deputy Livestock Inspector" as used in this Act shall mean a non-commissioned officer who provides livestock inspection services only and duties shall also include the seizure of livestock under this Title.

G. "Director" means the Director of the Department of Resource Enforcement and the Director of Navajo Nation Department of Agriculture.

H. "Disposal" means the deposit or dumping of any animal (carcass) into or on any land or water so that such animal (carcass) or any constituent (animal parts) thereof may enter the environment or be emitted into the air or discharged into any water, including ground water.

I. "Division" means the Navajo Nation Division of Natural Resources.

J. "Division Director" means Executive Director of Division of Natural Resources.

K. "Equine" as used in this Chapter means horses, mules, burros and asses.

L. "Feral" means any un-owned or free ranging animal, livestock or equine not under control of an owner.

M. "Livestock" as used in this Chapter means cattle, dairy cattle, buffalo, sheep, goats, swine, and llamas, except feral pigs.

N. "Law Enforcement Officer" means any person who has successfully completed training at a recognized police training academy, has been

commissioned by a designated Navajo Nation authority as a police officer, ranger, forestry officer, or resource enforcement officer, and is vested by law with a duty to maintain public order or make arrests, whether that duty extends to all offenses or is limited to specific areas of offenses or offenders. This term includes police officers, rangers, forestry officers and resource enforcement officers.

O. "Livestock Officer" means a commissioned Law Enforcement Officer who has the duties and responsibilities to enforce Title 3 and Title 17 related to livestock and who is also an authorized person to conduct livestock inspection service.

P. "Livestock Trader Permit" means a certification of a person, corporation or business who conducts business involving the sale, barter and trade of livestock, equine, hay and feed and other agricultural products.

Q. "Neglect" means failure to provide food, water and normal veterinary care for the animal(s) health and well being. During time of drought and severe weather conditions, the owner is responsible to ensure animal, livestock or equine are properly maintained and not in a state of neglect.

R. "Nuisance" means, but is not limited to defecation, urination, disturbing the peace by the presence of, sound or cry, emitting noxious or offensive odor, or otherwise endangering the well being of the inhabitants and other livestock, or equine of the community.

S. "NNERFAD" means the Navajo Nation Emergency Response to Foreign Animal Disease.

T. "NNVLP" means the Navajo Nation Veterinary Livestock Program who is responsible for the investigation, diagnosis and treatment of disease incidents and/or outbreak.

U. "Poultry" means any domesticated bird, whether live or dead, and includes chickens, turkeys, ducks, geese, guineas, ratites and squabs.

V. "Range" means every character of lands, enclosed or unenclosed, and not withdrawn from grazing, outside/inside of cities and towns, upon which livestock are permitted to graze with a valid Navajo Nation grazing permit and Eastern Navajo grazing permit.

W. "Range equine" means equine customarily permitted to roam upon the ranges of the Navajo Nation, and not in the immediate actual possession or control of the owner although occasionally placed in enclosures for temporary purposes.

X. "Range livestock" means livestock customarily permitted to roam upon the ranges of the Navajo Nation, and not in the immediate actual possession or control of the owner although occasionally placed in enclosures for temporary purposes.

Y. "Ratite" means ostriches, emus, rheas and cassowaries.

Z. "Stray animal" as used in this Chapter, means livestock, equine or

ratites whose owner is unknown or cannot be located, or any animal whose owner is known but permits the animal to roam at large on the streets, alleys, fenced paved roads, fenced right of ways, range or premises of another without permission.

AA. "Veterinarian" means accredited Navajo Nation, state or federal veterinarian.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

### **Cross References**

Definitions under Chapter 7, Control and Inspection of Livestock, see § 1201 of this Title.

### **§ 1502. General powers and duties; civil penalties**

A. The Director shall exercise general supervision over the livestock and equine interests of the Navajo Nation, protect the livestock and equine industry from contagious and infectious diseases and protect the public from diseased and unwholesome meat products.

B. The Director may, in with consultation with a Navajo Nation or federal veterinarian, approve rules to control and govern:

1. Importation of livestock, animals and poultry into the Navajo Nation, establishment of quarantine and its boundaries, notice of quarantine and accomplishment of all things necessary to affect the object of the quarantine and to protect the livestock and poultry industries from and prevent the spread of contagious or infectious diseases.

2. Dispatch of livestock, equine, animals and poultry affected with contagious or infectious diseases and disposition of carcasses of livestock, animals and poultry so destroyed, when the action appears necessary to prevent the spread of contagion or infection among livestock, equine, animal, and poultry.

C. The Director may:

1. Enter into agreements with neighboring states including agreements regarding the use of livestock officers or livestock inspectors or other agency resources for the purpose of enforcement of livestock laws within the Navajo Nation or within border areas of neighboring states.

2. Waive inspections, service charges or inspection fees under this Chapter in cases the Director deems advisable.

3. Direct employees or law enforcement officers (Livestock Officers) to execute the Director's orders under this Chapter.

D. The Director may establish a central investigation group to investigate reports of crimes related to violation(s) of the contagious and infectious diseases involving livestock, equine, ratite and poultry. Livestock officers and other employees of the Department shall report all cases of apparent crimes related to violation(s) of the contagious and infectious diseases involving livestock, equine, ratite and poultry to the Director. The investigation officer/group shall cooperate and coordinate its activities with appropriate federal, state and local law enforcement agencies in apprehending and prosecuting violators of livestock laws.

E. The Director may govern the importation of livestock, equine, ratite, animals and poultry into the Navajo Nation by carrier or rail to insure that the animals are free from infectious disease.

F. The Director may implement speedy and effective suppression and eradication of disease among livestock, equine, ratite and poultry.

G. To prevent spreading or contracting of infectious or contagious diseases among livestock, equine, ratite, and poultry including requirements for inspection of livestock, equine, ratite and poultry shipped or transported, or to be shipped or transported by common carrier, contract carrier, private carrier or in any other manner whatever, whether the shipping or transporting is in interstate or intrastate commerce, or both, and to require an owner, before moving livestock, equine, ratite and poultry in such manner, to furnish an inspection certificate in the form required by the Director.

H. The Director may establish and declare any district to be an infected district wherein diseased or infected livestock, equine, ratite and poultry are found or have recently been grazed or driven. The Director may order livestock, equine, ratite and poultry in the infected district or which are exposed to be moved, treated, disinfected or cured under quarantine regulations provided for by this Title.

I. Subsections A to H shall be conducted in conjunction with the recommendations of Navajo Nation Veterinary and Livestock Program.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**Note.** Reworded for statutory consistency.

#### **§ 1503. Control of animal diseases; violation; classification; penalties**

A. Livestock and equine owners are responsible for the annual vaccinations and deworming of livestock and equine for the prevention of disease and the reduction of parasites.

B. The Navajo Nation or federal veterinarian may enter any place where a suspected livestock, equine, ratite or poultry may be and take custody of the animal or poultry for the purpose of determining the presence of a contagious, infectious or communicable disease.

C. When advised of the occurrence of a disease of livestock, equine, ratite or poultry, which constitutes a threat to the livestock, equine, ratite or poultry industries, the Director may issue lawful orders and adopt rules he deems necessary.

D. Should the disease mechanism involve a foreign animal disease, the NNERFAD plan will be activated.

E. The Director may request NNVLP veterinarian or federal veterinarian or Department of Resource Enforcement Rangers, or Navajo Nation Fish and Wildlife, Environmental Protection Agency Enforcement Officers or Navajo Department of Public Safety to:

1. Establish quarantines and define their boundaries.
2. Destroy livestock, equine, ratite, animals or poultry when necessary to prevent the spread of any infectious, contagious or communicable disease.
3. Appoint authorized appraisers for the purpose of indemnifying owners of livestock, equine, ratite or poultry destroyed.
4. Control the movement of livestock, equine, ratite, animals or poultry products and agricultural products, which may be directly related to dissemination of diseases affecting the livestock, equine, ratite, animals or poultry industries.

F. Any person who violates any lawful order or rule issued pursuant to the Act, or breaks any quarantine established by the NNVLP, or federal veterinarian for the prevention and control of disease among livestock, equine, animals, ratite, or poultry, is guilty of an offense and is subject to a minimum two hundred and fifty dollars (\$250.00) fine not exceed five thousand dollars (\$5,000.00) or 365 days jail or both.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1504. Cooperation with United States**

In addition to other powers and duties conferred upon him by law, the Director may cooperate with the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture, or other agency of the United States vested with similar powers and duties, in the control of contagious or infectious diseases affecting livestock, equine, ratite and poultry.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1505. Diseases; inspection; quarantine.**

A. The Navajo Nation shall activate the NNERFAD plan when a foreign animal disease is suspected.

B. The Navajo Nation may use all proper means to prevent the spread of dangerous and fatal diseases among livestock, equine, ratite and poultry and for the prevention of such diseases. If a disease breaks out in the Navajo Nation, it is the duty of all persons owning or having in their charge livestock, equine, ratite or poultry infected to immediately notify the Navajo Nation of the existence of such disease. The Navajo Nation shall cause proper examination to be made by a NNVLP or federal veterinarian and, if the disease is found to be a dangerously contagious or infectious malady, the Navajo Nation shall order the diseased livestock, equine, ratite or poultry that have been exposed to be strictly quarantined and shall order any premises or farms where such disease exists or has recently existed to be put in quarantine so that no livestock, equine, ratite or poultry subject to the disease is removed from or brought to the premises or places so quarantined. The Navajo Nation shall prescribe such rules as it deems necessary to prevent the disease from being communicated in any way from the premises so quarantined.

C. The Navajo Nation may expend funds to prevent, suppress, control or eradicate any disease or parasite of livestock that the Navajo Nation has been ruled and declared to be a disease or pest of significant economic impact to any segment of the livestock, equine, ratite and poultry industry. This power shall include the right to purchase and destroy or sell infected or exposed livestock.

D. Whenever the Navajo Nation finds any livestock, equine, ratite or poultry infested with a disease or pest declared by the Navajo Nation to be of significant economic impact, the Navajo Nation may request the President of the Navajo Nation to declare a state of emergency.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1506. Failure to report livestock, equine, ratite or poultry disease; offenses; penalty**

A. Any person who has in his/her possession or under his/her care any livestock, equine, ratite or poultry that he/she knows or has reason to believe is affected with a disease shall without unnecessary delay notify the NNVLP or

District Grazing Committee member or Eastern Land Board member or the Department of Resource Enforcement in which the livestock, equine, ratite or poultry is situated.

B. All accredited veterinarians practicing within the Navajo Nation boundaries shall immediately notify the Navajo Nation Veterinary Livestock Program or the Department of Resource Enforcement of any reportable disease incidents.

C. A person who violates this Section is guilty of an offense and upon conviction shall be fined a minimum of one hundred dollars (\$100.00) not to exceed five thousand dollars (\$5,000.00) or 365 days in jail or both.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1507. Failure to comply with quarantine requirements; offense; penalty**

A. A person shall not bring into Navajo Nation to sell or dispose of any livestock, equine, ratite or poultry known to be affected or exposed to disease or move diseased or exposed livestock, equine, ratite or poultry from quarantine area within the Navajo Nation declared to be infected with a disease.

B. A person shall not bring into Navajo Nation any diseased livestock, equine, ratite or poultry from an area outside the Navajo Nation that may at any time be legally declared to be infected with a disease without the consent of the Navajo Nation.

C. A person who violates this Section is guilty of an offense and upon conviction shall be fined a minimum of one hundred and fifty dollars (\$150.00) not exceed to five thousand dollars (\$5,000.00) or 365 days in jail or both.

D. Restitution: Any necessary expenses incurred in the quarantining of the livestock, equine, ratite or poultry shall be paid by the owner, and if the same is refused, after demand made by order of the Navajo Nation, an action may be brought to recover the same with costs of suit, which action may be brought in the name of the Navajo Nation.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1508. Dead animals; infectious animals; disposal**

A. As provided by regulations of the Navajo Nation, all carcasses of dead animals shall be properly disposed of by the owners according to the approved or recommended method by the federal agencies.

1. Approved landfill or approved disposal site by Navajo Nation Environmental Protection Agency.

2. Disposal shall not create or endanger the public health, safety or welfare, or create a public nuisance.

B. A person commits an offense pursuant to this Section if he or she willfully refuses to dispose of animals found to be infectious by authorized agents of the Navajo Nation Veterinary and Livestock Program or federal veterinarian.

C. Any person found guilty of violating this Section shall be sentenced to imprisonment for a term not to exceed 30 days, or be ordered to pay a fine of five hundred dollars (\$500.00) but not to exceed one thousand dollars (\$1,000.00), or both.

D. It will be the responsibility of the owner for the euthanasia and disposal of any animal found to be infectious as determined by a Navajo Nation veterinarian or federal veterinarian.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1509. Infected pastures and buildings; notices**

If a pasture, building, corral, yard or enclosure where livestock, equine, ratite, or poultry have been or may be pastured or confined is infected with or has become dangerous on account of a disease or poisonous weed or plant, the Navajo Nation may post danger or quarantine notices in not less than two conspicuous places in or upon such pasture, building, corral, yard or enclosure sufficient to warn all owners and others in charge of livestock, equine, ratite or poultry of the danger or quarantine. When the danger has passed or the quarantine is lifted, the NNERFAD task force shall require the posted notices to be removed.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1510. Unlawful removals of quarantine notice or sign**

Any person who removes a posted notice of danger or quarantine is guilty of an offense and shall be fined a minimum of two hundred and fifty dollars (\$250.00) not to exceed five thousand dollars (\$5,000.00) or 365 days in jail or both.

#### **History**



CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**§ 1511. Destruction of diseased livestock, equine, ratite or poultry**

In cases where the Navajo Nation deems it necessary to destroy any diseased, infected or exposed livestock, equine, ratite or poultry in order to prevent the spread of dangerous and fatal diseases, foreign, domestic or other, which according to the rules, regulations and standards recommended by the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS) cannot be prevented by means other than the destroying of the diseased, infected, or exposed livestock, equine, ratite, animal or poultry, the Navajo Nation may have the livestock, equine, ratite, animal, or poultry humanly euthanized and disposed of under such laws, orders and rules as mandated by the Navajo Nation.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**§ 1512. Acceptance of federal rules and regulations; cooperation**

The President of the Navajo Nation may accept on behalf of the Navajo Nation, the rules and regulations prepared by the Secretary of the United States Department of Agriculture relating to the control of diseases of livestock, equine, ratite or poultry and to cooperate with the authorities of the United States in the enforcement of all applicable laws and regulations relating to diseased livestock, equine, ratite or poultry.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**§ 1513. Dangerous epidemics; emergency rules; imports prohibited; penalty**

A. When the Navajo Nation finds that a disease, the nature of which is known to be fatal or highly injurious to livestock, equine, ratite, or poultry, has become epidemic or exists in a locality in a country, state or territory beyond the limits of the Navajo Nation, the Navajo Nation shall immediately adopt and promulgate emergency rules to prohibit the importation into the Navajo Nation of any animals, including livestock, equine, ratite, or poultry, subject to the disease that may be so reported.

B. The Navajo Nation shall specify such restrictions and safeguards as it deems proper and shall specify for the protection of livestock in the Navajo Nation and may also prohibit the importation into the Navajo Nation of any hoofs, hides, skins or meat of any animals or any hay, straw, fodder, cottonseed or other products or material determined to carry the infection of such disease.

C. Emergency rules may be adopted and promulgated without the notice and hearing required of other rules and shall take effect immediately. If the Navajo Nation contemplates that an emergency rule will be in effect for longer than 90 days, it shall give notice and hold a hearing to adopt the emergency rule as a rule.

D. Any person who violates this Section or an emergency rule or order issued in accordance with this Section is guilty of a offense and upon conviction shall be fined a minimum two hundred and fifty dollars (\$250.00) fine not to exceed one thousand and five hundred dollars (\$1,500.00) or sentenced to 180 days jail or both and is also liable in a civil action for any damages and loss sustained by reason of such importation of the livestock or of any of the products provided for in this Section.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1514. Health certificate requirements; inspection; permit; penalty**

A. During the time covered by the emergency rule, it shall be unlawful for a person to drive or transport or cause to be driven or transported into or within the Navajo Nation any livestock that by any direct or circuitous route might have come from any place or district covered by the emergency rule without first having obtained a certificate of health from a veterinarian or a permit in writing from the Navajo Nation under such rules as the Navajo Nation prescribes.

B. A person failing to comply with this Section is guilty of an offense and upon conviction shall be fine a minimum of seventy-five dollars (\$75.00) not to exceed two hundred dollars (\$200.00) or sentenced to 90 days jail or both, and is also personally liable for all loss and damages sustained by any persons by reason of the introduction of a disease from the livestock unlawfully imported into the Navajo Nation.

C. During the time covered by the emergency rule, all livestock desiring to enter the Navajo Nation shall submit to an inspection and shall not be permitted to enter the Navajo Nation until a written permit is issued by the Navajo Nation. A Navajo Nation livestock officer or deputy livestock inspector or other agent of the Navajo Nation may require the person in charge of the livestock to produce the permit for his inspection, and any person refusing to produce the permit at any time within a year from the time the livestock were driven in is guilty of an offense and shall be fined a minimum of one hundred dollars (\$100.00) not to exceed five hundred dollars (\$500.00) or sentenced to 60 days jail or both.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**§ 1515. AGID test required (Agar Gel Immuno Diffusion Test)**

The Navajo Nation prohibits the driving or transporting into the Navajo Nation of any equine or other equine that have not tested negative to the AGID, or Coggins test or a United States Department of Agriculture-approved equivalent test for equine infectious anemia within 12 months prior to the date of entry, the evidence of which test result shall be shown on a health certificate; excepting from regulation only those foals accompanied in shipment by a negative-tested dam, those horses or other equine consigned directly to slaughter.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**§ 1516. Equine infectious anemia**

A. Any equine found to be positive to the immuno diffusion test or any other recognized test for equine infectious anemia shall be placed under quarantine by the Navajo Nation or federal veterinarian. Any such positive equine shall be identified with either a hot iron brand or a freeze iron brand on the neck. Such brand shall contain "84A", followed by the case number assigned by the Navajo Nation or federal veterinarian. Any equine placed under quarantine shall be pastured or stabled in a suitable place a minimum of 100 yards from any equine belonging to any other owner or shall be stabled in a screened enclosure which prevents insects from entering or leaving such enclosure.

B. Any equine placed under quarantine for equine infectious anemia may be moved only with a permit from the Navajo Nation or federal veterinarian.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**§ 1517. Investigation of suspected illegal imports; oaths; health certificate or permit**

A. Whenever the Navajo Nation, during the continuance in force of any prohibition against the importation into the Navajo Nation of livestock, equine, ratite or poultry has good reason to believe or suspect that any such livestock, equine, ratite or poultry against the importation of which prohibition then exists have been or are about to be driven, conveyed or transported into the Navajo Nation in violation of any such prohibition then existing and then in force, it is the duty of the Navajo Nation, either by its own members or through a veterinarian or through one or more of such persons then in their employ as circumstances shall seem to require, to thoroughly investigate the same.

B. They may examine, under oath or affirmation, any person in charge of the livestock, equine, ratite or poultry or any person cognizant of any facts or circumstances material to the investigations and all facts connected with the driving or transportation of the livestock, equine, ratite or poultry, including the place or places from which the livestock, equine, ratite or poultry have been driven or transported; the places or districts through which they have been driven or transported; the length of time and where they have remained, fed or grazed at any designated place or district; what contagious or infectious disease of livestock, equine, ratite or poultry, if any, they have been exposed to and when and where; and any other facts or circumstances material to the investigation and reduce such testimony to writing in all cases where the certificate of health or the permit in writing provided for in this Section shall be refused.

C. The Navajo Nation, a NNVLV veterinarian and all other persons as aforementioned so in the employment of the Navajo Nation through whom any such investigation shall be made hereby are authorized to administer all oaths and affirmations required in any such investigation. If any such investigation is made by such veterinarian and he/she is satisfied that the livestock, equine, ratite or poultry are free from all contagious and infectious disease and will not communicate any disease to any livestock, equine, ratite or poultry in the Navajo Nation, he/she shall deliver to the person in charge of the livestock, equine, ratite or poultry a certificate of health to the effect that the livestock, equine, ratite or poultry are healthy and entitled to pass into the Navajo Nation, otherwise he/she shall refuse the same.

D. If such investigation is made by any other persons authorized as specified in this Section to make the investigation and they are satisfied that the livestock will not transmit to the livestock, equine, ratite or poultry in the Navajo Nation any livestock, equine, ratite or poultry disease and that the facts and circumstances attending their transportation warrant the presumption that such livestock, equine, ratite or poultry are not from any prohibited areas, a recommendation that the importation of the livestock, equine, ratite or poultry shall then be permitted, shall be communicated to the Navajo Nation and the Navajo Nation shall upon concurrence give the person in charge of the livestock, equine, ratite or poultry a written permit to pass the same into the Navajo Nation, otherwise such permit shall be refused.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**Note.** Slightly reworded for statutory clarity.

### **§ 1518. Quarantine; seizure of livestock, equine, ratite or poultry**

A. Whenever any livestock, equine, ratite or poultry are driven or transported into the Navajo Nation without obtaining a certificate of health or permit by the person in charge thereof, in any case where a certificate or permit is required and if such livestock, equine, ratite or poultry have been inspected and an investigation had in relation thereto and the certificate or permit refused, then the livestock, equine, ratite or poultry may be seized and

securely held in quarantine under such reasonable rules and regulations as shall be prescribed therein by the Navajo Nation and as they may deem necessary to guard against other livestock, equine, ratite or poultry becoming affected with any such livestock, equine, ratite or poultry diseases.

B. They shall be held in quarantine for such length of time as the Navajo Nation shall in their opinion deem necessary for the sanitary protection of livestock, equine, ratite or poultry in the Navajo Nation.

C. If such livestock, equine, ratite or poultry shall not have been so inspected and an investigation had, then the same shall take place wherever the livestock, equine, ratite or poultry may be found, and they may be seized and held for that purpose and a certificate of health or permit granted or refused, as the case may require. If refused, the livestock, equine, ratite or poultry may in like manner be held in quarantine.

D. The owners of the livestock shall pay all the necessary expenses of quarantine and inspection and disposal under this Section.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

#### **§ 1519. Importation of livestock, equine, ratite or poultry**

A. It is unlawful for any person, firm, or corporation to ship, transport or drive into the Navajo Nation any livestock, equine, ratite or poultry unless such livestock, equine, ratite or poultry are accompanied by an official health certificate, except livestock, equine, ratite or poultry going to immediate slaughter. Such health certificate shall show the names and addresses of the consignor and the consignee and the kinds of livestock, equine, ratite or poultry, with a description of each, including sex, breed, and age. Individual identification is required on any breeding cattle and on any swine and equine, except those going to immediate slaughter. Such health certificate shall show the permit number when a permit is required.

B. The information on such health certificate shall be legible, and a licensed accredited veterinarian of the state of origin shall sign such certificate.

C. One copy of such certificate shall accompany the livestock, equine, ratite or poultry.

D. Livestock, equine, ratite or poultry known to be infected with or known to be exposed to any infectious or contagious disease shall not be imported into Navajo Nation.

E. Livestock, equine, ratite or poultry shall also meet all federal interstate requirements.

#### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**Note.** Slightly reworded at Subsection D.

**§ 1520. Failure to comply with importation requirements; penalty**

Any person, firm, or corporation who violates or disregards Section 1519 is guilty of an offense and/or, upon conviction thereof, shall be fined by a minimum of one hundred dollars (\$100.00), not to exceed one thousand dollars (\$1,000.00), for each offense or sentenced to six months in jail or both.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**§ 1521. Inspector in charge of premises**

A. Whenever the Navajo Nation finds it necessary to quarantine any livestock, ranch, farm, premises, or any portion of the Navajo Nation because of contagious or infectious disease, said NNERFAD plan has the authority to hold in quarantine such ranch, farm, premises, or part of the Navajo Nation, the Navajo Nation may deem necessary after all animals have been removed there from, until such time as in the judgment of the Navajo Nation there is no further risk of exposing domestic animals to disease by permitting them to inhabit such quarantined area.

B. The Navajo Nation has the authority to employ special livestock officers whenever it deems it necessary to be in charge of such quarantined animals or quarantined premises, under the direction of the Navajo Nation Veterinary and Livestock Program.

**History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**Note.** Slightly reworded for statutory clarity.

**§ 1522. Slaughter for post-mortem examination**

A. The Navajo Nation may order the humane euthanasia and post-mortem examination of any one or more diseased domestic animals if the exact nature of their disease is not readily ascertained through other means.

B. All livestock, equine, ratites, or poultry infected with a suspect foreign animal disease shall be forfeited to the Navajo Nation without compensation to the owner of said livestock, equine, ratites, or poultry.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

### **§ 1523. Quarantine responsibility; enforcement; authority**

A. The Navajo Nation shall quarantine any infected domestic animal or area within the Navajo Nation to prevent the spread of infectious or contagious disease.

B. Livestock Officers are law enforcement officers and shall have the powers of law enforcement officers with respect to Title 3 and Title 17, relating to livestock, and shall cite, apprehend or arrest any person who violates the health and quarantine laws, and shall, upon reliable information that any person has violated such law, make the necessary affidavits for arrest and examination of the person and shall, upon warrants issued therefore, immediately arrest the person.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

## **Chapter 11. Farm Enterprises**

### **Subchapter 1. [Reserved]**

### **Subchapter 3. Bull Herd**

#### **Cross References**

Tribal Enterprises generally, see 5 N.N.C. § 1501 *et seq.*

### **§ 1851. Establishment; authority**

The President of the Navajo Nation, with the assistance of the members of the Resources Committee, is authorized, empowered, and directed to establish a bull herd for the Bar-N Ranch.

### **History**

CF-23-58, February 20, 1958.

### **§ 1852. Plan of operation; adoption**

The Plan of Operation adopted July 17, 1958 by the Advisory committee shall govern the operations of the Tribal Bull Herd.

### **History**

ACS-104-58, September 8, 1958.

**Note.** Slightly reworded for purposes of statutory form.

### **Chapter 13. Livestock Brands**

#### **§ 2001. [Reserved]**

##### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006. Deleted previous § 2001, Requirements.

ACS-327-71, September 29, 1971.

ACAU-1 17-59, August 18, 1959.

#### **§ 2002. Inspection system; authority to institute**

A. The Resources Committee of the Navajo Nation Council is authorized to institute a brand inspection system for the Navajo Nation and to cooperate and coordinate such system for the Arizona portion of the Navajo Nation with the Livestock Sanitary Board of Arizona.

B. The Resources Committee is further authorized to negotiate with the proper authorities of New Mexico and Utah in order to institute such a cooperative system for the portions of the Navajo Nation lying in those States.

##### **History**

ACAU-118-59, August 18, 1959.

**Note.** Slightly reworded for purposes of statutory form.

##### **Cross References**

Intergovernmental agreements with state, see 2 N.N.C. § 824(B)(6).

### **Chapter 15. Livestock Supplies and Services**

#### **§ 2201. Schedule of charges**

[**Note.** The fee schedule for vaccinating, spraying, dusting, dipping, branding, dehorning and castrating has been deleted as the Resources Committee of the Navajo Nation Council, by regulation, may adopt such schedules from time to time. See 2 N.N.C. § 695(B).]

##### **History**

ACMY-54-61, May 1, 1961.

**Note.** Words "effective May 15, 1961" were omitted as executed.



### **Cross References**

Rules and Regulations, see 2 N.N.C. § 695(A).

## **Chapter 17. Fences**

### **§ 2401. Specifications; application of state statutes**

The specifications for fences as provided in the Arizona and New Mexico state statutes, respectively, shall apply to the Navajo Nation insofar as they concern Navajo Nation lands located in the States of Arizona and New Mexico; provided however, that such specification shall apply to cultivated lands only, and provided further, that this Section shall not be construed to authorize the fencing of range lands.

### **History**

Res. 1922-1951, p. 221, March 16, 1950.

### **Cross References**

Fences on range lands, see § 713 of this title.

### **§ 2402. Damages for trespass**

A. The occupant of enclosed land shall not be entitled to damages for trespass from cattle, horses, mules, or burros unless his land is enclosed with a fence in good repair equal to or better than the specifications adopted in accordance with 3 N.N.C. § 2401.

B. Since sheep and goats are presumed to be under the control of a herder at all times, the owner of such sheep and goats shall be liable for all damages caused by their trespass, regardless of the condition of the fence or the absence of same.

### **History**

Res. 1922-1951, p. 221, March 16, 1950.

### **Cross References**

Trespass generally, see § 710 of this title.

Criminal trespass, see 17 N.N.C. § 350.

## **Chapter 19. Navajo Wool Growers Marketing Program**

### **§ 2601. Objectives**

A. The objectives of the Navajo Wool Growers Marketing Program are:

1. To insure the receipt of fair market prices for wool and mohair produced by sheep and goat raisers of the Navajo Nation;

2. To produce sufficient revenue to the Navajo Nation to continue this program on a self-sustaining basis;

3. To establish a marketing apparatus for the future development of Navajo wool and mohair resources; and

4. To diversify into other profit-making industries that are feasible.

### **History**

ACN-142-82, November, 1982.

ACMA-37-78, March 29, 1978.

CO-56-73, October 17, 1973.

### **§ 2602. Organization**

A. The operating authority and responsibility for the Navajo Wool Growers Marketing Program is placed with the Director, Navajo Wool Growers Marketing Program. The director shall have full authority for supervision of daily operations of the program and authority to hire additional staff according to the program budget. Overall administrative authority for Navajo Wool Growers Marketing Program shall lie with the director.

B. A Management Board shall be established consisting of the following members:

1. Executive Director, Division of Economic Development, or his/her designee;

2. Director, Commercial, Industrial Development and Management Department (or its successor), or his/her designee; and,

3. A third member to be selected by the above two.

C. The Management Board shall advise, direct and establish policies regarding the actions of the Director, Navajo Wool Growers Marketing Program.

D. The Management Board shall meet once a month.

E. The Executive Director, Division of Economic Development or his/her designee shall be the chairperson of the Management Board. The Director, Commercial, Industrial Development and Management Department (or its successor) or his/her designee shall be the vice-chairman of the Management Board.

F. The chairman or vice-chairman shall preside at all meetings. The Director shall be responsible for maintaining accurate minutes of all meetings of the Management Board and shall assign a staff member to take the minutes at each meeting.

G. The Management Board shall be responsible for and have authority to

administer the Navajo Wool Growers Marketing Program in accordance with the operating procedures of this Chapter. In addition, to fully carry out the objectives of this Chapter and to diversify the program, the Management Board shall have all authority necessary or incidental thereto, not inconsistent with law, including, but not limited to, the following:

1. To purchase, lease, contract or otherwise acquire and to hold, own, use, and equip buildings, stores, shops, offices or other facilities useful in the conduct of the business;

2. To enter into and carry out any arrangements with and to act in any and all parts of the world in the conduct of the business;

3. To enter into any agreements including, but not limited to, joint ventures, operating agreements or management agreements and to establish corporations under Navajo Nation, federal or state incorporation laws to carry out the goals of this Chapter;

4. To acquire by purchase, exchange, lease, devise or otherwise, and to hold, own, maintain, manage, equip, improve, repair, remodel, and operate, and to sell, transfer, mortgage, lease, assign, convey, exchange, or otherwise turn to account or dispose of, and generally to deal in and with real and personal property wheresoever situated;

5. To borrow money, guarantee loans, and/or use its assets as collateral for any of the purposes of the business from time to time but not in excess of the ability of the business to repay its debts;

6. To recommend to the Navajo Nation Council revisions or amendments to this Chapter whenever deemed appropriate to improve the operation and management of the business;

7. To establish separate operating procedures when necessary for the diversification of the program into other businesses in furtherance of the goals of this Chapter; and

8. In general, to do all and everything either within or without the Navajo Nation necessary or convenient to the accomplishment of any of the purposes stated herein.

#### **History**

CD-68-89, December 15, 1989.

ACN-142-82, November 9, 1982.

CMA-37-78, March 29, 1978.

CO-56-73, October 17, 1973.

**Note.** "Advisory Committee" changed to "Navajo Nation Council". See 2 N.N.C. § 724(E).

#### **§ 2603. Duties and responsibilities of the director**

A. The director shall report to and be administratively responsible to the Management Board in policy matters established by the Board pertaining to the Navajo Wool Growers Marketing Program.

B. The Management Board shall be authorized to purchase wool other than that produced by Navajo livestock raisers to augment employment for the Navajo People.

C. The director is authorized to utilize the commodities for all potential uses, including the making of yarns for Navajo weavers.

D. The director shall be responsible for buying wool ties, strings, burlaps, bailing wires, etc. The director shall also have available for the Navajo wool producers and weavers, ties, strings, burlaps, hand shears, wool cards, wool dyes, and other related supplies and items.

E. The director is authorized to use satellite stations for the purpose of storing, selling yarns, and other related supplies and items.

F. The director shall have the authority to utilize consultants for the purpose of selling wool off the Navajo Nation and to market the wool for the best prices.

#### **History**

ACN-142-82, November 9, 1982.

ACMA-37-78, March 29, 1978.

CO-56-73, October 17, 1973.

#### **§ 2604. Operating procedures**

A. Sale of wool and mohair.

1. The selling price shall be established by executed sales contracts. Prices may vary from contract to contract. Advance payments from customers shall be negotiated where possible.

2. Deliveries of wool and mohair shall be in truckload quantities against previously signed sales contracts.

3. An invoice shall be prepared on each truckload shipment. This invoice will contain the following information:

- a. Sales contract number;
- b. Purchaser (complete identity);
- c. Net weight of wool and/or mohair by lot number sold and shipped;
- d. Extension of weight of each lot by contracted unit price;

- e. Total prices;
- f. Terms of payment (could be credit against advance payment);
- g. Proper weight sheets and Bills of Lading attached to all copies of the invoice.

4. Invoices shall be delivered to the Controller of the Navajo Nation weekly. All designated information shall be attached.

5. The Board is authorized to purchase wool and mohair from other than Navajo producers.

6. The director shall be responsible for collecting all accounts receivable and accounting for receipts.

B. Purchase of commodities shall be accomplished through a separate bank account for the Navajo Wool Growers Marketing Program. The Board will designate persons whose signatures are approved for checks written on this account. Copies of the authorization for approval signatures will be transmitted to the Controller, Navajo Nation.

C. Copies of check transactions of the Navajo Wool Growers Marketing Program will be transmitted to the Office of the Controller weekly. The Controller's office will establish and transmit to the director appropriate account numbers for transactions. All invoices, bills of sale, and checks will be numbered and accountability of all numbers will be made to the Controller's office with weekly transmittal of transaction documents.

D. The Office of the Controller will be responsible for supervision of proper accounting procedures and practices exercised in the operation of the Navajo Wool Growers Marketing Program. This responsibility shall not relieve the director or other Navajo Wool Growers Marketing Program employees of their financial, procedural, and accounting responsibilities as herein established.

E. Purchase prices of commodities shall be established by the director. The prices shall be reviewed for approval by the Management Board. Determination of purchase price shall be based upon existing market conditions and previously executed sales contracts, taking into consideration operating expenses and anticipated revenue needs of the program.

F. Purchases of wool and mohair shall be recorded incrementally by bills of sale and checks drawn on the Navajo Wool Growers Marketing Program Revolving Fund. Bills of sale shall contain the following information:

- 1. All information required by the producer for application for ASCS incentive payments, if applicable. Producer shall mean the individual producer and not a trader.
- 2. Weight by commodity description of wool and mohair purchased.
- 3. Seller (complete identity).

4. Extension of weight of each commodity description by unit price.

5. Total price.

G. The director shall be responsible for all disbursements and accountability of transaction documents.

H. The director will have the authority and responsibility for any encumbrance of funds for operating expenses (including salaries, supplies, equipment, etc.) in accordance with the program budget.

I. The Director of the Navajo Wool Growers Marketing Program shall submit a progress report monthly to the Management Board, on the financial status of the program. Copies of the report shall be delivered to the Controller of the Navajo Nation. The Director, in cooperation with the Board, shall submit quarterly reports to the Economic Development Committee of the Navajo Nation Council.

J. Upon completion of yearly operations, the Controller of the Navajo Nation shall reconcile the Navajo Wool Growers Marketing Program Revolving Fund and report the status of the funds to the Budget and Finance Committee of the Navajo Nation Council.

K. The Auditor General may, at any time, perform an operational audit to insure procedural compliance and integrity of assets.

L. Expenditures (commodity purchases and operating expenses) shall be limited to the balance of the Navajo Wool Growers Marketing Program Revolving Fund.

#### **History**

ACN-142-82, November 9, 1982.

ACMA-37-78, March 29, 1978.

CO-56-73, October 17, 1973.

**Note.** "Advisory Committee" changed to "Economic Development Committee". See 2 N.N.C. § 721 et. seq.

#### **§ 2605. Contracts with traders**

Any contract or agreement made with traders or organizations to act as purchasing agents for the Navajo Wool Growers Marketing Program shall contain the provision that Navajo wool/mohair producers shall receive the same price for commodities as offered to the Navajo wool/mohair producers by the Navajo Wool Growers Marketing Program.

#### **History**

ACMA-37-78, March 29, 1978.

CO-56-73, October 17, 1973.

**§ 2606. Contracts for technical assistance**

The Director, subject to the approval of the Management Board, is authorized to negotiate with members of the wool industry for the services and technical assistance needed to grade and bale the annual wool clip, and for the sale of wool accumulated or to be accumulated.

**History**

ACN-142-82, November 9, 1982.

ACMA-37-78, March 29, 1978.

CO-56-73, October 17, 1973.

**§ 2607. Amendment of Chapter**

This Chapter shall continue in force until cancelled or amended by the Navajo Nation Council.

**History**

CD-68-89, December 15, 1989.

ACMA-37-78, March 29, 1978.

CO-56-73, October 17, 1973.

**Note.** "Advisory Committee" changed to "Government Services Committee".

**Cross References**

Economic Development Committee authority, see 2 N.N.C. § 724(E) (1).

**Chapter 21. Soil and Water Conservation Districts**

**Subchapter 1. General Provisions**

**§ 2801. Policy**

It is the declared policy of the Navajo Nation to provide for the conservation and restoration of forest, range and watershed resources; for the control of erosion and sedimentation; for the control of floods and the beneficial use of flood waters; and to thereby preserve and enhance wildlife and vegetation and scenic and recreational resources and conserve natural resources, and in such a manner to promote the public health, safety and general well being of the Navajo People.

**History**

CF-11-80, February 7, 1980.

### **Cross References**

Resources Committee, see § 852 of this title, and 2 N.N.C. § 691 *et seq.*

Water, see Title 22.

### **Subchapter 3. Responsibilities of the Resources Committee of the Navajo Nation Council**

#### **§ 2812. General authority**

The Resources Committee of the Navajo Nation Council is authorized by 3 N.N.C. §§ 832 and 852 to coordinate federal and Navajo Nation Programs for natural resource utilization, conservation, restoration, and related educational programs.

#### **History**

CF-11-80, February 7, 1980.

### **Cross References**

Resources Committee, see § 852 of this title, and 2 N.N.C. § 691 *et seq.*

#### **§ 2813. Coordination of operation of districts**

The Resources Committee shall coordinate the organization and operation of Soil and Water Conservation Districts in the Navajo Nation, so as to enable the fullest possible participation by Navajo farmers, ranchers, and land users in federal programs of assistance in Soil and Water Conservation, watershed protection, flood control and prevention, farm forestry, and rural area development.

#### **History**

CF-11-80, February 7, 1980.

#### **§ 2814. Determination on formation of districts**

The Resources Committee shall hear petitions, hold public hearings, and establish Soil and Water Conservation Districts.

#### **History**

CF-11-80, February 7, 1980.

#### **§ 2815. Assistance in plan implementation**

The Resources Committee shall assist the Soil and Water District Boards of Directors in the implementation of Soil and Water Conservation programs, shall facilitate communication and coordination among Districts, shall prescribe uniform accounting and record keeping procedures for Districts, and



shall require annual reports from each District, including a complete accounting of District funds.

#### **History**

CF-11-80, February 7, 1980.

### **Subchapter 5. Formation of Soil and Water Conservation Districts**

#### **§ 2826. Petition for the creation of a district**

A. Twenty-five or more farmers, ranchers, and customary land users using lands within the boundaries of the proposed district, may petition the Resources Committee requesting that a Soil and Water Conservation District be formed. The petition shall contain:

1. The name of the proposed District;
2. A declaration of the need for the District;
3. A description of the boundaries of the District; and

4. A request that the Resources Committee determine that the District be created, set boundaries, and direct that a referendum be held.

B. Any proposed Soil and Water Conservation District shall conform to the existing boundaries of Navajo Nation grazing districts.

C. A Soil and Water Conservation District may include one or more Navajo Nation grazing districts in their entirety.

#### **History**

CF-11-80, February 7, 1980.

#### **Cross References**

Grazing, see §§ 701-950 of this title.

Farm Boards, see §§ 61-69 of this title.

Referendum, see 11 N.N.C. § 401 *et seq.*

#### **§ 2827. Hearing on a petition for the creation of a Soil and Water Conservation District**

Within 30 days after the Resources Committee receives a petition for the creation of a Soil and Water Conservation District, notice shall be given by publication in the Navajo Times for three weeks, by an announcement at a chapter meeting of each affected chapter at least one week in advance, and by the posting of notices for three weeks at all affected chapter houses, of a public hearing on:

A. The desirability and necessity of forming the proposed Soil and Water Conservation District;

B. The boundaries of the proposed District;

C. The propriety of the petition; and

D. All other related questions.

#### **History**

CF-11-80, February 7, 1980.

#### **§ 2828. Determination by the Resources Committee**

A. If the Resources Committee determines after a hearing that it is in the public interest and is administratively feasible to organize the proposed District, the Committee shall grant the petition, and shall set forth in a resolution the boundaries of the District, considering:

1. Topography;

2. Soils;

3. Erosion;

4. Flooding hazard;

6. Prevailing land use;

7. Desirability, necessity, and benefits of the District;

8. The relationship of the District to agricultural areas, watersheds, Navajo Nation grazing districts, and other Soil and Water Conservation Districts; and

9. Boundaries of existing grazing districts.

B. If the Resources Committee concludes that the proposed District is not in the public interest, it shall deny the petition and set forth in a resolution the reasons for its action.

C. If a petition for creation of a Soil and Water Conservation District is denied by the Resources Committee, the petitioners may resubmit the petition after six months have passed.

#### **History**

CF-11-80, February 7, 1980.

#### **Cross References**

Grazing, see §§ 701-950 of this title.

## **§ 2829. Referendum**

A. Within 30 days after the Resources Committee has granted a petition for the creation of a Soil and Water Conservation District and following notice as described in § 2827(A) of this Chapter, the Resources Committee shall cause a referendum to be held in all chapters within the District boundaries to determine whether a majority of the voters approve the formation of the District.

B. The referendum shall be conducted and the results declared in accordance with applicable provisions of the Navajo Nation Election Code, under the authority of the Navajo Board of Election Supervisors.

### **History**

CF-11-80, February 7, 1980.

### **Cross References**

Navajo Nation Election Code, see 11 N.N.C. § 1 *et seq.*

## **Subchapter 7. Administration of the District**

### **§ 2840. District Board of Directors**

A. The governing body of each Soil and Water Conservation District shall be a Board of Directors. At an election which may be held on a separate ballot at the time of the referendum each chapter will elect one representative to serve on the Board of Directors. In the event that there are more than 11 chapters in the District, those elected shall select from among themselves those who are to serve on the Board. Procedures for such selection may be formulated by the Resources Committee. Those representatives not selected shall constitute an advisory panel from which vacancies in the Board may be filled pending the next Board member election.

B. The term of each member of the Board of Directors shall be four years, except that two members of the initial Board will be elected to serve two year terms. Board member elections will be held every two years, and terms will be staggered such that no more than two members shall be elected in any election year.

C. The Board of Directors of each District shall enact bylaws including procedures for the transaction of business, which bylaws must be approved by the Resources Committee.

D. The Board of Directors shall record all proceedings, resolutions, rules and regulations of the District, report at least annually to the Resources Committee of the Navajo Nation Council, and upon request, furnish to the Committee copies of all documents adopted or employed by the District in pursuance of its programs.

### **History**

CF-11-80, February 7, 1980.

**§ 2841. Powers of the Soil and Water Conservation District**

A. Each Soil and Water Conservation District organized under the Navajo Nation Code shall be a political subdivision of the Navajo Nation and shall exercise the following functions, powers, and duties:

1. Employ, subject to available funds, administrative, clerical, and technical staff personnel;

2. Conduct surveys, investigation, and research relating to soil erosion, flood water, flood control, non-point water pollution, sediment control, watershed development, methods of cultivation, seeding and undesirable species eradication, and other measures as will aid farm and range operation, disseminate information, and carry on research programs in cooperation with Navajo Nation and federal agencies;

3. Conduct demonstration and training projects pertaining to all aspects of soil and water conservation, restoration, and utilization;

4. Cooperate and enter into agreements with customary land users, farmers, and ranchers, and agencies of the federal government, to carry on programs of soil erosion prevention, flood water control and utilization, methods of cultivation, cropping practices, landleveling, improvement of agricultural lands, methods of reseeding and vegetation enhancement on range lands;

5. Construct, improve, operate, and maintain any structure deemed necessary or convenient for the performance of any operation authorized by this Chapter;

6. To acquire and administer all supplies, tools, equipment, and other property necessary for the implementation of soil and water conservation programs;

7. Make available, on such terms as the Board of Directors may prescribe, agricultural and engineering machinery and equipment, fertilizer, seed and other plant materials and other equipment and supplies necessary to the implementation of soil and water conservation programs; and

8. Develop comprehensive long range district-wide plans for soil and water conservation programs, and annual work plans for the implementation of long range programs.

B. All participation in the District programs is voluntary.

**History**

CF-11-80, February 7, 1980.

**§ 2842. Limitation of powers**

A. All planning and implementation of water resource conservation, utilization, or development programs shall be conducted with the full understanding, consent, and participation of any Navajo Nation entities owning or operating water control structures within the District and of the Navajo Water Commission.

B. Soil and Water Conservation Districts shall have no control or authority whatsoever over the determination or assignment of water rights.

C. Soil and Water Conservation Districts shall be subject to all applicable Navajo Nation and federal laws and regulations.

D. In developing and implementing long range conservation programs and annual work plans, Soil and Water Conservation Districts shall consult and cooperate with other Navajo Nation departments and commissions.

#### **History**

CF-11-80, February 7, 1980.

#### **§ 2843. Authority to promulgate regulations**

The Resources Committee of the Navajo Nation Council shall have the authority to promulgate regulations necessary for the administration of this Chapter.

#### **History**

CF-11-80, February 7, 1980.

### **Title 4**

#### **Environment**

#### **History**

Previous Title 4, "Ceremonies and Fairs," (ACA-51-58, April 21, 1958 and ACAU-1 53-68, August 16, 1968) has been removed and replaced by a new Title 4, "Environment"; prior §§ 1, 2, 101 and 102 were deleted pursuant Navajo Nation Attorney General's advice on plans of operation for Navajo Nation Divisions dated January 4, 1991.

#### **Chapter 1. Navajo Nation Solid Waste Act**

#### **History**

CJY-51-97, July 24, 1997, rescinded and repealed the previously codified "Navajo Nation Solid Waste Code" (CJY-51-93, July 22, 1993 and CO-58-90, October 18, 1990) in its entirety and replaced it with the newly codified "Navajo Nation Solid Waste Act".

#### **United States Code**

Solid waste disposal, see 42 U.S.C. § 6901 *et seq.*

## **Subchapter 1. General Provisions**

### **§ 101. Title**

This Chapter may be cited as the "Navajo Nation Solid Waste Act."

### **History**

CJY-51-97, July 24, 1997.

### **§ 102. Definitions**

A. For purposes of this Chapter:

1. "Attorney General" means the Attorney General of the Navajo Nation.

2. "Director" means the Director of the Navajo Nation Environmental Protection Agency or his/her designee.

3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.

4. "Health Advisor" means the Director of the Navajo Area Indian Health Service or his or her designee.

5. "Navajo Nation" when used in terms of territorial jurisdiction, means the area defined in 7 N.N.C. § 254.

6. "Navajo Nation Council" means the official legislative body of the Navajo Nation empowered to adopt policies and enact laws governing the Navajo Nation, as set forth in 2 N.N.C. § 102 *et seq.*

7. "Navajo Nation Solid Waste Program" or "Navajo Nation SWP" means the program, including any successor program, regardless of name, within the Navajo Nation Environmental Protection Agency that is responsible for implementing and enforcing this Chapter products.

8. "Open burning" means the combustion of solid waste without: control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products.

9. "Open dump" means any facility or site where solid waste is disposed of and which does not comply with the requirements established for solid waste landfill facilities pursuant to this Chapter and the

regulations promulgated hereunder.

10. "Open dumping" means the act of depositing solid waste in a non-complying manner or management practice.

11. "Operator" means any person who operates, controls or otherwise supervises a solid waste management facility.

12. "Owner" means any person who owns all or part of or leases (in the case of trust land) a solid waste management facility.

13. "Person" means any individual, public or private corporation, company, partnership, firm, association or society of persons; the federal, state or local governments or any of their programs or agencies, any Indian tribe, including the Navajo Nation, or any of its agencies, divisions, departments, programs, enterprises, companies, chapters or other political subdivisions.

14. "Resource Conservation and Recovery Act" or "RCRA" means the federal Resource Conservation and Recovery Act, as amended, that is set forth at 42 U.S.C. § 6941 *et seq.*

15. "Resources Committee" means the standing committee of the Navajo Nation Council as defined in 2 N.N.C. § 691 *et seq.* with oversight authority over the Navajo Nation Environmental Protection Agency as provided for in 2 N.N.C. §§ 1921-1927.

16. "Solid waste" means any garbage, refuse or sludge from a wastewater treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from residential, industrial, commercial, mining, and agricultural operations and from community activities, but does not include:

a. Drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy;

b. Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed, with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion;

c. Waste from extraction, beneficiation and procession of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, coal, copper, molybdenum and other ores and minerals;

d. Agricultural waste, including, but not limited to, manures and crop residues returned to the soil as fertilizer or soil conditioner;

e. Cement kiln dust waste;

f. Sand and gravel;

g. Solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*;

h. Densified-remse-derived fuel; or

i. Any material regulated by Subtitle C or Subtitle I, 42 U.S.C. § 6901 *et seq.*, petroleum-contaminated soils, of the Resource Conservation and Recovery Act of 1976, or substances regulated by the Toxic Substances Control Act, 7 U.S.C. § 136 *et seq.* or low-level radioactive waste.

17. "Solid waste landfill" or "SWLF" unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A SWLF unit also may receive other types of RCRA Subtitle D <sup>1</sup> wastes, such as commercial solid waste, waste tires, construction/demolition debris, nonhazardous sludge conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A SWLF unit may be a new SWLF unit, an existing SWLF unit or a lateral expansion.

18. "Solid waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

19. "Storage" means the accumulation of solid waste after generation and prior to and following collection, processing, composting, recycling, transportation and/or disposal.

20. "Transfer station" means a permanent, fixed, supplemental collection and transportation facility, used by persons and/or route collection vehicles to deposit collected solid waste from offsite into a larger transfer vehicle for transport to a solid waste handling or disposal facility. It does not include solid waste storage containers placed for individual or clusters of residences and institutional, commercial, recreational or industrial establishments that service exclusively those establishments.

21. "Variance" means an acceptable alternative that meets or exceeds the standards required by this Chapter and the regulations hereunder.

## **History**



CJY-51-97, July 24, 1997.

### **§ 103. Declaration of Policy**

Legislative Purposes:

A. The Navajo Nation Council finds and declares that disposal of solid waste in or on the land without careful planning and management can present a danger to public health and the environment; that open dumping is particularly harmful to public health, potentially contaminates drinking water from underground and surface sources, and pollutes the air and the land; and that potentially recoverable material that could be recycled is needlessly buried each year, using scarce land resources, even though methods are available to separate usable materials from solid waste. The Navajo Nation Council is hereby creating a coordinated program for management of solid waste within the Navajo Nation.

B. The Navajo Nation Council, by enacting this Chapter, intends to protect the health, safety, welfare and environment of the Navajo Nation; to manage, protect and preserve the resources of the Navajo Nation; and to maintain and improve the aesthetic appearance of the Navajo Nation, by:

1. Assuring that solid waste management practices are conducted in a manner which protects human health and the environment and minimizes the need for corrective action at a future date;

2. Prohibiting open dumping and requiring the closure of existing open dumps;

3. Prohibiting open burning at SWLFs;

4. Minimizing the generation of solid waste by encouraging recycling and reuse; and

5. Providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery and disposal practices and systems.

C. The Navajo Nation Council places primary responsibility for the enforcement of this Chapter with the Navajo Nation Environmental Protection Agency.

### **History**

CJY-51-97, July 24, 1997.

### **§ 104. Applicability; Exemptions**

A. Except as otherwise provided in this Section, the provisions of this Act and regulations promulgated hereunder shall apply to all persons and all property within the Navajo Nation.

B. Except as otherwise provided in Subsections (C) and (D) of this Section, the provisions of this Act and/or regulation promulgated thereunder,

in whole or in part, shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property.

C. Notwithstanding the provisions of Subsection (B) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person who has submitted an application for and received a permit pursuant to this Act or is otherwise subject to its provisions and to all property within the Navajo Nation owned or operated by such person.

D. If not otherwise applicable in accordance with Subsection (C) of this Section, the provisions of this Act and/or regulations promulgated thereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to Section 105 of this Act.

E. Nothing in this Section shall be construed as a determination or admission by the Navajo Nation that any claim of covenant not to regulate or otherwise exercise jurisdiction is valid.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 105. Voluntary Compliance Agreement**

A. Any person to whom the provisions of this Act are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement with the Navajo Nation with respect to any property to which the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, are not otherwise applicable.

B. A proposal to enter into a voluntary compliance agreement shall be in writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate which part or parts of this Act and/or regulations promulgated hereunder, in whole or in part, with which voluntary compliance is proposed.

C. A voluntary compliance agreement shall be for a term of not less than one year, and may be subject to renewal for successive terms of not less than one year. A voluntary compliance agreement may not vary the requirements of this Act or of any regulations promulgated pursuant to this Act, except that the consent required to be given in accordance with § 143(B) of this Act shall be strictly limited to the application of this Act and regulations promulgated pursuant to this Act in accordance with the terms of said voluntary compliance agreement, including any renewals thereof.

D. A voluntary compliance agreement shall not be effective unless and until final approval of the agreement is given by the Director.

E. Except as otherwise expressly provided in the agreement, by entering

into a voluntary compliance agreement, no person shall be deprived of the benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.

F. A person may enter into a voluntary compliance agreement in accordance with this Section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this Act has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interests of the Navajo Nation. Entering into an agreement pursuant to this Subsection shall not constitute a determination or admission by the Navajo Nation that such claim of exemption is valid.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 106. Governmental Cooperation**

The provisions of this Chapter may be carried out by agreements between the Navajo Nation and federal, state or county agencies, including but not limited to the Indian Health Service and the Bureau of Indian Affairs

#### **History**

CJY-51-97, July 24, 1997.

#### **United States Code**

Agreements with Indian tribes, solid waste disposal, see 42 U.S.C. § 6908a.

#### **§ 107. General Authorities of the Director**

A. Powers and Duties. In carrying out this Chapter, the Director is authorized to:

1. Prescribe such regulations as are necessary to carry out his/her functions under this Chapter (including but not limited to regulating the open burning of solid waste), pursuant to the provisions of § 161 of this Chapter;

2. Enforce the provisions of this Chapter and the regulations promulgated hereunder, pursuant to the provisions of Subchapter 5 of this Chapter;

3. Require monitoring, sampling or other studies, as provided in § 151 of this Chapter;

4. Issue permits, exemptions and variances pursuant to the provisions of Subchapter 3 and 4 of this Chapter;

5. Assess fees on persons involved with the collection, disposal, transportation, processing or storage of solid waste;

6. Issue compliance orders, civil penalties and citations to carry

out the intent of this Chapter and regulations promulgated hereunder;

7. Conduct investigations, inspections and tests to carry out the duties of this Chapter pursuant to the provisions of Subchapter 5 of this Chapter;

8. Hold hearings related to any aspect of or matter within the authority of this Section and, in connection therewith, compel the attendance of witnesses and the production of records;

9. Provide to the public pertinent educational materials and information regarding solid waste management issues;

10. Issue guidelines and encourage voluntary cooperation with the provisions of this Chapter and the regulations promulgated hereunder;

11. Consistent with Title 2, Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this Chapter, provided that all monies resulting therefrom shall be deposited in the Navajo Nation Treasury to the account of the Solid Waste Program, as authorized under Navajo law; and

12. Perform such other activities as the Director may find necessary to carry out his/her functions under this Chapter.

In prescribing regulations under this Chapter, the Director shall consider but shall not be limited to the relevant factors prescribed by Subtitle D <sup>1</sup> of the Resource Conservation and Recovery Act and the regulations thereunder,<sup>2</sup> except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under RCRA. All regulations promulgated under this Chapter shall be subject to approval by the Resources Committee of the Navajo Nation Council.

B. Delegation of Authority. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such powers and duties under this Chapter, except the making of regulations, as he/she may deem necessary or expedient.

C. Use of Funds. Monies derived from fees and penalties imposed under this Chapter shall be available solely for the administration and implementation of this Chapter and the regulations promulgated hereunder. Such funds shall be deposited into a duly established Special Revenue Fund and expended by the Director for the use of the Solid Waste Program in accordance with the Special Revenue Fund plan of operation pursuant to an approved budget. Any monies contained in said Fund at the end of the fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in this Section.

### **History**

CJY-51-97, July 24, 1997.

### **§ 108. Construction**

This Chapter shall be liberally construed to carry out its purpose. The effectiveness and enforceability of this Chapter shall not be dependent upon the adoption of any regulations unless otherwise required by law. Nothing contained in this Chapter or regulations promulgated hereunder shall be construed to diminish, limit or otherwise adversely affect any right or remedy held or available to the Navajo Nation.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 109. Compliance with Other Laws and Regulations**

Compliance with this Chapter and regulations promulgated hereunder does not relieve a person of the obligation to comply with other applicable laws and regulations.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 110. Contractual Compliance**

Contracting for the storage, collection, transportation, processing or disposal of solid waste shall not relieve the contractor or contractee from responsibility for compliance with the provisions of this Chapter and the regulations promulgated hereunder.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 111. Severability**

If any provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter and the application of such provision to other persons or circumstances shall remain unaffected.

#### **History**

CJY-51-97, July 24, 1997.

### **Subchapter 2. Prohibited Acts**

#### **§ 121. Disposal, Collection, Transporting, Processing**

A. It shall be unlawful for any person to:

1. Dispose of any solid waste in a manner that will harm the environment, endanger the public health, safety and welfare or create a public nuisance;

2. Dispose of any solid waste in a place other than a facility which is in compliance with these regulations and other applicable laws;

3. Dispose of any waste not defined as solid waste in a solid waste disposal facility;

4. Dispose of bulk or non-containerized liquids in a solid waste facility;

5. Collect, dispose of, transport, process or store solid waste in any manner or at any facility that is not in compliance with the provisions of this Chapter or the regulations promulgated hereunder;

6. Interfere/prohibit with inspections, entry or monitoring activities; and

7. Violate any other provision, requirement or prohibition of this Chapter, including but not limited to a regulation or plan adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter, a filing, reporting or notice requirement under this Chapter or a fee assessed under this Chapter.

B. The on-site disposal of on-site generated solid waste from a family ranch, camp or farm is not prohibited where said disposal does not, according to the Director, create a public health or environmental hazard or public nuisance.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 122. Permits Required**

Unless otherwise specified by this Chapter or regulations promulgated hereunder, no person shall construct, operate or modify a solid waste landfill facility unless the facility has obtained a permit or permit modification from the Director for the described action. A permit is not required, however, for facilities that qualify under § 121(B).

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 123. Open Burning**

No open burning shall be allowed at any solid waste landfill facility.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 124. Open Dumping**

All open dumping shall be prohibited.

#### **History**

CJY-51-97, July 24, 1997.

### **Subchapter 3. Solid Waste Management Planning and Criteria**

#### **§ 131. Solid Waste Management Criteria**

A. Regulations. The Director is authorized to promulgate regulations establishing requirements for solid waste landfills, transfer stations, composting facilities, collection and transportation of solid waste and recycling. Such regulations may include but are not limited to:

1. Siting criteria;
2. Design requirements, including requirements regarding liners, leachate collection, and methane gas monitoring and control; operating requirements; recordkeeping and reporting requirements; and requirements for the preparation of contingency plans in the event of release of contaminants or hazardous waste to the environment;
3. Ground water monitoring, sampling and analysis and corrective action requirements;
4. Closure criteria and post-closure care requirements, including requirements for the installation of final cover; and
5. Financial responsibility requirements, including financial assurance requirements for damage claims, closure, post-closure care and corrective actions relating to SWLFs. The Director shall specify the various financial assurance mechanisms which will be deemed to satisfy these financial responsibility requirements.

B. Transportation Inspection Fees. The Director shall have the authority to inspect solid waste transportation vehicles, by regulation and charge reasonable fees for such service.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 132. Variances**

A. Issuance. The Director shall adopt regulations providing for the issuance of variances to owners or operators of solid waste management facilities, which would allow such facilities to vary from provisions of this Chapter and regulations and plans adopted and permits issued pursuant to this Chapter. Such regulations shall allow owners and operators of solid waste management facilities to petition the Director in writing for variances, and shall specify the minimum requirements for such petitions and for public participation. The Director shall also consider issuing variances for

hardships caused by, but not limited to, isolation and extreme weather conditions. In all cases, the Director shall grant a petition for a variance only if the Director finds that issuance of the variance will not endanger public health, safety, welfare or the environment and does not violate 40 C.F.R. Parts 257 or 258.

B. Terms and Conditions of Variances. The requirements imposed as a basis for granting or renewing a variance shall include, but not be limited to:

1. A detailed plan for the completion of corrective steps needed to conform to the provisions of this Chapter and the regulations adopted and permits issued hereunder, wherever practicable;

2. A fixed term for the variance; and

3. The right of the Director to make periodic inspections of the facilities for which the variance is granted.

Subject to the provisions of Subsection (C), variances shall be valid for no longer than the term specified in the variance. The Director may impose fees with the approval of the Resources Committee, on a facility for the issuance of a variance.

C. Renewals. A holder of a variance may petition the Director for a renewal of such variance. A petition for renewal may be filed not more than 60 days nor fewer than 30 days prior to the expiration of the variance. The Director, within 30 days of receipt of the petition, shall issue a decision to grant or deny the request for a renewal of the variance.

D. Suspension and Revocation. If the terms of a variance are being or have been violated, the Director may seek to revoke or suspend the variance. In such event, the Director shall serve notice of such violation on the holder of the variance, specifying the nature of the violation and the date on which a hearing will be held to determine whether the violation occurred and whether the variance should be suspended or revoked.

#### **History**

CJY-51-97, July 24, 1997.

**Note:** Slightly reworded for clarity.

### **Subchapter 4. Permitting**

#### **§ 141. Requirement to Obtain Permit**

Any person owning or operating any SWLF or any composting facility, and any person planning to construct a new SWLF or composting facility or to expand or modify such facility, shall not construct, expand, create a lateral expansion of a unit modify or operate such facility without first obtaining a permit or permit modifications from the Director, unless specifically exempt from such requirement by regulation promulgated, by the Director pursuant to this Chapter. In the case of a SWLF, or composting facility that is already in



existence at the time of enactment of this Chapter or of promulgation of permit regulations under this Chapter, the owner or operator shall submit a permit application to the Director within 90 days of the promulgation of permit regulations under this Chapter. Such owner or operator shall be treated as having been issued a permit until a final administrative disposition is made on the permit application, unless the Director finds that a final administrative disposition has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. A permit shall not be required to undertake a corrective action pursuant to the regulations promulgated under this Chapter. The Director also may by regulation require permits for the collection and transportation of solid waste within the Navajo Nation.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 142. Permit Applications**

A. Content of Permit Application. The applicant shall submit to the Director for approval a completed permit application, on a form prescribed by the Director, together with all other information, as required by the regulations promulgated under this Chapter.

B. Application Fees. A filing fee as prescribed by the Director by regulation shall accompany the application for a permit. In addition, the Director may charge a review fee at an hourly rate for the review of a permit application.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 143. Permit Determinations**

A. Issuance of Permit. The Director shall issue a permit, for a fixed term not to exceed 30 years, for construction, expansion, modification or operation of a facility that complies with all the requirements of this Chapter and the regulations promulgated hereunder. In the event that the applicant proposes modification of the facility in question, or the Director determines that modifications are necessary to comply with the requirements of this Chapter and the regulations hereunder, the permit shall specify the time allowed to complete the modifications. The Director also may allow the applicant an opportunity to revise a permit application to remedy deficiencies. The approval of a permit application does not relieve the applicant from the responsibility of compliance with all applicable provisions of this Chapter and the regulations promulgated hereunder and applicable federal regulations.

B. Conditions to Permits. As a condition of obtaining a permit and/or constructing, expanding, modifying or operating a SWLF or composting facility,

1. The Director or Health Advisor shall have the right to enter the facility to conduct inspections, take samples and conduct monitoring, as provided under this Chapter or the regulations promulgated hereunder;

2. The Director shall have the right to enter any premises where records relevant to determining compliance with this Chapter, the regulations promulgated hereunder or the requirements of the permit are kept;

3. The permittee, his agents, employees, lessees, sublessees, successors and assigns shall consent to the jurisdiction of the Navajo Nation and shall agree to abide by all laws of the Navajo Nation. Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

"Permittee consents to the jurisdiction of the Navajo Nation with respect to those activities conducted pursuant to this permit issued by the Director pursuant to the provisions of the Navajo Nation Solid Waste Act. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assignees, employees and agents, including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit"; and

4. Permittee shall include the statement in Paragraph 3 of this Subsection as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued by the Director, and each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for "permittee" as appropriate.

C. Permit Fees. The initial fee for a permit shall be in accordance with the fee schedule established by the Director in the regulations promulgated pursuant to this Chapter. A permit may be renewed following administrative review and payment of the renewal fee prescribed by regulation of the Director.

D. Permit Transfers. A permit may not be transferred, from one location, facility or person to another, without approval from the Director pursuant to the regulations promulgated under this Chapter.

E. Judicial Review of Final Permit Determinations. An applicant may seek judicial review of any final permit determination (including revocation) in Navajo Nation Court, pursuant to the provisions of § 162 of this Chapter.

#### **History**

CJY-51-97, July 24, 1997.

**Note:** Slightly reworded for clarity.

#### **§ 144. Permit Revocation**

The Director may revoke a permit for failure to comply with the terms or conditions of the permit; fraud, deceit or submission of inaccurate information to the Director; or failure to comply with the provisions of this

Chapter or the regulations promulgated hereunder.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 145. Public Participation**

A. Availability of Documents. The Director shall maintain a file of all permit applications, documents accompanying such applications and permits issued under this Chapter. This file shall be available for public inspection and comment. If any applicant or permittee is required to submit information entitled to protection from disclosure under § 151(C) of this Chapter, the applicant or permittee may submit such information separately. The requirements of § 151(C) shall apply to such information. The contents of a permit shall not be entitled to protection under § 151(C).

B. Notice of Final Permit Determination. Before making a final determination regarding any permit under this Chapter, including before issuing, transferring, renewing, revising, revoking or denying a permit, the Director shall publish in local newspapers and broadcast over local radio stations the Director's intent regarding such permit. If the Director receives a written request for a public hearing on such permit within 15 days of publication of such notice, the Director shall schedule a public hearing on such permit, and shall give notice of the date time, place and subject matter of such hearing in the aforementioned manner.

#### **History**

CJY-51-97, July 24, 1997.

### **Subchapter 5. Enforcement**

#### **§ 151. Recordkeeping, Inspections, Monitoring and Entry**

A. Requirements in Orders or Permits. The Director may require, by order or permit, any owner or operator of a solid waste management facility, or any other person who is subject to any requirement of this Chapter, to:

1. Establish and maintain records;
2. Prepare and submit reports;
3. Install, use and maintain monitoring equipment, and use audit procedures or methods;
4. Monitor and sample emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Director shall prescribe);
5. Submit compliance certifications in accordance with Subsection (B) of this Section; and

6. Provide such other information as the Director may reasonably require.

B. Production of Records. Whenever the Director has reasonable cause to believe that any person has violated or is in violation of any requirement of this Chapter or of any regulation hereunder or any requirement of a permit or order issued pursuant to this Chapter, he/she may request in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with such requirements.

C. Public Availability of Information. Any records, reports or information obtained under Subsections (A) or (B) of this Section shall be available to the public, except that upon a showing satisfactory to the Director by any person that records, reports or information, or any portion thereof would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Director shall consider such record, report, information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the Navajo Nation and of the United States concerned with carrying out this Chapter or when relevant to any proceeding under this Chapter.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 152. General Enforcement Authority**

A. In General. Whenever, on the basis of any information available to the Director, the Director finds that any person conducting an activity that threatens human health or the environment and/or has violated, or is in violation of, any requirement or prohibition of this Chapter, the regulations promulgated under this Chapter, or permits, orders, plans, variances or fees issued or approved pursuant to this Chapter, the Director may:

1. Issue and serve on such person an order requiring the person to comply with each requirement or prohibition, pursuant to the provisions of this Section;
2. Issue and serve on such person an administrative penalty order in accordance with § 154 of this Chapter;
3. Bring a civil action in accordance with § 153(A) of this Chapter; and/or
4. Bring a criminal action in accordance with § 153(B) of this Chapter.

In addition, when a person has consistently violated any requirements or prohibitions of this Chapter, the regulations promulgated under this Chapter, or permits, orders, variances or fees issued or approved pursuant to this Chapter, or refused to comply with any such requirements or prohibitions, the Director may issue an order prohibiting such person from continuing to operate

a solid waste management facility within the Navajo Nation, and/or prohibiting such person from entering into any new contracts (including leases) that would permit such person to operate a solid waste management facility within the Navajo Nation.

B. Requirements for Orders to Comply. An order to comply issued under this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director under § 161 of this Chapter, if such hearing is requested in writing within 30 days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. If the order is issued to a corporation, it shall be issued to the appropriate corporate officers. No order to comply issued under this Section shall prevent the Director from assessing any penalties nor otherwise affect or limit the Director's authority to enforce under other provisions of this Chapter, nor affect any person's obligations to comply with any Section of this Chapter or with a term or condition of any permit or implementation plan promulgated or approved under this Chapter.

C. Emergency Compliance Orders. Notwithstanding any other provision of this Section, the Director (after consultation with the Attorney General where feasible) may issue a compliance order that is effective immediately where there is an imminent and substantial threat to the public health, welfare or environment. Any person issued an order that is effective immediately may file a written request with the Director for a stay pending the outcome of any appeal taken under this Section in accordance with the procedures provided for in § 152(B). The Director shall, by written notice, grant or deny the request for a stay within five days receipt of a request for a stay. If the Director denies the request for a stay, the affected party has 30 days to appeal the denial to the Window Rock District Court. Any person subject to an emergency compliance order may seek judicial review of a final agency determination as provided for in § 154(D) of this Chapter.

D. Enforcement of Compliance Orders. Orders of the Director shall be enforced by the NNSWMP, the Navajo Department of Justice, Resources Enforcement and the Division of Public Safety. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to:

1. Entering upon any property or establishment believed to be violating the order and demanding compliance; and
2. Terminating part or all operations at the solid waste management facility.

E. Injunctive Relief. Notwithstanding any other provision of this Section, the Director may seek injunctive relief pursuant to § 153(A) to restrain any activity which may endanger or cause damage to human health or the environment.

## History

CJY-51-97, July 24, 1997.

### § 153. Judicial Enforcement

A. Civil Judicial Enforcement. The Director shall request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties in a maximum amount per day per violation of not less than five hundred dollars (\$500.00) but not to exceed twenty-five thousand dollars (\$25,000), in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter;

2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; and

3. Whenever an activity exists which may endanger or cause damage to human health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief, but not the assessment of penalties, unless the endangerment to the public health is caused by a violation, as specified in Paragraphs 1 and 2.

B. Criminal Penalties. Any person who intentionally:

1. Violates any provision, requirement or prohibition of this Chapter, including but not limited to a regulation adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter, a filing, reporting or notice requirement under this Chapter;

2. Makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, application, record, report, plan or other document required pursuant to this Chapter to be filed or maintained, including required by a permit issued pursuant to this Chapter; or

3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Chapter; shall, upon conviction, be punished by a fine in a maximum amount of not less five hundred dollars (\$500.00) but not to exceed five thousand dollars (\$5,000) per day per violation or imprisonment for not more than 180 days per day per violation or both or be subject to any other penalty imposed by the court available under Navajo law. For the purpose of this Subsection, the term "person" includes, in addition to the entities referred to in § 102(A) (13) of this Chapter, any responsible corporate officer.

C. Suits for Costs. In addition to the above proceedings, the Director is authorized to initiate proceedings, separately or in connection with either a civil, criminal or exclusion proceeding brought under this Chapter, for any damages caused to the lands or other resources of the Navajo Nation as the result of any violation of this Chapter, including for payment of costs of all associated remedial actions taken, for any expenses incurred in investigating and evaluating such damages, for any administrative costs incurred as a result of this matter and for the reasonable value of the attorney time and expenses associated with such proceedings.

D. Jurisdiction and Venue. Any action under this Subsection may be brought in the Navajo Nation District Court in Window Rock, and such Court shall have jurisdiction to restrain such violation, require compliance, assess civil penalties, collect any fees or noncompliance penalties owed the Nation under this Chapter, and award any other appropriate relief.

E. Calculation of Penalties; Notice.

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this Section, § 154 or § 155, if the Director has notified the source in writing of the violation and a prima facie showing can be made that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice, each day of violation prior to such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this Section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a civil penalty assessed under this Section, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. The court may assess penalties for noncompliance with administrative subpoenas under § 161 of this Chapter or actions under Subchapter 2 of this Chapter where the violator does not have sufficient cause to violate or fail or refuse to comply with such subpoena or action.

3. All penalties collected pursuant to this Section shall be deposited in a special fund in the Navajo Treasury for use by the Director to finance solid waste management compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

4. In lieu of or in addition to a monetary penalty, the Director may impose or may request the Attorney General to seek from the court a requirement to remediate the damage caused or to perform community service, or both.

F. Security. The court may, if a temporary restraining order or preliminary injunction is sought under this Section or § 155 of this Chapter, require the filing of a bond or equivalent security.

### **History**

CJY-51-97, July 24, 1997.

### **§ 154. Administrative Assessment of Penalties**

A. Basis for Penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) per day per violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter. The Director's authority under this Subsection shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) used for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing Requirement. The Director shall assess an administrative penalty under this Section by an order made after opportunity for a hearing. The Director shall promulgate rules for discovery and other procedures for hearings under this Section. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 days of receipt of the notice.

C. Field Citations. After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations assessing civil penalties not to exceed five thousand dollars (\$5,000) per day per violation may be issued by officers or employees designated by the Director, to the extent permissible under applicable law. Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation. If a timely request for a hearing is not made, the penalty shall be final. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Chapter if the violation



continues.

D. Judicial Review. Any person subject to a civil penalty under Subsections (A) or (C) of this Section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. Within 30 days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this Section.

E. Failure to Pay Penalty. If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be ten percent (10%) of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter.

F. Calculation of Penalty. In determining the amount of any penalty to be assessed under this Section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 153(E) of this Chapter.

### **History**

CJY-51-97, July 24, 1997.

### **§ 155. Citizen Suits**

A. Authority to Bring Civil Action; Jurisdiction.

1. Except as provided in Subsection (B) of this Section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his own behalf:

a. Against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who is alleged to be in violation of any provision, requirement or prohibition of this Chapter, including but not limited to

a regulation adopted pursuant to this Chapter, an order or permit issued pursuant to this Chapter or a requirement to have a permit issued under this Chapter; or

b. Against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid waste which may present an imminent and substantial endangerment to health or the environment.

2. The Navajo Nation courts shall have jurisdiction to enforce such provision, requirement, prohibition, regulation, order or permit requirement, to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid waste, to order such person to take such other action as may be necessary and to apply any appropriate civil penalties.

#### B. Notice.

1. An action may not be commenced under Subsection (A)(1)(a) of this Section fewer than 60 days after the plaintiff has given notice of the alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting an administrative or a civil action in court to require compliance with this Chapter, except that any person may intervene as a matter of right in an action filed with the Window Rock District Court.

2. An action may not be commenced under Subsection (A)(1)(b) of this Section fewer than 90 days after the plaintiff has given notice of the endangerment to the Director, the Navajo Nation and any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid waste. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting an administrative or a civil action in court to restrain or abate conditions which may have contributed or are contributing to the activities which may present the alleged endangerment, except that any person may intervene as a matter of right in an action before the Window Rock District Court if such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Director or the Navajo Nation shows that the person's interest is adequately represented by existing parties.

#### C. Venue; Intervention; Service of Complaint.

1. Any action respecting a violation by a solid waste management facility of any requirement of this Chapter or the regulations promulgated hereunder may be brought only in the Navajo Nation District Court in Window Rock.

2. The Director, if not already a party, may intervene as a matter of right in any action brought under this Section.

3. Whenever any action is brought under this Section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this Section in which the Director is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and the Director may submit, on behalf of the Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

D. Award of Costs. The court, in issuing a final order in an action brought under this Section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court; determines that such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

E. Penalty Fund. Penalties received under this Section shall be deposited in a Special Revenue Fund in the Navajo Nation Treasury for use by the Director to finance solid waste management compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

#### **History**

CJY-51-97, July 24, 1997.

#### **§ 156. Administrative Hearings**

The Director shall, by regulation, establish a formal hearing review process which meets due process standards, to hear appeals taken under § 154(A) and (B) (administrative penalties), § 154(C) (field citations) and § 152(C) (emergency compliance orders). The Director may establish an informal review process to hear all other administrative appeals provided for under this Chapter. Until the Director establishes a formal hearing review process, appoints a qualified presiding officer and certifies this in writing, the Navajo Office of Hearings and Appeals is authorized to hear appeals taken under § 154(A) and (B), § 154(C) and § 152(C); provided, however, the Director may, at his/her discretion, transfer other appeals allowed under this Chapter and regulations promulgated hereunder to the Navajo Office of Hearings and Appeals where the need arises.

#### **History**

CJY-51-97, July 24, 1997.

### **Subchapter 6. Rulemaking and Judicial Review**

#### **§ 161. Rulemaking and Other Administrative Procedures**

#### A. Rulemaking.

1. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Nation that are concerned. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least 30 calendar days; allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally their views, in the Navajo or English languages, data or arguments; and shall keep the docket open for 20 calendar days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

2. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

#### B. Administrative Subpoenas.

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Chapter, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Upon a showing satisfactory to the Director by the owner or operator of a source that it would divulge trade secrets or secret processes to make public such papers, books, documents or information or any portion thereof, the Director shall consider this information confidential, except that such information may be disclosed to other officers, employees or authorized representatives of the Nation concerned with carrying out this Chapter or when relevant in any proceeding under this Chapter.

3. Witnesses summoned shall be paid the same fees and mileage that are paid in the Nation's courts. In case of contumacy or refusal to obey a subpoena, the court for the district in which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation Window Rock District Court in his or her official capacity and not in any other manner; in any such action, relief shall be limited to declaratory relief.

## History

CJY-51-97, July 24, 1997.

### § 162. Review in Navajo Nation Supreme Court

A. Petitions for Review. A petition for review of any final action taken by the Director under this Chapter, including but not limited to promulgation of regulations and standards, issuance of orders and issuance and denial of permits (but not including imposition of administrative penalties under § 154 which are subject to review under § 154(D)), or challenge of an administrative subpoena which are subject to review under § 161(B)(3) shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within 60 days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Chapter, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 days after such grounds arise.

#### B. Limitations on Review.

1. If judicial review of a final action of the Director could have been obtained under Subsection (A) of this Section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

2. With respect to any regulations promulgated under this Chapter, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director shall convene a proceeding for reconsideration of the regulation and provide the same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation, although it may be stayed by the Director or the court for up to three months.

3. Except as otherwise expressly allowed by Navajo law no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Chapter. In reviewing alleged procedural errors, the court may invalidate the regulation only if the errors were so serious and related to matters of such central relevance to the regulation that there is a substantial likelihood that the regulation would have been significantly changed if such errors had not been made.

C. Standards for Review. In reviewing any final action of the Director undertaken pursuant to this Chapter, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion or otherwise not

in accordance with the law;

2. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;

3. Without observance of procedure required by law; or

4. Unsupported by substantial evidence.

D. Challenge to Provisions. Any challenge to the lawfulness of any provision of this Chapter must be filed in accordance with Navajo law within 90 calendar days after the date of enactment of this Chapter in the Window Rock District Court, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Any challenge to regulations promulgated under this Chapter must be filed within 90 calendar days of their adoption. In any such action, relief shall be limited to declaratory relief. The Window Rock District Court shall have exclusive jurisdiction and venue over any action challenging any provision of this Chapter.

#### **History**

CJY-51-97, July 24, 1997.

### **Chapter 3. Navajo Nation Pesticide Act**

#### **United States Code**

Environmental pesticide control, see 7 U.S.C. § 136 *et seq.*

#### **Code of Federal Regulations**

Recordkeeping on restricted use pesticides by certified applicators, surveys and reports, see 7 CFR § 110 *et seq.*

#### **§ 301. Title**

This Act may be referred to as the "Navajo Nation Pesticide Act."

#### **History**

CJY-62-95, July 21, 1995.

#### **§ 302. Purpose**

The purpose of this Act is to promote the protection of the health and welfare of the public and the environment by providing for the safe use and handling of pesticides within the Navajo Nation.

#### **History**

CJY-62-95, July 21, 1995.

#### **§ 303. Definitions**

A. Except as specifically defined herein, the terms used in this Act (Chapter) shall be given the same meaning as the identical terms are given in the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136 "FIFRA", and the federal regulations promulgated pursuant to such Act.

B. "Applicator". The term shall be applied as follows:

1. "Certified applicator". The term "certified applicator" means any individual who is certified by the states of Arizona, New Mexico or Utah and who is licensed by the Administrator or his/her designee as authorized to use or supervise the use of any pesticide which is classified for restricted use. All applicators of restricted use pesticides must be certified pursuant to the requirements under §§ 307, 311, 312, 313, 314, 315, 316, and 326 of this Act.

2. "Private applicator". The term "private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person. This term includes persons who use or supervise the use of restricted use pesticides on any lands of the Navajo Nation including lands of the Navajo Nation for purposes of producing any agricultural commodity for themselves, their families or households.

3. "Commercial applicator". The term "commercial applicator" means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purposes or on any property other than as provided by Subsection (C) (2) or (4) herein.

4. "Public applicator". The term "public applicator" means a pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use on any lands within the Navajo Nation including lands of the Navajo Nation in his capacity as any employee, official, or agent of the Navajo Nation, the United States, or any other government or subdivision thereof. This term does not include those applicators acting on behalf of the business enterprises of the Navajo Nation.

5. "Under the direct supervision of a certified applicator". The term "under the direct supervision of a certified applicator" means a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is immediately available if and when needed, as defined in § 315 of this Act, unless otherwise prescribed by its labeling.

C. "Device". The term "device" means any instrument or contrivance other than a firearm which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than man and other than bacteria, viruses or other microorganisms on or in any living

thing other than plants, but does not include equipment used for the application of pesticides when sold separately therefrom, or traps used to control predators or rodents or sterilization using dry heat or steam.

D. "EPA". The term "EPA" means the U.S. Environmental Protection Agency.

E. "Executive Director". The term "Executive Director" means the Executive Director of the Navajo Nation Environmental Protection Agency, or his/her designee.

F. "District Court". The term "District Court" means a District Court of the Navajo Nation.

G. "FIFRA". The term "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 *et seq.*

H. "Label and Labeling".

1. The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

2. The term "labeling" means all labels and all other written, printed, or graphic matter:

a. Accompanying the pesticide or devices at any time; or

b. To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and the Interior, the Department of Health and Human Services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

I. "NNEPA". The term "NNEPA" means the Navajo Nation Environmental Protection Agency.

J. "Navajo Nation". The term "Navajo Nation" means:

1. All lands within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;

2. All land held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and

3. All other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international



law.

K. "Navajo Nation Council". The term "Navajo Nation Council" means the governing body of the Navajo Nation as set forth in 2 N.N.C. § 101.

L. "Pesticide". The term "pesticide" means:

1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and

2. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; provided that the term pesticide shall not include any article that is;

a. A "new animal drug" within the meaning of § 201 (w) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 321 (w)); or

b. An animal drug that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article; or

c. An animal feed within the meaning of § 201 (x) of such Act (21 U.S.C. § 321 (x)) bearing or containing an article covered by Paragraph (1) of this Subsection.

N. "Pesticide Dealer". The term "pesticide dealer" means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale any pesticide classified for restricted or general use pursuant to FIFRA.

O. "Resources Committee". The term "Resources Committee" means the Resources Committee of the Navajo Nation Council.

P. "Restricted Use Pesticide". The term "restricted use pesticide" means a pesticide that is classified for restricted use under the provisions of § 3 (d) (1) (C) of FIFRA or by NNEPA.

Q. "State". The term "State" means the States of Arizona, New Mexico, or Utah. Portions of the Navajo Nation lie within all three states. When the term "State" is used herein it shall be used as a reference for the particular state in which the relevant portion of the Navajo Nation may be located, unless otherwise noted.

R. "An Unreasonable Adverse Effect on the Environment". The term "an unreasonable adverse effect on the environment" means any unreasonable risks to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

### **History**

CJY-62-95, July 21, 1995.

CMY-28-90, May 3, 1990.

CJY-46-86, July 17, 1986.

**Revision note.** Slightly reworded for purposes of statutory form.

### **§ 304. Applicability**

A. Except as otherwise provided in this Section, the provisions of this Chapter shall apply to all persons and property within the Navajo Nation.

B. Subject to the provisions of Subsections (C) and (D) of this Section, the provisions of this Chapter shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any valid waiver of jurisdiction or covenant not to regulate or otherwise exercise jurisdiction over such person or property.

C. Notwithstanding the provisions of Subsection (B) of this Section, the provisions of this Chapter shall apply to any person who has submitted an application for a certification or license pursuant to this Chapter.

D. Nothing in this Chapter shall excuse the required performance of any act as set out in any other applicable law or regulation of the Navajo Nation or limit the jurisdiction of the Navajo Nation.

### **History**

CJY-62-95, July 21, 1995.

### **§ 305. Authority of Executive Director**

A. The Executive Director is responsible for administering this Act and is authorized to exercise all of the legal authority necessary for this purpose including developing plans and strategies related to the use of pesticides on the Navajo Nation. The Executive Director may delegate authority to the Navajo Nation Pesticides Program to insure that the requirements of this Act and the regulations promulgated under this Act are met. In addition, the Executive Director may designate the Pesticides Program as the lead program in developing and implementing a Navajo Nation groundwater management plan, to protect the quality of groundwater throughout the Navajo Nation from contamination by agricultural chemicals. The Pesticides Program would act in cooperation with other NNEPA programs and with EPA. The Executive Director also may delegate authority to the Pesticides Program to develop a plan for implementing the Worker Protection Standard for pesticide workers and handlers and to administer the Navajo Nation Endangered Species Plan in cooperation with EPA and the U.S. Fish and Wildlife Service.

B. The Executive Director is authorized to promulgate such rules and regulations from time to time as may be necessary to carry out the provisions of this Act. Subject to Subsection (D) of this Section, such rules and regulations may include:

1. Regulations governing the determination of penalties, denials, suspension or revocation of certifications or licenses;

2. Rules and procedures governing appeals pursuant to §§ 318, 320,

322 and 323 of this Act; and

3. Regulations governing administration of this Chapter by the Executive Director.

C. Subject to Subsection (D) of this Section, proposed rules and regulations shall be published for public review and comment for at least 30 days prior to their adoption. Rules and regulations shall be effective in accordance with their terms after review and approval by the Resources Committee.

D. Upon adoption of an Administrative Procedure Act by the Navajo Nation Council, the provisions of such Act shall supersede and apply instead of the provisions of Subsection (C) of this Section, and the provisions of Subsection (B) of this Section where they are inconsistent.

E. The effectiveness and enforceability of the provisions of this Chapter shall not be dependent upon the adoption of regulations pursuant to Subsection (B) of this Section.

#### **History**

CJY-62-95, July 21, 1995.

CMY-28-90, May 3, 1990.

CJY-46-86, July 17, 1986.

#### **§ 306. Construction**

A. The provisions of this Act shall be liberally construed to fulfill the intent and purposes of this Act, and so as not to conflict with applicable law of the United States.

B. Nothing contained in this Act shall be construed to diminish, limit, or otherwise adversely affect any right or remedy otherwise held or available to the Navajo Nation or its members under other applicable law.

#### **History**

CJY-62-95, July 21, 1995.

#### **§ 307. Registration and classification of pesticides**

The Navajo Nation recognizes the classification of pesticides, whether for general use or restricted use, or both made by the Administrator of the EPA by the EPA pursuant to FIFRA. In addition, the Executive Director may restrict the use of additional pesticide products if the Executive Director finds that their uses must be restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy.

#### **History**

CJY-62-95, July 21, 1995.

CJY-46-86, July 17, 1986.

#### **United States Code**

Registration of pesticides, see 7 U.S.C. § 136a.

#### **§ 308. Restricted use pesticide dealer**

A. Licensing. Any pesticide dealer in the Navajo Nation shall obtain a license from the Executive Director pursuant to the regulations promulgated under this Act.

B. Responsibility. Every licensed pesticide dealer shall be responsible for the acts of each person employed by him/her in the distribution, sale, solicitation, handling and storage of pesticides. The pesticide dealer's license or the qualification of the sales manager or both may be suspended or revoked, after a hearing, for any violation of this Act, whether committed by the pesticide dealer, the sales manager or by any other officer, agent, or employee of the sales outlet.

#### **History**

CJY-62-95, July 21, 1995.

CMY-28-90, May 3, 1990.

CJY-46-86, July 17, 1986.

#### **§ 309. Qualifications of sales manager**

Any person seeking to work as a sales manager for a pesticide dealer shall apply for qualification from the Executive Director pursuant to the regulations promulgated under this Act.

#### **History**

CJY-62-95, July 21, 1995.

#### **§ 310. Classification of pesticide applicators**

Pesticide applicators shall be classified as commercial applicators, public applicators or private applicators according to the definitions shown in § 303(B) of this Act.

#### **History**

CJY-46-86, July 17, 1986.

#### **§ 311. Classification and categorization of pesticide applicators**

A. The Executive Director will classify pesticide applicators as commercial applicators, public applicators, private applicators, according to

the definitions in § 303 (B). In addition, commercial and public applicators shall be categorized in one or more of the categories defined below, based on the application site and the type of work they perform.

B. Categories:

1. Agriculture Pest Control.

a. Plant. This category includes commercial and public applicators using or supervising the use of restricted use pesticides in the production of agricultural crops, including but not limited to feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, and including use or supervision of use of restricted use pesticides on grasslands and non-crop agricultural lands.

b. Animal.

(1) This category includes commercial and public applicators using or supervising the use of restricted use pesticides on animals, including, but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock, and including the use or supervision of the use of restricted use pesticides on places in which animals are confined.

(2) Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

2. Forest Pest Control. This category includes commercial and public applicators utilizing or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed producing areas.

3. Ornamental and Turf Pest Control. This category includes commercial and public applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

4. Seed Treatment. This category includes commercial and public applicators using or supervising the use of restricted use pesticides on seeds.

5. Aquatic Pest Control. This category includes commercial and public applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health-related activities included in category (8) below.

6. Right-of-Way Pest Control. This category includes commercial and public applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric, powerlines, pipelines, railway rights-of-way or other similar areas.

7. Industrial, Institutional, Structural and Health-Related Pest

Control. This category includes commercial and public applicators using or supervising the use of restricted use pesticides in, on, or around food handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products.

8. Public Health Pest Control. This category includes Navajo Nation, state, federal, or other governmental employees using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance.

9. Regulatory Pest Control. This category includes Navajo Nation, state, federal, or other governmental employees who use or supervise the use of restricted use pesticides in the control of regulated pests.

10. Research and Demonstration Pest Control. This category includes:

a. Persons who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration; and

b. Persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides.

11. Rodent, Predator, and Bird Pest Control. This category includes commercial and public applicators using or supervising the use of any restricted use pesticides in the control of rodents, predators, or birds.

12. Wood Preservative Control. This category includes commercial and public applicators using or supervising the use of restricted use pesticides in wood preservative products containing creosote, pentachlorophenol (including its salts) and inorganic arsenicals.

C. Subcategories. Type of Pesticides. All commercial and public applicators are further placed into subcategories according to the types of pesticides they apply. These subcategories are:

1. Herbicides, desiccants, defoliant, and plant regulators;
2. Insecticides, attractants, and repellents;
3. Pesticides;
4. Rodenticides, predicides and avicides;
5. Fungicides and nematocides; and
6. Disinfectants and germicides.

D. All applicators who apply pesticides via aircraft must comply with all applicable federal and Navajo Nation regulations.

### **History**

CJY-62-95, July 21, 1995.

CJY-46-86, July 17, 1986.

### **§ 312. Standards of competency for certification of commercial and public applicators**

A. Commercial and public applicators must demonstrate competency in the use and handling of pesticides, both with regard to general standards applicable to all users and to additional specific standards applicable to each category or subcategory in which the applicator is to be classified.

B. General Standards for Commercial and Public Applicators. Commercial and public applicators must demonstrate knowledge of the following subjects in order to receive certification:

1. Label and Labeling Comprehension.

a. The general format and terminology of pesticide labels and labeling;

b. The understanding of instructions, signal words, terms, symbols, and other information commonly appearing on pesticide labels;

c. Classification of the product, general or restricted; and

d. Necessity for use consistent with the label.

2. Safety. Factors including:

a. Pesticide toxicity and hazard to man and common exposure routes;

b. Common types and causes of pesticide accidents;

c. Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;

d. Need for and use of protective clothing and equipment;

e. Symptoms of pesticide poisoning;

f. First aid and other procedures to be followed in case of a pesticide accident; and

g. Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from gaining access to pesticides and pesticide containers.

3. Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

- a. Weather and other climatic conditions;
  - b. Types of terrain, soil or other substrate;
  - c. Presence of fish, wildlife and other non-target organisms;
- and
- d. Drainage patterns.

4. Pests. Factors such as:

- a. Common features of pest organisms and characteristics of damage needed for pest recognition;
- b. Recognition of relevant pests; and
- c. Pest development and biology as it may be relevant to problem identification and control.

5. Pesticides. Factors such as:

- a. Types of pesticides;
- b. Types of formulations;
- c. Compatibility, synergism, persistence and animal and plant toxicity of the formulations;
- d. Hazards and residues associated with use;
- e. Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
- f. Dilution procedures.

6. Equipment. Factors including:

- a. Types of equipment and advantages and limitations of each type; and
- b. Uses, maintenance and calibration of equipment.

7. Application Techniques. Factors including:

- a. Techniques used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which techniques of application to use in a given situation;
- b. Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and



c. Prevention of drift and pesticide loss into the environment.

8. Laws and Regulations. Applicable federal and Navajo Nation laws and regulations.

C. Category Specific Standards. In addition to the general standards, commercial and public applicators must demonstrate knowledge of the principles of pesticide use as they relate to the particular use category in which the applicator is involved. The following are the category specific standards.

1. Agricultural Pest Control.

a. Plant. Applicators must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such knowledge is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

b. Animal. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

2. Forest Pest Control. Applicators shall demonstrate practical knowledge of the types of forests, forest nurseries, and seed production in the Navajo Nation and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent lands use. Due to frequent proximity of human habitation to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to human, pests and other domestic animals.

3. Ornamental and Turf Pest Control. Applicators shall demonstrate practical knowledge of pesticide problems associated with the production

and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant materials, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitation to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pests, and other domestic animals.

4. Seed Treatment. Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

5. Aquatic Pest Control. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effect on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

6. Right-of-Way Pest Control. Applicators shall demonstrate practical knowledge of a wide variety of environments since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides, the need of containment of these pesticides within the right-of-way area, and the impact of their application activities on the adjacent areas and communities.

7. Industrial, Institutional, Structural and Health-Related Pest Control. Applicators shall demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulations appropriate for their control and methods of application that avoid contamination of food, damage and contamination of habitat and exposure of people and pets. Since human exposure, including babies, children, pregnant women and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health-related pest control may involve outdoor application, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this Activity.

8. Public Health Pest Control. Applicator shall demonstrate practical knowledge of vector-disease transmission as it relates to and

influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

9. Regulatory Pest Control. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulations of pests, and the potential impact on the environment of restricted use pesticides used in suppressing and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

10. Research and Demonstration Pest Control:

a. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Such persons should also demonstrate an understanding of pesticide-organism interaction and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in 40 C.F.R. § 171.4(b). In addition, such persons shall meet the specific standards required for categories (1)-(7) of this Section as may be applicable to their particular activity.

b. Persons conducting field research or method improvement work with restricted use pesticides will be expected to know the general standards detailed in § 312 (B) of this Act. In addition, they shall meet the specific standards required for categories (1)-(7) of § 312(C) of this Act that are applicable to their particular activity, or alternatively, they shall meet the more inclusive requirements listed under "Demonstration".

11. Rodent, Predator, and Bird Pest Control. Applicators shall demonstrate practical knowledge of rodents, predators, and bird pests, as well as predator-prey relationships. They should possess practical knowledge of rodent, predator and bird habits and habitat, and the hazards associated with secondary poisoning of non-target species.

12. Wood Preservative Control. Applicators shall demonstrate practical knowledge of wood preservative products containing creosote,

pentachlorophenol (including its salts) and the inorganic arsenicals. They shall possess knowledge of how wood is preserved when using an EPA-registered pesticide containing creosote, pentachlorophenol (including its salts) and inorganic arsenical to protect it from insect attack and decay. Also knowledge should include applicator safety and environmental protection. Wood treated with creosote, pentachlorophenol (including its salts) and inorganic arsenic should only be used in areas where such protection is important.

D. Exemptions from Standards. The above standards do not apply to the following persons for purposes of this Act:

1. Persons conducting laboratory type research involving restricted use pesticides; and

2. Doctors of Medicine and Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice other than Doctors of Veterinary Medicine included under category (B) (1) of § 311 of this Act.

E. Until such time as the NNEPA has adopted its own plan and procedures for examination and testing of competency, any applicant who possesses a certificate from the State of Arizona, New Mexico, or Utah, granted pursuant to an approved state FIFRA plan, shall be deemed to have demonstrated the level of knowledge and competency necessary to receive a similar certificate from the Navajo Nation.

#### **History**

CJY-62-95, July 21, 1995.

CJY-46-86, July 17, 1986.

#### **United States Code**

Certification of applicators, see 7 U.S.C. § 136i.

#### **§ 313. Standards of competency for certification of private applicators**

A. In order to receive certification, all private applicators must show that they possess a practical knowledge of the pest problems and pest control practices associated with their agricultural operations; proper storage, use, handling and disposal of the pesticides and containers; and their related legal responsibilities. This practical knowledge includes the ability to:

1. Recognize common pests to be controlled and prevent potential damages caused by them.

2. Read and understand the label and labeling information including the common name of the pesticide to be applied; pest(s) to be controlled; timing and methods of application; safety precautions; preharvest or re-entry restrictions; and any specific disposal procedures.

3. Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as areas to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

4. Recognize local environmental situations that must be considered during application to avoid contamination.

5. Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

B. Until such time as the NNEPA has adopted its own procedures for examination and testing of competency, any applicant who possesses a certificate from the State of Arizona, New Mexico, or Utah, granted pursuant to an approved state FIFRA plan, shall be deemed to have demonstrated the level of knowledge and competency necessary to receive a similar certificate from the Navajo Nation.

#### **History**

CJY-62-95, July 21, 1995.

CJY-46-86, July 17, 1986.

#### **United States Code**

Certification of applicators, see 7 U.S.C. § 136i.

#### **§ 314. Certification and license application conditions**

A. All certification and license applications shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any certification or license:

"Applicant hereby consents to the jurisdiction of the Navajo Nation in connection with all activities conducted pursuant to or in connection with any certification or license issued pursuant to this application or to which the provisions of the Navajo Nation Pesticide Act otherwise apply. This consent shall be effective whether or not a certification or license is issued or is in effect, and may not be withdrawn by Applicant. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of Applicant."

B. Applicant shall include the foregoing statement as a term and condition of any agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any certification or license issued under this Chapter, and each party to any such agreement must agree and subscribe to said statement, substituting the name of the party for "Applicant" as appropriate, and substituting the phrase "this agreement" in place of the phrase "any certification or license issued pursuant to this application." Failure by Applicant to include such statement, or of any party

to agree and subscribe to such statement, shall render the contract or other agreement void and unenforceable, and shall subject Applicant to a civil penalty in accordance with § 322 of this Chapter.

#### **History**

CJY-62-95, July 21, 1995.

#### **United States Code**

Certification of applicators, see 7 U.S.C. § 136i.

#### **§ 315. Standards for supervision of non-certified applicators by certified applicators**

A. Certified applicators (except non-readers) whose activities indicate a supervisory role must demonstrate a practical knowledge of federal and Navajo Nation supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

B. The availability of the certified applicator must be directly related to the hazard of the situation. In many situations, where the certified applicator is not required to be physically present, "direct supervision" shall include verifiable instruction to the competent person, as follows:

(1) Detailed guidance for applying the pesticide properly, and

(2) Provisions for contacting the certified applicator in the event he/she is needed. In other situations, and as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

C. Each commercial applicator shall be responsible for the acts of each person employed, contracted, subcontracted, or supervised by him in the application of pesticides and all claims and recommendations for use of pesticides. The certified applicator shall be subject to criminal or civil penalties for any violation whether committed by him, or by his officers, agents, employees or subcontractors. Reliance on a subcontractor shall not constitute a defense against any action brought by the Executive Director against a certified applicator pursuant to this Act.

#### **History**

CJY-62-95, July 21, 1995.

CMY-28-90, May 3, 1990.

CJY-46-86, July 17, 1986.

#### **§ 316. Certification procedures**

A. Commercial and Public Applicators.

1. Certification Methods:

a. A Navajo Nation certification may be obtained by presenting to the Executive Director a valid commercial or public applicator certification issued by the State of Arizona, New Mexico, or Utah pursuant to an approved state FIFRA plan. The Navajo Nation certification issued will reflect Navajo Nation certification only in the commercial or public applicator categories appearing on the State certification. Further, the expiration date on the Navajo Nation certification shall not exceed the expiration date given on the State certification.

b. The Executive Director is authorized to develop and implement a Navajo Nation commercial and public applicator examination and certification program, in conjunction with EPA, and in accordance with the standards required by this Act and FIFRA. Such program may be either an exclusive or non-exclusive alternative to the acceptance of state certification. A Navajo Nation certification issued pursuant to such a program shall be valid for a period of three years from the date of issuance. A reasonable fee, at a rate set by regulation, may be charged for the issuance of a Navajo Nation certification, whether the certification is based on a State certification or on exam.

2. Certification Renewal. A Navajo Nation certification may be renewed by presenting a valid Arizona, New Mexico, or Utah certification to the Executive Director, and shall be re-issued for a period not to exceed the expiration of such State certification; provided, if the Executive Director has promulgated a Navajo Nation examination procedure for commercial and public applicators, such certification may be renewed pursuant to the procedure specified therein.

### 3. Records.

a. Commercial and public applicators shall keep and maintain records of each application of any restricted use pesticide within the Navajo Nation. Such records shall include the following information:

(1) Name and address of the person for whom the pesticide was applied;

(2) Location and size of treatment site, if different from Subsection (A) (3) (a) (1);

(3) Year, month, day and time of application;

(4) Name of pesticide, identified by trade name and EPA registration number, formulation, concentration, rate applied, and total amount used;

(5) Purpose of application, including target pest(s), crop, commodity, or site, as applicable;

(6) Weather conditions; and

(7) Type and amount of pesticide disposed of, method

of disposal, date, and location of disposal site.

b. Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the Executive Director at reasonable times. The Executive Director shall, upon written request, be furnished a copy of such records by the commercial or public applicator. Records of restricted use pesticides application performed by persons under the direct supervision of a certified commercial or public applicator shall be the responsibility of the supervising certified applicator.

4. Exemption. The provision of this Section concerning records shall not apply to persons conducting research involving restricted use pesticides nor to Doctors of Medicine or Doctors of Veterinary Medicine applying restricted use pesticides as drugs or medication during the course of their normal practice other than Doctors of Veterinary Medicine included under category (B) (1) (b) of § 311 of this Act.

## B. Private Applicators

### 1. Certification Methods.

a. A private applicator may obtain a Navajo Nation certification by presenting to the Executive Director a valid Private Applicator's certification issued by the States of Arizona, New Mexico, or Utah pursuant to an approved state FIFRA plan. The Executive Director will issue a Navajo Nation certification to the holder of an Arizona, New Mexico, or Utah certification which shall authorize only those uses authorized by the State certification. The expiration date of the Navajo Nation certification shall not exceed the expiration date given on the State certification.

b. The Executive Director is authorized to conduct or arrange for the conducting of training sessions for private applicators. Applicators who complete a thorough training in the use of one or more pesticides and demonstrate competency to use such pesticide(s), based on the private applicator standards set forth above, may be certified by the Executive Director to use such pesticide(s). The certification program may employ either a written or oral testing procedure or a thorough physical demonstration of proper technical knowledge and competency. This certification program may be either an exclusive or a non-exclusive alternative to the acceptance of State certification. A Navajo Nation certification issued pursuant to such a program shall be valid for three years from the date of issuance.

c. A reasonable fee, at a rate set by regulation, may be charged for the issuance of a Navajo Nation certification.

d. Recertification may be obtained by presenting an updated Arizona, New Mexico, or Utah certification to the Executive Director, but such renewal shall not exceed the period of the state certification, provided, if the Executive Director has promulgated a Navajo Nation Certification Program, such certifications shall be renewed pursuant to the procedures specified therein.



C. Certification of Non-English Reading Applicators/Non-Readers.

1. The Executive Director may certify a person who is unable to read English, if such person can demonstrate competency with regard to all of the standards required by this Act, except the ability to read. An applicator who does not read English or cannot for any other reason read the appropriate labels must:

a. Receive personal instruction from a certified applicator in the use of the pesticide.

b. Physically demonstrate that he understands how to use such pesticide.

c. Learn and memorize all of the significant information on the label.

d. Be able to distinguish by label shape, color, size or configuration the pesticide from others.

e. Be aware of sources of advice and information for safe and proper use of each pesticide related to his authorization.

2. Certification for non-readers is limited to one pesticide per certification. Non-readers may not supervise non-certified applicators.

**History**

CJY-62-95, July 21, 1995.

CJY-46-86, July 17, 1986.

**United States Code**

Certification of applicators, see 7 U.S.C. § 136i.

**§ 317. Pesticide containers**

Storage and disposal methods shall comply with appropriate pesticide label instructions and regulations promulgated pursuant to this Act. All containers shall be flattened or pierced before disposal so that they cannot be used to contain any other materials or used for any other purposes. Storage and disposal of pesticides shall only be at areas designated and approved by the Executive Director. Disposal of pesticide containers shall only be at approved or permitted landfills, in accordance with applicable solid waste laws and regulations.

**History**

CJY-62-95, July 21, 1995.

CMY-28-90, May 8, 1990.

CJY-46-86, July 17, 1986

**§ 318. Entry and inspection**

For purposes of carrying out this Act, the Executive Director may enter at reasonable times any establishment or other places where pesticides or devices are held for use, distribution or sale or where pesticides are being, or have been used, for the purposes of inspecting and obtaining samples of any pesticides or devices or samples of any container or copies of labels. The Executive Director also may enter at reasonable times any establishment or site for the purpose of inspecting records required to be maintained pursuant to this Act or the regulations hereunder.

**History**

CJY-62-95, July 21, 1995.

CJY-46-86, July 17, 1986.

**§ 319. Cooperative agreements**

The Executive Director is authorized to pursue the development of cooperative agreements including grants-in-aid from any agency of the States of Arizona, New Mexico, or Utah, the Bureau of Indian Affairs, or the United States Environmental Protection Agency for the purpose of carrying out the provisions of this Act. Any such agreements are subject to approval in accordance with the laws and procedures of the Navajo Nation.

**History**

CJY-62-95, July 21, 1995.

CJY-46-86, July 17, 1986.

**Cross References**

Navajo Nation standing committee authority, see 2 N.N.C. § 824(B)(6).

**United States Code**

Cooperation, aid and training, see 7 U.S.C. § 136u.

**§ 320. Denial, suspension or revocation of license or certificate**

A. The Executive Director may, for good cause shown or upon his/her own information and belief, informally contact any pesticide dealer or applicator about possible violations of the Act or practices which may result in violations. These informal contacts are to assist the dealer or applicator in adhering to practices which promote the proper use of pesticides.

B. Upon recommendation to the Executive Director or based upon his/her own findings and belief, the Executive Director may issue a Warning of Possible Violation in the form of a letter to a dealer or an applicator. The letter shall explain the basis for the Warning, possible measures which the dealer or

applicator may take to mitigate the basis of the Warning, and an explanation of the steps that may be taken if the dealer or applicator does not take positive corrective action. Neither this letter nor an informal contact are a necessary prerequisite to any further administrative or judicial action, except that the issuance of a warning of possible violation is a prerequisite to any criminal action against a private applicator.

C. The Executive Director is authorized to issue to any person who has willfully or negligently failed to comply with the recommendations of a Warning of Possible Violation or otherwise failed to comply with the requirements of this Act or the terms of a license or certification, an Order to Show Cause why a license or certification should not be revoked. Such an Order will require the person to appear before the Executive Director or other body designated by the Executive Director.

D. The Executive Director is authorized to suspend immediately or deny an application for a license or certification of any dealer or applicator whose actions or omissions in violation of this Act pose a significant threat to the health or welfare of the Navajo Nation, its people and its resources. Within 30 days of any such action, the Executive Director must insure that the dealer or applicator is given an opportunity for a hearing before the Executive Director or a body the Executive Director may designate for consideration of the suspension action and consideration as to whether the license or certification must be revoked, denied, or suspended pending further investigation.

### **History**

CJY-62-95, July 21, 1995.

CMY-28-90, May 3, 1990.

CJY-46-86, July 17, 1986.

**Revision note.** Slightly reworded for purposes of statutory form.

### **§ 321. Prohibited acts**

A. No pesticide applicator (commercial, public, private, or otherwise) using or supervising the use of a restricted use pesticide shall:

1. Use any pesticide in a manner inconsistent with its labeling or with this Act.
2. Use any restricted use pesticide without being certified or under the direct supervision of a certified applicator.
3. Supervise the use of a restricted pesticide without first obtaining a Navajo Nation certification.
4. Falsify any applications or records required by this Act.
5. Fail to keep or refuse to allow inspection of any records required by this Act.

6. Make available any restricted use pesticide to anyone who is not authorized to use it or is not acting directly under the supervision of one who is authorized to use it.

7. Use or dispose of any pesticide or pesticide container in a manner which is inconsistent with the label directions or which unreasonably endangers or harms the quality of the natural environment or the health of any living beings.

8. Violate any of the requirements of this Act or the regulations thereunder.

B. No pesticide dealer shall:

1. Distribute, sell, offer, or hold for sale any pesticide without being licensed by the Executive Director.

2. Sell any restricted use pesticide not registered pursuant to FIFRA.

3. Detach, alter, deface, or destroy, in whole or in part, any label or labeling required by FIFRA.

4. Add or delete any substance to or from a pesticide which may alter its registered composition.

5. Sell or offer for sale any pesticide other than from the original unbroken package.

6. Make false or misleading representation or advertisement for any pesticide or device, including any advertisement or representation which fails to reveal the consequences which may result from the use of the pesticide or device to which the advertisement or representation refers.

7. Use any pesticide in a manner inconsistent with the label or this Act.

8. Dispose of or store any pesticide in areas not approved for disposal and storage.

9. Violate any of the requirements of this Act or the regulations thereunder.

C. No person shall:

1. Distribute, sell, offer for sale, hold for sale, ship, or deliver for shipment to, or receive from, any person any pesticide that is not registered with the EPA under FIFRA or subject to the exceptions listed under FIFRA § 3 (a) and (b).

2. Produce any pesticide subject to FIFRA or any active ingredient used in producing a pesticide subject to FIFRA unless the establishment in which it is produced is registered with the EPA.

3. Use restricted use pesticides unless certified pursuant to this Act. This prohibition however does not apply to persons who apply pesticides under the direct supervision of a certified applicator pursuant to this Act. In addition, any person may use a general use pesticide, provided it is used in accordance with its directions, warnings, and cautions, and only for the uses for which it is registered.

4. Transport, store, or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects, or to pollute any waterway in a manner harmful to any wildlife therein or the quality of the water in such waterway, or to otherwise adversely impact the quality of any other water resources, including groundwater, within the Navajo Nation.

5. Violate any of the requirements of this Act or the regulations thereunder.

### **History**

CJY-62-95, July 21, 1995.

CJY-46-86, July 17, 1986.

### **United States Code**

Unlawful acts, environmental pesticide control, see 7 U.S.C. § 136j.

### **§ 322. Penalties**

#### **A. Criminal Penalties.**

1. Any person who commits one or more violations of the provisions of this Act shall be subject to criminal prosecution in the District Courts of the Navajo Nation. Upon receipt of the Executive Director's sworn statement alleging one or more violations of this Act, the Office of the Prosecutor of the Navajo Nation shall investigate and prosecute as appropriate alleged criminal violations of this Act.

2. Any person who knowingly violates any provision of this Act or the regulations promulgated thereunder, or who knowingly makes any material false statement or omits material information from, or alters, conceals, or fails to file or maintain any record, application, or other document required pursuant to this Chapter to be filed or maintained shall, upon conviction, be subject to a criminal fine of not greater than five thousand dollars (\$5,000), except that in the case of a private applicator the maximum fine shall be one thousand dollars (\$1,000), and/or imprisonment for a period not to exceed 30 days.

3. In any instance where the Navajo Nation lacks jurisdiction over the person charged, the Executive Director may refer the action to the appropriate EPA Regional Administrator. Any person who is not subject to the criminal jurisdiction of the Navajo Nation also may be subject to

exclusion from the territory of the Navajo Nation for consistent violations of the provisions of this Chapter or the regulations promulgated thereunder. Exclusion proceedings may be initiated by the Director in the District Courts of the Navajo Nation upon his/her determination that such violations have occurred.

4. In addition to the above proceedings, the Director in the District Courts of the Navajo Nation is authorized to initiate a proceeding, separately or in connection with either a criminal or exclusion proceeding brought under this Chapter, for any damages caused to the lands or other resources of the Navajo Nation as the result of any violation of this Chapter or the regulations promulgated thereunder, for any expenses incurred in investigating and evaluating such damages or violations, for any administrative costs incurred, and for the reasonable value of any attorney time or expenses associated with such proceeding.

#### B. Civil Administrative Penalties.

1. Any person who violates any provision of this Act or the regulations promulgated hereunder may be assessed a civil administrative penalty by order of the Executive Director of not more than five thousand dollars (\$5,000) for each violation; provided, however, that no civil penalty shall be assessed unless the person cited shall have been given notice and opportunity for a hearing on such violation. The person cited shall have 30 days from receipt of such notice to pay the penalty or request a hearing. If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived.

2. In the event that the Executive Director is unable to collect the civil penalty, the Executive Director shall refer the matter to the Attorney General of the Navajo Nation, for recovery of such amount in the appropriate District Court of the Navajo Nation. In addition, the Attorney General is authorized to recover all of the Director's enforcement expenses, including, but not limited to attorneys' fees and the cost of collection proceedings.

3. In determining the amount of the penalty, the Executive Director shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Whenever the Executive Director finds that the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, the Executive Director may issue a warning in lieu of assessing a penalty.

#### C. Stop Sale, Use, Removal, and Seizure.

1. Stop Sale, Use, or Removal Orders. In addition to any other penalties or actions available under this Act, the Executive Director may issue and enforce a written or printed "stop sale, use, or removal" order to the pesticide dealer for any lot of pesticides or devices which the Executive Director has reasonable cause to believe are being sold or offered for sale in violation of any of the provisions of this Act or

regulations promulgated pursuant to this Act. Such order shall remain in effect until the Executive Director has determined that the provisions of this Act or regulations in question have been complied with.

2. Seizure. If the Executive Director has reasonable cause to believe that a pesticide dealer is selling or offering for sale any pesticides or devices in violation of a "stop sale, use or removal order," the Executive Director may seize the pesticides or devices subject to such order and hold them at a designated place until the violation of this Act or its regulations has been complied with or until the violation has been otherwise legally disposed of and the dealer has paid all costs incurred in connection with the seizure. Such seizure shall be conducted in accordance with the applicable laws of the Navajo Nation.

D. Injunctive Relief. If the violation of any of the provisions of this Act or of any regulations promulgated thereunder is a nuisance or a hazard to the health and safety of humans or harmful to the environment, such activity may be restrained or enjoined at any time by an order issued by the appropriate District Court of the Navajo Nation, but only if all administrative remedies have been exhausted or if the Executive Director determines that immediate and irreparable injury, loss, or damage will result if such violation or activity is not immediately restrained or enjoined. The Executive Director shall request the Attorney General of the Navajo Nation to bring an action to obtain an order to restrain or enjoin any such violation.

E. Records and reports. Pesticide dealers shall keep a record of each sale of restricted use pesticide at each sales outlet on forms provided by the Executive Director. All records and reports shall be submitted to the Executive Director as specified by the regulations promulgated pursuant to this Act.

#### **History**

CJY-62-95, July 21, 1995.

CMY-28-90, May 3, 1990.

CJY-46-86, July 17, 1986.

**Revision note.** Slightly reworded for purposes of statutory form.

#### **United States Code**

Penalties, environmental pesticide control, see 7 U.S.C. § 1361.

#### **§ 323. Judicial Review**

A. Review in Navajo Nation District Court. Whenever the Executive Director takes final action without the opportunity for a hearing, such as in the case of a refusal to change a pesticide classification, review of such final action shall be had in the appropriate Navajo Nation District Court in Window Rock. In addition, any person subject to an administrative penalty under § 322(B) may seek review of such penalty assessment in the Navajo Nation

District Court in Window Rock by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Executive Director and the Attorney General. Within 30 days thereafter the Executive Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Executive Director may seek to recover civil penalties ordered or assessed under this Section.

B. Review in Navajo Nation Supreme Court. Review of all other final actions of the Executive Director, including but not limited to promulgation of regulations, issuance of orders, including civil penalty orders, and denial, suspension or revocation of certificates and licenses, shall be had in the Navajo Nation Supreme Court. A petition for review shall be filed within 60 days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or person required to be served, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 days after such grounds arise. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Executive Director at the time of the final action from which the appeal is taken.

C. Limitations on Review. If judicial review of a final action of the Executive Director could have been obtained under Subsection (A) or (B) of this Section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

D. Standards for Review. In reviewing any final action of the Executive Director undertaken pursuant to this Act, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
2. Contrary to constitutional right, power, privilege or immunity;
3. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;
4. Without observance of procedure required by law, such failure to observe such procedure is arbitrary or capricious; or
5. Unsupported by substantial evidence.

E. Any challenge to the lawfulness of any provision of this Act must be filed in accordance with Navajo law within 90 days after the date of the enactment of this Act in the District Court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. In any such action, relief shall be limited to declaratory relief. The District Court for the District of Window Rock shall have exclusive



jurisdiction and venue over any action challenging any provision of this Act.

#### **History**

CJY-62-95, July 21, 1995.

#### **§ 324. License conditions**

A. As a condition of obtaining a dealer's license, or qualification of a sales manager, said applicants shall consent to the jurisdiction of the Navajo Nation and shall agree to abide by all laws of the Navajo Nation.

B. All dealer license and qualification of sales manager application forms shall contain the consent to jurisdiction statement set forth at § 314 of this Act.

#### **History**

CJY-62-95, July 21, 1995.

#### **§ 325. Use of funds**

Monies derived from fees and penalties under this Act and regulations promulgated thereunder shall be available to the Executive Director to administer this Act and regulations. Such funds shall be deposited into a duly established revolving account and expended in accordance with the revolving account Plan of Operation approved budget. Any monies contained in said revolving account at the end of any fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in this Section.

#### **History**

CJY-62-95, July 21, 1995.

CMY-28-90, May 3, 1990.

#### **§ 326. Certification requirements for agricultural aircraft pilots**

All agricultural aircraft pilots must possess a valid agricultural aircraft pilot certification issued by the Executive Director, pursuant to regulations promulgated hereunder, and a valid commercial pilot's certification issued by the Federal Aviation Administrator.

#### **History**

CJY-62-95, July 21, 1995.

CMY-28-90, May 3, 1990.

**Revision note.** Sections 319 and 320 have been rearranged for purposes of statutory form.

#### **§ 327. Severability**

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall remain unaffected and to this end the provisions of this Code are declared to be severable.

#### **History**

CJY-62-95, July 21, 1995.

CMY-28-90, May3, 1990.

### **Chapter 5. [Reserved]**

Chapter 5 of Title 4, consisting of §§ 500 to 544, was recodified as Title 18, Chapter 15. See now, 18 NNC §§ 1601 to 1644.

### **Chapter 7. Navajo Energy Development Administration**

#### **History**

**Note.** CMY-39-80, May 1, 1980 established the Navajo Energy Development Authority. NEDA has, since its creation, operated within the Executive Branch of the Navajo Nation government.

#### **United States Code**

Indian energy resources, see 25 U.S.C. § 3501 *et seq.*

#### **§ 701. Establishment**

The Navajo Energy Development Administration (NEDA) is a department of the Executive Branch of the Navajo Nation government within the Division of Economic Development.

#### **History**

ACJA-21-87, January 7, 1987.

CMY-39-80, May 1, 1980.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 702. Purposes**

A. The basic purpose of NEDA is to plan energy related projects and to spin off actual project development to the Commercial and Industrial Departments of the Economic Development Division, or other entities as determined by the Office of the President/Vice-President including but not limited to private enterprises. In addition, NEDA's purposes include:

1. To plan and develop the following resources:

a. Energy. In the absence of capability from the private sector, the goal is to eventually spin off the management to the private sector. These resources include but are not limited to solar, wind, and geothermal;

b. Industrial and non-industrial minerals. NEDA shall assist from a planning standpoint, in exploration, determination of resources characterization, and conducting feasibility studies of industrial and non-industrial minerals; and

c. Coal, oil, gas, uranium and their processed forms, including but not limited to synthetic fuel and gasoline. NEDA shall assist in the production, mining, processing, and distribution of these resources.

2. To initiate the preliminary negotiation format and provisions on agreements and contracts with private enterprises with the specific goals of maximizing financial returns and Navajo employment of promoting conservation, and of transferring the eventual control over resources from non-Navajo private enterprise to Navajo;

3. To promote efficient utilization of Navajo energy resources in a manner which is consistent with Navajo social and environmental concerns;

4. To represent the Navajo Nation in various state and federal activities, acting as an energy advisor to the Navajo Nation, in conjunction with other Navajo Nation programs; and

5. To promote the utilization of Navajo labor and businesses.

#### **History**

ACJA-21-87, January 7, 1987.

CMY-39-8, 3, May 1, 1980.

**Revision note.** Slightly reworded for purposes of statutory form.

#### **§ 703. Activities**

A. NEDA will be responsible for the following activities and services:

1. Prepare an overall energy development plan for the Navajo Nation.

2. Inventory the following resources:

a. Nonferrous minerals;

b. Industrial minerals;

c. Oil, gas, and coal; and

d. Alternative energy and other minerals.

3. Conduct feasibility studies for the areas of concentration of specified resources.

4. Receive and evaluate proposals from non-Navajo Nation government entities interested in developing the specified resources, in conjunction with other Navajo Nation programs.

5. Refer planned projects to the appropriate agencies within the Navajo Nation and federal Governments, and others for further project planning and development.

6. Assist Navajo entities who request technical assistance for project planning/development.

7. Participate in evaluations concerning energy development projects, in conjunction with other agencies within the Navajo Nation and other governments.

8. Assist the Navajo Nation Negotiating Team with the provision of accurate information and technical assistance upon request.

9. Assist the Navajo Nation government in generating development financing for project planning and development, upon request.

10. Apply to the appropriate agencies of the state and the federal government for permits, licenses, or approval as may be necessary or appropriate to carry out the above-specified activities; and construct, maintain and operate energy projects in accordance with such licenses or permits, in conjunction with other Navajo Nation programs.

#### **History**

ACJA-21-87, January 7, 1987.

CMY-39-80, May 1, 1980.

#### **§ 704. Organization**

NEDA will operate under the Executive Branch of the Navajo Nation government as a department within the Division of Economic Development.

#### **History**

ACJA-21-87, January 7, 1987.

CMY-39-80, May 1, 1980.

#### **§ 705. Personnel**

All personnel shall be hired pursuant to Personnel Policies and Procedures of the Navajo Nation.

### **History**

ACJA-21-87, January 7, 1987.

CMY-39-80, May 1, 1980.

### **§ 706. Conflict of interest**

All employees of Navajo Energy Development Administration shall comply with the Navajo Nation Ethics in Government Law.

### **History**

ACJA-21-87, January 7, 1987.

CMY-39-80, May 1, 1980.

### **§ 707. Amendments**

This Plan of Operation may be amended from time to time as deemed necessary by the Government Services Committee of the Navajo Nation Council upon the recommendation of the Economic Development Committee and the Resources Committee of the Navajo Nation Council.

### **History**

ACJA-21-87, January 21, 1987.

CMY-39-80, May 1, 1980.

**Revision note.** Slightly reworded for purposes of statutory form.

## **Chapter 9. Navajo Nation Environmental Policy Act**

### **Subchapter 1. General Provisions**

### **History**

**Note.** Section headings have been added and are not to be construed as interpretive of or as a part of the Navajo Nation Environmental Policy Act adopted by CAP-47-95, April 21, 1995.

### **United States Code**

National environmental policy, see 42 U.S.C. § 4321 *et seq.*

### **§ 901. Policy**

It is the policy of the Navajo Nation to promote harmony and balance between the natural environment and people of the Navajo Nation, and to restore that harmony and balance as necessary. To this end, the Navajo Nation Council declares that the protection, restoration and preservation of the environment is a central component of the philosophy of the Navajo Nation; that the

quality of life of the Navajo People is intimately related to the quality of the environment within the Navajo Nation; that all persons and entities, including agencies, departments, enterprises and other instrumentalities of the Navajo Nation itself and agencies of other governments, can and do affect the environment; and that it is the policy of the Navajo Nation to use all practicable means to create and maintain conditions under which humankind and nature can exist in productive harmony.

#### **History**

CAP-47-95, April 21, 1995.

#### **United States Code**

Policies and goals, national environmental policy, see 42 U.S.C. § 4321 et seq.

#### **§ 902. Authority**

The Navajo Nation, acting through the Navajo Nation Environmental Protection Agency, shall exert to the fullest extent its authority to regulate, monitor and enforce performance with appropriate environmental standards throughout all of the Navajo Nation, including the exercise of its authority to limit or eliminate environmental contaminants emitted outside the Navajo Nation, but which may migrate into or otherwise adversely affect the lands, waters or air of the Navajo Nation. The Navajo Nation will employ any and all authority it may have pursuant to its inherent sovereign authority, delegations of authority from the United States and any cooperative arrangements entered into between the Navajo Nation and other governmental institutions where such arrangements are approved by the Navajo Nation or its duly authorized committee or committees.

#### **History**

CAP-47-95, April 21, 1995.

#### **Cross References**

Navajo Nation Environmental Protection Agency, 2 N.N.C. § 1921-1927.

#### **§ 903. Purposes**

The Navajo Nation shall employ its governmental authority pursuant to § 902 hereof, using all practicable means consistent with other essential governmental functions, for the following purposes:

A. To fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

B. To assure for all residents of and visitors to the Navajo Nation a safe, healthful, productive, aesthetically pleasing and culturally appropriate environment;

C. To promote to the fullest extent practicable recycling and the use of renewable resources to ensure that the level of use of renewable resources does

not exceed that which is sustainable; to reduce or eliminate the waste of resources; to designate, conserve and protect unique ecosystems; to eliminate unnecessary destruction, depletion, degradation, and disturbance of natural resources in the extraction or use of other resources; and to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable consequences;

D. To ensure that activities within the Navajo Nation that may substantially disturb the environment are conducted in a manner to minimize such disturbance to the extent feasible and practicable; to ensure that any person or entity doing business on or otherwise carrying on activities within the Navajo Nation is required to remediate any environmental damage caused in the course of business and to provide ample security for the costs of any such remedial actions in the event that such person or entity fails to satisfy such requirements;

E. To ensure that damage to or contamination of the environment which occurred in the past is remedied, and that the appropriate person or entity be held accountable for the costs of such remediation;

F. To preserve important cultural, religious, historic, and natural aspects of the Navajo Nation; and

G. To achieve and maintain, wherever possible, an environment which supports diversity, and to achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.

#### **History**

CAP-47-95, April 21, 1995.

#### **§ 904. Navajo Nation government**

A. All agencies, departments, enterprises and other instrumentalities of the Navajo Nation shall review their current Plans of Operation, charters, and policies and procedures to determine if they should be amended in order to better fulfill and promote the purposes set forth in § 903 hereof, and shall pursue such amendments pursuant to Navajo law.

B. All such agencies, departments, enterprises and other instrumentalities shall consider carefully in decision making, and prepare appropriate documentation of, any adverse environmental impacts which may occur as a result of any proposed action, the extent to which environmental impacts may be reduced or mitigated, and other alternatives, including no action, to the proposed action which may reduce or eliminate significant adverse environmental impacts.

#### **History**

CAP-47-95, April 21, 1995.

**Note.** Paragraph divided for statutory clarity.

## **§ 905. Limitations**

Nothing in this Navajo Nation Environmental Policy Act is intended to, nor shall it be construed to:

A. Alter, amend or diminish in any way the sovereign immunity of the Navajo Nation or constitute a waiver of the sovereign immunity of the Navajo Nation, as defined in 1 N.N.C. § 551, *et seq.*;

B. Abrogate any authority conferred by the Navajo Nation Council upon any agency, enterprise or other instrumentality of the Navajo Nation;

C. Repeal in whole or in part any law or regulation duly promulgated by the Navajo Nation or any of its agencies;

D. Authorize or sanction the breach of any contractual duty or diminish any vested property rights; or

E. Provide the basis for a private cause of action by or against any person or entity, or confer jurisdiction upon any court for any cause of action predicated on this Act.

### **History**

CAP-47-95, April 21, 1995.

## **§ 906. Severability**

If any part of this Navajo Nation Environmental Policy Act is declared by a court of competent jurisdiction to be invalid, the other provisions shall not be affected, but shall continue to remain in force to the extent possible.

### **History**

CAP-47-95, April 21, 1995.

## **Chapter 11. Navajo Nation Air Pollution Prevention and Control Act**

### **United States Code**

Air pollution prevention and control, see 42 U.S.C. § 7401 *et seq.*

### **Subchapter 1. General Provisions**

## **§ 1101. Definitions**

A. For purposes of this Chapter:

1. "Administrator" means the Administrator of the United States Environmental Protection Agency (USEPA).

2. "Adverse human health effects" means, for purposes of Part F of Subchapter 2 of this Chapter, those effects that result in or



significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, including adverse effects that are known to be or may reasonably be anticipated to be caused by substances that are acutely or chronically toxic, carcinogenic, mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.

3. "Adverse environmental effect" means, for purposes of Part F of Subchapter 2 of this Chapter, any significant and widespread detrimental effect which may reasonably be anticipated on wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

4. "Affected source" means, for purposes of Parts G and H of Subchapter 2 of this Chapter, a source that includes one or more affected units.

5. "Affected unit" means, for purposes of Part G of Subchapter 2 of this Chapter, a unit that is subject to emission reduction requirements or limitations under that Part and under Title IV of the Clean Air Act.<sup>1</sup>

6. "Air pollutants" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by product material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant to the extent the Administration of USEPA has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

7. "Air pollution" means the presence in the ambient air of one or more air pollutants or combinations thereof in sufficient quantities, which either alone or in connection with other substances, by reason of their concentration and duration, is or tends to be injurious to human, plant or animal life, causes damage to property, unreasonably interferes with the comfortable enjoyment of life or property of a substantial part of a community, obscures visibility, or in any way degrades the quality of the ambient air.

8. "Allowance" means an authorization, allocated to an affected unit by the Administrator of the USEPA under Title IV of the Clean Air Act,<sup>1</sup> to emit, during or after a specified calendar year, one ton of sulfur dioxide.

9. "Alternative method of compliance" means, for purposes of Part G of Subchapter 2 of this Chapter, a method of compliance in accordance with one or more of the following authorities:

a. An alternative NO<sub>x</sub> emission limitation, authorized in accordance with § 1132 of this Chapter or § 407 (d) of the Clean Air Act;<sup>2</sup>

b. NO<sub>x</sub> emissions averaging, under § 1132 (D) of this Chapter

or § 407(e) of the Clean Air Act;<sup>3</sup> or

c. Repowering with a qualifying clean coal technology under § 1133 of this Chapter or § 409 of the Clean Air Act.<sup>4</sup>

10. "Area source" means, for purposes of Part F of Subchapter 2 of this Chapter, any stationary source of air pollutants that is not a major source. The term "area source" shall not include motor vehicles or nonroad vehicles subject to regulation under Title II of the Clean Air Act.<sup>5</sup>

11. "Attainment area" means any area that has been identified in regulations promulgated by the Administrator of the USEPA as being in compliance with national ambient air quality standards.

12. "Attorney General" means the Navajo Nation Attorney General.

13. "Baseline concentration" means, with respect to a pollutant, the ambient concentration levels which exist at the time of the first application for a permit in an area subject to Part B of Subchapter 2 of this Chapter, based on air quality data available to EPA or NNAQCP and on such monitoring data as the permit applicant is required to submit.

14. "Best available control technology" or "BACT" means, with respect to each pollutant subject to regulation under this Chapter, an emission limitation based on the maximum degree of emission reduction from a major emitting facility which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to § 111<sup>6</sup> or § 112<sup>7</sup> of the Clean Air Act or Parts (D) or (F) of Subchapter 2 of this Chapter.

15. "Building," "structure," "facility" or "installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or of persons under common control, except that it shall not include the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

16. "Carcinogenic" shall have the same meaning, for purposes of Part F of Subchapter 2 of this Chapter, as provided by the Administrator of the USEPA under Guidelines for Carcinogenic Risk Assessment as of the date of enactment of the Clean Air Act Amendments of 1990.

17. "Class I," "Class II" and "Class III" shall have the same meaning as provided under Part C of Title 1 of the Clean Air Act.<sup>8</sup>

18. "Clean Air Act" or "Act" means the federal Clean Air Act, as amended, that is set forth at 42 U.S.C. § 7401 *et seq.*

19. "Commence" means, as applied to construction of a source:

a. For purposes other than for Part G of Subchapter 2 of this Chapter, that the owner or operator has obtained all necessary preconstruction approvals or permits required by federal law and this Chapter and has done either of the following:

(1) Begun or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time, or

(2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.

b. For purposes of Part G of Subchapter 2 of this Chapter, that the owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction.

20. "Commenced commercial operation" means, for purposes of Part G of Subchapter 2 of this Chapter, to have begun to generate electricity for sale.

21. "Compliance plan" means, for purposes of Part G of Subchapter 2 of this Chapter, either a statement that the source will comply with all applicable requirements of that Part or, where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the source is in compliance with the requirements of that Part.

22. "Construction" means any physical change in a source or change in the method of operation of a source, including fabrication, erection, installation, demolition or modification of a source, that would result in a change in actual emissions.

23. "Continuous Emission Monitoring System" or "CEMS" means the equipment required by § 412 of the Clean Air Act<sup>9</sup> and the regulations thereunder and used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow expressed in pounds per million British Thermal units, pounds per hour or such other form as the Administrator of the USEPA prescribes by regulation.

24. "Designated representative" means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or

disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications and compliance plans for the unit.

25. "Director" means the Executive Director of the Navajo Nation Environmental Protection Agency.

26. "Excess emissions" means emissions of an air pollutant in excess of any applicable emission standard. The averaging time and test procedures for determining such excess emissions shall be as specified as part of the applicable emission standard.

27. "Existing solid waste incineration unit" means a solid waste incineration unit that is not a new or modified solid waste incineration unit.

28. "Existing source" means any stationary source that is not a new source.

29. "Existing unit" means, for purposes of Part G of Subchapter 2 of this Chapter, a unit (including units subject to § 111 of the Clean Air Act)<sup>6</sup> that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990 that is modified, reconstructed or repowered after November 15, 1990 shall continue to be an existing unit for the purposes of Part G. Existing units shall not include simple combustion turbines, or units that serve a generator with a nameplate capacity of 25 MWe or less.

30. "Federal land manager" means the Secretary of the United States Department with authority over the federal class I area.

31. "Federally listed hazardous air pollutant" means any air pollutant listed pursuant to § 112 of the Clean Air Act<sup>7</sup> and not deleted from the list pursuant to that Section.

32. "Hazardous air pollutant" means any federally listed hazardous air pollutant and any air pollutant that the Director has listed as a hazardous air pollutant pursuant to § 1126 of this Chapter.

33. "Lowest achievable emission rate" or "LAER" means, for any source, the rate of emissions that reflects:

a. The most stringent emission limitation that is contained in the implementation plan of any tribe or state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

b. The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

34. "Major emitting facility" means any of the following stationary

sources of air pollutants that emit, or have the potential to emit, 100 tons per year or more of any air pollutant: fossil-fuel fired steam electric plants of more than 250 mBtu per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 50 tons of refuse per day, hydrofluoric, sulfuric and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 mBtu per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, and charcoal production facilities. Such term also includes any other source with the potential to emit 250 tons per year or more of any air pollutant.

35. "Major source" for purposes of Part F of Subchapter 2, means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator of the USEPA establishes a lesser quantity or, in the case of radionuclides, different criteria, as provided in § 112(a)(1) of the Clean Air Act <sup>10</sup>. For purposes of Part B of Subchapter 2, "major source" means "major stationary source," as defined in the USEPA regulations under Clean Air Act Title I, Part C. For purposes of all other parts of Subchapter 2, "major source" means any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator of the USEPA as provided in § 302(j) of the Clean Air Act),<sup>11</sup> or that is defined in Part D of Title I of the Clean Air Act <sup>12</sup> or the regulations thereunder or in regulations of the NNAQCP as a major source.

36. "Maximum achievable control technology" or "MACT" means an emission standard that requires the maximum degree of reduction in emissions of the hazardous air pollutants subject to this Chapter, including a prohibition on such emission where achievable, that the Director, after considering the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines to be achievable by new or existing sources in the category or subcategory to which such standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures that:

a. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of material or other modifications;

b. Enclose systems or processes to eliminate emissions;

c. Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

d. Are design, equipment, work practice, or operational standards, including requirements for operator training or certification, as provided in § 112 (h) of the Clean Air Act;<sup>13</sup> or

e. Are a combination of the above.

37. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air pollutants whether in motion or at rest.

38. "Modification" means, for purposes of Parts B, D, E and F of Subchapter 2 of this Chapter, a physical change in or change in the method of operation of a source that increases the actual emissions of any air pollutant (or, in the case of Part F, hazardous air pollutant) emitted by such source by more than a de minimis amount or that results in the emission of any air pollutant (or hazardous air pollutant) not previously emitted by more than such de minimis amount.

39. "Modified solid waste incineration unit" means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under § 129(a) of the Clean Air Act <sup>14</sup> if:

a. The cumulative cost of the modifications, over the life of the unit, exceed fifty percent (50%) of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs;

b. The modification is a physical change in or change in the method of operation of the unit that increases the amount of any air pollutant emitted by the unit for which standards have been established under § 111 <sup>7</sup> or § 129 <sup>15</sup> of the Clean Air Act.

40. "Municipal solid waste" means refuse and refuse derived fuel collected from the general public and from residential, commercial, institutional and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber and other combustible materials and noncombustible materials such as metal, glass and rock, provided that:

a. The term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and

b. An incineration unit shall not be considered to be combusting municipal waste for purposes of § 111 <sup>7</sup> and § 129 <sup>15</sup> of the Clean Air Act and § 1121 of this Chapter if it combusts a fuel feed stream thirty percent (30%) or less of the weight of which is comprised, in aggregate, of municipal waste.

41. "Nation" means the Navajo Nation, and shall encompass the area defined in 7 N.N.C. § 254.

42. "National ambient air quality standard" or "NAAQS" means the ambient air pollutant concentration limits established by the Administrator of the USEPA pursuant to § 109<sup>16</sup> of the Clean Air Act.

43. "Navajo Nation Air Quality Control Program" or "NNAQCP" means the program within the Navajo Nation Environmental Protection Agency responsible for implementing and enforcing this Chapter.

44. "New solid waste incineration unit" means a solid waste incineration unit the construction of which is commenced after the Administrator of the USEPA proposes requirements under § 129 of the Clean Air Act<sup>15</sup> establishing emissions standards or other requirements that would be applicable to such unit or to a modified solid waste incineration unit.

45. "New source" means, for purposes of § 1121 of this Chapter, any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, of proposed regulations) prescribing a standard of performance under § 111 of the Clean Air Act<sup>6</sup> that will be applicable to such source. For purposes of Part F of Subchapter 2 of this Chapter, "new source" means a stationary source the construction or reconstruction of which is commenced after the Administrator of the USEPA first proposes regulations under § 112 of the Clean Air Act<sup>7</sup> establishing an emission standard applicable to such source.

46. "New unit" means, for purposes of Part G of Subchapter 2 of this Chapter, a unit that commences commercial operation on or after November 15, 1990.

47. "Nonattainment area" means any area that is designated pursuant to § 107 of the Clean Air Act<sup>17</sup> and where violations of national ambient air quality standards have been measured.

48. "Owner" or "operator" means any person who owns, leases, operates, controls, or supervises a source.

49. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal or state governments and any of their programs or agencies, the Nation and any of its agencies, programs, enterprises, companies or political subdivisions, as well as a natural person.

50. "Phase H" means, for purposes of Part G of Subchapter 2 of this Chapter, the period beginning January 1, 2000 and extending into the future.

51. "Portable source" means any stationary source that is capable of being transported and operated in more than one location.

52. "President" means the President of the Navajo Nation.

53. "Reasonable further progress" means, for purposes of Part E of

Subchapter 2 of this Chapter, such annual incremental reductions in emissions of the relevant air pollutant as are required by Part E or may reasonably be required by the Director or the Administrator of the USEPA in order to ensure attainment of the applicable national ambient air quality standard by the applicable date.

54. "Reasonably available control technology" or "RACT" means devices, systems process modifications, or other apparatus or techniques that are reasonably available taking into account:

a. The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard,

b. The social, environmental and economic impact of such controls, and

c. Alternative means of providing for attainment and maintenance of such standard.

55. A "repowering" means replacement of an existing coal-fired boiler with one of the clean coal technologies specified in §§ 402<sup>18</sup> and 415<sup>19</sup> of the Clean Air Act and in the regulations thereunder.

56. "Resources Committee" means the standing committee of the Navajo Nation Council with oversight authority over the Navajo Nation Environmental Protection Agency.

57. "Schedule of compliance" means, for purposes of Part H of Subchapter 2 of this Chapter, a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation or emission prohibition.

58. "Small business stationary source" means a stationary source that:

a. Is owned or operated by a person that employs 100 or fewer individuals;

b. Is a small business concern as defined in the Small Business Act, 42 U.S.C. § 631 *et seq.*;

c. Is not a major stationary source;

d. Emits fewer than 50 tons per year of any regulated pollutant; and

e. Emits fewer than 75 tons per year of all regulated pollutants combined, except as excluded by the Administrator of the USEPA pursuant to § 507(c)(3)(A) of the Clean Air Act<sup>20</sup> or as modified by the Director pursuant to § 1140 (A) of this Chapter.

59. "Solid waste incineration unit" means a distinct operating unit of any facility that combusts any solid waste material from commercial or



industrial establishments or the general public (including single and multiple residences, hotels and motels). Such term does not include incinerators or other units required to have a permit under § 3005 of the Solid Waste Disposal Act, 42 U.S.C. § 6925. The term also does not include:

a. Materials recovery facilities (including primary or secondary smelters) that combust waste for the primary purpose of recovering metals;

b. Qualifying small power production facilities, as defined in 16 U.S.C. § 769(17)(C), or qualifying cogeneration facilities, as defined in 16 U.S.C. § 769 (18) (B), that burn homogeneous waste (such as units that burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or, in the case of qualifying cogeneration facilities, that burn homogeneous waste for the production of electric energy and steam or other useful forms of energy (such as heat) that are used for industrial, commercial, heating or cooling purposes; or

c. Air curtain incinerators, provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations established by rule by the Administrator of the USEPA.

60. "Source" means any building, structure, facility or installation that may cause or contribute to air pollution.

61. "Standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator of the USEPA determines has been adequately demonstrated.

62. "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant and that is not a nonroad engine under Title II of the Clean Air Act.<sup>21</sup>

63. "Tribal implementation plan" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the Director and submitted to the Administrator of the USEPA pursuant to § 110(o)<sup>22</sup> and § 301(d)<sup>23</sup> of the Clean Air Act and Part A of Subchapter 2 of this Chapter.

64. "Unclassifiable area" means an area of the Navajo Nation for which inadequate ambient air quality data exist to determine compliance with the national ambient air quality standards.

65. "Unit" means, for purposes of Part G of Subchapter 2 of this Chapter, a fossil fuel-fired combustion device.

66. "Utility unit" means, for purposes of Part G of Subchapter 2 of this Chapter:

a. A unit that serves a generator that produces electricity for sale, or a unit that, during 1985, served a generator that produced electricity for sale.

b. Notwithstanding Subparagraph (a), a unit described in Subparagraph (a) that was in commercial operation during 1985 but did not, during 1985, serve a generator that produced electricity for sale shall not be a utility unit for purposes of Part G.

c. A unit that cogenerates steam and electricity is not a "utility unit" for purposes of Part G unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies more than one third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale.

67. "Visibility Transport Region" means, whenever, upon the USEPA Administrator's motion or by petition from the Governors of at least two affected States, the Administrator of the USEPA has reason to believe that the current or projected interstate transport of air pollutants from one or more States contributes significantly to visibility impairment in Class I areas located in the affected States, the Administrator of the USEPA may establish a transport region for such pollutants that includes such States.

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **§ 1102. Declaration of policy**

#### **A. Legislative findings and purposes:**

1. The Navajo Nation Council finds that air pollution exists with varying degrees of severity within the Navajo Nation; is an increasing danger to the health and welfare of residents of the Navajo Nation; can cause physical discomfort and injury to property and property values, including injury to agricultural crops and livestock; discourages recreational and other uses of the Navajo Nation's resources; and is aesthetically unappealing.

2. The Navajo Nation Council, by enacting this Chapter, is creating a coordinated program to control present and future sources of air pollution on the Navajo Nation. This Chapter provides for the regulation of air pollution activities in a manner that ensures the health, safety and general welfare of all the residents of the Navajo Nation, protects property values and protects plant and animal life. The Council further is placing primary responsibility for air pollution control and abatement in the Navajo Nation Air Quality Control Program, a program of the Navajo Nation Environmental Protection Agency.

B. Maintenance of air quality. It is the policy of this Nation that no further significant degradation of the air in the Navajo Nation shall be tolerated, and that economic growth will occur in a manner consistent with the preservation of existing clean air resources. Those sources emitting pollutants in excess of the emission standards set by the Director of the Navajo Nation Environmental Protection Agency shall bring their emissions into conformity with the standards with all due speed. A new source shall not commence operation until it has secured a permit according to the provisions of this Chapter, the conditions of which require that operation of the source will not cause pollution in excess of the standards set by the Director.

C. Modular approach to air quality control programs:

1. The Navajo Nation is committed to providing for an air quality control program to ensure clean air for residents of the Navajo Nation. Pursuant to § 301 (d) of the Clean Air Act <sup>1</sup> and the regulations thereunder, however, it is discretionary with the Navajo Nation as to whether and which Clean Air Act programs to implement, and in what order. The Director shall determine which programs are essential to the protection of the environment and the health and welfare of the Navajo Nation, and of those programs shall determine which should be developed first. The Director may also determine that only parts of such programs are essential, and may develop these severable portions, as provided in the regulations under § 301 (d) of the Clean Air Act. The Director shall not be required to develop any of the programs described in this Chapter by any particular time.

2. However, once the Director determines that a particular program or portion of a program should be developed, the Director and the NNAQCP must comply with all the relevant statutory and regulatory requirements for that program or portion of a program.

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **§ 1103. Administration**

A. Regulations. The Director is authorized to prescribe such regulations as are necessary to carry out his/her functions under this Chapter, pursuant to the provisions of § 1161 of this Chapter. This shall include setting air quality standards, emission limitations and standards of performance for the prevention, control and abatement of air pollution in the Navajo Nation. In prescribing regulations, the Director shall give consideration to but shall not be limited to the relevant factors prescribed by the Clean Air Act <sup>1</sup> and the regulations hereunder, except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under the Clean Air Act. All regulations promulgated under this Chapter shall be subject to approval by the Resources Committee of the Navajo Nation Council.

B. Authority of Director. In addition, in order to fulfill his/her obligations under this Chapter, the Director may:

1. Conduct investigations, inspections and tests to carry out the duties of this Chapter according to the procedures established by this Chapter;

2. Hold hearings related to any aspect of or matter within the duties of this Section and, in connection therewith, compel the attendance of witnesses and the production of records;

3. Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in the Navajo Nation;

4. Encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Chapter, including voluntary testing of actual or suspected sources of air pollution;

5. Subject to 2 N.N.C. § 164(B)(2) and 2 N.N.C. § 1005(C)(2), enter into voluntary compliance agreements with entities that otherwise may not be subject to the provisions of this Chapter, or as to which there is a dispute regarding the applicability of this Chapter, under which the entity would be regulated by the Navajo Nation for air quality in order to achieve the goals and purposes of this Chapter, and provided that the Director finds, after consultation with the Resources Committee, that entering into the agreement is in the best interests of the Navajo Nation. Such agreements may contain provisions that differ from and supersede the requirements of this Chapter and implementing regulations, provided that the minimum federal requirements apply to the entity in question;

6. Make continuing determinations of the quantity and nature of emission of air pollutants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the Navajo Nation, the economic effect of remedial measures on the various areas of the Navajo Nation, the availability, use and economic feasibility of air-cleaning devices, the effect on human health and property of air pollutants, and other matters necessary to arrive at a better understanding of air pollution and its control;

7. Consistent with Title 2, Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this Chapter, provided that all monies resulting therefrom shall be deposited in the Navajo treasury to the account of the Air Quality Control Program, as authorized under Navajo law;

8. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Chapter;

9. Compile and publish from time to time reports, data and statistics with respect to matters studied or investigated by the Director or at his/her direction;

10. Require, as specified in § 1151 of this Chapter, any source of air pollution to monitor, sample or perform other studies to quantify emissions of air pollutants or levels of air pollution that may reasonably be attributable to that source; and

11. Perform such other activities as the Director may find necessary to carry out his/her functions under this Chapter.

C. Delegation of powers and duties. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such powers and duties under this Chapter, except the making of regulations, as he/she may deem necessary or expedient.

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **§ 1104. Air quality impact reports**

A. Contents of report. Whenever a Navajo agency proposes to carry out or approve a Navajo-funded project relating to transportation that may have a significant impact on air quality, the agency shall file with the Director a report that contains the following information:

1. A description of the proposed project;
2. Any significant impact on air quality of the proposed project;
3. Significant environmental effects that can not be avoided if the project is implemented, including any significant irreversible air quality changes that would be involved in the proposed project if it is implemented;
4. Mitigation measures proposed to minimize any significant air quality effects;
5. Alternatives to the proposed project;
6. The known views of any local groups concerning the proposed project; and
7. A statement briefly indicating the reasons for determining that various effects of a project are not significant and consequently have not been discussed in detail in the impact report.

B. Exemptions. This Section shall not apply to:

1. Emergency repairs to public service facilities that are necessary to maintain service;
2. Projects that are undertaken, carried out or approved to

maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been declared by the President;

3. Projects related to the interstate highway system; and

4. Projects that were already in existence before the date of enactment of this Chapter.

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **§ 1105. Emergency powers**

A. Injunctive relief. Notwithstanding any permit granted pursuant to this Chapter, the Director, upon receipt of evidence that a pollution source or combination of sources (including mobile or portable sources) is presenting an imminent and substantial endangerment to public health or welfare or the environment, may bring suit on behalf of the Navajo Nation, pursuant to § 1154 of this Chapter, to immediately restrain any person causing or contributing to the alleged pollution to cease such emissions or to take such other action as may be necessary.

B. Orders of the Director:

1. If the Director determines that air pollution is presenting an imminent and substantial endangerment to public health or welfare or the environment and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to Subsection (A) of this Section, the Director may issue such orders as may be necessary to protect public health or welfare or the environment. Such orders may prohibit, restrict or condition any and all activities that contribute or may contribute to the emergency, including but not limited to motor vehicles; retail, commercial, manufacturing and industrial activities; incinerators; and the burning or other consumption of fuels or other materials.

2. Any order issued by the Director under this Section shall be effective immediately upon issuance and shall remain in effect for a period of not more than 60 days, unless the Director brings an action pursuant to Subsection (A) of this Section within the 60-day period. If the Director brings such an action, the order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

3. Orders of the Director shall be enforced by the NNAQCP, the Navajo Department of Justice, Resources Enforcement and the Division of Public Safety. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to:

a. Entering upon any property or establishment believed to be violating the order and demanding compliance;

b. Stopping, detouring, rerouting and prohibiting vehicle traffic; and

c. Terminating operations at incinerators or other types of combustion facilities.

#### **History**

CJY-58-95, July 20, 1995.

### **§ 1106. Severability and preservation of rights**

A. Severability. If any provision of this Chapter, or the application of any provision of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter and the application of such provision to other persons or circumstances shall remain unaffected.

B. Preservation of rights. It is the purpose of this Chapter to provide additional and cumulative remedies to prevent, abate and control air pollution in the Navajo Nation. Nothing contained in this Chapter shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, nor shall any provisions of this Part or any act done by virtue thereof be construed as preventing the Navajo Nation or individuals from the exercise of their rights under the common law or statutory law to suppress nuisances or to abate pollution.

#### **History**

CJY-58-95, July 20, 1995.

## **Subchapter 2. Air Quality Control Programs**

### **Part A. Tribal Implementation Plans**

#### **§ 1111. Designation of air quality control regions**

A. Designations. The Director may request the President to submit to the Administrator of the USEPA a list of all areas in the Navajo Nation, designating, with regard to each pollutant for which a national ambient air quality standard exists, each such area as:

1. Nonattainment, if it does not meet (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant;

2. Attainment, if it meets the national primary or secondary ambient air quality standard for the pollutant; or

3. Unclassifiable, if it can not be classified on the basis of available information as meeting or not meeting the national primary or

secondary ambient air quality standard for the pollutant.

#### B. Redesignations

1. If the President has submitted designations to the Administrator of the USEPA pursuant to Subsection (A) of this Section, and the Administrator of the USEPA promulgates a new or revised NAAQS pursuant to § 109 of the Clean Air Act,<sup>1</sup> the President may, and in the case of a revised NAAQS for which the President has submitted designations pursuant to Subsection (A) shall, submit to the Administrator of the USEPA a new list of designations not later than one year after promulgation of the new or revised NAAQS.

2. The President also shall submit to the Administrator of the USEPA a redesignation of a particular area no later than 120 days after receiving notification from the Administrator of the USEPA, pursuant to § 107(d) (3) of the Clean Air Act,<sup>2</sup> of the need to redesignate.

3. The Director may request the President, on his/her own motion, to submit to the Administrator of the USEPA for approval, pursuant to § 107 of the Clean Air Act,<sup>3</sup> a redesignation of any area within the Navajo Nation if air quality changes within such area. In the case of an area in the Nation which the Administrator of the USEPA finds may significantly affect air pollution concentrations in a state or another tribe, the Director may redesignate that area only with the consent of the states or tribes which the Administrator of the USEPA determines may be significantly affected.

4. The submission of a redesignation shall not affect the effectiveness or enforceability of the applicable tribal implementation plan.

C. Regulations. If the President decides to submit designations to the Administrator of the USEPA under this Section, the Director shall adopt regulations to implement this Section that both:

1. Describe the geographic extent of attainment, nonattainment or unclassified areas of the Navajo Nation for all pollutants for which a national ambient air quality standard exists; and

2. Establish procedures and criteria for redesignating such areas that include:

a. The technical bases for proposed changes, including ambient air quality data, types and distributions of sources of air pollution, population density and projected population growth, transportation system characteristics, traffic congestion, projected industrial and commercial development, meteorology, pollution transport and political boundaries; and

b. Provisions for review of and public comment on proposed changes to area designations.

#### **History**



CJY-58-95, July 20, 1995.

**United States Code**

Air quality control regions, see 42 U.S.C. § 7407.

**§ 1112. Tribal (Navajo Nation) implementation plans for national primary and secondary ambient air quality standards**

A. Submission of and contents of plans. The Director may submit to the Administrator of the USEPA a tribal (Navajo Nation) implementation plan for any pollutant for which a national ambient air quality standard exists. The plan shall provide for implementation, maintenance and enforcement of such standard and protection of visibility in each air quality control region within the Navajo Nation. The plan shall be adopted by the Director according to the provisions of § 1161 of this Chapter and shall contain the following provisions:

1. Each Tribal implementation plan shall:

a. Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Chapter or the Clean Air Act;<sup>1</sup>

b. Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the Administrator of the USEPA;

c. Include a program to enforce the measures described in Subparagraph (a) and regulate the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in Parts B and E of this Subchapter;

d. Contain adequate provisions:

(1) Prohibiting, consistent with the provisions of this Chapter, any source within the Navajo Nation from emitting any air pollutant in amounts that will:

(a) Contribute significantly to nonattainment in, or interfere with maintenance by, any neighboring state or tribe with respect to any such national primary or secondary ambient air quality standard; or

(b) Interfere with measures required to be included in an applicable implementation plan for any neighboring state or tribe under Part C of Title I of the Clean Air Act <sup>2</sup> to prevent

significant deterioration of air quality or to protect visibility; and

(2) Insuring compliance with the applicable requirements of Subsection (C) of this Section (relating to interstate pollution abatement);

e. Provide:

(1) Necessary assurances that the Navajo Nation will have adequate personnel, funding, and authority under Navajo Nation law to carry out such implementation plan and that the NNAQCP is not prohibited by any provision of federal or tribal law from carrying out such implementation plan or portion thereof; and

(2) Necessary assurances that, where the Navajo Nation has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the Navajo Nation has responsibility for ensuring adequate implementation of such plan provision;

f. Require, as may be prescribed by the Administrator of the USEPA:

(1) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources;

(2) Periodic reports on the nature and amounts of emissions and emissions related data from such sources; and

(3) Correlation of such reports by the NNAQCP with any emission limitations or standards established pursuant to this Chapter, which reports shall be available at reasonable times for public inspection;

g. Provide for authority comparable to that in § 1105 of this Chapter and adequate contingency plans to implement such authority,

h. Provide for revision of such plan:

(1) From time to time as may be necessary to take account of revisions of national primary or secondary ambient air quality standards or the availability of improved or more expeditious methods of attaining such standards; and

(2) Whenever the Administrator of the USEPA finds, on the basis of information available to the Administrator of the USEPA and pursuant to the requirements of § 110 of the Clean Air Act<sup>3</sup> and the regulations hereunder, that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under the Clean Air Act<sup>1</sup> or this Chapter.

i. In the case of a plan or plan revision for an area

designated as a nonattainment area, meet the applicable requirements of Part E of this Subchapter (relating to nonattainment areas);

j. Meet the applicable requirements of Subsection (D) of this Section (relating to public notification) and Parts B and C of this Subchapter (relating to prevention of significant deterioration of air quality and visibility protection);

k. Provide for:

(1) The performance of such air quality modeling as the Administrator of the USEPA may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator of the USEPA has established a national ambient air quality standard; and

(2) The submission, upon request, of data related to such air quality modeling to the Administrator of the USEPA;

l. Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Chapter, a fee sufficient to cover:

(1) The reasonable costs of reviewing and acting upon any application for such a permit; and

(2) If the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the USEPA Administrator's approval of a fee program under Title V of the Clean Air Act;<sup>4</sup>

m. Provide for consultation and participation by Navajo chapters, as defined in 2 N.N.C. § 4001, and any Navajo-created townships affected by the plan; and

n. Provide that in the case of any source which uses a supplemental or intermittent control system for purposes of meeting the requirements of an order under § 113(d) of the Clean Air Act,<sup>5</sup> the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion-dependent control system.

B. Revisions to plans

1. The Director shall adopt regulations that describe procedures for revising tribal implementation plans as needed from time to time and as required by the Administrator of the USEPA, pursuant to the Clean Air Act<sup>1</sup> and the regulations thereunder, after promulgation of new or revised national ambient air quality standards.

2. If the Director has adopted and submitted to the Administrator of the USEPA a proposed plan revision which the Director determines:

a. Meets the requirements of this Section; and

b. Is necessary (i) to prevent the closing for one year or more of any source of air pollution and (ii) to prevent substantial increases in unemployment which would result from such closing, and which the Administrator of the USEPA has not approved or disapproved under this Section within 12 months of submission of the proposed plan revision, the Director may issue a temporary emergency suspension of the part of the applicable implementation plan that is proposed to be revised with respect to such source. The determination under Subparagraph (b) may not be made with respect to a source that would close without regard to whether or not the proposed plan revision is approved.

3. A temporary emergency suspension issued by the Director under this Subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator of the USEPA.

4. The Director may include in any temporary emergency suspension issued under this Subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under § 113 (d) of the Clean Air Act<sup>5</sup> upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this Subsection.

C. Interstate pollution abatement. Each applicable implementation plan shall require each proposed new or modified major source that is subject to Part B of this Chapter or that may significantly contribute to levels of air pollution in excess of the NAAQS in any air quality control region outside the Navajo Nation to provide written notice to all nearby states or tribes in which air pollution levels may be affected by such source at least 60 days prior to the date on which commencement of construction is to be permitted. Each applicable plan shall also identify all major existing stationary sources that may significantly contribute to levels of air pollution in excess of the NAAQS in any area outside the Navajo Nation and shall provide for notice to all nearby states or tribes in which air pollution levels may be affected of the identity of such sources.

D. Public notification. Each plan shall contain measures that will be effective to notify the public on a regular basis of instances or areas in which any national primary ambient air quality standard is or was exceeded, to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures that can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Provisions shall be made to notify the public in both the Navajo and English languages.

E. Prohibition against modification of plan requirements. No order, suspension, plan revision or other action modifying any requirement of any applicable implementation plan may be taken with respect to any stationary source except for those specifically allowed under the provisions of this Chapter and the Clean Air Act.<sup>1</sup>

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **United States Code**

National primary and secondary ambient air quality standards, see 42 U.S.C. § 7409.

State implementation of plans for national primary and secondary ambient air quality standards, see 42 U.S.C. § 7410.

### **§ 1113. Regulation of fuels and motor vehicles**

The provisions of §§ 177,<sup>1</sup> 211 (c), (k) and (m),<sup>2</sup> 246<sup>3</sup> and 249<sup>4</sup> of the Clean Air Act and the regulations hereunder, regarding fuels and motor vehicles, shall apply as required by the Clean Air Act<sup>5</sup> in certain nonattainment areas or as adopted by the Navajo Nation.

### **History**

CJY-58-95, July 20, 1995.

### **Part B. Prevention of Significant Deterioration of Air Quality**

### **§ 1114. Plan requirements**

Each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this Part, to prevent significant deterioration of air quality in each area designated pursuant to § 1111 of this Chapter and § 107 of the Clean Air Act<sup>1</sup> as attainment or unclassifiable. The provisions of this Part do not apply to hazardous air pollutants listed under Part F of this Subchapter.

### **History**

CJY-58-95, July 20, 1995.

### **United States Code**

Plan requirements, see 42 U.S.C. § 7471.

### **§ 1115. Initial classification**

All areas in the Navajo Nation that are designated as attainment or unclassifiable pursuant to § 1111 of this Chapter and § 107 of the Clean Air Act<sup>1</sup> shall be class II areas, as defined under Part C of Title I of the Clean Air Act,<sup>2</sup> unless reclassified under § 1117 of this Chapter.

### **History**

CJY-58-95, July 20, 1995.

#### **United States Code**

Initial classifications, see 42 U.S.C. § 7472.

#### **§ 1116. Increments and ceilings**

A. Sulfur oxide and particulate matter. Each applicable implementation plan shall contain measures ensuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentration of, sulfur dioxide and particulate matter shall not be exceeded. The maximum allowable increases and concentrations and provisions affecting those increases and concentrations are specified in §§ 163<sup>1</sup> and 165(d)<sup>2</sup> of the Clean Air Act and the regulations thereunder.

B. Other pollutants. In the case of nitrogen oxides, each applicable implementation plan shall contain measures ensuring compliance with the maximum allowable increases set forth at 40 C.F.R. § 51.166. With respect to any air pollutant for which a NAAQS is established, other than sulfur oxides or particulate matter, an area classification plan shall not be required if the implementation plan adopted by the Navajo Nation and submitted for the USEPA Administrator's approval or promulgated by the Administrator of the USEPA under § 110(c) of the Clean Air Act<sup>3</sup> contains other provisions that, when considered as a whole, the Administrator of the USEPA finds will carry out the purposes in § 110 of the Clean Air Act<sup>4</sup> at least as effectively as an area classification plan for such pollutant. Such other provisions referred to in the preceding sentence need not require the establishment of maximum allowable increases with respect to such pollutant for any area to which this Section applies.

#### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

#### **United States Code**

Increments and ceilings, see 42 U.S.C. § 7473.

#### **§ 1117. Area reclassification**

A. Authority to reclassify areas. The President may reclassify, upon approval of the Navajo Nation Council, such areas as he deems appropriate as class I areas. The land comprising Canyon de Chelly National Monument, as established in 16 U.S.C. § 445, may be reclassified only as class I or II. An area may be reclassified as class III if:

1. Such reclassification will not cause or contribute to concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and

2. Such reclassification otherwise meets the requirements of this Part.

B. Notice and hearing; disapproval of Administrator of the USEPA

1. Prior to reclassification of any area under this Part, notice shall be afforded and public hearings shall be conducted in areas proposed to be reclassified and in areas which may be affected by the proposed reclassification. Prior to any such public hearing a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed reclassification shall be prepared and made available for public inspection, and prior to any such reclassification the description and analysis of such effects shall be reviewed and examined by the Navajo Nation Council.

2. Prior to the issuance of notice under Paragraph (1) respecting the reclassification of any area under this Subsection, if such area includes any federal lands, the President shall provide for written notice to be given to the appropriate federal land manager and afford adequate opportunity (but not in excess of 60 days) to confer with the President and to submit written comments and recommendations with respect to the intended notice of reclassification. In reclassifying any area under this Section with respect to which any federal land manager has submitted written comments and recommendations, the President shall publish a list of any inconsistency between such reclassification and such recommendations and an explanation of such inconsistency (together with the reasons for making such reclassification against the recommendation of the federal land manager).

3. Any reclassification is subject to disapproval by the Administrator of the USEPA pursuant to § 164(b) (2) of the Clean Air Act.<sup>1</sup>

C. Resolution of disputes between the Navajo Nation and other Indian tribes or states. If any state or tribe is affected by the reclassification of an area by the Navajo Nation and if such party disagrees with such reclassification, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in the Navajo Nation which the governor of an affected state or governing body of an affected tribe, as the case may be, determines will cause or contribute to a cumulative change in air quality in excess of that allowed in the affected state or tribe, the Director shall enter into negotiations with the representative of such governor or other Indian governing body to attempt to resolve such dispute. If the parties are unable to reach an agreement, the Director shall request the USEPA Administrator's involvement pursuant to § 164(e) of the Clean Air Act.<sup>2</sup>

### **History**

CJY-58-95, July 20, 1995.

### **United States Code**

Area redesignation, see 42 U.S.C. § 7474.

## § 1118. Preconstruction requirements

A. Major emitting facilities on which construction is commenced. No major emitting facility on which construction was commenced after August 7, 1977, may be constructed in any area to which this Part applies unless:

1. A permit has been issued for such proposed facility in accordance with this Part (and Part H of this Subchapter) setting forth emission limitations for such facility which conform to the requirements of this Part;

2. The proposed permit has been subject to a review in accordance with this Section, the required analysis has been conducted in accordance with regulations promulgated by the Administrator of the USEPA, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator of the USEPA to appear and submit written or oral presentations on the air quality impact of such source, alternatives to the proposed construction, control technology requirements, and other appropriate considerations;

3. The owner or operator of such facility demonstrates as required pursuant to § 110(j) of the Clean Air Act,<sup>1</sup> that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (a) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this Part applies more than one time per year, (b) national ambient air quality standard in any air quality control region, or (c) any other applicable emission standard or standard of performance under this Chapter;

4. The proposed facility is subject to the best available control technology for each pollutant subject to regulation under this Chapter that is emitted from or results from such facility;

5. The proposed facility has complied with the provisions of Subsection (D) of this Section with respect to protection of class I areas, where applicable;

6. There has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;

7. The person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this Part agrees to conduct such monitoring as may be necessary to determine the effect that emissions from any such facility may have, or are having, on air quality in any area that may be affected by emissions from such source; and

8. In the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under § 111 of the Clean Air Act<sup>2</sup> has been promulgated subsequent to August 7, 1977 for such source category, the Administrator of the USEPA has approved the determination of best available technology



as set forth in the permit.

B. Exception. The demonstration pertaining to maximum allowable increases required under Subsection (A) (3) of this Section shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility that was in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with Subsection (A) (4) of this Section, will be less than 50 tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such Pollutants.

C. Permit applications. Any completed permit application under this Part and the regulations hereunder for a major emitting facility in any area to which this Part applies shall be granted or denied not later than one year after the date of filing of such completed application.

D. Action taken on permit applications; notice; adverse impact on air quality related values; variance; emission limitations

1. The Director shall transmit to the Administrator of the USEPA a copy of each permit application relating to a major emitting facility that he/she receives and provide notice to the Administrator of the USEPA of every action related to the consideration of such permit. The Administrator of the USEPA will provide notice of the permit application to the federal land manager and the federal official directly responsible for management of any lands within a class I area that may be affected by emissions from the proposed facility, pursuant to the requirements of § 165 (d) (2) of the Clean Air Act.<sup>3</sup>

a. In any case where the federal official charged with direct responsibility for management of any lands within a class I area, or the federal land manager of such lands, or the Administrator, of the USEPA, or the Governor of an adjacent state or governing body of a nearby tribe containing such a class I area files a notice alleging that emissions for a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

b. In any case where the federal land manager demonstrates to the satisfaction of the Director that the emissions for such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.

c. In any case where the owner or operator of such facility demonstrates to the satisfaction of the federal land manager, and the federal land manager so certifies, that the emissions from such facility

will have no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations which exceed the maximum allowable increases for class I areas, the NNAQCP may issue a permit.

d. In the case of a permit issued pursuant to Paragraph (c), the facility shall comply with such emission limitations under the permit as may be necessary to assure that emissions of sulfur oxides and particulates from the facility will not cause or contribute to concentrations of such pollutant which exceed the maximum allowable increases over the baseline concentration regulations thereunder.

e. In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under Paragraph (c) demonstrates to the satisfaction of the President, after notice and public hearing, and the President finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of 24 hours or less applicable to any class I area, the President, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this Subparagraph.

f. In any case in which the President recommends a variance under this Subsection in which the federal land manager does not concur, the recommendations of the President and the federal land manager shall be transmitted to the President of the United States, according to the provisions of § 165(d)(2)(D)(ii) of the Clean Air Act.<sup>4</sup>

g. In the case of a permit issued pursuant to Paragraphs (e) and (f), the facility shall comply with such emission limitations under the permit as may be necessary to assure that emissions of sulfur oxides from such facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the maximum allowable increases for such areas over the baseline concentration of such pollutant, as prescribed in § 165(d)(2)(D)(iii) of the Clean Air Act<sup>5</sup> and the regulations thereunder, and to assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period.

E. Analysis; continuous air quality monitoring data; regulations; model adjustments

1. The review provided for in Subsection (A) of this Section shall be preceded by an analysis in accordance with regulations of the Administrator of the USEPA, promulgated under § 165 of the Clean Air Act,<sup>6</sup> which shall be conducted by the major emitting facility applying for such permit, of the ambient air quality at the proposed site and in areas which may be affected by emissions from the proposed facility for each pollutant subject to regulations under this Chapter which will be

emitted from such facility.

2. The analysis required by this Subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from the proposed facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this Part. Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this Part unless the NNAQCP, in accordance with regulations promulgated by the Administrator of the USEPA, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

#### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

#### **United States Code**

Preconstruction requirements, see 42 U.S.C. § 7475.

#### **Part C. Protection of Visibility**

##### **§ 1119. Visibility protection for federal class I areas**

A. Plan requirements. In the case of an area listed by the Administrator of the USEPA under § 169(A)(a)(2) of the Clean Air Act<sup>1</sup> that is located within the Navajo Nation or that could reasonably be anticipated to have impaired visibility due in part or in whole to emissions coming from within the Navajo Nation, each applicable tribal (Navajo Nation) implementation plan under Part A of this Subchapter shall contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal of preventing any future and remedying any existing impairment of visibility due to man-made air pollution in mandatory class I federal areas. Such provisions shall include:

1. Except as otherwise provided pursuant to § 169A(c) of the Clean Air Act,<sup>2</sup> regarding exemptions, a requirement that each major stationary source that was in existence on August 7, 1977, but was not in operation for more than 15 years prior to such date, and that as determined by the Director (or the Administrator of the USEPA in the case of a federal implementation plan under § 110 (c) of the Clean Air Act),<sup>3</sup> emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the Director or the Administrator of the USEPA, as the case may be, for controlling emissions from such source for the purpose of eliminating or reducing any such impairment; and

2. A long-term (10 to 15 year) strategy for making reasonable progress toward meeting the national goal specified in the first Paragraph of this Subsection (A) and in § 169(A)(a)(1) of the Clean Air Act.<sup>4</sup>

The Director shall make such determinations in accordance with regulations and guidelines promulgated by the Administrator of the USEPA pursuant to § 169(A) of the Clean Air Act.<sup>5</sup> In the case of a fossil fuel-fired power plant having a total generating capacity in excess of 750 megawatts, the emission limitations required under this Paragraph shall be determined pursuant to guidelines promulgated by the Administrator of the USEPA under § 169(A)(b)(1) of the Clean Air Act.

B. Consultations with appropriate federal land managers. Before holding the public hearing required on a proposed promulgation of or revision to an applicable implementation plan to meet the requirements of this Section, the Director shall consult in person with the appropriate federal land manager or managers and shall include a summary of the conclusions and recommendations of the federal land managers in the notice to the public.

#### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

#### **United States Code**

Visibility protection for Federal class I areas, see 42 U.S.C. § 7491.

#### **§ 1120. Visibility transport regions and commissions**

A. Visibility transport regions. The President, in conjunction with at least one other tribe or state, may petition the Administrator of the USEPA for a determination that current or projected transport of air pollutants from the Navajo Nation or from one or more other tribes or states contributes significantly to visibility impairment in class I areas located in the Navajo Nation or in the other affected tribes or states and that a transport region for such pollutants that includes the Navajo Nation and such other tribes or states should be established. The President may also petition the Administrator of the USEPA to add or remove any state or tribe or portion thereof to a visibility transport region.

B. Visibility transport commissions. The President or his designee may be a member of a visibility transport commission established by the Administrator of the USEPA pursuant to § 169(B) of the Clean Air Act,<sup>1</sup> and as such shall participate in all activities required under that Section.

#### **History**

CJY-58-95, July 20, 1995.

#### **United States Code**

Visibility transport regions and commissions, see 42 U.S.C. § 7492.

#### **Part D. New Source Performance Standards**

##### **§ 1121. Implementation and enforcement of standards of performance**

A. Implementation and enforcement by Director. The Director may develop and submit to the Administrator of the USEPA a procedure for implementing and enforcing standards of performance for new sources located in the Navajo Nation. The Director is authorized under the Clean Air Act <sup>1</sup> to implement and enforce such standards upon delegation of such authority from the Administrator of the USEPA.

B. Standards of performance for existing sources. The Director may submit to the Administrator of the USEPA a plan that:

1. Establishes standards of performance for any existing source for any air pollutant:

a. For which air quality criteria have not been issued or that is not included on a list published under § 108 of the Clean Air Act <sup>2</sup> or emitted from a source category that is regulated under § 112 of the Clean Air Act,<sup>3</sup> but

b. To which a standard of performance under § 111 of the Clean Air Act <sup>4</sup> would apply if such existing source were a new source; and

2. Provides for the implementation and enforcement of such standards of performance.

3. In applying a standard of performance to any particular source under a plan submitted under this Paragraph, the Director may take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

C. Solid waste incineration units.

1. If existing solid waste incineration units of a category for which the Administrator of the USEPA has promulgated guidelines are operating within the Navajo Nation, the Director may submit to the Administrator of the USEPA for approval, pursuant to § 129(b)(2) of the Clean Air Act,<sup>5</sup> a plan to implement and enforce the guidelines. The plan shall be at least as protective as the guidelines and shall provide that each unit subject to the guidelines shall be in compliance with all requirements of § 129 of the Clean Air Act <sup>6</sup> within three years of the date that the plan is approved by the Administrator of the USEPA. The Director may modify and resubmit a plan that has been disapproved.

2. The Director may implement a model program for the training of solid waste incineration unit operators and high-capacity fossil fuel-fired plant operators, if the Director has adopted a program that is at least as effective as the model program developed by the Administrator

of the USEPA under § 129(d) of the Clean Air Act <sup>7</sup> and has been authorized to do so by the Administrator of the USEPA.

3. Each solid waste incineration unit in the Navajo Nation in a category for which the Administrator of the USEPA has promulgated performance standards under §§ 111 <sup>4</sup> or 129 <sup>6</sup> of the Clean Air Act shall operate pursuant to a permit issued under this Subsection and Part H of this Subchapter, if the Navajo Nation has an approved permit program for such source. Such permits may be renewed according to the provisions of Part H of this Subchapter. Notwithstanding any other provision of this Chapter, each permit for a solid waste incineration unit that combusts municipal waste shall be issued for a period of up to 12 years and shall be reviewed every five years from the date of issuance or reissuance. Each permit shall continue in effect after the date of issuance until the date of termination, unless the Director determines that the unit is not in compliance with all standards and conditions contained in the permit. Such determination shall be made at regular intervals during the term of the permit, such intervals not to exceed five years, and only after public comment and public hearing. No permit may be issued by any person who is also responsible, in whole or in part, for the design and construction or operation of the unit. Notwithstanding any other provision of this Paragraph, the Director may require the owner or operator of any unit to comply with emissions limitations or implement any other measures, if the Director determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment.

4. The Director may adopt and enforce any regulation, requirement, limitation or standard relating to solid waste incineration units that is more stringent than one in effect under the Clean Air Act,<sup>1</sup> and may establish any other requirements applicable to solid waste incineration units, including the authority to establish for any air pollutant an ambient air quality standard, except that no solid waste incineration unit subject to performance standards under §§ 111 <sup>4</sup> and 129 <sup>6</sup> of the Clean Air Act shall be subject to standards under § 1128 of this Chapter.

5. A solid waste incineration unit shall not be a utility unit for purposes of Part G of this Subchapter, provided that more than eighty percent (80%) of its annual average fuel consumption measured on a Btu basis, during a period or periods to be determined by the Administrator of the USEPA, is from a fuel (including any waste burned as a fuel) other than a fossil fuel.

6. No requirement of an applicable implementation plan under §§ 1118 or 1122 of this Chapter may be used to weaken the standards in effect under this Subsection.

D. Prohibited acts. It shall be unlawful for any owner or operator of any new source (or any existing source for which standards of performance are established pursuant to Subsection (B) of this Sections) or any new or existing solid waste incineration unit to operate such source in violation of any standard of performance applicable to such source, as prescribed by the Administrator of the USEPA pursuant to §§ 111 <sup>4</sup> or 129 <sup>6</sup> of the Clean Air Act and the regulations thereunder and by the Director pursuant to this Section and

the regulations hereunder.

E. Revision of regulations. The Director, with the approval of the President, may submit an application to the Administrator of the USEPA for revision of the regulations promulgated under § 111(f)(1) of the Clean Air Act.<sup>8</sup> The application shall demonstrate that:

1. The Administrator of the USEPA has failed to specify in regulations under § 111 (f)(1) of the Clean Air Act<sup>8</sup> any category of major stationary sources required to be specified under such regulations;

2. The Administrator of the USEPA has failed to include in the list under § 111 (b) (1) (A) of the Clean Air Act<sup>9</sup> any category of stationary sources that contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources);

3. The Administrator of the USEPA has failed to apply properly the criteria required to be considered under § 111(f) (2) of the Clean Air Act;<sup>10</sup> or

4. A new, innovative or improved technology or process that achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources and, as a result, the new source standard of performance in effect for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated.

#### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

#### **United States Code**

Solid waste combustion, see 42 U.S.C. § 7429.

#### **Part E. Provisions for Nonattainment Areas and New Source Review**

##### **§ 1122. Nonattainment plan provisions**

A. Plan submissions. With respect to any area within the Navajo Nation that the Administrator of the USEPA designates as nonattainment for any NAAQS, pursuant to § 107 of the Clean Air Act,<sup>1</sup> the Director may submit a plan or plan revision meeting the applicable requirements prescribed in §§ 110(a)(2)<sup>2</sup> and 172(c)<sup>3</sup> of the Clean Air Act and in Subsection (B) of this Section and § 1112 (A) of this Chapter and in the regulations promulgated hereunder.

B. Plan provisions. The plan shall provide for attainment of the

national primary ambient air quality standards and shall also contain the following provisions:

1. A requirement for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology);

2. A requirement for reasonable further progress:

3. A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator of the USEPA may determine necessary to assure that the requirements of this Part are met;

4. An identification and quantification of the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with § 1124 (A) (1) (b) of this Chapter, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator of the USEPA that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date;

5. A requirement for permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with § 1124 of this Chapter;

6. Enforceable emission limitations and such other control measures, means or techniques (including economic incentives such as fees, marketable permits and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified by the Administrator of the USEPA pursuant to regulations issued under § 172(a)(2) and (b) of the Clean Air Act,<sup>4</sup> as modified for Indian tribes by regulations issued under § 301 (d) of the Clean Air Act.<sup>5</sup> The Director may apply to the Administrator of the USEPA for the use of equivalent modeling, emission inventory and planning procedures, if the proposed techniques are, in the aggregate, at least as effective as the methods specified by the Administrator of the USEPA; and

7. A requirement for the implementation of specific measures to be undertaken if the area fails to make reasonable, further progress or to attain the national primary ambient air quality standard by the applicable attainment date. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the Director or the Administrator of the USEPA.

C. Plan revision in response to finding of plan inadequacy. Any plan revision for a nonattainment area which is submitted in response to a finding by the Administrator of the USEPA pursuant to § 110(k)(5) of the Clean Air Act



<sup>6</sup> must correct the plan deficiencies specified by the Administrator of the USEPA and meet all other applicable plan requirements of § 1112 of this Chapter and this Part.

D. Planning procedures. For any ozone, carbon monoxide, or PM-10 nonattainment area for which the Director intends to submit a plan, the Director shall develop planning procedures pursuant to this Subsection. The organization preparing the plan shall be certified by the Director, and shall include elected officials from the affected area, representatives of the NNAQCP and representatives of any transportation planning agency and of any other organization with responsibilities for developing, submitting or implementing the plan under this Part. In the case of a nonattainment area that is also included within another tribe or state, the Navajo Nation may jointly with the other tribes or states, through intergovernmental agreement or otherwise, undertake and implement all or part of the planning procedures described in this Subsection.

E. Planning grants. The Director, in accordance with Navajo Nation law, may apply to the Administrator of the USEPA for grants for the planning activities required by this Section.

F. Maintenance plans. If the Director submits a request under § 1111(B) of this Chapter for redesignation of a nonattainment area as an area that has attained the national primary ambient air quality standard for any air pollutant, the Director shall also submit a revision of the applicable implementation plan to provide for the maintenance of the standard for such air pollutant in the area concerned for at least 10 years after the redesignation. The plan shall contain such additional measures, if any, as may be necessary to ensure such maintenance. Until a plan revision is approved and an area is redesignated as attainment, the requirements of this Part shall continue in force and effect with respect to such area. Moreover, eight years after redesignation of any area as an attainment area under § 107(d) of the Clean Air Act,<sup>7</sup> the Director shall submit to the Administrator of the USEPA an additional revision of the applicable implementation plan for maintaining the standard for an additional 10 years after the expiration of the 10-year period referred to above.

G. Contingency provisions. Each plan revision submitted under Subsection (F) shall contain such contingency provisions as the Administrator of the USEPA deems necessary to assure that the Director will promptly correct any violation of the standard that occurs after the redesignation of the area as an attainment area. Such provision shall include a requirement that the Director implement all measures with respect to the control of the air pollutant concerned that were contained in the implementation plan for the area before redesignation as an attainment area. The failure of an area to maintain the NAAQS concerned shall not result in a requirement that the Director revise the implementation plan unless the Administrator of the USEPA requires the Director to do so.

H. Interstate transport commissions. The President may petition the Administrator of the USEPA to establish an interstate transport commission under § 176A of the Clean Air Act <sup>8</sup> and to add or remove the Navajo Nation or any other tribe or state or portion thereof to or from any such commission established under that Section.

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **United States Code**

Nonattainment plan provisions in general, see 42 U.S.C. § 7502.

### **§ 1123. Additional provision for nonattainment areas for specific pollutants**

In the event any area of the Navajo Nation is designated nonattainment for any pollutant for which a NAAQS has been promulgated by the Administrator of the USEPA, the relevant provisions of §§ 181 through 192 of the Clean Air Act <sup>1</sup> pertaining to that pollutant and of the regulations hereunder shall apply, to the extent such provisions are applicable to the Navajo Nation and as modified by regulations promulgated by the Administrator of the USEPA under § 301(d) of the Clean Air Act.<sup>2</sup>

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **§ 1124. Permit requirements**

A. General requirements. The Director may issue permits to construct and operate a proposed new or modified major stationary source if:

1. The Director determines, in accordance with regulations issued under § 173 of the Clean Air Act <sup>1</sup> and under this Section, that:

a. By the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained such that total allowable emissions from existing sources in the region, from new or modified sources that are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify so as to represent, when considered together with the plan provisions required under § 1122 of this Chapter, reasonable further progress; or

b. In the case of a new or modified major stationary source that is located in a zone (within the nonattainment area) identified by the Administrator of the USEPA as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emission levels that exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under § 1122 of this Chapter and § 172 (c) of the Clean Air Act;<sup>2</sup>

2. The proposed source is required to comply with the lowest achievable emission rate;

3. The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in the Navajo Nation are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this Chapter;

4. The Administrator of the USEPA has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified; and

5. An analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

B. Any emission reduction required as a precondition to the issuance of a permit shall be federally enforceable before such permit may be issued.

#### C. Offsets

1. The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this Part and Part D of Title 1 of the Clean Air Act<sup>3</sup> for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the Director may allow the owner or operator to obtain such emission reductions in another nonattainment area if (a) the other area has an equal or higher nonattainment classification than the area in which the source is located, and (b) emissions from such other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located. Such emission reductions shall be in effect and enforceable by the time a new or modified source commences operation, and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

2. Emission reductions otherwise required by this Chapter or by the Clean Air Act<sup>4</sup> shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this Chapter shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of Paragraph (1).

#### D. Control technology information

The Director shall provide that control technology information from permits issued under this Section will be promptly submitted to the

Administrator of the USEPA for purposes of making such information available through the RACT/BACT/LAER clearinghouse to other tribes and states and to the general public.

#### **History**

CJY-58-95, July 20, 1995.

#### **United States Code**

Permit requirements, see 42 U.S.C. § 7503.

#### **Part F. Control of Hazardous Air Pollutants**

#### **United States Code**

Hazardous air pollutants, see 42 U.S.C. § 7412.

#### **§ 1125. Control of hazardous air pollutants**

A. In general. The Director may develop and submit to the Administrator of the USEPA for approval a program for the implementation and enforcement of emission standards and other requirements for hazardous air pollutants pursuant to § 112 of the Clean Air Act <sup>1</sup> or requirements for the prevention and mitigation of accidental releases pursuant to § 112(r) of the Clean Air Act,<sup>2</sup> or both. The program may provide for partial or complete delegation of the USEPA Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements.

B. Navajo standards. As part of the program developed under Subsection (A) of this Section, the Director may adopt and enforce regulations, requirements, limitations, or standards that are more stringent than those in effect under § 112 of the Clean Air Act <sup>1</sup> or that apply to a substance that is not subject to § 112 of the Clean Air Act, pursuant to §§ 1126, 1127 and 1128 of this Chapter. Any standards set by the Director shall be at least as stringent as those promulgated by the Administrator of the USEPA.

C. Grants. The Director, in accordance with Navajo Nation law, may apply to the Administrator of the USEPA, pursuant to § 112(1)(4) of the Clean Air Act,<sup>3</sup> for grants to assist in developing and implementing a program under Subsection (A) of this Section.

#### **History**

CJY-58-95, July 20, 1995.

#### **§ 1126. List of hazardous air pollutants**

A. Contents of list. The hazardous air pollutants that are subject to regulation under this Part shall consist of:

1. The federally listed hazardous air pollutants, as defined in § 1101 of this Chapter;

2. Hazardous air pollutants that are designated by the Director, pursuant to Subsection (B) of this Section.

B. Designation of hazardous air pollutants. The Director may, by regulation, designate hazardous air pollutants in addition to the federally listed hazardous air pollutants if the Director finds that the pollutants present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects or adverse environmental effects, whether through ambient concentration, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under § 112(r) of the Clean Air Act.<sup>1</sup> The Director shall rely on technical protocols appropriate for the development of a list of hazardous air pollutants and shall base any designation on credible medical and toxicological evidence that has been subjected to peer review. The Director shall not include any air pollutant that is listed under § 108 of the Clean Air Act,<sup>2</sup> except that he/she may include a pollutant that independently meets the listing criteria of this Subsection and is a precursor to a pollutant listed under § 108(a) or to any pollutant in a class of pollutants listed under that Section. An adequate and reliable methodology must exist for quantifying emissions and ambient concentrations of a pollutant before that pollutant may be listed under this Subsection. The Director shall not list elemental lead as a hazardous air pollutant under this Subsection.

C. Review of list. The Director shall periodically review the list of hazardous air pollutants that are designated pursuant to Subsection (B) of this Section and, where appropriate, shall revise such list by rule, adding or deleting substances as warranted. A current list of all hazardous air pollutants designated pursuant to Subsection (B) of this Section shall be kept on file at the NNAQCP office and shall be available for examination by the public during regular business hours.

D. Petitions to modify list. Any person may petition the Director to modify the list of hazardous air pollutants under Subsection (B) of this Section by adding or deleting substances. The petition must include a showing that there is adequate data on the health or environmental effects of the pollutant or other evidence adequate to support the petition. The Director shall commence a rulemaking pursuant to § 1161 of this Chapter within six months of receipt of the petition.

### **History**

CJY-58-95, July 20, 1995.

### **§ 1127. List of source categories**

A. Contents of list. The categories and subcategories of major sources and area sources of hazardous air pollutants listed under § 1126 of this Chapter shall consist of:

1. Source categories listed by the Administrator of the USEPA pursuant to § 112 (c) of the Clean Air Act;<sup>1</sup> and

2. Categories and subcategories of sources that emit the hazardous air pollutants designated by the Director pursuant to § 1126 (B) of this

Chapter.

3. The Director may list a major source or area source category under Paragraph (2) of this Subsection if the Director finds, through rulemaking pursuant to § 1161 of this Chapter, that emissions of hazardous air pollutants from that category present a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this Section. The Director shall periodically review the list of hazardous air pollutants that are designated pursuant to Paragraph (2) of this Subsection and, where appropriate, shall revise such list by rule, adding or deleting substances as warranted.

B. Petitions to modify list. Any person may petition the Director to modify the list of source categories under Subsection (A) (2) of this Section by adding or deleting categories. The petition must include a showing as to the lifetime risk of cancer to the most exposed individual in the affected population caused by the hazardous air pollutants emitted from such source category, the extent to which hazardous air pollutants emitted from such source category exceed or do not exceed a level which is adequate to protect public health with an ample margin of safety, the degree to which adverse environmental effects will or will not result from hazardous air pollutants emitted from such source category, or other evidence adequate to support the petition. The Director shall commence a rulemaking pursuant to § 1161 of this Chapter within six months of receipt of the petition to add or delete the source category from the list under Subsection (A).

#### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

#### **§ 1128. Emission standards**

A. In general. The Director shall adopt the standards promulgated by the Administrator of the USEPA pursuant to § 112 (d), (e) (5), (f) and (n) of the Clean Air Act <sup>1</sup> and, in addition, shall promulgate regulations establishing emissions standards for each category or subcategory listed by the Director pursuant to § 1127(A)(2) of this Chapter. The Director may distinguish among classes, types and sizes of sources within a category or subcategory in establishing such standards.

Notwithstanding the first sentence of this Subsection, the Director may adopt more stringent standards than those promulgated by the Administrator of the USEPA, except in the case of emissions of radionuclides from facilities licensed by the U.S. Nuclear Regulatory Commission. The Director shall comply with § 112(n)(4) of the Clean Air Act <sup>2</sup> with respect to the non-aggregation of emissions from oil and natural gas facilities and pipelines. Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, except as provided by regulation

promulgated by the Director, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this Part, except as provided by regulation promulgated by the Director.

B. Criteria. Emissions standards promulgated by the Director under this Section shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this Part (including a prohibition on such emissions, where achievable) that the Director, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures that:

1. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;
2. Enclose systems or processes to eliminate emissions;
3. Collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;
4. Are design, equipment, work practice or operational standards (including requirements for operator training or certification), as provided in § 112(h) of the Clean Air Act;<sup>3</sup> or
5. Are a combination of the above.

C. New and existing sources. The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Director. Emission standards promulgated under this Section for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent, than:

1. The average emission limitation achieved by the best performing twelve percent (12%) of the existing sources (for which the Administrator of the USEPA has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources; or
2. The average emission limitation achieved by the best performing five sources (for which the Administrator of the USEPA has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

D. Alternative standard for area sources. With respect to categories and subcategories of area sources listed pursuant to § 1127 the Director may, in lieu of the authorities provided in Subsection (B) of this Section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories that provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

E. Compliance. For those standards promulgated by the Administrator of the USEPA that the Director adopts pursuant to Subsection (A) of this Section, the Director shall also adopt the same compliance dates. The Director shall establish compliance dates for each category or subcategory of existing sources for which the Director promulgates emissions standards under this Section. These dates shall provide for compliance as expeditiously as practicable, but not until 90 days after the effective date of the standard, and no later than two years after the effective date of such standard, except as provided in § 1129(D) of this Chapter.

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **§ 1129. Hazardous air pollutant permit program**

A. In general. Permits issued to sources of hazardous air pollutants covered under § 1127 of this Chapter shall be issued pursuant to the provisions of Part H of this Chapter and subject to the requirements and conditions contained within this Section.

B. Construction, reconstruction and modifications. After the effective date of the permit program under Part H of this Subchapter, no person may obtain a permit or permit revision to modify, construct or reconstruct a major source of hazardous air pollutants or area source in a category listed under § 1127 of this Chapter unless the Director determines that the appropriate maximum achievable control technology emission limitation under this Part will be met. In the case of modifications, the appropriate emission limitation shall be that for existing sources; in the case of construction or reconstruction, for new sources, determined pursuant to § 1128(C) of this Part. In both cases, where the Administrator of the USEPA or the Director, as the case may be, has not established applicable emission limitations, the Director shall make such determination on a case-by-case basis.

C. Exemption from definition of modification. A physical change in a source or change in the method of operation of a source that results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant or pollutants from such source that is deemed more hazardous, pursuant to guidance issued by the Administrator of the USEPA under § 112(g)(1)(B) of the Clean Air Act.<sup>1</sup> The owner or operator of such



source shall submit a showing to the Director that such increase has been offset under this Subsection.

D. Schedule for compliance. Once the Navajo Nation has an approved permit program under Part H of this Subchapter:

1. After the effective date of any emission standard, limitation, or regulation under § 112(d), (f), or (h) of the Clean Air Act <sup>2</sup> or under § 1128 of this Chapter, no person may construct any new major source or area source or reconstruct any existing major source or area source subject to such emission standard, regulation, or limitation unless the Director determines that such source, if properly constructed or reconstructed and operated, will comply with the standard, regulation, or limitation.

2. Notwithstanding Paragraph (1), a new source that commences construction or reconstruction after an applicable standard, limitation or regulation is proposed and before such standard, limitation, or regulation is promulgated shall not be required to comply with such promulgated standard until the date three years after the date of promulgation if:

a. The promulgated standard, limitation, or regulation is more stringent than the standard, limitation, or regulation proposed; and

b. The source complies with the standard, limitation, or regulation as proposed during the three year period immediately after promulgation.

3. After the effective date of any emissions standard, limitation or regulation promulgated under § 112 (d), (f), or (h) of the Clean Air Act or under § 1128 of this Chapter and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the source shall comply with the emissions standard, limitation or regulation by the date set by the Administrator of the USEPA, pursuant to § 112(i) of the Clean Air Act, or by the Director, pursuant to this Section and § 1128 of this Chapter, as the case may be.

4. The Director may issue a permit that grants an extension permitting an existing source up to one additional year to comply with standards under § 112(d) of the Clean Air Act <sup>3</sup> or § 1128 of this Chapter if such additional period is necessary for the installation of controls. An additional extension of up to three years may be added for mining waste operations if the compliance time required under § 112(i)(3) of the Clean Air Act <sup>4</sup> and the regulations hereunder, together with the one year extension provided by the Director under this Paragraph, is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under § 112 (b) of the Clean Air Act.<sup>5</sup>

5. If the owner or operator of an existing source demonstrates that the source has achieved a reduction of at least ninety percent (90%) in emissions of hazardous air pollutants (at least ninety-five percent (95%)

in the case of hazardous air pollutants that are particulates) before the otherwise applicable standard under § 112(d) of the Clean Air Act or § 1128 of this Chapter is first proposed, the Director shall issue a permit allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under § 112(d) of the Clean Air Act or § 1128 of this Chapter. The permit shall provide for an extension of six years from the compliance date for the otherwise applicable standard. The Director may, through regulations, require greater reductions than those specified in this Paragraph as a condition of granting this extension. The reduction shall be determined according to the provisions of § 112(i)(5)(C) of the Clean Air Act<sup>6</sup> and the regulations hereunder.

6. The reduction in Paragraph (5) shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987, provided that there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emission reduction measures.

7. For each source granted an alternative emission limitation under Paragraph (5) above, the permit shall establish an enforceable emission limitation for hazardous air pollutants reflecting the reduction which qualifies the source for an alternative emission limitation under Paragraph (5). An alternative emission limitation shall not be available with respect to standards or requirements promulgated pursuant to § 112(f) of the Clean Air Act.<sup>7</sup>

E. Equivalent emission limitation by permit. Once the Navajo Nation has an approved permit program under Part H of this Chapter:

1. If the Administrator of the USEPA fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to § 112(e)(1) and (3) of the Clean Air Act,<sup>8</sup> then beginning 18 months after that date (but not prior to the effective date of the Navajo permit program), the owner or operator of any major source in such category or subcategory shall submit a permit application to the Director, pursuant to requirements established by the Administrator of the USEPA under § 112(j) of the Clean Air Act.<sup>9</sup> If the owner or operator has submitted a timely and complete application for a permit, any failure to have a permit shall not be a violation of this requirement, unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application.

2. Permit applications submitted under this Subsection shall be reviewed and approved or disapproved according to the provisions of Part H of this Chapter. If the Director disapproves a permit application or determines that the application is incomplete, the applicant shall have up to six months to revise the application to meet the objections of the Director.

3. The permit shall contain emission limitations for the hazardous air pollutants subject to regulation under this Section and emitted by the source that the Director determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an

emission standard had been promulgated in a timely manner under § 112 (d) of the Clean Air Act. In the alternative, if the applicable criteria are met, the permit may contain an emissions limitation established according to the provisions of Subsection (D)(5) of this Section. For these purposes, the reduction required by Subsection (D)(5) shall be achieved by the date on which the relevant standard should have been promulgated under § 112 (d) of the Clean Air Act. No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and as expeditiously as practicable but no later than three years after the permit is issued for existing sources, or such other compliance date as would apply under Subsection (D) of this Section.

4. If the Administrator of the USEPA promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to Paragraph (3), provided that the source shall have the compliance period provided under Subsection (D) of this Section. If the Administrator of the USEPA promulgates a standard under § 112 (d) of the Clean Air Act that would be applicable to the source in lieu of the emission limitation established by permit under this Subsection after the date on which the permit has been issued, the Director shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator of the USEPA, providing such source a reasonable time to comply but no longer than eight years after such standard is promulgated or eight years after the date on which the source is first required to comply with the emissions limitation established by Paragraph (3), whichever is earlier.

#### **History**

CJY-58-95, July 20, 1995.

#### **§ 1130. Research program on hazardous air pollutants**

A. Research program. The NNAQCP may, in cooperation with the U.S. Environmental Protection Agency and the National Academy of Sciences, undertake a research program to evaluate the existing risk to public health from hazardous air pollutants and to provide options and recommendations for programs to control the release of hazardous substances into the ambient air. This research may include any or all of the following:

1. Identification of hazardous air pollutants that are or may be emitted into the ambient air in the Navajo Nation;
2. Identification and evaluation of methods for conducting ambient air monitoring, modeling, measuring emissions, and performing related analyses;
3. Surveying concentrations of hazardous air pollutants within the ambient air of the Navajo Nation and estimating contributions to those concentrations from permitted, nonpermitted and natural sources as well as background concentrations;

4. Identification and evaluation of residual risk after implementation of controls during the term of study, of actual risk from exposure to hazardous air pollutants and of alternative risk assessment methodologies;

5. Evaluation of the feasibility of, need for, and potential methods for establishing ambient air quality standards or health-based guidelines for hazardous air pollutants; and

6. Development of a public education program to provide information and increase public awareness of hazardous air pollutants.

B. Report. If the NNAQCP conducts any such research program, it shall submit a report of its findings and recommendations to the President and shall make such report available to the public.

### **History**

CJY-58-95, July 20, 1995.

### **Part G. Acid Deposition Control**

#### **§ 1131. Acid deposition permits and compliance plans**

A. Permit Program.

1. The Director may submit a permit program for approval in accordance with Title V of the Clean Air Act <sup>1</sup> and Part H of this Subchapter to provide for permits for: new utility units required under § 403 (e) of the Clean Air Act <sup>2</sup> to have allowances; affected units or sources under § 405 of the Clean Air Act;<sup>3</sup> and units subject to nitrogen oxide emission reductions under § 407 of the Clean Air Act.<sup>4</sup>

2. Any permit issued by the Director shall prohibit:

a. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator of the unit or designated representative of the owners or operators hold for the unit;

b. Violations of applicable emissions rates;

c. The use of any allowance prior to the year for which it was allocated; and

d. Contravention of any other provision of the permit.

3. Permits shall be issued for a period of five years. No permit shall be issued that is inconsistent with the requirements of this Section and Title IV of the Clean Air Act <sup>5</sup> and the regulations thereunder, and with the applicable provisions of Part H of this Subchapter and Title V of the Clean Air Act and the regulations thereunder.

B. Compliance plans. Each affected source when submitting an initial permit application to the Director shall include a compliance plan for the source to comply with its requirements under Title IV of the Clean Air Act. Where an affected source consists of more than one affected unit, the compliance plan shall cover all such units, and for purposes of § 502 (c) of the Clean Air Act <sup>6</sup> the source shall be considered a "facility". Nothing in this Section regarding compliance plans or in Part H of this Subchapter shall be construed as affecting allowances. Except as provided under § 408(c) (1) (B) of the Clean Air Act,<sup>7</sup> submission of a statement by the owner or operator, or the designated representative thereof, of a unit subject to the emissions limitation requirements of §§ 405 and 407 of the Clean Air Act that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of § 405 of the Clean Air Act, the owners and operators will hold allowances to emit not less than the total annual emissions of the unit, shall be deemed to meet the compliance planning requirements of this Section and Title V of the Clean Air Act, except that, for any unit that will meet the requirements of Title IV of the Clean Air Act by means of an alternative method of compliance authorized under §§ 407(d) or (e),<sup>8</sup> 409 <sup>9</sup> or 410 <sup>10</sup> of the Clean Air Act or §§ 1132 or 1133 of this Chapter, the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator of the USEPA, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under Title IV of the Clean Air Act. Recordation by the Administrator of the USEPA of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits. The Director may also require:

1. For a source, a demonstration of attainment of national ambient air quality standards; and

2. From the owner or operator of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance at the affected sources.

C. Phase II permits.

1. The owner or operator or the designated representative thereof of each affected source under § 405 of the Clean Air Act <sup>3</sup> that is located within the Navajo Nation shall submit a permit application and compliance plan for that source to the Director not later than January 1, 1996.

2. Not later than December 31, 1997, provided that the Navajo Nation has an approved acid deposition control permit program, the Director shall issue permits to the owner, operator, or designated representative thereof of affected sources under § 405 of the Clean Air Act <sup>3</sup> that satisfy the requirements of Part H of this Subchapter and Title V of the Clean Air Act <sup>1</sup> and that submitted to the Director a permit application and compliance plan pursuant to Paragraph (1). The permit application and the compliance plan, including amendments thereto, shall be binding on the owner, operator, or designated representative and

shall be enforceable as a permit for purposes of this Part and Part H of this Subchapter until a permit is issued by the Director for the affected source.

3. The permit issued in accordance with this Subsection for an affected source shall provide that the affected units at the affected source may not emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner, operator, or designated representative holds for the unit.

D. New units. The owner or operator of each source that includes a new utility unit that is located within the Navajo Nation shall submit a permit application and compliance plan to the Director not later than two years before January 1, 2000, or the date on which the unit commences operation, whichever is later. The Director shall issue a permit to the owner, operator, or designated representative of the unit that satisfies the requirements of this Part and Part H of this Subchapter and of Titles IV<sup>5</sup> and V<sup>1</sup> of the Clean Air Act.

E. Units subject to NOx emission limitations. The owner or operator, or designated representative thereof, of any unit subject to an emission rate requirement under § 407 of the Clean Air Act<sup>4</sup> and located within the Navajo Nation shall submit a permit application and compliance plan for such unit to the Director not later than January 1, 1998.

The Director shall issue a permit to the owner or operator that satisfies the requirements of Titles IV<sup>5</sup> and V<sup>1</sup> of the Clean Air Act and this Part and Part H of this Subchapter, including any appropriate monitoring and reporting requirements.

F. Amendment of application and compliance plan. At any time after the submission of an application and compliance plan under this Section, the applicant may submit a revised application and compliance plan in accordance with the requirements of this Section and the regulations hereunder. In considering any permit application and compliance plan under this Section, the Director shall ensure coordination with the applicable electric ratemaking authority, in the case of regulated utilities, and with unregulated public utilities.

G. Prohibition.

1. It shall be unlawful for an owner or operator, or designated representative thereof, required to submit a permit application or compliance plan under this Part to fail to submit such application or plan in accordance with the requirements specified in this Section or to otherwise fail to comply with regulations implementing this Section.

2. It shall be unlawful for any person to operate any source subject to this Section except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Director, provided that there is an approved Navajo Nation acid deposition permit program. For purposes of this Subsection, compliance, as provided in § 1136(E) of this Chapter, with a permit issued under Part H of this Subchapter which

complies with this Part for sources subject to this Part shall be deemed compliance with this Part as well as with § 1134(E) of this Chapter.

3. In order to ensure reliability of electric power, nothing in this Part or Part H of this Subchapter shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan, except that any such unit may be subject to the applicable enforcement provisions of Subchapter 3 of this Chapter.

H. Certificate of representation. No permit shall be issued under this Section to an affected unit until the designated representative of the owners or operators has filed, with the Administrator of the USEPA and the Director, a certificate of representation with regard to matters under Title IV of the Clean Air Act <sup>5</sup> and this Part, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Such certificate shall comply with the requirements of § 408(i) of the Clean Air Act <sup>11</sup> and the regulations thereunder, including where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, as those terms are defined under Title IV of the Clean Air Act <sup>5</sup> and the regulations thereunder.

#### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

#### **United States Code**

Permits and compliance plans, acid deposition control, see 42 U.S.C. § 7651g.

#### **§ 1132. Special provisions related to nitrogen oxides**

A. Alternative emission limitations. Upon request by an owner or operator of a unit subject to § 407 of the Clean Air Act,<sup>1</sup> the Director shall authorize an emission limitation less stringent than the applicable limitation established under § 407(b) of the Clean Air Act upon a determination that:

1. A unit subject to § 407(b) (1) of the Clean Air Act <sup>2</sup> cannot meet the applicable limitation using low NOx burner technology, as defined in Title IV of the Clean Air Act <sup>3</sup> and the regulations thereunder; or

2. A unit subject to § 407(b) (2) of the Clean Air Act <sup>3</sup> cannot meet the applicable rate using the technology on which the Administrator of the USEPA based the applicable emission limitation.

B. Demonstration required. The Director shall base such determination upon a showing satisfactory to the Director, in accordance with regulations promulgated by the Administrator of the USEPA, that the owner or operator:

1. Has properly installed appropriate control equipment designed to meet the applicable emission rate;

2. Has properly operated such equipment for the period required by the Administrator of the USEPA in regulations and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

3. Has specified emission rate that such unit can meet on an annual average basis.

C. Permit. The Director shall issue an operating permit for the unit in question in accordance with § 1131 of this Chapter that permits the unit during the demonstration period referred to in Paragraph (B)(2) above to emit at a rate in excess of the applicable emission rate. At the conclusion of the demonstration period, the Director shall revise the operating permit to reflect the alternative emission rate demonstrated in Paragraphs (B)(2) and (3) above.

D. Emissions averaging.

1. In lieu of complying with the applicable emission limitations under § 407(b)(1), (2) or (d) of the Clean Air Act,<sup>5</sup> the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to those Sections may petition the Director for alternative contemporaneous annual emission limitations for such units that ensure that the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to § 407 (b) (1) and (2) of the Clean Air Act.<sup>6</sup>

2. If the Director determines in accordance with regulations promulgated by the Administrator of the USEPA, that the conditions in Paragraph (1) can be met, the Director shall issue operating permits for such units, in accordance with § 1131 of this Chapter, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while all such units continue operation under the conditions specified in their respective operating permits.

#### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

#### **United States Code**

Nitrogen oxides emission reduction program, see 42 U.S.C. § 7651f.

#### **§ 1133. Repowered sources**



A. Eligibility. Not later than December 31, 1997, the owner or operator of an existing unit subject to the emission limitation requirements of § 405(b) or (c) of the Clean Air Act <sup>1</sup> may demonstrate to the Director, if the Navajo Nation has an approved acid deposition control permit program by that date, that one or more units will be repowered with a qualifying clean coal technology, as that term is defined in Title IV of the Clean Air Act <sup>2</sup> and the regulations hereunder, to comply with the requirements of § 405 of the Clean Air Act.<sup>3</sup> The owner or operator shall, as part of any such demonstration, provide, not later than January 1, 2000, satisfactory documentation of a preliminary design and engineering effort for such repowering and an executed and binding contract for the majority of the equipment to repower such unit and such other information as is required by regulation under this Section and § 409 of the Clean Air Act.<sup>4</sup>

B. Extension. The Director shall grant to an owner or operator satisfying the requirements of Subsection (A) of this Section an extension of the emission limitation requirement compliance date for that unit from January 1, 2000 to December 31, 2003. The extension shall be specified in the permit issued to the source, together with any compliance schedule and other requirements necessary to meet Phase II requirements by the extended date. Any unit that is granted an extension under this Section shall not be eligible for a waiver under § 1110 of the Clean Air Act.

C. Control requirements. Any unit qualifying for an extension under this Section that does not increase actual hourly emissions for any pollutant regulated under this Chapter or the Clean Air Act <sup>5</sup> shall not be subject to any standard of performance under § 1121 of this Chapter. Notwithstanding the preceding sentence, no new unit that is designated as a replacement for an existing unit, qualifies for an extension under this Section and is located at a different site than the existing unit shall receive an exemption from the requirements imposed under § 1121 of this Chapter.

D. Expedited permitting. The Director shall attempt to give expedited consideration to permit applications under Parts B and E of this Subchapter for any source qualifying for an extension under this Section.

E. Prohibition. It shall be unlawful for the owner or operator of a repowered source to fail to comply with the requirements of this Section, or any regulation or permit requirements to implement this Section, including the prohibition against emitting sulfur dioxide in excess of allowances held.

#### **History**

CJY-58-95, July 20, 1995.

#### **United States Code**

Repowered sources, see 42 U.S.C. § 7651h.

#### **Part H. Permits**

##### **§ 1134. Permit programs.**

A. Submission and approval

1. The Director may develop and submit to the Administrator of the USEPA a permit program or portion thereof meeting the requirements of Title V of the Clean Air Act <sup>1</sup> and the regulations thereunder. The Director may establish additional permitting requirements in regulations under this Section, provided that the additional requirements are not inconsistent with the requirements of Title V of the Clean Air Act. In addition, the Director shall submit to the Administrator of the USEPA a legal opinion from the Attorney General that the laws of the Navajo Nation provide adequate authority to carry out the program.

2. If the Administrator of the USEPA disapproves the permit program, in whole or in part, and notifies the Director of any revisions or modifications necessary to obtain approval, the Director may revise and resubmit the program for review under § 502 of the Clean Air Act.<sup>2</sup>

3. The Director may, subject to 2 N.N.C. § 824(B)(6), 2 N.N.C. § 164(B)(2) and 2 N.N.C. § 1005(C)(2), enter into a delegation agreement with USEPA providing for the Director to implement a CAA Title V operating permit program pursuant to 40 C.F.R. Part 71, pending USEPA's approval of a permit program submitted by the Director pursuant to 40 C.F.R. Part 70 and the requirements of this part, and pending the transition from Part 71 to Part 70 permits, and in other instances when it may be appropriate to enter into such an agreement.

B. Requirements. The permit program shall contain the elements required by the Administrator of the USEPA by regulation pursuant to Title V of the Clean Air Act,<sup>1</sup> as well as such other elements as the Director may require by regulation, including but not limited to:

1. Requirements for permit applications, including a standard application form and criteria for processing permit applications and for determining in a timely fashion the completeness of applications;

2. Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing on permit applications and compliance plans and for expeditious review of permit actions, including applications, renewals, and revisions, and including an opportunity for judicial review in the Navajo Nation Court system of final permit actions (including review of failures to take timely action on permit applications or permit renewal applications, to require that action be taken on such permit applications without additional delay), by the permit applicant, any person who participated in the public comment process provided according to § 1137(D) of this Part, and any other person who could obtain judicial review under Navajo law;

3. Monitoring and reporting requirements;

4. Requirements for adequate personnel and funding to administer the program;

5. Provisions ensuring adequate authority to issue permits; assure

compliance by all sources required to have a permit under this Part with each applicable standard, regulation or requirement under this Chapter; assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan; terminate, modify or revoke, and reissue permits for cause; enforce permits and permit requirements imposed pursuant to this Part; assure that no permit will be issued if the Administrator of the USEPA objects to its issuance in a timely manner under this Part; and generally administer the permit program;

6. In the case of permits for major sources with a remaining term of three or more years, a requirement that revisions be made to the permit to incorporate applicable standards and regulations promulgated under this Chapter or under the Clean Air Act <sup>3</sup> after the issuance of such permit, as expeditiously as practicable and consistent with the procedures established under Paragraph (2) but not later than 18 months after the promulgation of such standards and regulations, except that no revision shall be required if the effective date of the standards or regulations is after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this Part regarding renewals;

7. In the case of affected sources under the acid rain program, a requirement that revisions be made to the permit to incorporate applicable requirements under Part G of this Subchapter and Title IV of the Clean Air Act <sup>4</sup> and the regulations hereunder;

8. Provisions to allow changes within a permitted facility or one operating pursuant to § 1135(D) of this Chapter or § 503(d) of the Clean Air Act <sup>5</sup> without requiring a permit revision, if the changes are not modifications under any provision of Title 1 of the Clean Air Act <sup>3</sup> and the changes do not exceed the emissions allowable under the permit (whether expressed as a rate of emissions or as total emissions), and if the facility provides the Director and the Administrator of the USEPA with written notification a minimum of seven days in advance of the proposed changes according to the requirements of the regulations promulgated under § 502 (b)(10) of the Clean Air Act <sup>6</sup> and under this Section;

a. A requirement that the owner or operator of a source required to obtain a permit under this Part pay a fee to a system of fees established by the Director under this Part and designed solely to cover all reasonable direct and indirect costs required to develop and administer the permit program under this Part and the small business assistance program under § 1140 of this Part (if such program is developed by the Director), including the reasonable costs of reviewing and acting upon permit applications; implementing and enforcing the terms and conditions of permits (not including costs associated with enforcement actions); performing emissions and ambient monitoring; preparing generally applicable regulations and guidance; conducting modeling, analyses and demonstrations; preparing inventories and tracking emissions; the general administrative costs of running the permit program; and the costs of providing direct and indirect support to sources under the small business assistance program in determining and

meeting their obligations under this Part and the regulations hereunder (if such program is developed by the Director);

b. A requirement that the fee program result in the collection, in the aggregate, from all sources subject to fees, of an amount not less than twenty-five dollars (\$25.00) per ton of each regulated pollutant, as such term is defined and as such amount is calculated in accordance with § 502 (b) (3) (B) of the Clean Air Act <sup>7</sup> and the regulations hereunder, unless a lesser amount will meet the requirements of the preceding paragraph; and that the NNAQCP regulations prescribe procedure for increasing the fee each year by the percentage, if any, by which the Consumer Price Index for the immediately preceding calendar year exceeds the Consumer Price Index for calendar year 1989, as defined in § 502 (b) (3) (B) of the Clean Air Act, and provide that any fees collected shall be deposited in the fund established by § 1139 of this Chapter and used solely to cover the reasonable costs of the permit program; and

9. Authority, and reasonable procedures consistent with the need for expeditious action by the Director on permit applications and related matters, to make available to the public any permit application, compliance plan, permit and monitoring or compliance report under § 1135(E) of this Chapter, subject to the provisions of § 1151 (D) of this Chapter.

C. Effective date. The effective date of a permit program or partial or interim program approved under § 502 of the Clean Air Act <sup>2</sup> shall be the effective date of approval by the Administrator of the USEPA.

D. Interim approval. If a program, including a partial permit program, submitted under Subsection (A) of this Section receives interim approval from the Administrator of the USEPA, for the period of any such interim approval the provisions of Subsection (E) of this Section shall be suspended.

E. Violations. After the effective date of any permit program promulgated under this Part, it shall be unlawful for any person to violate any requirement of a permit issued under this Part or to operate an affected source or a major source, as those terms are defined under § 1101 of this Chapter, or any other source (including an area source) subject to regulation under Parts D and F of this Subchapter, any other source required to have a permit under Parts B or E of this Subchapter, or any other stationary source in a category designated in whole or in part by the Administrator of the USEPA or the Director as requiring a permit, except in compliance with a permit issued by the Director under this Part. If the Director designates a category in whole or in part under this Subsection he/she shall do so by regulation after notice and public comment and shall include a finding setting forth the basis for such designation. If the Administrator of the USEPA exempts a source category from the requirements of § 502(a) of the Clean Air Act,<sup>8</sup> pursuant to that Subsection, the Director may, but is not required to, exempt that source category from the requirements of this Subsection. Nothing in this Subsection shall be construed to alter the applicable requirements of this Chapter that a permit be obtained before construction or modification.

F. Permits implementing acid deposition provisions. The requirements of

this Part, including regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of Part G of this Subchapter except as modified by Part G. Nothing in the permits or compliance plans issued pursuant to this Part shall be construed as affecting allowances under Part G of this Subchapter or Title IV of the Clean Air Act.<sup>4</sup>

G. Minor source permits. Notwithstanding any other provisions under this Part, the Director shall establish by regulation a minor source permitting program, under which sources not classified as major sources or not otherwise subject to the provisions of this Part shall nevertheless be required to obtain operating permits, in order to control emissions, including fugitive emissions, from such sources. The Director shall promulgate regulations pursuant to this Subsection which shall identify the minor sources subject to this Subsection, provide for the filing of permit applications and compliance plans and for the payment of fees pursuant to Subsection (B) (9) of this Section, and require monitoring and reporting. Minor sources identified by the Director may include coal mines and uranium mines, in addition to such other sources as the Director identifies by regulation.

#### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

#### **United States Code**

Permit programs, see 42 U.S.C. § 7661a.

#### **§ 1135. Permit applications**

A. Applicable date. Any source specified in § 1134(E) of this Part shall become subject to a permit program under this Part on the later of the following dates:

1. The effective date of a permit program or partial or interim permit program applicable to the source; or
2. The date such source becomes subject to § 1134 of this Chapter.

B. Deadline. Any person required to have a permit shall, not later than one year after the date on which the source becomes subject to a permit program under this Part (including permit programs that have received interim approvals and partial permit programs), or such earlier date as the Director may establish, submit to the Director a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. Permit applications shall be filed in the manner and according to the requirements prescribed by this Chapter and by the Director through regulation. The Director shall approve or disapprove a completed application and shall issue or deny the permit within 18 months after the date of receipt thereof, except that the Director shall establish, in conjunction with EPA Region 9, a phased schedule for acting on permit applications submitted within the first full year after the effective date of the permit

program or the partial or interim program. This schedule shall ensure that all such applications will be acted on by the Director within five years after such effective date. The Director shall establish reasonable procedures to review permit applications and to prioritize approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this Chapter.

C. Permit applications.

1. Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

"Permittee consents to the jurisdiction of the Navajo Nation with respect to those activities conducted pursuant to this permit issued by the Director pursuant to the provisions of the Navajo Nation Air Pollution Prevention and Control Act. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit."

2. Permittee shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued by the Director, and each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for "permittee" as appropriate.

D. Compliance plan. The applicant shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Chapter. The compliance plan shall include a schedule of compliance and a schedule under which the permittee will submit progress reports to the Director no less frequently than every six months. In addition, the permittee shall periodically certify that the facility is in compliance with any applicable requirements of the permit, and promptly report any deviations from permit requirements to the Director, as provided in the regulations promulgated under this Part.

E. Timely and complete applications. Except for sources required to have a permit before construction or modification under this Chapter, if an applicant has submitted a timely and complete application for a permit required by this Part (including for a renewal) but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this Chapter, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this Part shall be in violation of § 1134 (E) of this Chapter before the date on which the source is required to submit an application under Subsection (B) of this Section.

F. Availability to public. A copy of each permit application, compliance

plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this Part, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under § 1151 (D) of this Chapter, the applicant or permittee may submit such information separately. The requirements of § 1151 (D) shall apply to such information. The contents of a permit shall not be entitled to protection under § 1151 (D) of this Chapter.

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **United States Code**

Permit applications, see 42 U.S.C. § 7661b.

### **§ 1136. Permit requirements and conditions**

A. In general. Permits shall be issued under this Part for fixed terms, not to exceed five years, except that affected sources under Part G of this Subchapter must have five year fixed terms and solid waste incineration units under Part D of this Subchapter may have up to 12-year fixed terms. Each permit shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the Director, no less often than every six months, the results of any required monitoring, provisions under which the permit can be revised, terminated, modified, or reissued for cause, an identification of all alternative operating scenarios, and such other conditions as are necessary to assure compliance with applicable requirements of this Chapter and the regulations hereunder, including the requirements of the applicable implementation plan.

B. Inspection, entry, monitoring, certification and reporting. Each permit issued under this Part shall set forth inspection, entry, monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation promulgated under § 504(b) of the Clean Air Act.<sup>1</sup> Any report required to be submitted by a permit issued to a corporation under this Part shall be signed by a responsible corporate official, who shall certify its accuracy.

C. General permits. The Director may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this Subchapter. No source covered by a general permit shall thereby be relieved from the obligation to file an application under § 1135 of this Chapter.

D. Temporary sources. The Director may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Chapter at all authorized

locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under Parts B and C of this Subchapter. Any such permit shall in addition require the owner or operator to notify the Director in advance of each change in location. The Director may require a separate permit fee for operations at each location.

E. Permit shield. Compliance with a permit issued in accordance with this Part shall be deemed compliance with § 1134 of this Chapter. Except as otherwise provided by the Administrator of the USEPA by regulation, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this Chapter that relate to the permittee if:

1. The permit includes the applicable requirements of such provisions; or

2. The Director, in acting on the permit application, makes a determination relating to the permittee that such other provisions are not applicable and the permit includes the determination or a concise summary thereof.

3. Nothing in the preceding sentence shall alter or affect the provisions of § 1105 of this Chapter, including the authority of the Director under that Section.

#### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

#### **United States Code**

Permit requirements and conditions, see 42 U.S.C. § 7661c.

#### **§ 1137. Notification to Administrator of the USEPA and contiguous tribes and states; notification to public**

A. Notice. Unless the following notification requirements are waived by the Administrator of the USEPA for a particular category of sources (other than major sources), pursuant to § 505(d) of the Clean Air Act <sup>1</sup>:

1. The Director shall:

a. Transmit to the Administrator of the USEPA a copy of each permit application (including any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator of the USEPA may require to effectively review the application and otherwise carry out the USEPA Administrator's responsibilities under the Clean Air Act;<sup>2</sup> and

b. Provide to the Administrator of the USEPA a copy of each permit proposed to be issued and issued as a final permit.



2. The Director shall notify all states and tribes:

a. Whose air quality may be affected and that are contiguous to the Navajo Nation; or

b. That are within 50 miles of the source, of each permit application or proposed permit forwarded to the Administrator of the USEPA under this Section, and shall provide an opportunity for such states and tribes to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the Director, the Director shall notify the state or tribe submitting the recommendations and the Administrator of the USEPA in writing of his/her refusal to accept those recommendations and the reasons therefor.

B. Objection by USEPA. Unless the following requirements are waived by the Administrator of the USEPA for any particular category of sources (other than major sources), pursuant to § 505(d) of the Clean Air Act <sup>1</sup>:

1. The Director shall respond in writing to any objection by the Administrator of the USEPA to the issuance of a permit, pursuant to the provisions of § 505(b) of the Clean Air Act <sup>3</sup> and the regulations hereunder.

2. Upon receipt of an objection by the Administrator of the USEPA under § 505 of the Clean Air Act,<sup>4</sup> the Director may not issue the permit unless it is revised and issued in accordance with Subsection (C) of this Section. If the Director has issued a permit prior to receipt of an objection by the Administrator of the USEPA under § 505(b)(2) of the Clean Air Act, the Director may issue a revised permit in accordance with Subsection (C) of this Section after the permit has been modified, terminated, or revoked by the Administrator of the USEPA.

C. Issuance or denial.

1. The Director shall, within 90 days after the date of an objection under § 505(b) of the Clean Air Act,<sup>3</sup> submit a permit revised to meet the objection.

2. If the Administrator of the USEPA notifies the Director that cause exists to terminate, modify, or revoke and reissue a permit, the Director shall, within 90 days after receipt of such notification, forward to the Administrator of the USEPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Director may request a 90-day extension for this submittal, in accordance with § 505(e) of the Clean Air Act.<sup>5</sup>

D. Notification to general public. The NNAQCP shall give notice of permit applications and proposed permits to the public, according to regulations promulgated by the Director under this Part, providing an opportunity for public hearing and comment. Any person may petition the Administrator of the USEPA to veto a permit, pursuant to § 505(b) of the Clean Air Act,<sup>3</sup> if the Administrator of the USEPA fails to object to the permit within the period prescribed by Title V of the Clean Air Act <sup>6</sup> and the

regulations thereunder. The objections in the petition must have been raised in the public comment period provided for in this Subsection, unless the petitioner shows that it was impracticable to have done so.

#### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

#### **United States Code**

Notification to Administrator and contiguous States, see 42 U.S.C. § 7661d.

#### **§ 1138. Permit transfers**

A permit shall not be transferable, by operation of law or otherwise, from one location to another or from one source to another, except that a permit may be transferred from one location to another in the case of a mobile or portable source that has notified the NNAQCP in advance of the transfer, pursuant to regulations promulgated under this Section. A permit for a source may be transferred from one person to another if the person who holds the permit notifies the NNAQCP in advance in writing of the transfer, according to regulations promulgated by the Director, and if the Director finds that the transferee is capable of operating the source in compliance with the permit and the requirements of this Part and the regulations hereunder.

#### **History**

CJY-58-95, July 20, 1995.

#### **§ 1139. Permit Fund**

There is hereby established a Permit Fund in the Navajo Treasury, consisting of fees, penalties and interest collected pursuant to this Part, § 1153 of this Chapter and Title V of the Clean Air Act. The Fund shall be administered by the Director and shall be used to pay for all direct and indirect costs of developing and administering the permit program under this Part, as described in § 1135 of this Part, including the cost of issuing conditional orders under § 1153 of this Chapter. In addition, penalties collected pursuant to § 1154(D)(3) and § 1156(E) may be utilized for the purposes set out therein. The Permit Fund shall not be utilized for any purpose not authorized by this Chapter or the Clean Air Act.<sup>1</sup> The Director may invest money from the Fund, and the money earned from investment shall be credited to the Fund.

#### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

#### **§ 1140. Technical and environmental compliance assistance for small businesses**

A. Eligibility. This Section shall apply to small business stationary sources, as such term is defined in § 1101 of this Chapter, except that the Director may, upon petition by a source and after notice and opportunity for public comment, include as a small business stationary source a stationary source that does not meet the criteria of Paragraphs (c) to (e) of § 1101 (A) (58) but that does not emit more than 100 tons per year of all regulated pollutants combined. In addition, the Director may, in consultation with the Administrator of the USEPA and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, exclude from the definition any category or subcategory of sources that the Director determines to have sufficient technical and financial capabilities to meet the requirements of this Chapter and the Clean Air Act <sup>1</sup> without the application of this Section.

B. Content of program. The Director may, after reasonable notice and public hearings, adopt and submit to the Administrator of the USEPA as part of the tribal implementation plan or as a revision to the tribal implementation plan a program to provide technical and environmental compliance assistance to small business stationary sources. The program must include each of the following:

1. Adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this Chapter and the Clean Air Act;<sup>1</sup>

2. Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution;

3. A designated office within NNEPA to serve as ombudsman for small business stationary sources in connection with the implementation of this Chapter and the Clean Air Act;<sup>1</sup>

4. A compliance assistance program for small business stationary sources that assists such sources in determining applicable requirements and in receiving permits under this Chapter and the Clean Air Act <sup>1</sup> in a timely and efficient manner;

5. Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this Chapter and the Clean Air Act <sup>1</sup> in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this Chapter or the Clean Air Act;

6. Adequate mechanisms for informing small business stationary sources of their obligations under this Chapter and the Clean Air Act,<sup>1</sup> including mechanisms for referring such sources to qualified auditors or, at the option of the Director, for providing audits of the operations of such sources to determine compliance with this Chapter and the Clean Air

Act; and

7. Procedures for consideration of requests from a small business stationary source, made before any applicable compliance date, for modification of any work practice or technological method of compliance or modification of the schedule for implementing such work practice or method of compliance, based on the technological and financial capability of any such source. No such modification may be granted unless it is in compliance with the applicable requirements of this Chapter and the Clean Air Act,<sup>1</sup> including the requirements of the applicable implementation plan. Where such requirements are set forth in federal regulations, only modifications authorized in such regulations may be allowed.

C. Compliance advisory panel.

1. A compliance advisory panel shall be established which shall:

a. Advise the Director on the effectiveness of the program operated pursuant to this Section, including on the difficulties encountered and the degree and severity of enforcement;

b. Review information developed by the program to ensure that it is understandable by the general public; and

c. Have the program develop and disseminate reports and advisory opinions concerning the findings made pursuant to Paragraphs (a) and (b) above.

2. The panel shall consist of five members, appointed for staggered terms, as follows:

a. Two members, who are not owners or representatives of owners of small business stationary sources, selected by the President to represent the general public;

b. Two members selected by the Speaker of the Navajo Nation Council who are owners or who represent owners of small business stationary sources; and

c. One member selected by the Director to represent NNEPA.

D. Fees. The Director may reduce any fee required under this Chapter to take into account the financial resources of small business stationary sources.

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **United States Code**

Small business stationary source technical and environmental compliance assistance program, see 42 U.S.C. § 7661f.

### **Subchapter 3. Enforcement**

#### **United States Code**

Federal enforcement, see 42 U.S.C. § 7413.

#### **§ 1151. Record keeping, inspections, monitoring and entry**

A. Requirements in orders or permits. The Director may require, by order or permit and on a one-time, periodic or continuous basis, any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Director believes may have information necessary for the purposes set forth in this Subsection, or who is subject to any requirement of this Chapter, to:

1. Establish and maintain such records;
2. Make such reports;
3. Install, use and maintain such monitoring equipment, and use such audit procedures or methods;
4. Sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator of the USEPA or the Director shall prescribe);
5. Keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;
6. Submit compliance certifications in accordance with Subsection (B) of this Section; and
7. Provide such other information as the Director may reasonably require.

B. Monitoring. The Director may require sources to monitor, sample or otherwise quantify their emissions as follows:

1. The Director may adopt regulations requiring sources to monitor, sample or otherwise quantify their emissions of air pollutants for which ambient air quality standards or emission, design, equipment, work practice or operational standards have been adopted. In the development of these regulations, the Director shall consider the cost and effectiveness of the monitoring, sampling or other studies.
2. In prescribing monitoring, sampling or other quantification requirements under Subsection (A), the Director shall consider the relative cost and accuracy of any reasonable alternatives to such requirements. The Director may require monitoring, sampling or other quantifications under Subsection (A) if the Director determines in

writing that the actual or potential emissions in question may adversely affect public health or the environment and the monitoring, sampling, or other quantification method to be required is technically feasible, reasonably accurate and reasonable in cost in light of the use to be made of the data.

3. The Director may require enhanced monitoring and submission of compliance certifications in cases where the Administrator of the USEPA has not already done so pursuant to § 114(a) (3) of the Clean Air Act.<sup>1</sup> Compliance certifications shall be subject to the same requirements as those prescribed under § 114 (a) (3) of the Clean Air Act and the regulations hereunder and, together with monitoring data, shall be subject to Subsection (D) of this Chapter. Submission of a compliance certification shall not limit the Director's authority to investigate or otherwise implement this Chapter.

C. Production of records. Whenever the Director has reasonable cause to believe that any person has violated or is in violation of any requirement of this Chapter or of any regulation hereunder or any requirement of a permit issued pursuant to this Chapter, he/she may require in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with such requirements.

D. Public availability of information. Any records, reports or information obtained under Subsections (A), (B) or (C) of this Section shall be available to the public, except that upon a showing satisfactory to the Director by any person that records, reports or information, or any portion thereof (other than emission data), would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Director shall consider such record, report, information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the Navajo Nation and of the United States concerned with carrying out this Chapter or when relevant to any proceeding under this Chapter.

### **History**

CJY-58-95, July 20, 1995.

### **United States Code**

Recordkeeping, inspections, monitoring and entry, see 42 U.S.C. § 7414.

### **§ 1152. Orders to comply**

A. In general. Whenever, on the basis of any information available to the Director, the Director finds that any person has violated, or is in violation of, any requirement or prohibition of this Chapter, the regulations promulgated under this Chapter, or permits, orders, plans (including tribal (Navajo Nation) implementation plans), waivers or fees issued or approved pursuant to this Chapter, the Director may:

1. Issue and serve on such person an order requiring such person to

comply with such requirement or prohibition, pursuant to the provisions of this Section;

2. Issue and serve on such person an administrative penalty in accordance with § 1155 of this Chapter;

3. Bring a civil action in accordance with § 1154 of this Chapter; and/or;

4. Bring a criminal action in accordance with § 1154 of this Chapter and/or refer any criminal enforcement action or portion of such action to the EPA Regional Administrator for the appropriate EPA region.

B. In addition, when a person has consistently violated any requirements or prohibitions of this Chapter, the regulations promulgated under this Chapter, or permits, orders, plans (including tribal (Navajo Nation) implementation plans), waivers or fees issued or approved pursuant to this Chapter, or refused to comply with any such requirements or prohibitions, the Director may issue an order prohibiting such person from continuing to operate a source within the Navajo Nation, and/or prohibiting such person from entering into any new contracts (including leases) that would permit such person to operate a source within the Navajo Nation.

C. Requirements for orders to comply. An order to comply issued under this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director under § 1161 of this Chapter, if such hearing is requested in writing within 30 days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. In the case of a source required to obtain a permit pursuant to Part H of Subchapter 2 of this Chapter and Title V of the Clean Air Act,<sup>1</sup> the order shall require compliance no later than one year after the date the order is issued and shall be nonrenewable. A copy of the order shall be sent to the appropriate EPA region and, if the order is issued to a corporation, to the appropriate corporate officers. No order to comply issued under this Section shall prevent the Navajo Nation from assessing any penalties nor otherwise affect or limit the Navajo Nation's authority to enforce under other provisions of this Chapter, nor affect any person's obligations to comply with any Section of this Chapter or with a term or condition of any permit or implementation plan promulgated or approved under this Chapter.

#### **History**

CJY-58-95, July 20, 1995.

#### **§ 1153. Conditional orders**

A. Issuance. The Director may adopt regulations providing for the

issuance of conditional orders to owners or operators of air pollution sources, which would allow sources to vary from provisions of this Chapter and regulations and plans adopted and permits issued pursuant to this Chapter. Such regulations shall allow owners and operators of sources to petition the Director for conditional orders, and shall specify the minimum requirements for such petitions and procedures for processing petitions and for public participation. For a conditional order that would vary from a requirement of a tribal (Navajo Nation) implementation plan, the regulations shall provide for submittal of the order to the Administrator of the USEPA pursuant to § 110(1) of the Clean Air Act <sup>1</sup> and shall provide for a public hearing on the petition. For a conditional order that would vary from a requirement of a permit issued pursuant to this Chapter, the regulations shall conform to the procedures established for permit revisions pursuant to Part H of Subchapter 2 of this Chapter. In all cases, the Director shall grant a petition for a conditional order only if he/she finds that:

1. There has been a breakdown of equipment or operations beyond the control of the petitioner, the source was in compliance before the breakdown and the breakdown can be corrected within a reasonable time; and

2. Issuance of the conditional order will not endanger public health or the environment, impede attainment of the national ambient air quality standards or cause significant deterioration of existing air quality.

B. Terms and conditions of orders. The requirements imposed as a basis for granting or renewing a conditional order shall include, but not be limited to:

1. A detailed plan for the completion of corrective steps needed to conform to the provisions of this Chapter, and the regulations adopted and permits issued hereunder;

2. A requirement that necessary construction shall begin as expeditiously as practicable; and

3. The right of the NNAQCP to make periodic inspections of the facilities for which the conditional order is granted.

C. Subject to the provisions of Subsection (D), conditional orders shall, be valid for no longer than one year in the case of a source that is required to obtain a permit pursuant to Part H of Subchapter 2 of this Chapter and Title V of the Clean Air Act <sup>2</sup> and no longer than three years in the case of any other source. Any fees imposed by the Director in order to obtain a conditional order shall be deposited in the permit fund established under § 1139 of this Chapter.

D. Renewals. A holder of a conditional order may petition the Director for a renewal of such order. A petition for renewal may be filed not more than 60 days nor fewer than 30 days prior to the expiration of the order. The Director, within 30 days of receipt of the petition, shall renew the conditional order for one year if the petitioner is in compliance with the requirements imposed pursuant to Subsection (B). The total term of renewals



shall not exceed three years from the date of initial issuance of such order, except that if the petitioner is not in compliance with the requirements of the order after this three-year period and the Director finds that such failure is due to conditions beyond the control of the petitioner, the Director may renew the order for a total term of two additional years. The Director may also renew a conditional order for up to an additional two year term if the Director amends or adopts any regulation that requires the installation of additional or different air pollution control equipment on the source in question.

E. Suspension and revocation. If the terms of a conditional order are being or have been violated, the Director may seek to revoke or suspend the conditional order. In such event, the Director shall serve notice of such violation on the holder of the order, specifying the nature of the violation and the date on which a hearing will be held to determine whether the violation occurred and whether the order should be suspended or revoked.

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **§ 1154. Judicial Enforcement**

A. Civil judicial enforcement. The Director shall request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties not more than thirty-two thousand five hundred dollars (\$32,500) per day, which amount shall increase automatically whenever the federal maximum civil penalty increases, in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation or plan adopted pursuant this Chapter, a permit or order issued pursuant to this Chapter or a fee assessed under this Chapter;

2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities;

3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment because of a release of air pollution, in which case the Director shall request the Attorney General to pursue injunctive relief but not the assessment of penalties, unless the endangerment to the public health is caused by a violation, as specified in Paragraphs (1) and (2).

B. Criminal penalties. Any person who intentionally:

1. Violates any provision, requirement or prohibition of this Chapter, including but not limited to a regulation or plan adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter, a filing, reporting or notice requirement under this Chapter or

a fee assessed under this Chapter;

2. Makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, application, record, report, plan or other document required pursuant to this Chapter to be filed or maintained, including required by a permit issued pursuant to this Chapter; or

3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Chapter; shall, upon conviction, be punished by a fine in a maximum amount of not less than ten thousand dollars (\$10,000) per day per violation or, if smaller, the largest amount permissible under applicable law. In any instance where the Navajo Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he/she may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to § 1152 of this Chapter. For the purpose of this Subsection, the term "person" includes, in addition to the entities referred to in § 1101(a)(49) of this Chapter, any responsible corporate officer.

C. Jurisdiction and venue. Any action under this Subsection may be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil penalties, collect any fees or noncompliance penalties owed the Navajo Nation under this Chapter, and awarded any other appropriate relief.

D. Calculation of penalties.

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this Section, § 1155 or § 1156, if the Director has notified the source in writing of the violation and the Director or plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this Section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a civil penalty assessed under this Section, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any, the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. The court shall not assess penalties for

noncompliance with administrative subpoenas under § 1161 of this Chapter or actions under § 1151 of this Chapter where the violator had sufficient cause to violate or fail to refuse to comply with such subpoena or action.

3. All penalties collected pursuant to this Section shall be deposited in a special fund in the Navajo Treasury for use by the Director to finance air compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof

E. Security. The court may, if a temporary restraining order or preliminary injunction is sought under this Section or § 1156 of this Chapter, require the filing of a bond or equivalent security.

### **History**

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

### **§ 1155. Administrative assessment of penalties**

A. Basis for penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) per day per violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation or plan adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter or a fee assessed under this Chapter. The Director's authority under this Subsection shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing requirement. The Director shall assess an administrative penalty under this Section by an order made after opportunity for a hearing. The Director shall promulgate rules for discovery and other procedures for hearings under this Section. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 days of receipt of the notice.

C. Field citations. After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations (assessing civil

penalties not to exceed five thousand dollars (\$5,000) per day per violation) may be issued by officers or employees designated by the Director, to the extent permissible under applicable law. Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation. If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Chapter if the violation continues.

D. Judicial review. Any person subject to a civil penalty under Subsections (A) or (C) of this Section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. Within 30 days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this Section.

E. Failure to pay penalty. If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be ten percent (10%) of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter.

F. Calculation of penalty. In determining the amount of any penalty to be assessed under this Section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 1154(D) of this Chapter.

#### **History**

CJY-58-95, July 20, 1995.

#### **§ 1156. Citizen suits**

A. Authority to bring civil action; jurisdiction.

1. Except as provided in Subsection (B) of this Section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his/her own behalf against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting Tribal enterprises) who is alleged to be in violation of an emission standard or limitation under this Chapter, an order issued by the Director or the President with respect to such a standard or limitation, or a permit of requirement to have a permit issued under this Chapter.

2. The Navajo Nation Courts shall have jurisdiction to enforce such an emission standard or limitation, order or permit requirement and to apply any appropriate civil penalties.

B. Notice.

1. An action may not be commenced under Subsection (A) (1) of this Section fewer than 60 days after the plaintiff has given notice of the alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to require compliance with this Chapter, except that any person may intervene as a matter of right in such an action.

C. Venue; intervention; service of complaint

1. Any action respecting a violation by a source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the Navajo Nation District Court in Window Rock.

2. The Director, if not already a party, may intervene as of right in any action brought under this Section.

3. Whenever any action is brought under this Section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this Section in which the Director is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and the Director may submit, on behalf of the Navajo Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

D. Award of costs. The Court, in issuing a final order in an action brought under this Section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such award is appropriate.

E. Penalty fund. Penalties received under this Section shall be deposited in a special fund in the Navajo Nation Treasury for use by the Director to finance air compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

## **History**

CJY-58-95, July 20, 1995.

### **United States Code**

Citizen suits, see 42 U.S.C. § 7604.

## **Subchapter 4. Rulemaking and Judicial Review**

### **United States Code**

Administrative proceedings and judicial review, see 42 U.S.C. § 7607.

### **§ 1161. Rulemaking and other administrative procedures**

#### **A. Rulemaking.**

1. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Navajo Nation that are concerned. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally their views, in the Navajo or English language, data or arguments; and shall keep the docket open for 20 days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

2. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

#### **B. Administrative subpoenas.**

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Chapter, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Except for emissions data, upon a showing satisfactory to the Director by the owner or operator of a source that it would divulge trade secrets or secret processes to make public such papers, books, documents or information or any portion thereof, the Director shall consider this information confidential, except that such information may be disclosed

to other officers, employees or authorized representatives of the Navajo Nation concerned with carrying out this Chapter or when relevant in any proceeding under this Chapter.

3. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation's Courts. In case of contumacy or refusal to obey a subpoena, the tribal court for the district in which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt.

### **History**

CJY-58-95, July 20, 1995.

### **§ 1162. Review in Navajo Nation Courts**

A. Petitions for review. A petition for review of any final action taken by the Director under this Chapter, including but not limited to promulgation of regulations and standards, issuance of orders, and issuance and denial of permits (but not including imposition of administrative penalties under § 1155), shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within 90 days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Chapter, except that if the petition is based solely on grounds arising after the ninetieth day, then the petition shall be filed within 90 days after such grounds arise. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Director at the time of the final action from which the appeal is taken.

B. Limitations on review.

1. If judicial review of a final action of the Director could have been obtained under Subsection (A) of this Section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

2. With respect to any regulations promulgated under this Chapter, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director shall convene a proceeding for reconsideration of the regulation and provide the same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation, although it may be stayed by the Director or the court for up to three months.

3. No interlocutory appeals shall be permitted with regard to procedural determinations made by the Director during rulemakings. In reviewing alleged procedural errors, the court may invalidate the regulation only if the errors were so serious and related to matters of such central relevance to the regulation that there is a substantial likelihood that the regulation would have been significantly changed if such errors had not been made.

C. Standards for review. In reviewing any final action of the Director undertaken pursuant to this Chapter, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
2. In excess of statutory jurisdiction, authority, or limitations short of statutory right;
3. Without observance of procedure required by law; or
4. Unsupported by substantial evidence.

D. Challenge to any provisions. Any challenge to the lawfulness of any provision of this Chapter must be filed in accordance with Navajo law within 90 calendar days after the date of enactment of this Chapter in the District Court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Any challenge to regulations promulgated under this Chapter must be filed within 90 calendar days of their adoption. In any such action, relief shall be limited to declaratory relief. The District Court for the District of Window Rock shall have exclusive jurisdiction and venue over any action challenging any provision of this Chapter.

#### **History**

CJY-58-95, July 20, 1995.

### **Chapter 13. Navajo Nation Clean Water Act**

#### **History**

**Note.** The Navajo Nation Clean Water Act amended the Navajo Nation Pollutant Discharge Elimination System Act previously approved by Navajo Nation Council Resolution CJA-16-96.

#### **United States Code**

Indian tribes, water pollution prevention and control, see 33 U.S.C. § 1377.

### **Subchapter 1. General Provisions**

#### **§ 1301. Title**

This Act may be cited as the Navajo Nation Clean Water Act ("NNCWA").



## History

CJY-81-99, July 26, 1999.

### § 1302. Definitions

A. For the purposes of this Act:

1. "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

2. "Best management practice" or "BMP" means methods, measures or practices selected by an agency to meet its nonpoint source control needs or, in the case of the National Pollutant Discharge Elimination System, schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of waters of the Navajo Nation. BMPs include, but are not limited to, structural and nonstructural controls, treatment requirements, operation and maintenance procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage, and can be applied before, during, or after pollution-producing activities to reduce or eliminate the introduction of pollutants into waters of the Navajo Nation.

3. "Biological monitoring" means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants:

(a) By techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and

(b) At appropriate frequencies and locations.

4. "Chapter," when used with reference to a governmental unit, means those community organizations duly certified and recognized as such by the Navajo Nation Council in CAP-34-98.

5. "Clean Water Act" means the Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. § 1251 *et seq.*

6. "Contaminant" means any physical, chemical, biological, or radiological substance or matter introduced by man or man's actions in water.

7. "Director" means the Executive Director of the Navajo Nation Environmental Protection Agency.

8. "Discharge," when used without qualification, means a discharge of pollutant(s).

9. "Discharge of pollutant(s)" means any addition of any pollutant

to navigable waters from any point source.

10. "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells, septic tanks, and other systems.

11. "Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receive only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

12. "Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

13. "Effluent limitation" means any restriction, requirement, or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources, including schedules of compliance.

14. "Fundamentally different factors variance" means a variance from otherwise applicable technology-based effluent limitations under Subsections 301(b)(1)(A), 301(b)(2)(A) and (E), and 301(n) of the Clean Water Act.<sup>1</sup>

15. "Industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category "Division D-Manufacturing," and such other classes of significant waste products as, by regulation, the Administrator deems appropriate.

16. "Load allocation" or "LA" means the portion of a receiving water's loading capability that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources.

17. "Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and such additional medical items as the Administrator shall prescribe by regulation.

18. "National Pollutant Discharge Elimination System" or "NPDES" means the regulatory program operated under Sections 307,<sup>2</sup> 318,<sup>3</sup> 402<sup>4</sup> and 405<sup>5</sup> of the Clean Water Act (including pretreatment and sludge management) and under Subchapters 3, 4 and 5 of this Act.

19. "National pretreatment standard" means any regulation promulgated by the Administrator in accordance with Section 307(b) and (c) of the Clean Water Act<sup>6</sup> which applies to industrial users, including prohibited discharges.

20. "Navajo Nation" or "Nation" means-

a. When referring to the body politic, except as the context may otherwise require, the same meaning as set forth in 1 N.N.C. § 501.

b. When referring to territorial jurisdiction, all lands and waters within the territorial boundaries of the Navajo Nation, including:

i. All lands and waters within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency or within the boundaries of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments, all without regard to the nature of title thereto;

ii. All lands and waters held in trust by the United States for, or restricted by the United States, or otherwise set apart under the superintendence of the United States for, the use of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and

iii. All other lands and waters over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

21. "Navigable waters" means waters of the Navajo Nation.

22. "New source" means any source (a building, structure, facility, or installation from which there is or may be a discharge of pollutants), the construction of which is commenced after publication by the Administrator of proposed regulations prescribing a standard of performance under Section 306 of the Clean Water Act <sup>7</sup> which will be applicable to such sources, if such a standard is thereafter promulgated in accordance with Section 306 of the Clean Water Act.

23. "New source performance standard" means a standard promulgated by the Administrator applicable to a category of new sources.

24. "Non-point source" means any source of water pollution that is not a point source, as defined herein.

25. "Person" means the Navajo Nation or any agency, entity or institution thereof, any chapter, township, political subdivision, public or private corporation, individual, partnership, association, federal agency, state, Indian Tribe, any interstate or intertribal body, municipality, commission or political subdivision of a state, or other entity, and includes any officer or governing or managing body of any chapter, township, political subdivision, or public or private corporation.

26. "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, landfill leachate collection system, container, rolling stock (except to the extent excluded from the

NPDES program by Section 601 of the National and Community Service Act of 1990, P.L. 101-610, 104 Stat. 3185), concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges or return flows from irrigated agriculture.

27. "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the environment.

28. "Pretreatment program" means the program operated by the Navajo Nation Environmental Protection Agency and any publicly owned treatment works (whose program has been approved either by the Director or the Administrator) to implement national pretreatment standards to control pollutants which pass through or interfere with treatment processes in publicly owned treatment works or which may contaminate sewage sludge.

29. "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the Navajo Nation, its political subdivisions or entities, or other state, municipality, or tribe; this term does not include such a facility owned or operated by the United States or a federal agency.

30. "Schedule of compliance" or "compliance schedule" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or other limitation, prohibition or standard.

31. "Section 404 permit" means a permit issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act <sup>8</sup> or a permit issued by a tribe or state that is authorized by the U.S. Environmental Protection Agency to issue Section 404 permits.

32. "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.

33. "Sewage sludge" means solid, semi-solid, or liquid residues generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solid removed in primary, secondary, or advanced wastewater treatment processes, and a material derived from sewage sludge. Sewage sludge does not include ash generated during firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

34. "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

35. "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background.

36. "Toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring.

37. "Treatment works" means any device, system, plant, disposal field, lagoon, dam, pumping station, incinerator, or other works subject to this Act used for the purpose of recycling, reclaiming, treating, stabilizing, or holding wastes.

38. "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For the purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. The Director may designate any person subject to the standards for sewage sludge use and disposal established by the Administrator as a "treatment works treating domestic sewage."

39. "Underground injection" means the subsurface emplacement of fluids by well injection.

40. "United State Environmental Protection Agency" or "U.S. EPA" means the United States Environmental Protection Agency, its Administrator, Regional Administrator, or delegate.

41. "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954,<sup>9</sup> as amended), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of Section 312 of the Clean Water Act;<sup>10</sup> or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the Navajo Nation, and the Navajo Nation determines that such injection or disposal will not result in the degradation of ground or surface water resources.

42. "Wasteload allocation" or "WLA" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution.

43. "Waters of the Navajo Nation" means all surface waters, including but not limited to portions of rivers, streams (including perennial, intermittent and ephemeral streams and their tributaries), lakes, ponds, dry washes, marshes, waterways, wetlands, mudflats, sandflats, sloughs, prairie potholes, wet meadows, playa lakes, impoundments, riparian areas, springs, and all other bodies or accumulations of water, surface, natural or artificial, public or private, including those dry during part of the year, that are within or border the Navajo Nation. This definition shall be interpreted as broadly as possible to include all waters that are currently used, were used in the past, or may be susceptible to use in interstate, intertribal or foreign commerce. Consistent with federal requirements, the Director may exclude from waters of the Navajo Nation certain waste treatment systems.

44. "Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

### **History**

CJY-81-99, July 26, 1999.

### **§ 1303. Policy and Authority**

A. Legislative purposes and intent.

1. The Navajo Nation Council finds and declares that discharges of pollutants into the waters of the Navajo Nation from point and non-point sources, introduction of pollutants by industrial users into publicly owned treatment works and improper management of sewage sludge are potential hazards to the health, welfare and environment of the Navajo Nation and its residents and need to be addressed.

2. It is the policy of the Navajo Nation Council to protect the health, safety, welfare and environment of the Navajo Nation and its residents; to prevent, reduce and eliminate pollution of the waters of the Navajo Nation; and to plan the development and use (including restoration, preservation, and enhancement) of land and water resources within the Nation, by:

a. Providing for the establishment of water quality standards to protect fish and wildlife and the domestic, cultural, agricultural and recreational uses of the waters of the Navajo Nation;

b. Preventing the discharge of pollutants into waters of the Navajo Nation in amounts that would cause violations of water quality standards;

c. Providing for the issuance of permits and implementation of certification programs under this Act to control present and future point source discharges, introduction of pollutants by industrial users

to publicly owned treatment works, and sludge management activities, using, to the extent practicable, a watershed basis;

d. Providing for the development of nonpoint source, clean lakes, and watershed protection programs, and for the implementation of these programs using, to the extent practicable, a watershed basis; and

e. Supporting research relating to water quality standards and planning, clean lakes, nonpoint sources, and watershed protection, and providing for tribal technical services and financial aid (to the extent funds are available and appropriated) to the Navajo Nation government and chapters in connection with these programs and their implementation.

3. The Navajo Nation Council also finds and declares that degradation of the waters of the Navajo Nation shall be minimized, and that economic growth should occur in a manner consistent with the preservation of existing clean Navajo Nation water resources.

4. It is further the policy of the Navajo Nation Council that the President, acting through such tribal organizations as he determines appropriate, shall take such action as may be necessary to encourage all surrounding governmental entities to take meaningful action regarding water quality standards and planning, permitting of discharges into surface waters, pretreatment of pollutants introduced into treatment works, clean lakes, non-point sources, and watershed protection for the achievement of goals regarding these programs and the improvement of water quality to at least the same extent as the Navajo Nation does under its laws.

5. The Navajo Nation Council is placing primary responsibility for the implementation and enforcement of this Act with the Navajo Nation EPA.

B. Modular approach to water quality programs. The Navajo Nation is committed to providing for water quality standards and planning and implementing NPDES and other water quality management programs under this Act, to protect the health, safety, welfare and environment of the Navajo Nation. It is, however, discretionary with the Navajo Nation as to whether and which programs to implement, and in what order. The Director shall determine which programs are essential to the protection of the environment, health and welfare of the Navajo Nation, and of those programs shall determine which should be developed first. The Director may also determine that only parts of such programs are essential, and may develop these severable portions. The Director shall not be required to implement any of the programs described in this Act by any particular time. However, once the Director determines that a particular program or portion of a program should be developed, and sufficient funding exists, the Director must comply with all of the relevant statutory and regulatory requirements for that program or portion of a program.

#### **History**

CJY-81-99, July 26, 1999.

## United States Code

Congressional declaration of goals and policy, water pollution prevention and control, see 33 U.S.C. § 1377.

### § 1304. General Authorities of the Director

#### A. Powers and Duties.

1. Except as otherwise expressly provided in this Act, the Director shall be responsible for administering this Act.

2. In order to fulfill his or her obligations under this Act, the Director may:

a. Encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution as necessary for the discharge of duties assigned under this Act;

b. Hold hearings related to any aspect of or matters within the authorities of this Section and, in connection therewith, compel the attendance of witnesses and the production of records;

c. Develop programs for the prevention, control, and abatement of new or existing pollution of waters of the Navajo Nation;

d. Encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Act, including voluntary testing of actual or suspected sources of surface water pollution;

e. Enforce regulations that have been promulgated by the Director, after review and approval by the Resources Committee of the Navajo Nation Council, consistent with the provisions of this Act, including but not limited to regulations concerning water quality standards and planning; discharges of pollutants into navigable waters; introduction of pollutants by industrial users; disposal of sewage sludge; construction of new control facilities or any parts of them or the modification of existing control facilities or any parts of them or the adoption of other remedial measures to prevent, control or abate water pollution; clean lakes; nonpoint sources; and watershed protection;

f. Consistent with Title 2, Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out the purposes of this Act;

g. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Act;

h. Compile and publish from time to time reports, data and statistics with respect to matters studied or investigated by the



Director or at his or her direction;

i. Require, as specified in § 1381 of this Act, any point source or non-point source discharger, industrial user or treatment works treating domestic sewage to monitor, sample or perform other studies to quantify effects of pollutants and sewage sludge to the environment;

j. Represent, consistent with the requirements of Title 2 of the Navajo Nation Code and after appropriate consultation with other Divisions, the Navajo Nation in all matters pertaining to water pollution and its control, abatement, and prevention; and

k. Perform such other activities appropriate for the Director to carry out his/her functions under this Act.

B. Regulations. The Director is authorized to promulgate such regulations as are necessary to carry out his or her functions under this Act, pursuant to the provisions of § 1391 of this Act, including, but not limited to, setting water quality standards, effluent limitations, standards of performance for point source discharges, industrial users and sludge management activities, and best management practices for non-point source discharges. In promulgating regulations, the Director shall give consideration to, but shall not be limited to, the relevant factors prescribed by the Clean Water Act<sup>1</sup> and the regulations thereunder, except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under the Clean Water Act, if there is an applicable minimum standard established therein. In promulgating regulations, the Director shall also give consideration to, but shall not be limited to, the relevant factors prescribed by Navajo Nation law. All regulations promulgated under this Act shall be subject to review and approval by the Resources Committee of the Navajo Nation Council.

C. Delegation of Powers and Duties. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such of his or her powers and duties under this Act, except the making of regulations, as he or she may deem necessary or expedient.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1305. Plans, Specifications and Information**

The Director, under such conditions as he or she may prescribe, may require the submission of such plans, specifications, and other information as he or she deems necessary to carry out the rules and regulations adopted pursuant to the provisions of this Act.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1306. Severability and Preservation of Rights**

A. Severability. If any provision of this Act, or the application of any

provision of this Act to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall remain unaffected.

B. Water Quantity Rights. The right of the Navajo Nation to certain quantities of water and the authority of the Navajo Nation to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. The Navajo Nation Environmental Protection Agency and local chapter governments are encouraged to cooperate with federal and state agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

C. Preservation of Rights and Construction. It is the purpose of this Act to provide additional and cumulative remedies to prevent, abate, and control pollution of waters of the Navajo Nation. The provisions of this Act shall be liberally construed to fulfill the intent and purpose of this Act and so as not to conflict with the applicable laws of the Navajo Nation and the United States. Nothing contained in this Act shall be construed to abridge or alter rights of action or remedies in equity under treaties, the common law or statutory law, nor shall any provisions of this Part or any act done by virtue thereof be construed as preventing the Navajo Nation or individuals from the exercise of their rights under treaties, the common law or statutory law to suppress nuisances or to abate pollution.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1307. Applicability**

A. Except as otherwise provided in this Section, the provisions of this Act shall apply to all persons and all property within the Navajo Nation.

B. Subject to the provisions of Subsections (C) and (D) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property.

C. Notwithstanding the provisions of Subsection (B) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person and to all property within the Navajo Nation owned or operated by such person who has submitted an application for and received a permit pursuant to this Act or is otherwise subject to the provisions of this Act.

D. If not otherwise applicable in accordance with Subsection (C) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to § 1308 of this Act.

E. Nothing in this Section shall be construed as a determination or admission by the Navajo Nation that any claim of covenant not to regulate or otherwise exercise jurisdiction is valid.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1308. Voluntary Compliance Agreement**

A. Any person to whom the provisions of this Act are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement with the Navajo Nation with respect to any property to which the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, are not otherwise applicable.

B. A proposal to enter into a voluntary compliance agreement shall be in writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate which part or parts of this Act and/or regulations promulgated hereunder, in whole or in part, with which voluntary compliance is proposed.

C. A voluntary compliance agreement shall be in writing, shall be for a term of not less than one year, and may be subject to renewal for successive terms of not less than one year. A voluntary compliance agreement may not vary the requirements of this Act or of any regulations promulgated pursuant to this Act, except that the consent required to be given in accordance with § 1341(B) of this Act shall be strictly limited to the application of this Act and regulations promulgated pursuant to this Act and shall be strictly limited to the term of the agreement, including any renewals thereof.

D. A voluntary compliance agreement shall not be effective unless and until approved by the Director.

E. Except as otherwise expressly provided in the agreement, by entering into a voluntary compliance agreement, no person shall be deprived of the benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.

F. A person may enter into a voluntary compliance agreement in accordance with this Section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this Act has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interests of the Navajo Nation. Entering into an agreement pursuant to this Subsection shall not constitute a determination or admission by the Navajo Nation that such claim of exemption is valid.

#### **History**

CJY-81-99, July 26, 1999.

### **Subchapter 2. Navajo Water Quality Standards and Planning**

## **Part A. Water Quality Standards**

### **United States Code**

Water quality standards and implementation plans, see 33 U.S.C. § 1313.

#### **§ 1311. Water Quality Standards**

A. Promulgation of Standards. The Director shall promulgate water quality standards that protect the public health or welfare, enhance the quality of water and generally serve the purposes of this Act. The standards shall provide for the protection and propagation of fish, wildlife and livestock and protect agricultural, domestic and recreational uses of water, as well as protecting the cultural value and use of water. The standards shall consist of the designated uses for the waters of the Navajo Nation and the water quality criteria for such waters based upon such uses, and shall be applicable to all waters of the Navajo Nation. The standards shall also include the methods and analyses to be used to determine compliance with such standards. The Director may also promulgate regulations regarding compliance schedules, mixing zones, low flows, variances and such other matters as may be appropriate, including regulations implementing the anti-degradation policy set forth in § 1303(A) (2) of this Act.

B. Uses. The water quality standards shall establish designated uses for waters of the Navajo Nation, or segments thereof, taking into consideration their use and value for public water supplies, protection and propagation of fish and wildlife, recreational purposes, and agricultural (including livestock watering), industrial, and other purposes, and also taking into consideration their use and value for navigation and the cultural value and use of the water. The Director may remove a designated use that is not an existing use consistent with the requirements of Section 303(c) of the Clean Water Act <sup>1</sup> and the Administrator's implementing regulations.

C. Criteria. The criteria established by the Director shall protect the designated uses, be based on sound scientific rationale (which may include criteria documents of the Administrator), and include sufficient parameters or constituents to protect the designated use. For waters with multiple uses, the criteria shall protect the most sensitive use. The Director may establish criteria specifically applicable to wildlife or sediment. The criteria shall include:

1. Narrative criteria to protect all waters of the Navajo Nation from: the discharge of toxics in toxic amounts; objectionable odors, tastes, color or turbidity in or on the water; detrimental effects on edible plant or animal life that reside in or on the water; bottom deposits; floating debris; and any other protections determined by the Director to be warranted under the goals of this Act.

2. Numerical criteria for pollutants or pollutant parameters, including toxic pollutants and a thermal component (consistent with the requirements of the Clean Water Act),<sup>2</sup> the discharge or presence of which in the waters of the Navajo Nation the Director has determined could reasonably be expected to interfere with designated uses adopted by the Director. The numerical criteria shall support such designated uses. In

setting numerical criteria the Director may consider the effect of local conditions on water quality, and may modify stream standards to reflect actual stream conditions when justified by sufficient data and need. Where such numerical criteria are not available, and the Director determines it is appropriate to protect designated uses, the Director shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to Section 304(a)(8) of the Clean Water Act.<sup>3</sup> Nothing in this Section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

3. Any other criteria the Director determines are necessary to protect the designated uses of the waters of the Navajo Nation.

D. Methods Used. The Director, in specifying the methods and analyses to be used to determine compliance with the water quality standards, may include biological monitoring and toxicity testing.

E. Compliance Schedules. The Director may establish by regulation, or on a case-by-case basis, a reasonable period of time, but no longer than five years, for a person subject to an NPDES permit to comply with a new or more restrictive water quality-based effluent limitation based upon a water quality standard. The Director may establish by regulation, or on a case-by-case basis, a reasonable period of time, but no longer than five years, for any person subject to a mechanism, including a best management practice applicable to a non-point source, to comply with a new or more restrictive requirement which implements a water quality standard.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1312. Review of Water Quality Standards**

The Director shall from time to time (but at least once each three year period beginning with the date of enactment of this Act) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. The results of such review shall be provided to the Administrator. Whenever the Director revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1313. Water Quality Standards Implementation**

The Director shall implement the water quality standards provisions of this Act through issuance of permits under Subchapter 5 of this Act, mechanisms provided under Subchapter 6 of this Act for non-point source discharges, mechanisms provided under Subchapter 7 of this Act for the clean lakes program, certification of federal licenses and permits (including permits issued by the

U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act)<sup>1</sup> as provided in § 1319 of this Act, and participation as an adjoining tribe for discharges that may affect the waters of the Navajo Nation (under Section 401(a)(2) of the Clean Water Act).<sup>2</sup>

#### **History**

CJY-81-99, July 26, 1999.

### **Part B. Water Quality Planning and Management**

#### **§ 1314. Coordinated Water Quality Planning and Management**

The Director may conduct water quality planning and management activities within the Navajo Nation in a coordinated fashion. Any such coordination shall be conducted consistent with this Act and the regulations promulgated hereunder and with applicable minimum federal requirements and may include, but is not limited to, identification of waters under § 1315 of this Act, development of total maximum daily loads and wasteload allocations/load allocations under § 1316 of this Act, and development of water quality monitoring, management plans and reports under § 1317 of this Act.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1315. Identification of Waters**

A. Effluent limitations. The Director shall identify those waters of the Navajo Nation for which the effluent limitations required by Sections 301(b)(1)(A) and 301(b)(1)(B) of the Clean Water Act<sup>1</sup> are not stringent enough to implement a water quality standard applicable to such waters. The Director shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

B. Thermal discharges. The Director shall identify those waters of the Navajo Nation for which controls on thermal discharges under Section 301 of the Clean Water Act<sup>2</sup> are not stringent enough to assure protection and propagation of a balanced indigenous population of fish and wildlife.

C. Approval by Administrator. The Director shall submit to the Administrator from time to time for approval the identifications made under this Section. If the Administrator approves any such identification, the Director shall incorporate it into the current plan under § 1308 of this Act. If the Administrator disapproves such identification and himself identifies certain waters of the Navajo Nation for which the effluent limitations and controls on thermal discharges are not stringent enough to implement the water quality standards applicable to such waters, the Director shall incorporate this identification into the Director's current plan under § 1308 of this Act. These actions shall be taken in parallel with actions under Subsection 1306(C) of this Act.

#### **History**

CJY-81-99, July 26, 1999.

**§ 1316. Total Maximum Daily Loads and Wasteload Allocations/Load Allocations**

A. Total maximum daily load. The Director shall establish for the waters identified under Subsection 1315(A) of this Act, and in accordance with the priority ranking, the total maximum daily load for those pollutants which the Administrator identifies under Section 304(a)(2) of the Clean Water Act <sup>1</sup> as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

B. Total maximum daily thermal load. The Director shall estimate for the waters identified in Subsection 1315(B) of this Act the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

C. Approval by Administrator. The Director shall submit to the Administrator from time to time for approval the loads established under this Section. If the Administrator approves such loads, the Director shall incorporate them into the current plan under § 1318 of this Act. If the Administrator disapproves such loads and himself establishes loads to implement the water quality standards applicable to such waters, upon such establishment the Director shall incorporate such loads into the Director's current plan under § 1318 of this Act. These actions shall be taken in parallel with actions under § 1315 of this Act.

D. Additional identification. For the specific purpose of developing information, the Director shall identify all waters of the Navajo Nation which were not identified under Subsections 1315(A) and (B) of this Act and estimate for such waters the total maximum daily load with seasonal variations and margins of safety for those pollutants which the Administrator identifies under Section 304(a)(2) of the Clean Water Act <sup>1</sup> as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish and wildlife.

**History**

CJY-81-99, July 26, 1999.

**§ 1317. Water Quality Monitoring, Management Plans and Reports**

A. Monitoring. The Director shall establish and provide for the operation of appropriate devices, methods, systems, and procedures necessary to monitor, and to compile and analyze data on (including classification according

to eutrophic condition), the quality of the waters of the Navajo Nation, including biological monitoring, and provide for periodic updating of such data and the submission of such data to the Administrator. The Director may provide for such monitoring through water quality management plans and through regulations promulgated under § 1391 of this Act.

B. Management Plans. The Director may develop water quality management plans consistent with the requirements of Sections 205(j),<sup>1</sup> 208<sup>2</sup> and 303<sup>3</sup> of the Clean Water Act and submit these plans to the Administrator; the Director may also periodically update these plans.

C. Reports. The Director may prepare water quality reports consistent with the requirements of Section 305(b) of the Clean Water Act<sup>4</sup> and submit these reports to the Administrator; the Director may also periodically update these reports.

### **History**

CJY-81-99, July 26, 1999.

### **United States Code**

State reports on water quality, see 33 U.S.C. § 1315.

### **§ 1318. Continuing Planning Process**

A. Plan. The Director shall submit to the Administrator for approval (to the extent that it has not otherwise already been completed and approved) a proposed continuing planning process which is consistent with this Act and the Clean Water Act. The Director shall from time to time review the Navajo Nation's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act and the Clean Water Act.<sup>1</sup>

B. Elements of Plan. The continuing planning process shall include, but not be limited to, the following:

1. Effluent limitations and schedules of compliance at least as stringent as those required by §§ 1322 and 1323 of this Act, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this Act and the Clean Water Act;<sup>1</sup>

2. All elements of any applicable area wide waste management plans or applicable basin plans, established under Sections 208<sup>2</sup> and 209<sup>3</sup> of the Clean Water Act, for which the submitting governmental entity had jurisdiction;

3. Total maximum daily load for pollutants in accordance with § 1316 of this Act;

4. Procedures for revision;

5. Adequate authority for intergovernmental cooperation;



6. Adequate implementation, including schedules of compliance, for revised or new water quality standards, under Part A of this Subchapter;

7. Controls over the disposition of all residual waste from any water treatment processing;

8. An inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of § 1322 of this Act.

#### **History**

CJY-81-99, July 26, 1999.

#### **Part C. Certification of Compliance**

#### **§ 1319. Certification of Compliance with Federal Water Pollution Control Requirements**

A. Certification of compliance. The Director may grant or deny certification that an applicant for a Navajo Nation or federal license or permit necessary to conduct any activity, including but not limited to the construction or operation of facilities, which may result in a discharge into waters of the Navajo Nation has satisfactorily shown that he or she will comply with Sections 301,<sup>1</sup> 302,<sup>2</sup> 303,<sup>3</sup> 306<sup>4</sup> and 307<sup>5</sup> of the Clean Water Act. If there is no applicable effluent limitation or other limitation under Sections 301(b) and 302, and there is no applicable standard under Sections 306 and 307, for the activity in question, the Director shall so certify. The Director shall submit the application and any certification issued under this Section to the Administrator, pursuant to Section 401 of the Clean Water Act.<sup>6</sup>

B. Rules for grant or denial of certification. The Director shall promulgate rules, consistent with the provisions of Section 1391 of this Act, establishing the procedures that the Director will follow in granting or denying certifications under this Section. Such rules shall require public notice of an application for certification within an area no smaller than the chapter where the activity is located, opportunity for public participation in the decision-making process on an application for certification, and opportunity and procedures for contested hearings on applications for certification. Such rules also shall require an applicant to provide the Director with notice of proposed changes in the construction or operation of the facility or other activity in question and with plans for the operation of the facility or conduct of the activity in question. Such rules may also include fees to be charged by the Director for the review of applications and issuance of certifications.

C. Limitations and monitoring requirements. In any certification issued under this Section, the Director shall set forth effluent limitations, other limitations and monitoring requirements necessary to assure that the applicant will comply with applicable effluent and other limitations under Sections 301<sup>1</sup> or 302<sup>2</sup> of the Clean Water Act, standards of performance under Section 306 of the Clean Water Act,<sup>4</sup> prohibitions, effluent standards or pretreatment

standards under Section 307 of the Clean Water Act,<sup>5</sup> and any other appropriate requirement of Navajo Nation law. These limitations and requirements shall become conditions on any permit subject to the provisions of Section 401 of the Clean Water Act.<sup>6</sup>

### **History**

CJY-81-99, July 26, 1999.

### **United States Code**

Certification, permits and licenses, see 33 U.S.C. § 1341.

## **Subchapter 3. Surface Water Discharges and Pretreatment Requirements**

### **Part A. Surface Water Discharges**

#### **§ 1321. Permit Required to Discharge into Surface Waters**

##### **A. Prohibitions.**

1. Except as provided in this Act or regulations promulgated hereunder, it is unlawful for any person to discharge a pollutant from a point source into waters of the Navajo Nation. Any such action is a public nuisance, as well as being subject to enforcement under Subchapter 9 of this Act.

2. No person may discharge any waste, pollutant or combination of pollutants from a point source into the waters of the Navajo Nation without a permit issued consistent with rules promulgated pursuant to this Subchapter and Subchapter 5 or, if no such permit program has been established, by the Administrator under Section 402 of the Clean Water Act.<sup>1</sup>

3. It is unlawful for any person, without first securing a permit from the Director, to:

a. Make any discharge of pollutants from a point source into waters of the Navajo Nation if not authorized under an existing valid permit; or

b. Construct, install, modify, or operate any treatment works or part of any treatment works or any extension or addition to any treatment works, the operation of which is reasonably determined to result in a discharge due to runoff, flow or usage.

##### **B. Exemptions. The following discharges do not require NPDES permits:**

1. Discharges into waters of the Navajo Nation of dredged or fill materials that are regulated under Section 404 of the Clean Water Act.<sup>2</sup>

2. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 C.F.R. Part 300 or 33 C.F.R. § 153.10(e).

C. Grounds for issuance of permit. The Director may, after notice and opportunity for public hearing, issue a permit for the discharge of any waste, pollutant or combination of pollutants into navigable waters, for a period not to exceed five years, upon condition that such discharge meets or will meet, subject to authorized schedules of compliance, all applicable Navajo Nation, adjoining tribe or state, and federal water quality standards and effluent standards and all other requirements of this Act.

D. Grounds for denial of permit. The Director shall deny a permit where:

1. The permit would authorize the discharge of any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste into navigable waters;

2. The permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any navigable waters;

3. The permit is objected to in writing by the Administrator pursuant to any right to object provided to the Administrator by Section 402(d) of the Clean Water Act;<sup>3</sup>

4. The permit would authorize a discharge from a point source which is in conflict with a plan approved by the Administrator under Subsection 208(b) of the Clean Water Act,<sup>4</sup> and for which the submitting government entity had jurisdiction;

5. The issuance of the permit would otherwise be inconsistent with the applicable requirements of other Navajo Nation laws or regulations promulgated thereunder; or

6. The issuance of the permit would otherwise be inconsistent with applicable requirements of the Clean Water Act<sup>5</sup> or regulations promulgated thereunder.

E. General permit. The Director may issue a general permit within a geographical area to cover (1) storm water point sources, (2) a category of point sources, or (3) a category of treatment works treating domestic sewage. A facility covered by a general permit shall be subject to all provisions of this Act and regulations promulgated hereunder, except as otherwise provided by the Director by regulation in the case of certain application requirements.

F. Compliance. Compliance with a permit issued pursuant to this Act shall be deemed compliance, for the purposes of Subchapter 9 of this Act, with Sections 301,<sup>6</sup> 302,<sup>7</sup> 306<sup>8</sup> and 307<sup>9</sup> of the Clean Water Act, except for any standard imposed under Section 307 for a toxic pollutant injurious to human health.

#### **History**

CJY-81-99, July 26, 1999.

Permits and licenses, water pollution prevention and control, see 33 U.S.C. § 1341 *et seq.*

**§ 1322. Effluent Limitations Enforced in Issuance of Permits**

A. Permit conditions. The Director shall require as permit terms, limitations and conditions the achievement of:

1. Effluent limitations based upon the application of such levels of treatment, technology and processes as are required under the Clean Water Act for which the Administrator has promulgated regulations under Sections 301,<sup>1</sup> 304,<sup>2</sup> 306<sup>3</sup> and/or 318<sup>4</sup> of the Clean Water Act for industrial or municipal dischargers and aquaculture projects;

2. Effluent limitations, best management practices, requirements for cooling water intake structures, alternative limitations for coal remining under Section 301(p) of the Clean Water Act,<sup>5</sup> and/or a determination of maximum extent practicable, based upon the application of best professional judgment, in the absence of formally promulgated standards and limitations by the Administrator under the Clean Water Act,<sup>6</sup> based upon the appropriate criteria contained in Sections 301,<sup>1</sup> 304(e),<sup>7</sup> 316(b)<sup>8</sup> and/or 402(a)(1)(B)<sup>9</sup> of the Clean Water Act;

3. Toxic pollutant effluent standards or prohibitions promulgated by the Administrator under Section 307(a) of the Clean Water Act<sup>10</sup> and contained within 40 C.F.R. Part 129, within the time frame for compliance provided by the Administrator, as well as the authority to modify existing permits to require compliance with such toxic pollutant effluent standards;

4. Effluent limitations, standards, or prohibitions on discharges from publicly owned treatment works and/or requirements of a pretreatment program based upon the requirements of Section 307 of the Clean Water Act<sup>11</sup> and the Administrator's implementing regulations;

5. For those treatment works treating domestic sewage and required to obtain a permit under Section 1321, appropriate conditions which are required in order to comply with regulations for sludge use and disposal promulgated by the Administrator under Section 405 of the Clean Water Act;<sup>12</sup>

6. Any more stringent effluent limitations necessary to meet water quality standards established pursuant to any Navajo Nation, adjoining state or tribe, or federal law or regulation, including water quality-related effluent limitations established by the Administrator under Section 302 of the Clean Water Act;<sup>13</sup> and/or

7. Any more stringent effluent limitations necessary to comply with the continuing planning process approved by the Administrator under Section 303(e) of the Clean Water Act.<sup>14</sup>

B. Time for compliance. Effluent limitations prescribed under this Section shall be achieved in the shortest reasonable period consistent with

Navajo Nation law and the Clean Water Act,<sup>6</sup> and with any regulations or guidelines promulgated or issued thereunder.

#### C. Variances

1. The Director may grant or deny requests for variances under Section 316(a) of the Clean Water Act<sup>15</sup> for thermal pollution. The Director may implement any alternative limitations, terms or conditions established in a final decision on such a variance request.

2. The Director may deny, forward to the Administrator with a written concurrence, or submit to the Administrator without a recommendation, completed requests for variances under Subsections 301(c),<sup>16</sup> 301(g),<sup>17</sup> 301(n)<sup>18</sup> (including fundamentally different factors variance requests from best practicable control technology currently available effluent limitations guidelines), or 302(b)(2)<sup>19</sup> under the Clean Water Act. To the extent that the Director has forwarded a request to the Administrator with a written concurrence or without a recommendation, the Director may implement any alternative limitations, terms or conditions established by the Administrator in a final decision on such a variance request.

#### **History**

CJY-81-99, July 26, 1999.

#### **United States Code**

Effluent limitations, see 33 U.S.C. § 1311.

Water quality related effluent limitations, see 33 U.S.C. § 1312.

#### **§ 1323. Schedules of Compliance**

The Director may set and revise schedules of compliance and include such schedules within the terms and conditions of permits for discharge of wastes or pollutants or for sludge use and disposal, consistent with Navajo Nation law, the Clean Water Act<sup>1</sup> and implementing regulations. The Director may establish interim compliance schedules in permits which are enforceable without showing a violation of an effluent limitation or harm to water quality.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1324. Extension of Time to Meet Quality and Effluent Standards**

A. Required findings. The Director may issue a reasonable extension to a point source discharger, industrial user, or treatment works treating domestic sewage, which extension shall not conflict with the Clean Water Act,<sup>1</sup> in which to meet water quality standards or other applicable effluent limitations or standards of the Navajo Nation or an adjoining state or tribe (to the extent allowable under the state or tribal law or regulations), if the Director determines that:

1. The violation was the result of actions or conditions outside the control of the discharger;

2. The discharger, industrial user, or treatment works treating domestic sewage has acted in good faith;

3. The extension would not result in the imposition of any additional controls on any point or non-point source; and

4. Facilities necessary for compliance are under construction and will be completed at the earliest date possible.

B. Excuse of noncompliance. Any extension of time granted under this Section will not compromise any right for enforcement available under Subchapter 9 which exists before the extension is granted.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1325. Recording, Reporting, and Inspection Conditions**

The Director may prescribe terms and conditions for permits or other controls on industrial users to assure compliance with applicable Navajo Nation, adjoining state or tribe, and federal effluent standards and water quality standards (as set forth in § 1322 of this Act), including, but not limited to, requirements concerning recording, reporting, monitoring, entry, and inspection (as provided in § 1381 of this Act).

#### **History**

CJY-81-99, July 26, 1999.

#### **United States Code**

Records and reports, inspections, water pollution prevention and control, see 33 U.S.C. § 1318.

#### **§ 1326. Disposal of Pollutants into Wells**

The disposal of pollutants into wells shall be prohibited, unless the disposal is authorized by the federal underground injection control (UIC) program or by the Navajo Nation UIC program approved by the Administrator. The Director shall regulate any such discharges that are subject to the NPDES program through NPDES permits that incorporate appropriate federal or Navajo Nation UIC requirements. This authority shall enable the Navajo Nation to protect the public health and welfare and to prevent the pollution of ground and surface waters by prohibiting well discharges or by issuing permits for such discharges with appropriate permit terms and conditions.

#### **History**

CJY-81-99, July 26, 1999.

## **Part B. Pretreatment Requirements**

### **United States Code**

Toxic and pretreatment effluent standards, water pollution prevention and control, see 33 U.S.C. § 1317.

#### **§ 1327. Pretreatment Standards**

The Director may promulgate rules specifying pretreatment standards to be applied to all industrial users of publicly owned treatment works for the introduction of pollutants into publicly owned treatment works, including pollutants which interfere with, pass through, or otherwise are incompatible with such treatment works. Such standards shall not conflict with any pretreatment standard established under Subsection 307(b) of the Clean Water Act.<sup>1</sup>

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1328. Conditions in Permits Issued for POTWs**

A. Compliance with Clean Water Act. The Director or the owner or operator of a publicly owned treatment works, if it has an approved pretreatment program, shall implement all provisions of Section 307 of the Clean Water Act,<sup>1</sup> including issuing pretreatment industrial user permits or controlling discharges from significant industrial users by other appropriate means, such as discharge fees.

B. Other conditions. The Director shall include the following requirements as conditions in permits for the discharge of pollutants from publicly owned treatment works:

1. The identification, in terms of character and volume of pollutants, of any significant source introducing into such POTWs pollutants subject to pretreatment standards under Subsection 307(b) of the Clean Water Act;<sup>2</sup>

2. A program to assure compliance by each such source with pretreatment standards promulgated under Subsection 307(b) of the Clean Water Act<sup>2</sup> and § 1327 of this Act;

3. Adequate notice to the Navajo Nation EPA of:

a. New introductions into such works of pollutants from any source which would be a new source as defined in Section 306 of the Clean Water Act<sup>3</sup> if such source were discharging pollutants,

b. New introductions of pollutants into such works from a source which would be subject to Section 301 of the Clean Water Act<sup>4</sup> if it were discharging such pollutants, or

c. A substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works;

4. Compliance with any system of user charges required under Navajo law or the Clean Water Act or regulations promulgated thereunder; and

5. Compliance with record-keeping, reporting, sampling, monitoring and inspection requirements under Section 308 of the Clean Water Act<sup>5</sup> and § 1381 of this Act.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1329. Other Authority of Director Regarding POTWs**

In addition to other provisions specifically authorized in this Act, the Director shall have, but not be limited to, the following authority regarding publicly owned treatment works:

A. Issue decisions on requests by publicly owned treatment works for pretreatment program approval;

B. Act on requests for removal credits under Subsection 307(b) of the Clean Water Act;<sup>1</sup>

C. Act on categorical determination requests;

D. Deny or make recommendations on requests for fundamentally different factors variances under Subsection 301(n) of the Clean Water Act;<sup>2</sup>

E. Make decisions on compliance deadline extension requests based on innovative technology under Subsection 307(e) of the Clean Water Act;<sup>3</sup> and

F. Join the publicly owned treatment works as a defendant in an enforcement action under this Act against an industrial user.

#### **History**

CJY-81-99, July 26, 1999.

### **Subchapter 4. Sewage Sludge**

#### **United States Code**

Disposal or use of sewage sludge, water pollution prevention and control, see 33 U.S.C. § 1345.



### **§ 1331. Regulation of the Use and Disposal of Sewage Sludge**

A. Establishment of program. The Director shall, by rulemaking consistent with Section 1391 of this Act, establish a program to regulate the use and disposal of sewage sludge.

B. Content of Regulations. In establishing a sewage sludge program, the Director shall:

1. Regulate all sludge use and disposal methods within the Navajo Nation;

2. Regulate the transportation and storage of sewage sludge in the Navajo Nation;

3. Ensure compliance with applicable sludge standards by all users or disposers of sewage sludge; and

4. Regulate the issuance of permits under §§ 1321 and 1332 of this Act for the disposal of sewage sludge, which regulations shall require the application to sewage sludge disposal of each criterion, factor, procedure and requirement applicable to a permit issued under § 1321 of this Act.

#### **History**

CJY-81-99, July 26, 1999.

### **§ 1332. Permits**

A. Permit requirement. In any case where the disposal of sewage sludge resulting from the operation of a treatment works (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering navigable waters, such disposal is prohibited except in accordance with a permit issued under Section 1321 of this Act or, if no such permit program has been established, by the Administrator under Section 402 of the Clean Water Act.<sup>1</sup>

B. Consistency with sewage sludge regulations. Any permit issued under § 1321 to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations promulgated pursuant to § 1331 of this Act.

C. Applicability to all treatment works. In the case of a publicly owned treatment works or other treatment works treating domestic sewage that is not subject to § 1321 of this Act, the Director may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that implement the regulations established pursuant to § 1331 of this Act. The Director shall establish procedures for issuing permits pursuant to this Subsection.

#### **History**

CJY-81-99, July 26, 1999.

### **§ 1333. Recordkeeping, Reporting, and Inspections**

Any treatment works treating domestic sewage is subject to applicable provisions of regulations issued by the Director regarding recordkeeping, reporting and inspections, including provisions of § 1381 of this Act. The Director may prescribe terms and conditions for permits issued under this Part to assure compliance with applicable Navajo Nation and federal effluent, solid waste, and water quality standards, including requirements concerning recordkeeping, reporting, monitoring, entry and inspection, to the extent provided under this Act. The Director may establish regulations specifically establishing terms, limitations and conditions, including notification requirements, applicable to septage haulers.

#### **History**

CJY-81-99, July 26, 1999.

## **Subchapter 5. Permits and Other Authorizations**

### **Part A. Permits**

#### **United States Code**

Permits and licenses, water pollution prevention and control, see 33 U.S.C. § 1341 *et seq.*

### **§ 1341. Conditions of Permits**

A. Submission of information. The Director may prescribe conditions for (by issuing regulations and on a case-by-case basis) and require the submission of plans, specifications, and other information from a permittee, person applying for a permit, or person discharging without a permit, in connection with applications for or otherwise related to the issuance of permits, introduction of pollutants by an industrial user into a publicly owned treatment works, or activities of a treatment works treating domestic sewage.

B. Consent to jurisdiction. All permit applications and permits, including general permits, as well as regulations or other mechanisms issued by the Director for direct implementation of requirements for industrial users and treatment works treating domestic sewage that are not otherwise required to apply for permits, shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit or coverage by direct implementation mechanism:

"Applicant hereby consents to the jurisdiction of the Navajo Nation in connection with all activities conducted pursuant to, in connection with, or directly affecting compliance with, any permit issued pursuant to this application or to which the provisions of the Navajo Nation Clean Water Act otherwise apply. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all

successors, heirs, assigns, employees and agents, including contractors and subcontractors, of the applicant."

The applicant shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued under this Act, or to which the provisions of the Act otherwise apply. Each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for "applicant" as appropriate and substituting the phrase "this agreement" in place of the phrase "any permit issued pursuant to this application." Failure by the applicant to include such statement, or of any party to agree and subscribe to such statement, shall subject the applicant to civil penalty in accordance with this Act.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1342. Term of Permits**

A. Fixed term. Each permit shall have a fixed term not exceeding five years. Upon expiration of a permit, a new permit may be issued by the Director after notice and opportunity for public hearing and upon condition that the discharge or disposal (including of sludge) meets or will meet, subject to authorized schedules of compliance, all applicable requirements of this Act, including the conditions of any permit issued by the Director.

B. Renewals. When the permittee has made a timely and sufficient application for a renewal in accordance with Navajo Nation EPA rules, an existing permit for an activity of a continuing nature shall not expire until the application for renewal has been finally determined by the Director.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1343. Notice of Actions**

The Director shall issue and implement rules to ensure:

A. That the public, appropriate government agencies, and any other tribe or state the waters of which may be affected, receive notice of each application for a permit; be provided an opportunity for public hearing before ruling on each such application; and be provided an explanation in writing of the reasons why any recommendations submitted with regard to such application were not adopted;

B. That the public, appropriate government agencies, and any other tribe or state the waters of which may be affected, receive appropriate notice of activities of the pretreatment program and be provided an opportunity for public hearing before the Director rules on such activities, as provided by Section 307 of the Clean Water Act <sup>1</sup> and the Administrator's implementing regulations; and

C. That the Administrator receives notice and a copy of each application for a permit.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1344. Issuance, Revocation, or Denial of Permits**

The Director shall issue, suspend, revoke, modify, or deny permits consistent with provisions of this Subchapter and with rules issued by the Director consistent with the provisions of § 1391 of this Act.

#### **History**

CJY-81-99, July 26, 1999.

#### **§ 1345. Issuance of Permits and Grounds for Revocation, Modification, or Suspension of Permits**

A. Grounds for revocation, modification or suspension. Any permit issued under this Part may be revoked, modified, or suspended in whole or in part during its term or upon request of the permit holder or any interested person, for cause including, but not limited to the following:

1. Violation of any condition of the permit;
2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
3. Change in condition that requires either a temporary or permanent reduction or elimination of the permitted discharge or disposal operation, where "condition" does not include statutory or regulatory effluent limitations or standards enacted or adopted during the permit term, other than for toxic pollutants.

B. Notice and hearing. If the Director recommends issuance or denial of an application for a permit, or revokes, suspends, or modifies a permit, he or she shall give written notice of his or her action to the applicant or permittee, any interested person who has requested to be notified, as well as other entities as provided by this Act. The applicant, permittee or any interested person may request a hearing before the Director after issuance of the initial decision. Such hearing shall be held within 30 calendar days after receipt of written request, or as soon thereafter as reasonably practical. The Director may affirm, modify or reverse his or her initial decision based upon the evidence presented.

C. Effective date. Issuance, modification, revocation, or suspension of a permit shall be effective 30 calendar days after issuance of the initial decision, unless a later date is specified. If the holder or any interested person requests a hearing before the Director, the order of modification, revocation or suspension shall be effective 30 calendar days after the final determination by the Director.

### **History**

CJY-81-99, July 26, 1999.

### **§ 1346. Conflict of Interest**

A. The Director, or his or her delegate, shall not participate in a permit action which involves himself or herself, any discharger, industrial user or treatment works treating domestic sewage with which he or she is connected as a director, officer or employee, or in which he or she has a direct personal financial interest. Direct financial interest is defined as receiving, or having received during the previous two years, a significant portion of income directly or indirectly from permit holders or applicants for permits.

B. To the extent not prohibited by Subsection (A) of this Section, the Director, or his or her delegate, shall not participate in any proceeding as a consultant or in any other capacity on behalf of any discharger, industrial user or treatment works treating domestic sewage, except to the extent otherwise allowed under Navajo Nation law. In no case, shall the Director, or his or her delegate, participate in any proceeding as a consultant or in any other capacity on behalf of any discharger, industrial user or treatment works treating domestic sewage, that was instituted or ongoing during their tenure.

### **History**

CJY-81-99, July 26, 1999.

### **Part B. Other Authorizations**

### **§ 1347. Approval of Construction Grant Projects and User Charges**

A. Requirements for approval. The Director shall not approve (for those projects the Director has authority to approve or disapprove) any projects for any treatment works from a grant under Section 201(g)(1) of the Clean Water Act,<sup>1</sup> unless he or she shall first have determined that the applicant

1. Has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Director, will pay its proportionate share (except as otherwise provided in this Paragraph) of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; and

2. Has legal, institutional, managerial, and financial capability to ensure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Director. The Director may determine that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, by determining the system of charges is in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such

works, the constituent elements of the waste, and other appropriate factors), including different rates for small non-residential and residential user classes. In defining small non-residential users, the Director shall consider the volume of wastes discharged into the treatment works by such users and the constituent elements of such wastes as well as such other factors as he or she deems appropriate. A system of user charges which imposes a lower charge for low-income residential users (as defined by the Director) shall be deemed to be a user charge system meeting the requirements of clause (1) of this Paragraph if the Director determines that such system was adopted after public notice and hearing.

B. Guidelines on Payment of Waste Treatment Costs. The Director may, after consultation with appropriate Navajo Nation, federal, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and nonindustrial recipients of waste treatment services which shall establish:

1. Classes of users of such services, including categories of industrial users;

2. Criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste; and

3. Model systems and rates of user charges typical of various treatment works serving municipal-industrial communities.

C. Alternative systems of charges. A system of charges that meets the requirements of § 1347(A)(1) may be based on something other than metering the sewage or water supply flow of residential recipients of waste treatment services, consistent with Navajo Nation law. If the system of charges is based on something other than metering the Director shall require:

1. The applicant to establish a system by which the necessary funds will be available for the proper operation and maintenance of the treatment works; and

2. The applicant to establish a procedure under which the residential user will be notified as to that portion of his or her total payment which will be allocated to the costs of the waste treatment services.

### **History**

CJY-81-99, July 26, 1999.

### **§ 1348. Clean Water Act Fund**

Monies derived from fees and penalties imposed under this Act shall be available solely to the Navajo Nation EPA for the administration, implementation and enforcement of this Act and the regulations promulgated hereunder. Such monies shall be deposited into a duly established Special

Revenue Fund, called the Clean Water Act Fund, and shall be expended by the Director for the use of the Clean Water Act <sup>1</sup> programs in accordance with the Special Revenue Fund plan of operation and pursuant to an approved budget. The Director shall report annually to the Navajo Nation Council on the sums deposited into the fund, including the sources and uses thereof. Any monies contained in said fund at the end of the fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in this Section.

### **History**

CJY-81-99, July 26, 1999.

## **Subchapter 6. Nonpoint Source Management Program**

### **United States Code**

Nonpoint source management programs, water pollution prevention and control, see 33 U.S.C. § 1329.

### **§ 1351. Nonpoint Source Assessment Report**

A. Content of report. The Director shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval (to the extent that it has not otherwise already been completed and approved), a report which:

1. Identifies those waters of the Navajo Nation which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act or the Clean Water Act;<sup>1</sup>

2. Identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the waters of the Navajo Nation identified under Subsection (A)(1) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

3. Describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under Subsection (A)(2) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and

4. Identifies and describes Navajo Nation and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the waters of the Navajo Nation, including but not limited to those programs which are receiving federal assistance under Subsections 319(h) and (i) of the Clean Water Act.<sup>2</sup>

B. Basis for report. In preparing the report required by this Section, the Director may use all available information.

### **History**

CJY-81-99, July 26, 1999.

### **§ 1352. Nonpoint Source Management Program**

A. Program submission. The Director shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program for controlling pollution added from nonpoint sources to the waters of the Navajo Nation and improving the quality of such waters, which program the Navajo Nation proposes to implement in the first four fiscal years beginning after the date of submission of the program. The Director may periodically revise the submission.

B. Program Contents. The management program proposed for implementation under this Section shall include the following:

1. An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under § 1351(A)(2) of this Act, taking into account the impact of the practice on ground water quality.

2. An identification of programs within the Navajo Nation and adjoining tribes and states (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) designed to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under Subsection (B)(1) of this Section.

3. A schedule containing annual milestones for (i) utilization of the program implementation methods identified in Subsection (B)(2) of this Section, and (ii) implementation of the best management practices identified in Subsection (B)(1) of this Section by the categories, subcategories, or particular nonpoint sources designated under § 1351(A)(2) of this Act. Such schedule shall provide for utilization of the best management practices at the earliest practicable date, but no later than the time period provided in § 1311(E) of this Act.

4. Any other information required by Section 319(b) of the Clean Water Act.<sup>1</sup>

C. Utilization of Local and Private Experts. In developing and implementing a management program under this Section, the Director shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

D. Development on Watershed Basis. The Director shall, to the maximum extent practicable, develop and implement a management program under this Part



on a watershed-by-watershed basis within the Navajo Nation.

### **History**

CJY-81-99, July 26, 1999.

### **United States Code**

Nonpoint source management programs, water pollution prevention and control, see 33 U.S.C. § 1329.

### **Subchapter 7. Clean Lakes Program**

### **United States Code**

Clean lakes, water pollution prevention and control, see 33 U.S.C. § 1324.

### **§ 1361. Biennial Report**

The Director may initiate a Clean Lakes program under this Subchapter. If the Director decides to develop such a program, the Director shall prepare and submit to the Administrator for approval a report containing the following information:

A. An identification and classification according to eutrophic condition of all lakes within the Navajo Nation;

B. A description of procedures, processes and methods (including land use requirements) to control sources of pollution of such lakes;

C. A description of methods and procedures, in conjunction with appropriate federal agencies, to restore the water quality of such lakes;

D. Methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of lakes and methods of removing from lakes toxic metals and other toxic substances mobilized by high acidity;

E. A list and description of those lakes within the Navajo Nation which are known to be impaired, including those lakes which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition; and

F. An assessment of the status and trends of water quality in lakes in the Navajo Nation, including but not limited to the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

This report shall be updated and submitted to the Administrator every two years, for so long as the Director continues to operate a Clean Lakes program.

### **History**

CJY-81-99, July 26, 1999.

#### **§ 1362. Demonstration Program**

The Director may establish and conduct a lake water quality demonstration program, in order to promote the following goals and activities:

A. Develop cost effective technologies for the control of pollutants to preserve or enhance lake water quality while optimizing multiple lake uses;

B. Control nonpoint sources of pollution which are contributing to the degradation of water quality in lakes;

C. Evaluate the feasibility of implementing regional consolidated pollution control strategies;

D. Demonstrate environmentally preferred techniques for the removal and disposal of contaminated lake sediments;

E. Develop improved methods for the removal of silt, stumps, aquatic growth, and other obstructions which impair the quality of lakes;

F. Construct and evaluate silt traps and other devices or equipment to prevent or abate the deposit of sediment in lakes; and

G. Demonstrate the costs and benefits of utilizing dredged material from lakes in the reclamation of despoiled land.

### **History**

CJY-81-99, July 26, 1999.

#### **§ 1363. Contracts and Interagency Agreements**

The Director is authorized to enter into agreements with other public agencies and to contract with public and private agencies, organizations and individuals to develop and demonstrate new or improved methods for the prevention, removal, reduction and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation.

### **History**

CJY-81-99, July 26, 1999.

## **Subchapter 8. Watershed Protection Program**

#### **§ 1371. Development of Program**

The Director may develop a program to protect surface and ground water from pollution on a watershed basis, taking into account impacts on water

quality from a variety of sources and considering cumulative impacts as well as discrete instances of contamination. In developing this program, the Director shall consult with other Navajo Nation agencies and departments, and with state and federal agencies and other entities having authority over activities which may impact water quality within the Navajo Nation (such as agriculture, livestock grazing, mining and timber operations and business development). The Director may conduct studies regarding watershed protection within the Navajo Nation, may develop guidelines and procedures to protect such watersheds and may promulgate regulations to implement the purposes of this Subchapter, in accordance with the provisions of § 1391.

### **History**

CJY-81-99, July 26, 1999.

## **Subchapter 9. Enforcement**

### **§ 1381. Records, Inspections, Monitoring and Entry**

A. Record-keeping, reporting and monitoring. In order to carry out the purposes of this Act, including but not limited to developing or enforcing any water quality standard, water quality management plan, continuing planning process or best management practice under this Act, issuing certifications, granting approvals, and issuing permits or otherwise regulating point sources, treatment works and industrial users of POTWs under this Act, the Director may promulgate regulations requiring any person subject to the requirements of this Act to:

1. Establish and maintain records;
2. Prepare and submit reports;
3. Install, calibrate, use and maintain monitoring equipment or methods, including, where appropriate, biological monitoring;
4. Sample effluents (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Director shall prescribe); and
5. Provide such other information as the Director may reasonably require.

B. Entry and inspections. The Director or his/her authorized representative (including an authorized contractor acting as a representative of the Director), upon presentation of his/her credentials,

1. Shall have a right of entry to, upon, or through any premises necessary to implement and enforce the provisions of this Act and the regulations promulgated hereunder, and
2. May at reasonable times have access to and copy any records, inspect any monitoring or sampling equipment or method under Subsection (A) above, inspect any treatment processes or equipment, sample any

effluents which are being discharged into the waters of the Navajo Nation or are required to be or are sampled under Subsection (A), and perform such other inspection as is necessary to ensure compliance with this Act and the regulations promulgated hereunder.

Any records, reports or information obtained under this Section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment or new source performance standards.

C. Availability of information to public. Any records, reports or other information obtained under this Section shall be available to the public, except that upon a showing satisfactory to the Director by any person that records, reports or other information or any particular part thereof (other than effluent data) to which the Director has access under this Section would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Director shall consider such record, report or other information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the Navajo Nation and of the United States concerned with carrying out this Act or when relevant to any proceeding under this Act. The Director shall deny claims of confidentiality for name and address of any permit applicant or permittee; permit applications; permits; and effluent data.

D. Confidential information. Any authorized representative of the Director (including an authorized contractor acting as a representative of the Director) who discloses confidential information contrary to these provisions, except as otherwise provided by law, may be subject to dismissal, suspension, or other adverse personnel action. Any authorized representative of the Director (including an authorized contractor acting as a representative of the Director) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information that is required to be considered confidential under this Subsection shall be fined not more than one thousand dollars (\$1,000). Nothing in this Subsection shall prohibit the Director or an authorized representative of the Director (including any authorized contractor acting as a representative of the Director) from disclosing records, reports, or information to officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act. In any instance where the Navajo Nation lacks jurisdiction over the person charged, the Director may refer the action to the appropriate USEPA Regional Administrator and/or U.S. Department of Justice official.

#### **History**

CJY-81-99, July 26, 1999.

#### **United States Code**

Records and reports, inspections, water pollution prevention and control, see 33 U.S.C. § 1318.

#### **§ 1382. General Enforcement Authority**

A. In general. Whenever, on the basis of any information available to

the Director, the Director finds that any person (including the Navajo Nation and any instrumentality of the Navajo Nation, but only with regard to their role as a point or nonpoint source, industrial user of a publicly owned treatment works or a treatment works treating domestic sewage) has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits, orders, plans, programs or fees issued or developed pursuant to this Act, the Director may:

1. Issue and serve on such person an order requiring such person to comply with such requirement or prohibition, including an emergency order to comply, pursuant to the provisions of this Section;

2. Issue and serve on such person an administrative penalty order in accordance with § 1384 of this Act;

3. Request that the Attorney General bring a civil action, including an action for injunctive relief, in accordance with § 1383(A) of this Act; and/or

4. Request that the Navajo Nation Prosecutor's Office bring a criminal action in accordance with § 1383(B) of this Act and/or refer any criminal enforcement action or portion of such action to the U.S. Environmental Protection Agency Regional Administrator for the appropriate EPA region.

B. Requirements for orders to comply. An order issued under Subsection (A)(1) or (A)(2) of this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director under § 1391 of this Act, if such hearing is requested in writing within 30 calendar days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the 30 calendar days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. A copy of the order shall be sent to the appropriate U.S. EPA region and, if the order is issued to a corporation, to the appropriate corporate officers and registered agent of the corporation. No order to comply issued under this Section shall prevent the Navajo Nation from assessing any penalties or otherwise affect or limit the Navajo Nation's authority to enforce under other provisions of this Act, or affect any person's obligations to comply with any Section of this Act or with a term or condition of any permit or other requirements promulgated or approved under this Act.

C. Emergency compliance orders. Notwithstanding any permit issued under this Act, if the Director determines that discharge of pollutants into the waters of the Navajo Nation, into a POTW or a treatment works treating domestic sewage, pollution from a nonpoint source, or a combination of such sources, is presenting an imminent and substantial endangerment to public health or welfare or the environment and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to

Subsection (E) of this Section, the Director may issue such orders as may be necessary to protect public health or welfare or the environment. Such orders may prohibit, restrict or condition any and all activities that contribute or may contribute to the emergency, shall be effective immediately upon issuance and shall remain in effect for a period of not more than 60 days, unless the Director brings an action pursuant to Subsection (E) of this Section within the 60-day period. If the Director brings such an action, the order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

D. Enforcement of compliance orders. Enforcement actions of the Director shall be enforced by the Navajo Nation EPA, the Navajo Department of Justice, Navajo Prosecutors Office, Resources Enforcement and/or the Division of Public Safety. Those authorized to enforce the Director's actions may take reasonable steps to assure compliance, consistent with the requirements established by this Act (including rights of appeal), including but not limited to:

1. Entering upon any property or establishment believed to be violating the order and demanding compliance; and
2. Terminating operations at facilities not in compliance.

E. Injunctive relief. The Director may seek injunctive relief pursuant to § 1383(A) of this Act to restrain any person who causes or contributes to an imminent and substantial threat to the public health or welfare or environment due to a discharge or other activity affecting the water quality of the Navajo Nation.

### **History**

CJY-81-99, July 26, 1999.

### **United States Code**

Enforcement, water pollution prevention and control, see 33 U.S.C. § 1319.

### **§ 1383. Judicial Enforcement**

A. Civil judicial enforcement. The Director shall request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties of not less than five hundred dollars (\$500.00) and not more than twenty-five thousand dollars (\$25,000) per day per violation, in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act;
2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; or
3. Whenever a person is creating an imminent and substantial

endangerment to the public health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief but not the assessment of civil penalties, unless the endangerment is caused by a violation, as specified in Paragraphs (1) and (2).

B. Criminal penalties. Any person who intentionally:

1. Violates any provision, requirement or prohibition of this Act, including but not limited to a regulation or plan adopted pursuant to this Act or a permit or an order issued pursuant to this Act;

2. Makes any false material statement, representation or certification in, or omits material from, or alters, conceals or fails to file or maintain any notice, application, record, report, plan or other document required to be filed or maintained pursuant to this Act, regulations or plans adopted pursuant to this Act or a permit or an order issued pursuant to this Act; or

3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Act, regulations or plans adopted pursuant to this Act or a permit or an order issued pursuant to this Act; shall, upon conviction, be punished by a fine of not less than five hundred dollars (\$500.00) and not more than twenty-five thousand dollars (\$25,000) per day of violation or, if smaller, the largest amount permissible under applicable law, or imprisonment for not more than one year, or both, notwithstanding the provisions of 17 N.N.C. §§ 222 and 223, or be subject to any other penalty imposed by the court that is available under Navajo Nation law. In any instance where the Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to § 1352 of this Act. For the purpose of this Subsection, the term "person" includes, in addition to the entities referred to in § 1302(A)(26) of this Act, any responsible corporate officer.

C. Jurisdiction and venue. Any action under this Section shall be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil and criminal penalties up to the amounts provided in this Section, collect any fees or noncompliance penalties owed the Nation under this Act, and award any other appropriate relief.

D. Calculation of penalties.

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this Section, § 1384 or § 1385, if the Director has notified the source in writing of the violation and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the

evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this Section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a penalty assessed under this Section, § 1384 or § 1385, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. For purposes of this Section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

3. All penalties collected pursuant to this Section shall be deposited into the Clean Water Act Fund established pursuant to § 1348.

4. In lieu of or in addition to a monetary penalty, the Director may impose or may request the Attorney General to seek from the court a requirement to remediate the damage caused or to perform community service, or both.

E. Failure to pay penalty. If any person fails to pay an assessment of a civil penalty, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent (10%) of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director may by regulation establish higher penalties to take into account situations where the prime rate is higher.

#### **History**

CJY-81-99, July 26, 1999.

#### **United States Code**

Enforcement, water pollution prevention and control, see 33 U.S.C. § 1319.

#### **§ 1384. Administrative Assessment of Penalties**



A. Basis for penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) per day per violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act. The Director's authority under this Subsection, combined with actions under Subsection (C), shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing requirement. The Director shall assess an administrative penalty under this Section by an order made after opportunity for a hearing, pursuant to § 1391 of this Act. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 calendar days of receipt of the notice.

C. Field citations. After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations (assessing civil penalties not to exceed one thousand dollars (\$1,000) per day per violation) may be issued by officers or employees designated by the Director, for any violation for which an administrative order could be issued under Subsection (A) to the extent permissible under applicable law. The Director's authority under this Subsection, combined with action taken under Subsection (A), shall be limited in total amount by the provisions in Subsection (A). Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation under the provisions of Subsection (B). If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Act, except as to the days of violation for which the penalty required by a field citation is paid.

D. Judicial review. Any person subject to a civil penalty under Subsections (A) or (C) of this Section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within 30 calendar days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. A notice of intent to challenge such penalty assessment, otherwise required by the Navajo

Nation Sovereign Immunity Act, 1 N.N.C. § 551 et seq., is not required. Within 30 calendar days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this Section.

E. Failure to pay penalty. If any person fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent (10%) of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director may by regulation establish higher penalties to take into account situations where the prime rate is higher.

F. Calculation of penalty. In determining the amount of any penalty to be assessed under this Section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 1383(D) of this Act.

### **History**

CJY-81-99, July 26, 1999.

### **United States Code**

Enforcement, water pollution prevention and control, see 33 U.S.C. § 1319.

### **§ 1385. Citizen Suits**

A. Authority to bring civil action; jurisdiction.

1. Except as provided in Subsection (B) of this Section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his or her own behalf against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who is alleged to be in violation of any provision, requirement or prohibition of this Act, including but not limited to a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act.

2. The Navajo Nation courts shall have jurisdiction to enforce such provision, prohibition, regulation, plan, permit, order, fee or other

requirement, to restrain such violation, to order such person to take such other action as may be necessary and to apply any appropriate civil penalties.

B. Notice. An action may not be commenced under Subsection (A)(1) of this Section fewer than 60 days after the plaintiff has given notice of the alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to require compliance with this Act, except that any person may intervene as a matter of right in such an action.

C. Venue; intervention; service of complaint.

1. Any action under this Section may be brought only in the Navajo Nation District Court in Window Rock.

2. The Director, if not already a party, may intervene as of right in any action brought under this Section.

3. Whenever any action is brought under this Section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this Section in which the Director is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and/or the Director may submit, on behalf of the Navajo Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

D. Award of costs. The court, in issuing a final order in an action brought under this Section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever the court determines that such award is appropriate.

E. Use of penalties. All penalties collected pursuant to this Section shall be deposited into the Clean Water Act Fund established pursuant to § 1348.

#### **History**

CJY-81-99, July 26, 1999.

#### **United States Code**

Citizen suits, water pollution prevention and control, see 33 U.S.C. § 1365.

#### **Subchapter 10. Rulemaking and Judicial Review**

#### **United States Code**

Administrative procedure and judicial review, water pollution prevention and control, see 33 U.S.C. § 1369.

## **§ 1391. Rulemaking and Other Administrative Procedures**

### **A. Rulemaking.**

1. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Navajo Nation that are concerned and shall be given orally in English and Navajo over local radio stations. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least 30 calendar days; shall allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally, in the Navajo or English languages, their views, data or arguments; and shall keep the record open for at least 10 days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

2. The final regulation shall be based on the record of the rulemaking proceeding contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

**B. Administrative hearings.** The Director shall, by regulation, establish a formal administrative hearing process which meets due process standards to hear appeals taken under §§ 1382(B) (compliance orders) and 1384 (administrative penalties and field citations). Until the Director establishes this administrative hearing process and appoints a qualified presiding officer, the Navajo Office of Hearings and Appeals is authorized to hear appeals taken under the above-cited Sections; provided, however, that the Director may, in his or her discretion, transfer other appeals allowed under this Act and the regulations promulgated hereunder to the Navajo Office of Hearings and Appeals when necessary.

### **C. Administrative subpoenas.**

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Act, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Claims of confidentiality shall be processed using the provisions of § 1381(C) of this Act and regulations promulgated thereunder.

3. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation courts. In case of contumacy or refusal to obey a subpoena, the Navajo Nation District Court for the district in

which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation District Court for the District of Window Rock, naming as defendant the Director in his or her official capacity and not in any other manner; in any such action, relief will be limited to declaratory relief.

### **History**

CJY-81-99, July 26, 1999.

### **§ 1392. Review in Navajo Nation Supreme Court**

A. Petitions for review. A petition for review of any final action taken by the Director under this Act, including but not limited to promulgation of regulations, plans and standards, issuance of orders and issuance or denial of permits (but not including imposition of administrative penalties under Section 1384), which are subject to review under the provisions of Subsection 1384(D), or for challenge of an administrative subpoena, which is subject to review under the provisions of Subsection 1391(C)(3), shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within 60 calendar days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Act, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 calendar days after such grounds arise. The date of adoption of any regulation promulgated pursuant to this Act shall be the date of its approval by the Resources Committee of the Navajo Nation Council. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Director at the time of the final action from which the appeal is taken.

B. Limitations on review.

1. If judicial review of a final action of the Director could have been obtained under Subsection (A) of this Section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

2. With respect to any regulations promulgated under this Act or other notice and comment actions taken pursuant to this Act, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation or other action, the Director may convene a proceeding for reconsideration of the regulation or other action and provide the same procedural rights as would have been afforded had the information been available at the time the regulation or other action was proposed. If the Director declines to convene such a

proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation or other action, although it may be stayed by the Director or the court for up to three months.

3. Except as otherwise expressly allowed by Navajo law, no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Act. In reviewing alleged procedural errors, the court may invalidate the regulation or other action only if the errors were so serious and related to matters of such central relevance to the regulation or permitting action that there is a substantial likelihood that the regulation or other action would have been significantly changed if such errors had not been made.

C. Standards for review. In reviewing any final action of the Director undertaken pursuant to this Act, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;

2. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;

3. Without observance of procedure required by law; or

4. Unsupported by substantial evidence.

D. Challenge to any provisions. Any action brought pursuant to the provisions of this Section shall be brought in compliance with the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, and not in any other manner. In any such action, relief shall be limited to declaratory relief and the Navajo Nation Supreme Court shall have no jurisdiction to grant any other relief. The Navajo Nation Supreme Court shall have exclusive jurisdiction and venue over any action brought pursuant to this Section, except as otherwise provided in this Section.

### **History**

CJY-81-99, July 26, 1999.

### **§ 1393. Challenge to Facial Validity of Act**

A. Any challenge to the lawful authority of the Navajo Nation Council to enact any provision of this Act must be filed in accordance with the laws of the Navajo Nation within 90 calendar days after the date of enactment of such provision of this Act, in the Navajo Nation District Court in Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner.

B. For purposes of this Section, the date of enactment of each provision of this Act shall be the date of signature by the President of the Navajo Nation after its adoption by the Navajo Nation Council, or the date of its adoption by the Navajo Nation Council if the Navajo Nation Council overrides a

veto by the President.

C. The Navajo Nation District Court in Window Rock shall have exclusive jurisdiction and venue over any action under this Section.

D. In any action brought pursuant to the provisions of this Section, relief shall be limited to declaratory relief.

E. Any action brought pursuant to the provisions of this Section shall be brought in compliance with the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, and not in any other manner.

#### **History**

CJY-81-99, July 26, 1999.

### **§ 1394. Legislative Oversight and Amendments**

The Resources Committee of the Navajo Nation Council shall serve as the legislative oversight committee for the Navajo Nation Environmental Protection Agency, 2 N.N.C. § 1926 *et seq.* The Navajo Nation Council may amend 2 N.N.C. §§ 1921-1926 upon recommendation from the Resources Committee pursuant to 2 N.N.C. § 1927 *et seq.*

#### **History**

CJY-81-99, July 26, 1999.

## **Chapter 15. The Navajo Nation Underground Storage Tank Act**

### **Subchapter 1. General Provisions**

#### **§ 1501. Title**

This Chapter may be cited as the "Navajo Nation Underground Storage Tank Act."

#### **History**

CO-82-98, October 20, 1998.

#### **§ 1502. Definitions**

For the purposes of this Chapter:

A. "Abandoned Underground Storage Tank" means an underground storage tank (UST) abandoned by the owner and operator for which no liability is imposed against the owner or operator or their guarantor for the removal of said UST or associated release under federal law, this Chapter, Navajo common law or contract law, or where it is impossible to require an owner or operator to remove a UST or remediate a release or collect damages from the owner or operator for their failure to remove a UST or remediate a release because the owner and operator have been determined by a court of competent jurisdiction to

be bankrupt or otherwise unable to pay.

B. "Attorney General" means the Attorney General of the Navajo Nation.

C. "Corrective Action Plan (CAP)" means a document which is submitted to the regulatory agency for approval and which is based on the site characterization of an underground storage tank site. The CAP corrects soil, surface water and ground water contamination and is implemented in order to protect human health, safety, welfare and the environment.

D. "Director" means the Director of the Navajo Nation Environmental Protection Agency or his/her designee.

E. "Environmental Assessment (EA)" means an assessment done of an individual parcel of land for the purpose of evaluating the environmental impacts of a project and for making management decisions in accordance with the National Environmental Policy Act (NEPA). An EA is not as comprehensive as an Environmental Impact Statement (EIS) which is done for federal projects, nor is it commercially based like an ESA.

F. "Environmental Audit" means a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.

G. "Environmental Site Assessment" or "ESA" means the process by which a person or entity seeks to determine if a particular parcel of property (including improvements) is subject to recognized environmental conditions.

H. "Exposure Assessment" means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum or a regulated substance from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

I. "Facility" means, with respect to any owner or operator, a single parcel of property or contiguous or adjacent property on which underground storage tanks and their associated piping are used for the storage of regulated substances. A facility may have one or more clusters of storage tanks at separate tank sites.

J. "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator as required by this Chapter.

K. "Navajo Nation" means:

1. When referring to the body politic, the same meaning as set forth in 1 N.N.C. § 552;



2. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

a. All land within the exterior boundaries of the Navajo Indian Reservation, or of the Eastern Navajo Agency, or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;

b. All land held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and

c. All other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

L. "Navajo Nation Council" means the official legislative body of the Navajo Nation empowered to adopt policies and enact laws governing the Navajo Nation, as set forth in 2 N.N.C. § 102 *et seq.*

M. "Navajo Nation Environmental Protection Agency or Navajo EPA" means the agency established by the Navajo Nation Council pursuant to CAP-47-95, 2 N.N.C. § 1921 *et seq.*, to carry out the environmental laws and regulations adopted by the Navajo Nation.

N. "Navajo Nation Underground Storage Tank Program or Navajo UST Program" means the program, including any successor program, regardless of name, within Navajo EPA that is responsible for implementing and enforcing this Chapter.

O. "Non-operational Storage Tank" means any underground storage tank into which regulated substances will not be deposited, or from which regulated substances will not be dispensed, after November 8, 1984.

P. "Operator" means any person in control of, or having responsibility for the daily operation of underground storage tanks.

Q. "Owner" means:

1. A person who owns an underground storage tank or a person who owned an underground storage tank immediately before the underground storage tank was taken out of operation. A person who acquires ownership or control of property (by lease, use or other means) where an underground storage tank is located is the owner of the underground storage tank, except that the person is not an owner if the following applies:

a. The person, after conducting a due diligence investigation immediately prior to acquiring ownership of the property, did not know and had no reason to know that the underground storage tank was located on the property. Due diligence shall consist of performing a phase I environmental assessment of the property which meets generally accepted

commercial practices or standards for due diligence performed prior to the adoption of this standard.

2. A person who holds indicia of ownership primarily to protect a security interest in either the underground storage tank or in the property on which the underground storage tank is or was located but who does not participate in the management of the underground storage tank and who is not otherwise engaged in petroleum refining or marketing is not an owner for purposes of this Chapter.

3. A person who holds indicia of ownership as prescribed by Subsection (2) of this Section and who acquires ownership or control of a underground storage tank through foreclosure of the property where a underground storage tank is located shall not be deemed an owner and shall not be required to investigate a release or take corrective action in response to a release, if the person does all of the following:

a. Complies with the notification requirements prescribed by Subchapter 3.

b. Complies with the reporting requirements prescribed by § 1544 to the extent that the information is known to the person at the time of the report.

c. Temporarily or permanently closes the underground storage tank as in accordance with this Chapter and regulations promulgated hereunder.

d. Divests itself of the property in a reasonably prompt manner using whatever commercially reasonable means are relevant or appropriate with respect to the property, taking into consideration all of the facts and circumstances.

4. The Navajo Nation shall not be deemed an owner and shall not be required to investigate a release or take corrective action in response to a release where it holds indicia of ownership due to bankruptcy, foreclosure, tax delinquency condemnation, abandonment or similar means because of its status as a governmental entity (and is not otherwise operating said tank) and it:

a. Complies with the notification requirements prescribed by Subchapter 3.

b. Complies with the reporting requirements prescribed by § 1544 to the extent that the information is known to the person at the time of the report.

c. Temporarily or permanently closes the underground storage tank as in accordance with this Chapter and regulations promulgated hereunder.

5. The federal government or any of its agencies shall not be deemed an owner or operator under this Chapter if prohibited by federal law.

R. "Person" means any individual, public or private corporation, company, partnership, firm, association or society of persons, the federal, state or local governments or any of their programs or agencies, any Indian tribe, including the Navajo Nation, or any of its agencies, divisions, departments, programs, enterprises, companies, chapters or other political subdivisions.

S. "Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute pressure.

T. "Petroleum product" means petroleum, including crude oil, and/or fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of 42 U.S.C. § 9601(14), natural gas, natural gas liquids, liquified natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). The word fraction refers to certain distillates of crude oil, including gasoline, kerosene, diesel oil, jet fuels, and fuel oil, pursuant to Standard definitions of Petroleum statistics.

U. "Regulated Substance" means

1. Petroleum;

2. A substance defined in the Comprehensive Environmental Liability Act of 1980; P.L. 96-510, 94 Stat. 2767; 42 U.S.C. § 9601(14), but not including a substance regulated as a hazardous waste under the Solid Waste Disposal Act of 1984, P.L. 98-616, 98 Stat. 3221; 42 U.S.C. § 6921.

V. "Release" means any spilling, leaking, pumping, pouring, emptying, dumping, emitting, discharging, escaping, leaching, or disposing from any underground storage tank into groundwater, surface water or surface or subsurface soil.

W. "Resources Committee" means the standing committee of the Navajo Nation Council as defined in 2 N.N.C. § 691 *et seq.* with oversight authority over the Navajo Nation Environmental Protection Agency as provided for by Navajo Nation Council Resolution No. CAP-47-95.

X. "Site Characterization" at an underground storage tank site is the investigation and reporting of detailed information about soil, ground water, geology, conductivity, contaminants and other data for the purpose of implementing a corrective action plan (CAP).

Y. "Tank System" means an underground storage tank or tanks and ancillary equipment, including piping, which is used for the storage of regulated substances.

Z. "Underground Storage Tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; provided, however, that the owner or operator of such tanks shall comply with the leak/release reporting requirements of this Chapter (§ 1544) and such tanks installed after the effective date of this Chapter shall comply with the best available design technology for preventing leaks or releases. Moreover, in the event of a release the owner or operator of such tanks shall be subject to the corrective action requirements of this Chapter and regulations promulgated hereunder.

2. A single tank of 660 gallons or less or tank system of 1,320 gallons or less used for storing heating oil for consumptive use on the premises where stored; provided, however that the owner or operator of such tanks shall comply with the leak/release reporting requirements of this Chapter (§ 1544) and such tanks installed after the effective date of this Chapter shall comply with the best available design technology for preventing leaks or releases. Moreover, in the event of a release the owner or operator shall be subject to the corrective action requirements of this Chapter and regulations promulgated hereunder.

3. Septic tank.

4. Pipeline facility (including gathering lines)-

a. Which is regulated under the Natural Gas Pipeline Safety Act of 1968; 49 U.S.C. Appx. §§ 1671 through 1686;

b. The Hazardous Liquid Pipeline Safety Act of 1968; 49 U.S.C. Appx. § 2001.

5. An intrastate pipeline facility regulated under Tribal law comparable to the provision under 4(a) and (b).

6. Surface impoundment, pit, pond, or lagoon.

7. Storm water or waste water collection system.

8. Flow-through process tank.

9. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

10. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

11. The term "underground storage tank" shall not include any pipes connected to any tank which is described in Subparagraphs (1) through (10).

#### **History**

### **§ 1503. Declaration of Policy**

The Navajo Nation Council finds and declares that the release of petroleum products and other hazardous liquids from underground storage tanks presents a significant danger to the public health and the environment, by contaminating surface water, ground water and subsurface soils. Therefore, it is the intent of the Navajo Nation Council to establish a program for the regulation of underground storage tanks which implements stringent control of the installation, operation, retrofitting, upgrading, removal and abandonment of underground storage tanks, corrective action, closure and post closure care, and financial assurances consistent with the requirements of Title VI of the Hazardous and Solid Waste Amendments of 1984, P.L. 98-618, 98 Stat. 3221; 42 U.S.C. § 6991(a) *et seq.*

#### **History**

CO-82-98, October 20, 1998.

### **§ 1504. Applicability; Exemptions**

A. Except as otherwise provided in this Section, the provisions of this Act and regulations promulgated hereunder shall apply to all persons and all property within the Navajo Nation.

B. Except as otherwise provided in Subsection (C) of this Section, the provisions of this Act and/or regulation promulgated thereunder, in whole or in part, shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property.

C. The provisions of this Act and/or regulations promulgated thereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person where required by federal law or to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to § 1505 of this Act.

D. Nothing in this Section shall be construed as a determination or admission by the Navajo Nation that any claim of covenant not to regulate or otherwise exercise jurisdiction is valid.

#### **History**

CO-82-98, October 20, 1998.

### **§ 1505. Voluntary Compliance Agreement**

A. Any person to whom the provisions of this Act are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement with the Navajo Nation with respect to any property to which the provisions of this Chapter and/or regulations promulgated thereunder, in whole or in part, are not otherwise applicable.

B. A proposal to enter into a voluntary compliance agreement shall be in

writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate which part or parts of this Chapter and/or regulations promulgated thereunder, in whole or in part, with which voluntary compliance is proposed.

C. A voluntary compliance agreement shall be in writing, shall be for a term of not less than one year, and may be subject to renewal for successive terms of not less than one year. A voluntary compliance agreement may not vary the requirements of this Chapter, or of any regulations promulgated pursuant to this Act.

D. A voluntary compliance agreement shall not be effective unless and until final approval of the agreement is given by the Director.

E. Except as otherwise expressly provided in the agreement, by entering into a voluntary compliance agreement, no person shall be deprived of the benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.

F. A person may enter into a voluntary compliance agreement in accordance with this Section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this Act has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interests of the Navajo Nation. Entering into an agreement pursuant to this Subsection shall not constitute a determination or admission by the Navajo Nation that such claim of exemption is valid.

#### **History**

CO-82-98, October 20, 1998.

#### **§ 1506. General Authorities of the Director**

A. Powers and Duties. In carrying out the intent of this Chapter, the Director is authorized to:

1. Prescribe such regulations as are necessary to carry out his/her functions under this Chapter in accordance with the provision of § 1561(A) of this Chapter;
2. Enforce the provisions of this Chapter and the regulations promulgated hereunder, pursuant to the provisions of Subchapter 5 of this Chapter;
3. Require monitoring, sampling or other studies;
4. Assess fees for the inspection of underground storage tanks;
5. Issue compliance orders, civil penalties and citations to carry out the intent of this Chapter and regulations promulgated hereunder;
6. Conduct investigations, inspections and tests at underground storage tank sites to carry out the duties of this Chapter pursuant to the provisions of Subchapter 5 of this Chapter;

7. Hold hearings related to any aspect of or matter within the authority of this Section and, in connection therewith, compel the attendance of witnesses and the production of records;

8. Provide to the public pertinent educational materials and information regarding underground storage tank issues;

9. Issue guidelines and encourage voluntary cooperation with the provisions of this Chapter and the regulations promulgated hereunder;

10. Consistent with Title 2, Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this Chapter, provided that all monies resulting therefrom shall be deposited in the Navajo Nation Treasury to the account of the Navajo UST Program, as authorized under Navajo law;

11. Require the owner and/or operator of an underground storage tank to perform or cause to be performed a tank and line system test to determine compliance with the standards established by this Chapter or regulations promulgated hereunder; and

12. Perform such other activities as the Director may find necessary to carry out his/her functions under this Chapter.

In prescribing regulations under this Chapter, the Director shall consider but shall not be limited to the requirements of Title VI of the Hazardous and Solid Waste Amendments of 1984, P.L. 98-618, 98 Stat. 3221; 42 U.S.C. § 6991(a) *et seq.* and the regulations thereunder, except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under said Act. All regulations promulgated under this Chapter shall be subject to approval by the Resources Committee of the Navajo Nation Council.

B. Delegation of Authority. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such powers and duties under this Chapter, except the making of regulations, as he or she may deem necessary or expedient.

C. Use of Funds. Monies derived from fees and penalties imposed under this Chapter shall be available solely for the administration and implementation of this Chapter and the regulations promulgated hereunder. Such funds shall be deposited into a duly established UST Program Special Revenue Fund Account and expended by the Director for the use of the Underground Storage Tank Program in accordance with the UST Program Special Revenue Fund Account plan of operation pursuant to an approved budget. Any monies contained in said revolving account at the end of the fiscal year (not to exceed two hundred fifty thousand dollars (\$250,000)) shall not revert to the general fund and shall remain available for appropriation as provided in this Section. Any amount accumulated in excess of two hundred fifty thousand dollars (\$250,000) within a single fiscal year shall be deposited into the Navajo Nation General Fund Account.

### **History**

CO-82-98, October 20, 1998.

### **§ 1507. Construction**

This Chapter shall be liberally construed to carry out its purpose. The effectiveness and enforceability of this Chapter shall not be dependent upon the adoption of any regulations unless otherwise required by law. Nothing contained in this Chapter or regulations promulgated hereunder shall be construed to diminish, limit or otherwise adversely affect any right or remedy held or available to the Navajo Nation.

### **History**

CO-82-98, October 20, 1998.

### **§ 1508. Compliance with other Laws and Regulations**

Compliance with this Chapter and regulations promulgated hereunder does not relieve a person of the obligation to comply with other applicable laws and regulations.

### **History**

CO-82-98, October 20, 1998.

### **§ 1509. Severability**

If any provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter and the application of such provision to other persons or circumstances shall remain unaffected.

### **History**

CO-82-98, October 20, 1998.

## **Subchapter 2. Prohibited Acts**

### **§ 1521. Prohibited Acts**

A. It shall be unlawful for any person:

1. To install an underground storage tank (or tank system) unless:

a. It is designed to prevent releases due to corrosion or structural failure for the operational life of the tank;

b. It is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with noncorrosive material or designed in a manner to prevent the release of a regulated substance;



- c. It is equipped with spill and overfill prevention devices;
- d. It is correctly installed in accordance with manufacture specifications and appropriate technical industry standards;
- e. The material used in the construction or lining of the tank is compatible with the substance to be stored; and
- f. The tank (or operation thereof) complies with all standards required by this Chapter and regulations promulgated hereunder.

2. To fail to remove (or upgrade) an underground storage tank that does not comply with this Chapter and in accordance with the removal requirements of this Chapter and regulations promulgated hereunder.

3. To fail to take corrective action for any leaking underground storage tank as required by this Chapter and in accordance with the requirements of this Chapter and regulations promulgated hereunder.

4. To fail to maintain adequate financial responsibility assurances as required by this Chapter and regulations promulgated hereunder.

5. To fail to comply with the notification, reporting, and recordkeeping requirements of this Chapter or regulations promulgated hereunder.

6. To violate any duty to allow an inspection, entry or monitoring activities.

7. To fail to inspect or monitor an underground storage tank or tank system as required by this Chapter or regulations promulgated hereunder.

8. To violate any provision, requirement, prohibition, or duty under this Chapter or regulations promulgated hereunder.

B. It shall be unlawful for any person to:

1. Falsify documents or otherwise provide false information to the Director;

2. Divulge confidential information as prohibited by § 1546 of this Chapter.

3. Fail to notify the Navajo UST Program of the release of a regulated substance as required by this Chapter.

C. It shall be unlawful for any person:

1. To place (effective January 1, 1999) a regulated substance into an underground storage tank where the owner or operator is not in compliance with all the requirements of this Chapter or regulations promulgated hereunder.

2. To place a regulated substance into an underground storage tank where any tariff or fees imposed under this Chapter or regulations promulgated hereunder, including related interest or penalties have not been paid when due.

#### **History**

CO-82-98, October 20, 1998.

#### **United States Code**

Release detection, prevention, and correction regulations, regulation of underground storage tanks, see 42 U.S.C. § 6991b.

### **Subchapter 3. Notification Requirements**

#### **United States Code**

Notification, regulation of underground storage tanks, see 42 U.S.C. § 6991a.

#### **§ 1531. Existing Tanks**

Within 90 days from the effective date of this Chapter, each owner or operator of an underground storage tank shall notify the Navajo UST Program, on a form to be provided by the Director, of the existence of such tank, specifying the:

1. Age,
2. Size,
3. Type,
4. Location,
5. Uses of such tank, and
6. The type of release detection system and the extent of any known soil or ground water contamination,
7. The material out of which the tank was constructed,
8. Factory tank design specifications,
9. Tank system schematic, and
10. Other pertinent information as may be determined by the Director.

#### **History**

CO-82-98, October 20, 1998.

### **§ 1532. Tanks Taken out of Operation**

The owner or operator of an underground storage tank taken out of operation after January 1, 1974, but not removed from the ground, shall notify the Navajo UST Program, on a form to be provided by the Director, of the existence of such tank, within 90 days from the effective date of this Chapter, specifying the:

1. Date the tank was taken out of operation,
2. Age of the tank taken out of operation,
3. Size,
4. Type,
5. Location,
6. Type and quantity of substance stored in the such tank immediately before it was taken out of operation,
7. Factory tank design specifications,
8. Tank system schematic, and
9. Other pertinent information as may be determined by the Director.

#### **History**

CO-82-98, October 20, 1998.

### **§ 1533. Tanks Taken out of Operations before January 1, 1974**

The notice requirements of §§ 1531 and 1532 of this Subchapter do not apply to an owner of an underground storage tank taken out of operation on or before January 1, 1974; provided, however, that the owner or operator of said tanks (taken out of operation prior to January 1, 1974) shall notify (within six months of the effective date of this Chapter) the Navajo UST Program of the existence and location of such tanks and other information (if available) as may be required by the Director.

#### **History**

CO-82-98, October 20, 1998.

**Note.** Slightly reworded for clarity.

### **§ 1534. Tanks Removed from a Facility**

The notice requirements of §§ 1531 and 1532 of this Subchapter do not apply to the owner of an underground storage tank which has been removed from the ground between January 1, 1974 and November 8, 1984, but the Director may

require the owner of an underground storage tank removed from the ground after November 8, 1984 to notify the Navajo UST program of the age, location, uses of the tank and the date of its removal.

**History**

CO-82-98, October 20, 1998.

**Note.** Slightly reworded for clarity.

**§ 1535. New Tanks**

An owner or operator who brings an underground storage tank into operation after the effective date of this Chapter shall meet the notice requirements provided for in § 1531 of this Subchapter within 30 days.

**History**

CO-82-98, October 20, 1998.

**§ 1536. Notification By Depositors**

After the effective date of this Chapter and for 12 months thereafter, any person who deposits regulated substances in an underground storage tank shall notify the owner or operator of the tank of the notification requirements of this Subchapter.

**History**

CO-82-98, October 20, 1998.

**§ 1537. Notification By Sellers**

Any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of the owner's notification requirements under § 1535 of this Subchapter.

**History**

CO-82-98, October 20, 1998.

**Note.** Slightly reworded for clarity.

**§ 1538. Notification Requirements for Tanks Taken Out of Operation or Abandoned Prior to January 1, 1974**

Any person who discovers the existence of a tank taken out of operation prior to January 1, 1974 shall notify the Navajo UST Program of the existence of such tank. This requirement shall become effective upon the effective date of this Chapter.

**History**

CO-82-98, October 20, 1998.

### **§ 1539. Inventory**

The Director shall prepare and maintain an inventory of all underground storage tanks within the Navajo Nation. The inventory shall be based on the information collected pursuant to the notification requirements under this Subchapter.

#### **History**

CO-82-98, October 20, 1998.

### **§ 1540. Upgrades, Replacement Tanks and Tanks Which Change Use**

An owner or operator shall notify the Navajo UST Program, within 30 days, of any upgrade, underground storage tank replacement (providing the information required in § 1531) or any change in the use of an underground storage tank.

#### **History**

CO-82-98, October 20, 1998.

## **Subchapter 4. Release, Detection, Prevention, Reporting and Corrective Action Regulations and Other Requirements**

### **United States Code**

Release detection, prevention, and correction regulations, regulation of underground storage tanks, see 42 U.S.C. § 6991b.

### **§ 1541. Release, Detection, Prevention, Reporting, Closure and Corrective Action Regulations**

A. The Director, after notice and opportunity for public comment as provided for in this Chapter shall promulgate release detection, prevention, reporting, closure, and corrective action regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment. The regulations adopted pursuant to this Section shall be no less stringent than that required by federal law.

B. In promulgating regulations under this Section, the Director may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the Director may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, proximity to drinking water, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

C. The regulations promulgated pursuant to this Section shall include, but need not be limited to, the following requirements respecting all

underground storage tanks:

1. Requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;
2. Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;
3. Requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;
4. Requirements for performing an environmental assessment (EA) ;
5. Requirements for taking corrective action in response to a release from an underground storage tank;
6. Requirements for the closure of tanks to prevent future releases of regulated substances into the environment; and
7. Requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden or gradual accidental releases arising from operating an underground storage tank;
8. Requirements for submitting health and safety plans and management plans as may be necessary to protect the public health and safety and the environment.

#### **History**

CO-82-98, October 20, 1998.

#### **§ 1542. Interim Underground Storage Tank Requirements**

Until the Director promulgates regulations authorized under § 1541 of this Chapter, the owner and operator of any underground storage tank shall comply with all applicable underground storage tank requirements of 42 U.S.C. § 6991 et seq. and federal regulations promulgated thereunder. In addition, the owner and operator of any underground storage tank shall comply with the following criteria:

A. Permanent closure of all underground storage tanks and product lines shall be accomplished by the removal and proper disposal of the tanks and product lines except that removal of an underground storage tank may not be required where said removal would result in the unnecessary destruction of a building/ structure or harm to potential cultural resources.

B. The owner and/or operator shall hire an independent third party certified consultant to perform removals, installations, upgrades, or remedial activity and shall provide proof of qualifications to NNEPA upon

request. Qualifications shall include state certification of installation training (if applicable), field oversight by a qualified professional (Professional registered engineer or professional geologist or related science), reference list of similar projects completed, proof of liability insurance, proof of adherence to QA/QC protocol, proof of appropriate health and safety training, and proof of training and experience in tank removals (if applicable).

C. Upon hiring a UST consultant, the owner and/or operator shall direct a letter to the NNEPA authorizing under what circumstances the consultant may speak directly to the regulatory agencies on behalf of the owner.

D. Prior to any activity for which the ground surface will be excavated or drilled, the owner or operator or his/her authorized representative shall notify the Navajo Nation Historic Preservation Department to obtain a clearance if required to excavate or drill and provide proof of such clearance to the NNEPA.

E. The owner and/or operator shall make arrangements in advance of the planned activity to obtain clean fill material from a permitted facility if said fill material is taken from Navajo lands.

F. The owner and/or operator shall, in consultation with the consultant, provide a site-specific health and safety plan to the regulatory agencies prior to the planned activity, and shall conduct a health and safety meeting each day prior to commencing activity at the site.

G. The consultant shall contact the NNEPA to arrange for a date to conduct all installation and removal activity, and shall notify the NNEPA in writing of the arranged-for date at least 30 days prior to the commencement of the activity.

H. Until such time as Navajo Nation clean-up standards and written guidelines are promulgated, the consultant shall determine, in advance of the activity, the possible alternatives for disposal and/or treatment of any contaminated soil and/or ground water and shall discuss these alternatives with the NNEPA prior to commencing activity. In the event of the discovery of a release, the consultant shall select the alternative treatment plan and present it in a Corrective Action Plan.

I. Contaminated soil may be temporarily stockpiled on-site only if permission is granted by the leasing agency of the Navajo Nation and the BIA or another agency as appropriate. The NNEPA shall review the plans and monitor the construction of the stockpile. The life span of the temporary stockpile shall be decided on a site-by-site basis by the appropriate oversight agencies.

J. The NNEPA UST Program shall not use risk assessment analysis as the only tool except in limited site specific corrective actions where it is convincingly proven and agreed upon by the Director that there is no other reasonable alternative.

K. The NNEPA can make policy decisions related to protection of the environment, but cannot make land use decisions. For instance, the technical oversight of land farms shall be done by NNEPA, but the land use decisions must be made by the proper agencies.

L. For purposes of these interim regulations, the NNEPA will act as a second responder only. As stated in § 1541(C)(3), regulations will be developed which designate the requirements for reporting of releases and corrective action. In the interim, all releases which impact the immediate health and safety of the Navajo people shall be reported to the Department of Emergency Management. Secondly, if any one release from an underground storage tank is greater than 25 gallons, that release shall be reported to the NNEPA and the U.S. EPA within 24 hours as stated in the federal regulations.

M. NNEPA shall operate independently from the Division of Economic Development and other tribal departments and shall enforce against all entities equally. The NNEPA shall not review ESA's, land use documents, contractor bids, purchase requisitions, or other documents which are part of the property transfer process or for which review poses a conflict of interest, unless the review is necessary in order to determine liability for a release or as a follow up on a reported release. Should the Division of Economic Development or another department, or the Bureau of Indian Affairs need assistance in reviewing an ESA or other document, the NNEPA may do so only as a third party on technical matters.

N. The owner and/or operator shall immediately clean up a release of a regulated substance in accordance with applicable laws and regulations.

#### **History**

CO-82-98, October 20, 1998.

**Note.** Subsections originally numbered were lettered to conform with codification forms.

#### **§ 1543. Financial Responsibility Requirements**

A. Financial responsibility required by this Subsection may be established in accordance with regulations promulgated by the Director by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Director. In promulgating requirements under this Subsection, the Director is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this Subchapter.

B. In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in tribal court or the Federal Courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial



responsibility must be provided under this Subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this Paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.

C. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Section. Nothing in this Subsection shall be construed to limit any other tribal or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this Subsection shall be construed to diminish the liability of any person under the Comprehensive Environmental Response Compensation and Liability Act of 1980, P.L. 96-510, 94 Stat. 2769; 42 U.S.C. § 9607 or § 9611 or other applicable law.

D. The Director, in promulgating financial responsibility regulations under this Section,

1. May establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of not less than one million dollars (\$1,000,000) for 1 to 100 petroleum USTs or with an annual aggregate of not less than two million dollars (\$2,000,000) for 101 or more petroleum USTs;

2. May set amounts lower than the amounts required by Subparagraph 1. of this Paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

3. In establishing classes and categories for purposes of this Paragraph, the Director may consider the following factors:

- a. The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

- b. The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

- c. The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

- d. The availability of methods of financial responsibility in amounts greater than the amount established by this Paragraph.

e. Such other factors as the Director deems pertinent.

#### **History**

CO-82-98, October 20, 1998.

#### **§ 1544. Reporting Releases of a Regulated Substance Requirements**

A. The operator and owner of an underground storage tank shall notify the Navajo UST Program of each release or suspected release (of more than 25 gallons) of petroleum and any release of hazardous substance that equals or exceeds its reportable quantity under CERCLA from the tank as soon as practicable but no later than 24 hours after the release or suspected release is detected. For releases of 25 gallons or less of petroleum and any release of a hazardous substance that is less than its reportable quantity, the owner or operator shall immediately clean up the spill or overflow, maintain records of each release for a period of five years and shall report to Navajo EPA any cumulative releases of more than 25 gallons of petroleum or home heating oil during a five year period.

B. The operator of an underground storage tank shall notify the owner of each release from the tank as soon as practicable but no later than 24 hours after the release is detected.

C. Notice by the operator and owner required by this Section may be made orally or in writing but shall be followed within 14 days by a written report to the Navajo UST Program that a release or suspected release has been detected. The written report shall specify to the extent known at the time of the report the nature of the release or suspected release, the regulated substance released, the quantity of the release, the period of time over which the release occurred, the initial response and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report. In addition, the written report shall include additional information as may be required by the Director.

D. The Director shall prescribe by regulation the reporting, investigation and confirmation actions to be taken, in the event of a release or suspected release of a regulated substance from an underground storage tank. Any regulations adopted pursuant to this Section shall be no less stringent than that required by federal law. Until regulations adopted pursuant to this Subsection are in effect, reporting, investigation and confirmation actions shall be accomplished in a manner consistent with 40 CFR §§ 280.50 through 280.53.

#### **History**

CO-82-98, October 20, 1998.

#### **§ 1545. Right to Inspect Records, Tanks and Equipment**

A. For the purposes of developing rules, conducting studies or enforcing the provisions of this Chapter, an owner or operator of an underground storage tank shall, on request of the Director:

1. Furnish to the Navajo UST Program information, relating to the tank and its associated equipment and contents.

2. Permit the Director to have access to the site to conduct monitoring and testing of tanks or surrounding soils, air, surface water or ground water.

3. Permit the Director to inspect and copy all records relating to tanks or which indicates that a release of a regulated substance has occurred.

4. Permit the Director to inspect and obtain samples of regulated substances contained in tanks.

B. Environmental site assessments (ESA) are generated as part of a property transfer and as such are generally not reviewable by Navajo EPA. Nonetheless, Navajo EPA shall have the right to review such documents upon request to ensure compliance with this Chapter and regulations promulgated hereunder.

C. The Director shall conduct all inspections permitted pursuant to Subsection (A) at a reasonable time and complete these inspections with reasonable promptness.

#### **History**

CO-82-98, October 20, 1998.

#### **United States Code**

Inspections, monitoring, testing and corrective action, regulation of underground storage tanks, see 42 U.S.C. § 6991d.

#### **§ 1546. Confidentiality of Records**

A. Records or other information furnished to or obtained by the Director concerning regulated substances are available to the public, except that any records and information which relate to the trade secrets, processes, operations, style of work or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the confidential use of Navajo EPA in the administration of this Chapter unless the owner or operator expressly agrees in writing to their publication or availability to the public. This Section does not prohibit the appropriate governmental agency from publishing quantitative and qualitative statistics pertaining to the storage of regulated substances. Notwithstanding provisions to the contrary to this Section, information regarding the nature and quality of releases from underground storage tanks otherwise reportable pursuant to this Chapter shall be available to the public. Notwithstanding any provision of this Section, records, reports, documents or information may be disclosed to other officers, employees, or authorized representatives of the Navajo Nation or the United States government concerned with carrying out this Chapter or when relevant in any proceeding taken under Navajo or federal law.

B. Any person who knowingly and willfully divulges or discloses any information entitled to protection under this Section shall, upon conviction, be subject to a fine of not more than five thousand dollars (\$5,000) or to imprisonment not to exceed one year or both.

#### **History**

CO-82-98, October 20, 1998.

#### **United States Code**

Inspections, monitoring, testing and corrective action, regulation of underground storage tanks, see 42 U.S.C. § 6991d.

#### **§ 1547. Authority of the Director to Take Corrective Action**

A. Corrective Actions. The Director is authorized to:

1. Require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of a regulated substance when the Director determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

2. Undertake corrective actions, utilizing available funds from the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account established under § 1573 of this Chapter, with respect to any release of a regulated substance into the environment from an underground storage tank only if such action is necessary, in the judgment of the Director, to protect human health and the environment and one or more of the following situations exists:

a. No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is:

i. An owner or operator of the tank concerned,  
ii. Subject to such corrective action regulations, and  
iii. Capable of carrying out such corrective action properly.

b. A situation exists which requires prompt action by the Director to protect human health and the environment.

c. Corrective action costs at a facility exceed the amount of coverage required by the Director and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account are necessary to assure an effective corrective action.

d. The owner or operator of the tank has failed or refused to

comply with an order of the Director under this Chapter to comply with the corrective action regulations.

3. Undertake the removal of an abandoned underground storage tank when, in the judgment of the Director, said removal is necessary to protect human health, safety or the environment and sufficient funds exist in the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account established under § 1573 of this Chapter.

B. Priority for Corrective Actions. The Director shall give priority in undertaking corrective actions under this Subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of regulated substances from underground storage tanks which pose the greatest threat to human health and the environment.

C. Corrective Action Orders. The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out Subsection (A)(1) of this Section or to carry out this Chapter or regulations promulgated hereunder. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under § 1552 of this Chapter.

D. Allowable Corrective Actions. The corrective actions undertaken by the Director under Subsection (A)(1) may include temporary or permanent relocation of residents (or temporary closure of business where necessary to protect the public health) and the establishment of alternative household or public water supplies. In connection with the performance of any corrective action under Subsection (A)(1), the Director may undertake an exposure assessment. The costs of any such assessment may be treated as corrective action for purposes of Subsection (E) related to cost recovery.

E. Recovery of Costs.

1. In General. Whenever costs have been incurred by the Director for undertaking corrective action or enforcement action with respect to the release of regulated substance from an underground storage tank, the owner or operator of such tank shall be liable to the Director. The liability under this Subsection shall be construed to be the standard of strict, joint and several liability and the Director may use funds from the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account to pursue the recovery of cost.

2. Recovery. In determining the equities for seeking the recovery of costs under Subsection (A)(1), the Director may consider the amount of financial responsibility required to be maintained under this Chapter and the regulations promulgated hereunder.

3. Effect on Liability.

a. No Transfers of Liability. No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this Subsection, to any other person the liability imposed under

this Subsection. Nothing in this Subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this Section.

b. No Bar to Cause of Action. Nothing in this Subsection, including the provisions of Subsection (A) of this Subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this Section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

F. Emergency Procurement Powers. Notwithstanding any other provision of law, the Director may authorize the use of such emergency procurement powers as he or she deems necessary.

G. Facilities without Financial Responsibility, Facilities Owned by the Federal Government and Navajo Nation, Facilities not Subject to Tariffs and Facilities not in Compliance with the Tariff Requirements. At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by this Chapter or regulations promulgated hereunder for whatever reason, facilities owned by the federal government, the Navajo Nation or its entities (excluding tribal enterprises), any facility not subject to tariffs under this Chapter or any facility that has failed to pay any tariffs owed under this Chapter when due, the Director shall expend no monies from the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account to clean up releases at such facility pursuant to the provisions of Subsection (A) of this Section. At such facilities the Director shall use the authorities provided in this Chapter to order corrective action to clean up such releases. Notwithstanding the provisions of this Section, the Director may use monies from the fund to take the corrective actions authorized by Subsection (D) of this Section to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of Subsection (E)(1) of this Section and without consideration of the factors in Subsection (E)(2) of this Section. Nothing in this Section shall prevent the Director from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

#### **History**

CO-82-98, October 20, 1998.

#### **United States Code**

Inspections, monitoring, testing and corrective action, regulation of underground storage tanks, see 42 U.S.C. § 6991d.

#### **Subchapter 5. Enforcement**

#### **United States Code**

Federal enforcement, regulation of underground storage tanks, see 42 U.S.C. § 6991e.

**§ 1551. Record-keeping, Inspections, Monitoring and Entry**

A. Requirements in Orders. The Director may require, by order any owner or operator of an underground storage tank facility, or any other person who is subject to any requirement of this Chapter, to:

1. Establish and maintain records;
2. Prepare and submit reports;
3. Install, use and maintain monitoring equipment, and use such audit procedures or methods;
4. Monitor and sample emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Director shall prescribe)
5. Submit compliance certifications in accordance with Subsection (B) of this Section;
6. Conduct site characterizations and complete corrective action plans as may be required; and
7. Provide such other information as the Director may reasonably require.

B. Production of Records. To ensure compliance with this Chapter or of any regulation hereunder, the Director may request in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with such requirements.

C. Public Availability of Information. Any records, reports or information obtained under Subsections (A) or (B) of this Section shall be available to the public, subject to the confidentiality requirements under Subchapter 4.

**History**

CO-82-98, October 20, 1998.

**§ 1552. General Enforcement Authority**

A. In General. Whenever, on the basis of any information available to the Director, the Director finds that any person has violated, or is in violation of, any requirement or prohibition of this Chapter, the regulations promulgated under this Chapter, or orders issued pursuant to this Chapter, the Director may:

1. Issue and serve on such person an order requiring such person to comply with such requirement or prohibition, pursuant to the provisions of this Section;

2. Issue and serve on such person an administrative penalty order in accordance with § 1554 of this Chapter;

3. Bring a civil action in accordance with § 1553(A) of this Chapter; and/or

4. Bring a criminal action in accordance with § 1553(B) of this Chapter and/or refer any criminal enforcement action or portion of such action to the U.S. EPA Regional Administrator for the appropriate EPA region.

In addition, when a person has consistently violated any requirements or prohibitions of this Chapter, the regulations promulgated under this Chapter, or orders issued pursuant to this Chapter, or refused to comply with any such requirements or prohibitions, such person shall be prohibited from continuing to operate an underground storage tank facility within the Navajo Nation, and/or from entering into any new contracts (including leases) that would permit such person to operate an underground storage tank facility within the Navajo Nation.

B. Requirements for Orders to Comply. An order to comply issued under this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director under § 1561 of this Chapter, if such hearing is requested in writing within 30 days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. A copy of the order shall be sent to the appropriate EPA region and, if the order is issued to a corporation, to the appropriate corporate officers. No order to comply issued under this Section shall prevent the Director from assessing any penalties nor otherwise affect or limit the Director's authority to enforce under other provisions of this Chapter, nor affect any person's obligations to comply with any Section of this Chapter or with a term or condition of any permit or implementation plan promulgated or approved under this Chapter.

C. Emergency Compliance Orders. Notwithstanding any other provision of this Section, the Director (after consultation with the Attorney General where feasible) may issue a compliance order that is effective immediately where there is an imminent and substantial threat to the public health, welfare or environment. Any person issued an order that is effective immediately may file a written request within 30 days with the Director for a stay pending the outcome of any appeal taken under this Section in accordance with the procedures provided for in § 1552(B). The Director shall, by written notice, grant or deny the request for a stay within five days receipt of a request for a stay. If the Director denies the request for a stay, the affected party has 30 days to appeal the denial to the Window Rock District Court. Any person subject to an emergency compliance order may seek judicial review of a final agency determination as provided for in § 1554(D) of this Chapter.



D. Enforcement of Compliance Orders. Orders of the Director shall be enforced by the Navajo Nation Underground Storage Tank Program, the Navajo Department of Justice, Resources Enforcement and the Division of Public Safety. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to:

1. Entering upon any property or establishment believed to be violating the order and demanding compliance; and
2. Terminating part or all operations at the underground storage tank facility.

E. Injunctive Relief. Notwithstanding any other provision of this Section, the Director may seek injunctive relief pursuant to § 1553(A) to restrain immediately any person from engaging in any unauthorized activity that is endangering or is causing danger to the public health or the environment or enjoin any threatened or continuing violation of any requirements under this Chapter or regulations hereunder.

### **History**

CO-82-98, October 20, 1998.

### **§ 1553. Judicial Enforcement**

A. Civil Judicial Enforcement. The Director shall request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties in an amount of not less than five hundred dollars (\$500.00) but not to exceed twenty five thousand dollars (\$25,000) per day per violation, in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation adopted pursuant to this Chapter, or order issued pursuant to this Chapter;
2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; and
3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief, but not the assessment of penalties, unless the endangerment to the public health is caused by a violation, as specified in Subsection (1) and (2). Provided, however, that any person who fails to provide notice as required by Subchapter 3 or submits false information required under this Chapter or regulations promulgated hereunder shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each tank for which notification is not given or false information is submitted.

B. Criminal Penalties. Any person who intentionally:

1. Violates any provision, requirement or prohibition of this Chapter, including but not limited to a regulation adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter, a filing, reporting or notice requirement under this Chapter;

2. Makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, application, record, report or other document required pursuant to this Chapter; or

3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Chapter; shall, upon conviction, be punished by a fine in a maximum amount of not less than five hundred dollars (\$500.00) but not to exceed five thousand dollars (\$5,000) per day per violation or imprisonment for not more than 180 days per day per violation or both or be subject to any other penalty imposed by the court available under Navajo law. In any instance where the Navajo Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to § 1552 of this Chapter. For the purpose of this Subsection, the term "person" includes, in addition to the entities referred to in § 1502 of this Chapter, any responsible corporate officer.

C. Suits for Costs. In addition to the above proceedings, the Director is authorized to initiate proceedings, separately or in connection with either a civil, criminal or exclusion proceeding brought under this Chapter, for any damages caused to the lands or other resources of the Navajo Nation as the result of any violation of this Chapter, including for payment of costs of all associated remedial actions taken, for any expenses incurred in investigating and evaluating such damages, for any administrative costs incurred as a result of this matter and for the reasonable value of the attorney time and expenses associated with such proceedings.

D. Jurisdiction and Venue. Any action under this Subsection may be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil penalties, collect any fees or noncompliance penalties owed the Navajo Nation under this Chapter, and award any other appropriate relief.

E. Calculation of Penalties.

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this Section, § 1554 or § 1555, if the Director has notified the source in writing of the violation and a prima facie showing can be made that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice, each day of violation prior to such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during

which no violation occurred or that the violation was not continuing in nature. Notice under this Section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a civil penalty assessed under this Section, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. The court may assess penalties for noncompliance with administrative subpoenas under § 1561 of this Chapter or actions under Subchapter 2 of this Chapter where the violator does not have sufficient cause to violate or fail or refuse to comply with such subpoena or action.

3. All penalties collected pursuant to this Section shall be deposited in the UST Program Special Revenue Fund Account in the Navajo Treasury for use by the Director to finance the Underground Storage Tank Program compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

4. In lieu of or in addition to a monetary penalty, the Director may impose or may request the Attorney General to seek from the court a requirement to remediate the damage caused, perform community service, or conduct supplemental environmental projects.

F. Security. The court may, if a temporary restraining order or preliminary injunction is sought under this Section or § 1555 of this Chapter, require the filing of a bond or equivalent security.

#### **History**

CO-82-98, October 20, 1998.

#### **§ 1554. Administrative Assessment of Penalties**

A. Basis for Penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) for each tank for each day of violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation adopted pursuant to this Chapter, or order issued pursuant to this Chapter. The Director's authority under this Subsection shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a

joint determination and the method(s) used for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing Requirement. The Director shall assess an administrative penalty under this Section by an order made after opportunity for a hearing. The Director shall promulgate rules for discovery and other procedures for hearings under this Section. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within 30 days of receipt of the notice.

C. Field Citations. After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations assessing civil penalties not to exceed five thousand dollars (\$5,000) per day per facility may be issued by officers or employees designated by the Director, to the extent permissible under applicable law. Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation. If a timely request for a hearing is not made, the penalty shall be final. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Chapter if the violation continues.

D. Judicial Review. Any person subject to a civil penalty under Subsections (A) or (C) of this Section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. Within 30 days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this Section.

E. Failure to Pay Penalty. If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys fees and costs of collection proceedings. Such person shall also pay

a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be ten percent (10%) of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter of non-payment.

F. Calculation of Penalty. In determining the amount of any penalty to be assessed under this Section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 1553(E) of this Chapter.

### **History**

CO-82-98, October 20, 1998.

### **§ 1555. Citizen Suits**

A. Authority to Bring Civil Action; Jurisdiction.

1. Except as provided in Subsection (B) of this Section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his own behalf:

(a) Against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises or other similar businesses engaged in the wholesale or resale trade whether for profit or nonprofit) who is alleged to be in violation of any provision, requirement or prohibition of this Chapter, including but not limited to a regulation adopted pursuant to this Chapter, or order issued pursuant to this Chapter, or

(b) Against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who has contributed or who is contributing any activity which may present an imminent and substantial endangerment to the public health or the environment.

2. The Navajo Nation courts shall have jurisdiction to enforce such provision, requirement, prohibition, regulation, or order and to take such other action as may be necessary and to apply any appropriate civil penalties.

B. Notice.

1. An action may not be commenced under Subsection (A)(1)(a) of this Section fewer than 60 days after the plaintiff has given notice of the alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to require compliance with this Chapter, except that any person may intervene as a matter of right in such an action.

2. An action may not be commenced under Subsection (A)(1)(b) of this Section fewer than 90 days after the plaintiff has given notice of the endangerment to the Director, the Navajo Nation and the alleged

violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to restrain or abate conditions which may have contributed or are contributing to the activities which may cause or lead to the alleged endangerment, except that any person may intervene as a matter of right in such action if such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest.

C. Venue; Intervention; Service of Complaint.

1. Any action relating to a violation of any requirement of this Chapter or the regulations promulgated hereunder may be brought only in the Navajo Nation District Court in Window Rock.

2. The Director, if not already a party, may intervene as of right in any action brought under this Section.

3. Whenever any action is brought under this Section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this Section in which the Director is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and the Director may submit, on behalf of the Navajo Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

D. Award of Costs. The court, in issuing a final order in an action brought under this Section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

E. Penalty Fund. Penalties received under this Section shall be deposited in the UST Program Special Revenue Fund Account established by § 1506(C) of this Chapter for use by the Director to finance underground storage tank compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

### **History**

CO-82-98, October 20, 1998.

### **§ 1556. Administrative Hearings**

The Director shall, by regulation, establish a formal hearing review process which meets due process standards, to conduct hearings under § 1554(A) and (B) (administrative penalties), § 1554(C) (field citations) and § 1552(C) (emergency compliance orders). The Director may establish an informal review process to hear all other matters where a hearing is provided for under this

Chapter. Until the Director establishes a formal hearing review process, appoints a qualified presiding officer and certifies this in writing, the Navajo Office of Hearings and Appeals is authorized to conduct hearings under §§ 1554(A) and (B), § 1554(C) and § 1552(C); provided, however, the Director may, at his/her discretion, transfer other hearings provided for under this Chapter and regulations promulgated hereunder to the Navajo Office of Hearings and Appeals where the need arises.

### **History**

CO-82-98, October 20, 1998.

## **Subchapter 6. Rulemaking and Judicial Review**

### **§ 1561. Rulemaking and Other Administrative Procedures**

#### **A. Rulemaking.**

1. Notice of any proposed regulation shall be published in a newspaper of general circulation for the Navajo Nation. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least 30 calendar days; allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally their views, in the Navajo or English languages, data or arguments; and shall keep the docket open for 20 calendar days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

2. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

#### **B. Administrative Subpoenas.**

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Chapter, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Upon a showing satisfactory to the Director by the owner or operator of a source that it would divulge trade secrets or secret processes to make public such papers, books, documents or information or any portion thereof, the Director shall consider this information confidential, except that such information may be disclosed to other officers, employees or authorized representatives of the Nation concerned

with carrying out this Chapter or when relevant in any proceeding under this Chapter.

3. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation's courts. In case of contumacy or refusal to obey a subpoena, the tribal court for the district in which such person is found, resides or transacts, business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation Window Rock District Court in his or her official capacity and not in any other manner; in any such action, relief shall be limited to declaratory relief.

### **History**

CO-82-98, October 20, 1998.

### **§ 1562. Review in Navajo Nation Supreme Court**

A. Petitions for Review. A petition for review of any final action taken by the Director under this Chapter, including but not limited to promulgation of regulations and standards or issuance of orders (but not including imposition of administrative penalties under § 1554 which are subject to review under § 1554(D)), or challenge of an administrative subpoena which are subject to review under § 1561(B)(3) shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within 60 days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Chapter, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 days after such grounds arise.

B. Limitations on Review.

1. If judicial review of a final action of the Director could have been obtained under Subsection (A) of this Section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

2. With respect to any regulations promulgated under this Chapter, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director shall convene a proceeding for reconsideration of the regulation and provide the same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation, although it may be



stayed by the Director or the court for up to three months.

3. Except as otherwise expressly allowed by Navajo law, no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Chapter. In reviewing alleged procedural errors, the court may invalidate the regulation only if the errors were so serious and related to matters of such central relevance to the regulation that there is a substantial likelihood that the regulation would have been significantly changed if such errors had not been made.

C. Standards for Review. In reviewing any final action of the Director undertaken pursuant to this Chapter, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
2. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;
3. Without observance of procedure required by law; or
4. Unsupported by substantial evidence.

D. Challenge to Provisions. Any challenge to the lawfulness of any provision of this Chapter must be filed in accordance with Navajo law within 90 calendar days after the date of enactment of this Chapter in the District Court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Any challenge to regulations promulgated under this Chapter must be filed within 90 calendar days of their adoption. In any such action, relief shall be limited to declaratory relief. The District Court for the District of Window Rock shall have exclusive Jurisdiction and venue over any action challenging any provision of this Chapter.

#### **History**

CO-82-98, October 20, 1998.

### **Subchapter 7. Funding**

#### **§ 1571. Annual Tank Fees**

Each owner and/or operator of an underground storage tank which is subject to regulations under this Chapter shall pay annually to Navajo EPA a fee of one hundred twenty five dollars (\$125.00) for each tank. The fees collected shall be transmitted to the Controller for deposit into the UST Program Special Revenue Fund Account established by § 1506(C) of this Chapter.

#### **History**

CO-82-98, October 20, 1998.

#### **§ 1572. Underground Storage Tank Tariff**

A. Effective January 1, 1998, there is imposed and the Director shall collect a tariff from the owner who is primarily responsible for submitting payment or operator (to be collected on an annual basis except as provided below for distributors) on the operation of underground storage tanks regulated under this Chapter measured by the quantity of regulated substances placed in a tank in any calendar year; provided, however, that the distributor of motor vehicle fuel, diesel fuel and aviation fuel shall be responsible and liable for submitting the tariff (on a monthly basis) to Navajo EPA where the owner or operator is not engaged in the bulk distribution of such fuels. In the event the distributor fails to submit the tariff, the owner and operator shall also remain jointly and severally liable for said tariff. The tariff shall be levied at the rate of one cent per gallon of regulated substance. In addition to providing monthly tariff payments, the distributor shall provide to Navajo EPA a monthly summary report on forms prescribed by the Director as well as an annual reconciliation report verifying payment of all tariffs owned.

B. For proper administration of this Section, and to prevent the evasion of the tariff imposed by this Chapter, it shall be presumed until the contrary is established by competent proof under rules and procedures adopted by the Director, that all regulated substances which are motor vehicle fuel, aviation fuel and diesel and which are refined, manufactured, produced, compounded or blended within the Navajo Nation, or imported into the Navajo Nation will be placed in an underground storage tank from which the fuel is dispensed to users who consume the fuel and do not further distribute it.

C. The tariff imposed by this Chapter does not apply to underground storage tanks operated by the United States or the Navajo Nation, its agencies (including Navajo Nation chapters not engaged in the wholesale or resale trade, whether for profit or not of motor fuel, aviation fuel or diesel fuel) or to underground storage tanks used for the purpose of storing, handling or distributing naphtha-type jet fuel or kerosene-type jet fuel. The tariff does, however, apply to Navajo Nation enterprises and other Navajo Nation business entities who are engaged in the wholesale or resale trade, whether for profit or not, of motor vehicle fuel, aviation fuel or diesel fuel. The Director shall issue, within 30 days of a request, an exemption certificate to those owners or operators of underground storage tanks exempted from the tariff requirements under the provision which shall be used for verifications of the tariff exemption.

D. The Director shall adopt and specify the forms of the return.

E. Subchapter 6 shall not apply to the temporary rules adopted pursuant to this Section. The temporary rules shall be effective for a period of 180 days from the date of adoption. The temporary rules may be renewed twice in the same manner as they were adopted, may be amended at the time or times they are renewed, and shall be effective for a period of 180 days from the date the renewed temporary rules are adopted

F. The permanent rules adopted pursuant to this Section shall be adopted as provided in Subchapter 6.

G. Return and payment of tariff; due date.

1. The tariff levied under this Section is due and payable annually on or before March 31 for the preceding calendar year and is delinquent if not postmarked on or before that date or if not received by Navajo EPA on or before March 31 for tariff payers electing to file in person.

2. At the time the tariff is paid the tariff payer shall prepare and file with the tariff a return, on a form prescribed by the Director, showing the amount of tariff for which he is liable for the period covered by the return. The return shall contain either a sworn statement or a certification, under penalty of perjury, that the information contained in the return is true, complete and correct according to the best belief and knowledge of the owner or operator filing the report.

H. Extensions; abatement. The Director, for good cause, may extend the time for filing any return required by this Chapter and may grant such reasonable additional time within which to make the return as he deems proper if at least ninety percent (90%) of the tariff liability is paid when the extension is requested.

I. Audits. The Director may require a person who is required to pay the tariff under this Section to appear, at reasonable times and on reasonable notice, at the Director's office and produce such records and information as are specified in the notice to determine compliance with this Section. The Director shall audit the records of a sufficient number of tariff payers under this Section to ensure general compliance with this Section.

J. Interest; penalty; lien.

1. If the tariff, or any portion of the tariff, is not paid on or before the date prescribed for its payment, interest shall be imposed on any unpaid amount of tariff from the date the payment was due, without regard to any extension of time or stay of payment, to the date payment is received. The rate shall be equal to the IRS rate.

2. If a tariff payer fails to file a return as required under this Section on or before the due date as extended by the Director, unless the failure is due to reasonable cause and not due to willful neglect, a penalty of five percent (5%) of the tariff found to be remaining due shall be added to the tariff for each month or fraction of a month elapsing between the due date of the return and the date on which it is filed. The total penalty shall not exceed twenty-five percent (25%) of the tariff remaining due. The penalty so added to the tariff is due and payable on notice and demand by the Director.

3. If any tariff, interest or penalty imposed by this Section is not paid when due, the unpaid amounts are a lien from the date the amounts became due on all real and personal property and rights to property belonging to the tariff payer. The lien may be perfected by recording a notice of lien in the county in which the property is located, the Navajo Division of Economic Development, the Navajo Land Department or the Bureau of Indian Affairs where appropriate. The notice shall specify the nature of the tariff, the amount of tariff, interest and penalty due, the tariff period for which the amounts are due and the name and last known address of the tariff payer who is liable for the

amounts. In addition, it shall be unlawful for the owner, operator or distributor to place a regulated substance into an underground storage tank where said tariff, interest or penalty imposed has not been paid when due.

K. Remission and disposition of revenues. The Director shall promptly transmit to the Controller all monies collected under this Section. The Controller shall credit these payments to the UST Program Special Revenue Fund Account and the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account as follows:

1. Eighty percent (80%) of the net revenues shall be credited to the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account. Any amount accumulated in excess of three million dollars (\$3,000,000) in said account within a single fiscal year shall be deposited in the Navajo Nation General Fund Account. After five years from the effective date of this Chapter, any amount accumulated in excess of one million dollars (\$1,000,000) within a single fiscal year shall be deposited into the Navajo Nation General Fund Account.

2. Twenty percent (20%) of the net revenues shall be deposited into the UST Program Special Revenue Fund Account for program implementation. Effective upon the date of this Chapter, any amount accumulated in excess of two hundred fifty thousand dollars (\$250,000) within a single fiscal year shall be deposited in the Navajo Nation General Fund Account.

L. Appeals. Any Appeals taken under this Section shall be taken in the same manner as appeals taken under § 1554 (administrative penalties) of this Chapter.

#### **History**

CO-82-98, October 20, 1998.

#### **§ 1573. Navajo Leaking Underground Storage Tank Revolving Trust Fund Account**

There is hereby established a Navajo Leaking Underground Storage Tank Revolving Trust Fund Account to be utilized by the Director at his/her discretion, but pursuant to an approved budget, to carry out corrective actions required under this Chapter, regulations promulgated hereunder and to remove abandoned tanks and clean up such sites. Monies shall be deposited into this trust fund from any tariffs authorized by this Chapter, appropriations authorized by the Navajo Nation Council, available state, federal or other grants, corrective action reimbursement cost, or donations. For a period of five years upon the effective date of this Chapter, the Navajo Nation Council hereby authorizes a set aside of one-half of all business site lease revenues (but, not to exceed two million dollars (\$2,000,000) within a single fiscal year) to be used for corrective actions, removal of abandoned underground storage tanks and clean ups associated with such removal. The monies collected from this set aside shall be transmitted by the Controller into the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account to be used by the Director to carry out the intent of this Section.

#### **History**

CO-82-98, October 20, 1998.

**§ 1574. Tank Removal, Installation and Clean-Up Monitoring Fees**

Each owner of an underground storage tank shall pay per tank to Navajo EPA a tank removal and installation field monitoring fee of one hundred fifty dollars (\$150.00) per day for each removal or installation. In the event that remediation is required, each owner of an underground storage tank shall pay an additional one hundred fifty dollars (\$150.00) field monitoring fee for each site per day. The fees collected shall be transmitted to the Controller for deposit into the UST Program Special Revenue Fund Account established by § 1506(C) of this Chapter.

**History**

CO-82-98, October 20, 1998.

**§ 1575. Registration Fee**

Notwithstanding the definition of owner under § 1502, all owners and/or operators required to provide notice under Subchapter 3 shall pay to Navajo EPA a one-time registration fee of fifty dollars (\$50.00) for each tank. The fees collected shall be transmitted to the Controller for deposit into the UST Program Special Revenue Fund Account established by Section 1506(C) of this Chapter.

**History**

CO-82-98, October 20, 1998.

**Chapter 17. Navajo Nation Comprehensive Environmental Response,  
Compensation and Liability Act**

**Subchapter 1. General Provisions**

**§ 2101. Title**

This Act may be cited as the Navajo Nation CERCLA.

**History**

CF-07-08, February 26, 2008.

**§ 2102. Declaration of policy**

**A. Legislative Findings and Purposes**

1. The Navajo Nation Council finds and declares that contamination from hazardous substances, pollutants and contaminants exists with varying degrees of severity within the Navajo Nation. Releases or

threatened releases of these hazardous substances, pollutants and contaminants can endanger the public health and the safety of its residents, by causing physical discomfort, disability, and injury; can cause injury to property and property values; can discourage recreational uses of the Nation's resources; and can discourage economic development, including by halting and hindering economic use and re-use of contaminated or affected business and industrial areas within the Nation.

2. The Navajo Nation Council, by enacting the Navajo Nation CERCLA, is creating a coordinated program to control present and future contamination by hazardous substances, pollutants and contaminants. This Act provides for the regulation, assessment, containment, removal, and monitoring of hazardous substances, pollutants and contaminants on sites in the Navajo Nation; ensures the health, safety and general welfare of all the residents of the Nation; and protects plants and animal life, property values, and cultural resources of the Navajo Nation. The Council further is placing primary responsibility for the regulation and abatement of hazardous substances, pollutants or contaminants in the Navajo Nation Environmental Protection Agency.

#### B. Modular Implementation of the Navajo Nation CERCLA

The Navajo Nation is committed to providing a program for response to releases and threatened releases of hazardous substances, pollutants and contaminants. However, it is discretionary with the Nation as to whether and which provisions of this Act to implement and in what order, based on the Nation's needs and available resources. The Director shall determine the order and timing for implementation of the authorities provided for in this Act. The Director shall not be required to implement any of the provisions described in this Act by any particular time.

#### C. Preservation of Rights

It is the purpose of this Act to provide additional and cumulative remedies to those existing under common or statutory law to prevent, abate, remove, remediate, and monitor releases and threatened releases of hazardous substances, pollutants and contaminants in the Navajo Nation. Nothing contained in this Act shall be construed to abridge or alter rights of action or remedies in equity under common law or statutory law, nor shall any provisions of this part or any act done by virtue thereof be construed as preventing the Nation or individuals from the exercise of their rights under the common law or statutory law to suppress nuisances or to abate pollution or contamination.

### **History**

CF-07-08, February 26, 2008.

#### **§ 2103. Purpose**

A. To assure that all persons subject to this Act have a clear, non-technical statement of the requirements of the law, this Section provides a summary of the provisions of the Act and explains the intent of the Navajo Nation in adopting the Act.

B. This Act serves substantially the same purposes as the United States Comprehensive Environmental Response, Compensation, and Liability Act, as amended, commonly known as CERCLA or the Superfund law, but this Act is intended to provide a more flexible program suited to the specific requirements of the Navajo Nation. This Act also authorizes the use of response and enforcement tools for circumstances under which the federal Superfund law would not usually be used, such as for certain petroleum releases. This added flexibility should help avoid disputes over the application of the Act to various environmental and public health threats.

C. This Act authorizes the Director of the Navajo Nation EPA to implement the authorities of this Act in a phased manner, and to coordinate activities, as appropriate, with other state, federal and tribal agencies, to assure the efficient use of available resources and minimize duplication of effort. The Act also provides the Director flexibility in conducting response actions so that the timing and extent of investigation, documentation, and response actions can be appropriate to the environmental threat and the priorities of the Navajo Nation.

D. Like the Superfund law, the Navajo Nation CERCLA places principal responsibility for conducting and paying for response actions on the parties who are legally responsible for contamination, including current and prior owners and operators of sites, and persons who arranged for hazardous substances, pollutants or contaminants to be brought to and used at a site. The Director is authorized to work with responsible parties in a cooperative manner, emphasizing voluntary cleanup where possible, and authorizing agreements and settlements with responsible parties.

E. The Act also provides for necessary enforcement authorities, including information gathering, administrative orders, cost recovery, natural resource and cultural resource damages, penalties, and civil and criminal actions, and provides the Director with discretion to decide which authorities should be applied in any given situation.

F. Persons who are responsible for releases of hazardous substances, pollutants or contaminants will be required to report certain releases to the Navajo Nation EPA and the Navajo Nation Department of Emergency Management, and to cooperate with the Navajo Nation EPA in the circumstances and in the manner prescribed, including but not limited to paying for or conducting a needed investigation or cleanup. In addition to cleanup obligations, responsible persons may be liable to the Nation for damages to Navajo natural and cultural resources.

G. This Act also imposes an obligation on other persons to cooperate with the Navajo Superfund Program's information-gathering and response actions, including providing access to Navajo Nation officials for the purpose of investigation or response actions.

H. The Act provides for public participation in such matters as the selection of response actions and provides a public forum and site information clearinghouse for the community. A Navajo Site List serves an important public information function by listing sites in the Navajo Nation that have been identified by the Director as having possible releases, or have been the

subject of screening or evaluation. The Act also contains a citizens' suit provision to aid in enforcement.

### **History**

CF-07-08, February 26, 2008.

### **§ 2104. Definitions**

For the purposes of this Act:

A. "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

B. "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

C. "Alternative water supplies" includes, but is not limited to, drinking water and household water supplies.

D. "ARAR" means those applicable or relevant and appropriate requirements of federal and tribal environmental law which the Director considers, selects or waives in determining the degree of cleanup and control of further releases which assures protection of human health and the environment.

E. "Attorney General" means the Navajo Nation Attorney General.

F. "Barrel" means forty-two United States gallons at sixty degrees Fahrenheit (60° F).

G. "Claim" means a demand in writing for a sum certain.

H. "Claimant" means any person who presents a claim for compensation under this Act.

I. "Comprehensive Environmental Response, Compensation and Liability Act," or "CERCLA," means the federal law codified at 42 U.S.C. § 9601 *et seq.*

J. "Cultural resource" means any product of human activity or any object or place given significance by human action or belief. Places that may be cultural resources include building and other structures, landforms, archaeological sites, traditional cultural properties, and districts that are eligible or potentially eligible for listing on the Navajo Nation Register of Cultural Properties or the National Register of Historic Places. Objects that may be cultural resources include artifacts and other physical remains of human activity, natural objects given significance by human action or belief, human remains and "cultural items" as defined in the Native American Graves Protection and Repatriation Act, and archaeological resources.

K. "Damages" means damages for injury to or loss of natural resources and cultural resources, as set forth in this Act.



L. "Director" means the Executive Director of the Navajo Nation Environmental Protection Agency (Navajo Nation EPA) or, where appropriate, his or her designee.

M. "Drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Navajo Nation Safe Drinking Water Act, 22 N.N.C. § 201(Q)), or as drinking water by one or more individuals.

N. "Environment" means the waters, including surface water and ground water, drinking water supply, land surface or subsurface strata, or ambient air within the Navajo Nation or under the jurisdiction of the Navajo Nation.

O. "Groundwater" means water in a saturated zone or stratum beneath the surface of land or water.

P. "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act.

Q. "Hazardous substance" means:

1. Any substance designated pursuant to § 311 of the Clean Water Act, 33 U.S.C. § 1321(b) (2) (A);

2. Any element, compound, mixture, solution, or substance designated pursuant to § 2105(B) of this Act or 42 U.S.C. § 9602;

3. Any hazardous waste having the characteristics identified under or listed pursuant to § 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6921;

4. Any toxic pollutant listed under § 307 of the Clean Water Act, 33 U.S.C. § 1317(a);

5. Any hazardous air pollutant listed under § 112 of the Clean Air Act, 42 U.S.C. § 7412; and

6. Any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to § 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606.

The term includes petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under Subparagraphs (1) through (6) of this Paragraph, and the term includes natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

R. "National contingency plan" means the plan established under § 105 of the Superfund law, 42 U.S.C. § 9605, and § 311 of the Clean Water Act, 33 U.S.C. § 1321, and published at 40 C.F.R. Part 300.

S. "Natural resources" means land, fish, wildlife, biota, air, water,

ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust for, appertaining to, or otherwise controlled by the Navajo Nation.

T. "Navajo Nation" or "Nation" means:

1. When referring to the body politic, except as the context may otherwise require, the same meaning as set forth in 1 N.N.C. § 552.

2. When referring to governmental territory, all lands and waters within the territorial boundaries of the Navajo Nation, including:

a. All lands within the exterior boundaries of the Navajo Reservation or of the Eastern Navajo Agency or within the boundaries of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments, all without regard to the nature of title thereto;

b. All lands held in trust by the United States for, or restricted by the United States, or otherwise set apart under the superintendence of the United States for the use of the Navajo Nation or benefit of the Navajo Nation, Tribe, any band of Navajo Indians or any individual Navajo Indians; and

c. All other lands over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

U. "Navajo Nation Environmental Protection Agency" or "Navajo Nation EPA" means the division of Navajo Nation government that is authorized by the Navajo Nation Council to oversee the health and well-being of the public and the Navajo Nation environment and to implement environmental laws and regulations.

V. "Navajo Nation Resource Trustee" means the Resource Trustee for the Navajo Nation, who is authorized to monitor and further any natural resource damage claims that the Navajo Nation has or may have in the future pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Oil Pollution Act (OPA), and the Clean Water Act (CWA).

W. "Navajo Nation Superfund Program" or "NSP" means the program within the Navajo Nation EPA responsible for implementing and enforcing this Act.

X. "Navajo Department of Emergency Management" or "DEM" means the department within the Division of Public Safety that is authorized by the Navajo Nation Council to respond to emergencies on the Navajo Nation.

Y. "Owner or Operator" means:

1. In the case of a site:

a. Any person owning or operating such site; and

b. In the case of any site, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment,

escheat or similar means to a unit of the Navajo Nation, District, geographic Agency, or Chapter government, any person who owned, operated, or otherwise controlled activities at such site immediately beforehand.

Such term does not include a person who, without participating in the management of a vessel or site, holds indicia of ownership primarily to protect his security interest in the vessel or site.

2. In the case of a hazardous substance, pollutant or contaminant which has been accepted for transportation by a common or contract carrier and except as provided in this Act, the term "owner or operator" shall mean such common carrier or other bona fide for hire carrier acting as an independent contractor during such transportation, and the shipper of such hazardous substance, pollutant or contaminant shall not be considered to have caused or contributed to any release during such transportation which resulted solely from circumstances or conditions beyond his control.

3. In the case of a hazardous substance, pollutant or contaminant which has been delivered by a common or contract carrier to a disposal or treatment site and except as provided in this Act, the term "owner or operator" shall not include such common or contract carrier, and such common or contract carrier shall not be considered to have caused or contributed to any release at such disposal or treatment site resulting from circumstances or conditions beyond its control.

4. The term "owner or operator" does not include a unit of Navajo Nation or Chapter government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, escheat, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. However, the exclusion provided under this Paragraph shall not apply to any government which has caused or contributed to the release or threatened release of a hazardous substance, pollutant or contaminant from the site, and such government shall be subject to the provisions of this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under § 2501 of this Act.

Z. "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, the United States, state, tribe, municipality, commission, political subdivision of a state or tribe, or any interstate or other intergovernmental body.

AA. "Permitted release" means a discharge in compliance with a permit issued by the Navajo EPA or the U.S. EPA.

BB. "Pollutant or contaminant" means any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

CC. "President" means the President of the Navajo Nation.

DD. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes:

1. Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons;

2. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

3. Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under § 170 of such Act, 42 U.S.C. § 2210, or, for the purposes of this Act or any other response action, any release of source byproduct or special nuclear material from any processing site designated under the Uranium Mill Tailings Control Act of 1978, 42 U.S.C. § 7912(a)(1) or § 7942(a); and

4. The normal application of fertilizer.

EE. "Remove" or "removal" means the cleanup or removal of released hazardous substances, pollutants or contaminants from the environment; such actions as may be necessary to take in the event of the threat of release of hazardous substances, pollutants or contaminants into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, pollutants or contaminants; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment which may otherwise result from a release or threat of release. The term includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, and temporary evacuation of threatened individuals.

FF. "Remedy" or "remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance, pollutant or contaminant into the environment, to prevent or minimize the release of hazardous substances, pollutants or contaminants so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances, pollutants or contaminants and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision

of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances, pollutants or contaminants and associated contaminated materials.

GG. "Respond" or "response" means remove, removal, remedy and remedial action; all such terms (including the terms "removal" and "remedial action") include enforcement activities related thereto.

HH. "Response action contract" means any written contract or agreement entered into by a response action contractor with the Director to provide any remedial action or any removal under this Act with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a site or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such site.

II. "Response action contractor" means:

1. Any:

a. Person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a site or vessel and who is carrying out such contract; and

b. Person, public or nonprofit private entity, conducting a field demonstration pursuant to this Act.

2. Any person who is retained or hired by a person described in Subparagraph (1) to provide any services relating to a response action.

JJ. "Service station dealer" means any person:

1. Who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles, and

2. Who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and is presented by such owner to such person for collection, accumulation, and delivery to an oil recycling facility.

KK. "Site" means:

1. Any facility, building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or

2. Any area where a hazardous substance, pollutant or contaminant has been deposited, stored, disposed of, placed, or otherwise come to be located, but does not include any consumer product in consumer use.

LL. "Transport" or "transportation" means the movement of a hazardous substance, pollutant or contaminant by any mode, including pipeline (as defined in the Federal Pipeline Safety Act), and in the case of a hazardous substance, pollutant or contaminant which has been accepted for transportation by a common or contract carrier, the term "transport" or "transportation" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance, pollutant or contaminant.

MM. "Tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

NN. "Uniform Regulations" means the Navajo Nation Environmental Protection Agency Uniform Regulations for Permit Review, Administrative Enforcement Orders, Hearings, and Rulemakings under Navajo Nation Environmental Acts.

OO. "United States Environmental Protection Agency (USEPA)" means the United States Environmental Protection Agency, its Administrator, Regional Administrator, or delegatee.

PP. "Vessel" means every type of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

QQ. The terms "disposal," "hazardous waste" and "treatment" shall have the meanings provided in § 1004 of the Solid Waste Disposal Act, 42 U.S.C. § 6903.

### **History**

CF-07-08, February 26, 2008.

**Note.** This definition section was reformatted in an alphabetic-based format rather than numeric format for purposes of codification.

### **§ 2105. Authority of the director**

A. General Authority of the Director. In order to fulfill the obligations under this Act, the Director may:

1. Conduct investigations, inspections and tests to carry out the duties of this Act according to the procedures established by this Act;

2. Hold hearings related to any aspect of or matter within the duties of the Director and, in connection therewith, compel the

attendance of witnesses and the production of records according to the procedures established under this Act;

3. Prepare and develop a comprehensive plan, or plans, for the prevention, assessment, containment, removal and remediation of contamination from hazardous substances, pollutants and contaminants in the Nation;

4. Encourage voluntary cooperation by advising and consulting with owners, operators and potentially responsible parties to achieve the purposes of this Act, including a Voluntary Response Program, as specified in § 2402 of this Act;

5. Consistent with Title 2, Navajo Nation Code, accept, receive, and administer grants, funds, or gifts from public or private agencies, including the federal government, to carry out any of the purposes of this Act, provided that all such monies shall be deposited in the Hazardous Substances Fund established by § 2701 for the use of the Navajo Superfund Program;

6. Secure necessary scientific, technical, administrative, and operational services, including laboratory facilities and technical consultants, by contract or otherwise, to carry out the purposes of this Act;

7. Compile and publish from time to time reports, data, and statistics with respect to matters studied or investigated by the Director;

8. Require assessments, sampling, and monitoring of affected or potentially affected media to discover, verify, and quantify contamination by hazardous substances, pollutants or contaminants;

9. Ensure timely public notice and adequate opportunity for public participation;

10. Ensure the best and most appropriate response for each site;

11. Perform such other activities as the Director may find necessary to implement and carry out this Act, including enforcing the provisions of this Act and taking such other action authorized by this Act as the Director deems appropriate.

#### B. Standards and Reportable Quantities

The Director may promulgate regulations, pursuant to § 2801, designating as hazardous substances, in addition to those referred to in § 2104(Q), such elements, compounds, mixtures, solutions, and substances which, when released into the environment, may present substantial danger to the public health or welfare or the environment, as well as promulgating regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to § 2201. The Director may determine that one single quantity shall be the reportable quantity for any hazardous substance, regardless of the medium into which the hazardous substance is released. The Director may adopt

hazardous substances and their reportable quantities as published in the Federal Register. Hazardous substances and their reportable quantities will be listed in the Navajo Nation Hazardous Substance Regulations, and may be revised as necessary.

#### C. Emergency procurement powers

Notwithstanding any other provision of law, the Director may authorize the use of such emergency procurement powers as he or she deems necessary to carry out the provisions of this Act. Upon determination that such procedures are necessary, the Director shall promulgate regulations prescribing the circumstances under which such authority shall be used and the procedures governing the use of such authority.

#### D. Delegation of Powers and Duties

The Director may delegate to any officer or employee of the Navajo Superfund Program or the Navajo Nation EPA such powers and duties under this Act, except the making of regulations, as the Director deems necessary or expedient.

#### E. Coordination with Other Environmental Programs

Nothing in this Act shall prevent the Director from determining that a cleanup or other action authorized under this Act may be conducted by another branch of the Navajo Nation EPA, where that other branch has concurrent jurisdiction and is prepared to conduct the action.

For the purposes of program authorization, eligibility for grants, or any other purpose identified by the Director, other Navajo Nation environmental programs may elect to use the cleanup authorities provided in this Act to meet the requirements of a cleanup or abatement law, including but not limited to corrective action, closure, and post-closure. The Director shall ensure that there is no duplication of effort or listing with respect to such sites. Any exercise of the response or order authorities of this Act by any other branch of the Navajo Nation EPA should be exercised in consultation with the Navajo Superfund Program under such protocols as the Director may deem appropriate.

### **History**

CF-07-08, February 26, 2008.

**Note.** Reference to § 2104(A)(17) at Subsection B was changed to § 2014(Q) to reflect format changes.

### **§ 2106. Applicability; relationship to other law**

#### A. Applicability

Except as otherwise provided in this Act, the provisions of this Act and any regulations promulgated hereunder shall apply to all persons and all property within the Navajo Nation.



## B. Exemptions

### 1. Voluntary Cleanup Agreement

The provisions of this Act and any regulations promulgated hereunder shall not apply to any person (or to any property owned or operated by such person) who is subject to a voluntary cleanup agreement entered into pursuant to § 2402, except under such terms and conditions as may be provided in that voluntary cleanup agreement.

### 2. Covenant Not to Regulate

The provisions of this Act and any regulations promulgated hereunder shall not apply to any person or property where, but only to the limited extent that, such application would be in breach of any covenant not to regulate or otherwise exercise jurisdiction over such person or property. Such person may, however, enter into a voluntary cleanup agreement pursuant to § 2402, in which case this Act and implementing regulations shall apply as provided in that voluntary cleanup agreement. Nothing in this Paragraph shall be construed as a determination or admission by the Navajo Nation that any covenant not to regulate or otherwise exercise jurisdiction is valid.

## C. Relationship to Other Law

Any person who receives compensation for response costs or damages or claims pursuant to this Act shall be precluded from recovering compensation for the same response costs or damages or claims pursuant to any other tribal, state or federal law. Any person who receives compensation for removal costs or damages or claims pursuant to any other federal or state law shall be precluded from receiving compensation for the same response costs or damages or claims from the Navajo Nation as provided in this Act.

### **History**

CF-07-08, February 26, 2008.

## **§ 2107. Severability**

If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall remain unaffected.

### **History**

CF-07-08, February 26, 2008.

## **Subchapter 2. Reporting and recordkeeping**

### **§ 2201. Obligation to report releases of hazardous substances**

#### A. Notification Requirements Respecting Released Substances

Any person in charge of a site shall, as soon as he or she has knowledge of any release (other than a permitted release) of a hazardous substance from the site in quantities equal to or greater than those determined as reportable quantities under this Act or 42 U.S.C. § 9602, notify the Navajo Nation Department of Emergency Management, or their designee, within 24 hours of learning of such release. Whether a release meets or exceeds a reportable quantity shall be determined based on the amount of the hazardous substance released within a 24-hour period.

#### B. Continuous Releases

Notification need not be given more than annually for a release subject to Subsection (A) when that release is a continuous release, stable in quantity and rate, and notification has already been given for that release pursuant to Subsection (A) for a period sufficient to establish the continuity, quantity and regularity of such release. At such time as there is any statistically significant increase in the quantity of any hazardous substance or constituent thereof released above that previously reported, however, notice shall be given immediately pursuant to this Section.

#### C. Penalties for Failure to Notify; Use of Notice

Any person in charge of a site from which a hazardous substance is released, other than a permitted release, in a quantity equal to or greater than the reportable quantity established by the Director or, in the absence of action by the Director, established pursuant to 42 U.S.C. § 9602, and who fails to notify immediately the Navajo Department of Emergency Management as soon as he or she has knowledge of such release, or who submits in such a notification any information which he or she knows to be false or misleading, shall, upon conviction, be fined in accordance with § 2509(D) of this Act. Notification received pursuant to this Subsection or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

#### D. Registered Pesticide Products

This Section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, or to the handling and storage of such a pesticide product by an agricultural producer.

### **History**

CF-07-08, February 26, 2008.

## **§ 2202. Preservation of records**

### **A. Requirement to Preserve Records**

1. Beginning with the date of enactment of this statute, for 50 years thereafter or for 50 years after the date of establishment of a record required under 42 U.S.C. § 9603 (whichever is later), or at any such earlier time as a waiver is obtained under Paragraph (3) of this Subsection, the Navajo Nation EPA shall require any person required to notify the Administrator under 42 U.S.C. § 9603(c) to preserve said records. It shall be unlawful for any such person knowingly to destroy, mutilate, erase, dispose of, conceal, or otherwise render unavailable or unreadable or falsify any records.

2. Notwithstanding the provisions of this Subsection, the Director may in his or her discretion require any such person to retain any record identified pursuant to Paragraph (1) of this Subsection for such a time as the Director determines to be necessary to protect the public health or welfare.

3. At any time prior to the date which occurs 50 years after the date of establishment of a record under Paragraph (1) of this Subsection, any person identified under Paragraph (1) of this Subsection may apply to the Director for a waiver of the provisions of Paragraph (1) of this Subsection. The Director may grant such waiver if, in his or her discretion, such waiver would not unreasonably interfere with the attainment of the purposes and provisions of this Act.

### **B. Penalty for Violation**

Any person who violates this Section shall, upon conviction, be fined in accordance with applicable provisions of Navajo Nation law or imprisoned for not more than one year, or both.

### **History**

CF-07-08, February 26, 2008.

**Note.** This Section was changed to § 2202 to correct inadvertent enactment of two sections 2201.

## **Subchapter 3. Information gathering, site evaluation and response action determination**

### **§ 2301. Authorities for information gathering and access to sites**

#### **A. Actions to Obtain Information**

The Director, or any duly designated officer, employee or representative of the Director, is authorized to take action under Paragraph (B)(2), Subsection (C) or Subsection (D) (or any combination thereof) at a site,

establishment, place, property, or location or, in the case of Subsections (C) and (D), at any site, establishment, place, property, or location which is adjacent to the site, establishment, place, property, or location referred to in such Subsection (C) or (D). Any duly designated officer, employee, or representative of the Nation is also authorized to take such action. The authority of Subsections (C) and (D) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance, pollutant or contaminant, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring. The Director, or any duly designated officer, employee or representative, may undertake such investigations, monitoring, surveys, testing, and other information-gathering activities as he or she may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the Director may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he or she may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

#### B. Access to Information

##### 1. Information to be provided

Any officer, employee, or representative described in Subsection (A) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

a. The identification, nature, and quantity of materials which have been or are generated, treated, stored, transported or disposed of at a site or transported to a site or a vessel;

b. The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a site or vessel;

c. Information relating to the ability of a person to pay for and/or to perform a cleanup.

##### 2. Access

In addition, upon reasonable notice, such person either:

a. Shall grant any such officer, employee, or representative access at all reasonable times to any site, establishment, place, property, or location to inspect and copy all documents or records relating to such matters; or

b. Shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

### C. Access and Entry to the Site

Any officer, employee, or representative described in Subsection (A) is authorized to enter at reasonable times any of the following:

1. Any site, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported to or from;

2. Any site, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released;

3. Any site, establishment, or other place or property where such release is or may be threatened; and

4. Any site, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this Subchapter.

### D. Inspection and Samples

#### 1. Authority

Any officer, employee or representative designated by the Director is authorized to inspect and obtain samples from any site, establishment, or other place or property of any suspected hazardous substance, pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances, pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.

#### 2. Samples

If the officer, employee, or representative obtains any samples, before leaving the premises he or she shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

### E. Protection of Confidential Information

1. Any records, reports, or information obtained from any person under this Section shall be available to the public, except that upon a showing satisfactory to the Director by any person that records, reports, or information, or any particular part thereof (other than health or safety effects data) to which the Director or any officer, employee, or representative has access under this Section would, if made public, divulge information entitled to protection under the federal Privacy Act, 18 U.S.C. § 1905, such information or particular portion thereof shall be considered confidential in accordance with the purposes of the Privacy

Act, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the Navajo Nation concerned with carrying out this Act, to officers, employees or authorized representatives of the United States concerned with carrying out CERCLA, or when relevant in any proceeding under this Act or CERCLA.

2. Any person to whom confidential information is disclosed pursuant to Paragraph (1) who knowingly and willfully divulges or discloses any information entitled to protection under this Subsection shall, upon conviction, be subject to a fine of not more than five thousand dollars (\$5,000) or to imprisonment not to exceed one year, or both.

3. In submitting data under this Act, a person required to provide such data may:

a. Designate the data which such person believes is entitled to protection under this Subsection; and

b. Submit such designated data separately from other data submitted under this Act.

A designation under this Paragraph shall be made in writing and in such manner as the Director may prescribe by regulation.

4. Notwithstanding any limitation contained in this Section or any other provision of law, all information reported to or otherwise obtained by the Director (or any representative of the Director) under this Act shall be made available to any duly authorized committee of the Navajo Nation Council, such as the Resources Committee, upon receipt of that Committee's written request.

No person required to provide information under this Act may claim that the information is entitled to protection under this Subsection unless such person shows each of the following:

a. Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under SARA Title III (1986), 42 U.S.C. § 11001 *et seq.*, an officer or employee of the Navajo Nation, United States, state, or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

b. The information is not required to be disclosed, or otherwise made available, to the public under any other tribal or federal law.

c. Disclosure of the business/industrial proprietary information is likely to cause substantial harm to the competitive position of such person.

d. The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

5. The following information with respect to any hazardous substance, pollutant or contaminant at a site or vessel shall not be entitled to protection under this Subsection and shall be available to the public:

a. The trade name, common name, or generic class or category of the hazardous substance, pollutant or contaminant.

b. The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at twenty degrees Celsius (20°C).

c. The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

d. The potential routes of human exposure to the substance at the site, establishment, place, or property being investigated, entered, or inspected under this Section.

e. The location of disposal of any waste stream.

f. Any monitoring data or analysis of monitoring data pertaining to disposal activities.

g. Any hydrogeologic or geologic data.

h. Any groundwater monitoring data.

6. To promote consistency in the handling of confidential business information among the various environmental programs administered by the Navajo Nation Environmental Protection Agency, the Director may amend or adopt regulations promulgated under other statutes for the purpose of establishing procedures for the implementation of this Subsection. Implementing regulations may include such matters as the handling by the Navajo Nation EPA of business information which is or may be entitled to confidential treatment, determinations by the Navajo EPA of whether information is entitled to confidential treatment for reasons of business confidentiality, notice to businesses and such other procedures as the Director deems appropriate. Until such time as the Director promulgates regulations to implement this Subsection, the Director is authorized to protect confidential business information using such interim procedures as the Director deems appropriate.

#### F. Compliance Order for Information and Access

In addition to any other enforcement action available under this Act, if consent is not granted regarding any request made by an officer, employee, or representative pursuant to this Section, the Director may issue an order directing compliance with the request. The order may be issued after such

notice and opportunity for a hearing as is reasonably appropriate under the circumstances. The Director may ask the Navajo Nation Attorney General to commence a civil action to compel compliance with any such request or order, pursuant to § 2509 of this Act.

#### **History**

CF-07-08, February 26, 2008.

### **§ 2302. Coordination of investigations**

#### **A. Notification to Natural Resource Trustees**

The Director shall promptly notify the appropriate tribal and federal natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this Section and shall coordinate the assessments, investigations, and planning under this Section with such tribal and federal trustees.

#### **B. Cooperative Agreements**

The Director may enter into any cooperative agreements needed to conduct adequate risk or health assessments. The Director may also contract with appropriate agencies or technical professionals to gather and/or interpret site information.

#### **History**

CF-07-08, February 26, 2008.

### **§ 2303. The Navajo Nation Contingency Plan**

#### **A. The Navajo Nation Contingency Plan**

The Director may promulgate a Navajo Nation Contingency Plan which shall contain procedures to be employed in identifying, screening, evaluating, selecting and providing response action for releases of hazardous substances, pollutants and contaminants at sites within the Navajo Nation. The Director may, from time to time, revise and republish the Navajo Nation Contingency Plan. The Navajo Nation Contingency Plan may include, but is not limited to:

1. Methods for discovering and investigating sites at which hazardous substances, pollutants or contaminants have been disposed of or otherwise come to be located;

2. Methods for evaluating, including analyses of relative cost, and responding to any releases or threats of releases from sites which pose substantial danger to the public health, welfare, or the environment;

3. Methods and criteria for determining the appropriate extent of



removal, remedy, and other measures authorized by this Act;

4. Appropriate roles and responsibilities for the federal, state, and local governments and for interstate and nongovernmental entities in effectuating the plan;

5. Provision for identification, procurement, maintenance, and storage of response equipment and supplies;

6. Means of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances, pollutants or contaminants or contaminated materials;

7. Specified roles for private organizations and entities in preparation for response and in responding to releases of hazardous substances, pollutants or contaminants, including identification of appropriate qualifications and capacity therefore and including consideration of minority firms in accordance with § 2601 of this Act; and

8. Standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this Act.

The Director shall implement the Navajo Nation Contingency Plan so that screening and evaluation of a site is commensurate with the risks presented by the site. In assessing the need for and scope of response, the Director may consider such factors as the Director determines to be appropriate, including no action criteria, site history, contaminants, pathways of contaminants, sampling history and sampling data assessment, and other available regulatory responses and oversight. To assure a more efficient use of Navajo Nation EPA resources, the Director may use a multi-media approach to screening and evaluation of sites and may refer sites to other environmental programs based upon the screening and evaluation, as appropriate.

#### B. Assessing Risks from Multiple Sources

1. The Navajo Nation Contingency Plan shall provide that during site screening and evaluation, preliminary assessment and site assessment, and response action evaluation and selection, the Director shall, as appropriate, consider the identification, assessment, management of, and response to multiple sources of risk in and around sites. The Director shall, as appropriate, examine various approaches to protect communities exposed to such sources of multiple risk, such as:

a. Health risks from the existence of and exposure to hazardous substances, pollutants or contaminants in the vicinity of a site; or

b. Health risks from releases or threatened releases of a hazardous substance, pollutant, or contaminant from adjacent sites, permitted or otherwise, in the vicinity of the site.

2. Where two or more non-contiguous sites are reasonably related on

the basis of geology, geography, hydrology, threat, or potential threat to the public health or welfare or the environment, the Director may, in his discretion, aggregate the sites and treat these related sites as one for purposes of this Act.

C. Health Assessment of Water Contamination Risks

The Navajo Nation Contingency Plan shall provide that:

1. The Director shall ensure that the human health risks associated with the potential or actual contamination (either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites) of surface water are appropriately assessed in situations where the water is, or can be, used for recreation or for consumption by humans or livestock. This assessment shall also consider the potential migration of any hazardous substance, pollutant, or contaminant through such surface water to downstream sources of drinking water.

2. For purposes of taking action under this Act, the Director shall give a high priority to sites where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.

**History**

CF-07-08, February 26, 2008.

**§ 2304. Site listing and prioritization**

A. The Navajo Nation EPA Site List

The Director shall compile and maintain a Navajo Nation EPA Site List of all the known releases or threatened releases throughout the Navajo Nation and shall revise the list no less often than annually. The Navajo Nation EPA Site List shall include sites that have already undergone screening, evaluation or response as well as sites that have been identified as having possible releases but have not yet been screened or evaluated. The Navajo Nation EPA Site List is intended to serve as an informational tool and is not intended to identify priorities for action.

B. Site Prioritization

The Director may adopt by rulemaking a process or criteria for determining priorities among releases or threatened releases throughout the Navajo Nation for the purpose of taking response action. The priorities shall be based upon, but not limited to:

1. The relative risk or danger to the public health, welfare or the environment;
2. The population at risk;

3. The hazard potential of the hazardous substances, pollutants or contaminants at such sites;
4. The potential for contamination of drinking water supplies;
5. The potential for direct human contact;
6. The potential for destruction of sensitive ecosystems;
7. The damage to natural or cultural resources;
8. The effect on the human food chain;
9. The contamination or potential contamination of the ambient air;
10. Whether the site is already listed on the National Priorities List, in which case the Director shall avoid any duplication of effort with regard to that facility; and
11. Other appropriate factors, as determined by the Director.

#### C. Hazard Ranking System

The Director may elect to assess a site pursuant to the federal Hazard Ranking System. Ranking under the federal Hazard Ranking System shall not be a prerequisite for the initiation of long-term or other response action at a site.

### **History**

CF-07-08, February 26, 2008.

### **§ 2305. Response action selection**

#### A. General Use of Removal and Remedial Actions

1. The Director is authorized to select removal or remedial actions as appropriate to the circumstances and to undertake a level of information-gathering, sampling, analysis and alternatives evaluation appropriate to the circumstances. The use of the terms removal and remedial action are not intended to limit the Director's discretion in determining the appropriate response action to be taken.

2. No further action. The Director is also authorized to determine at any time during the site screening, evaluation or response process that a site does not require any further action, if the Director determines that the site does not present risks warranting response. The Director may also suspend action if the Director determines that the site does not require response at that time.

#### B. Degree of Cleanup

1. As provided in this Section, response actions selected under

this Section or otherwise required or agreed to by the Director shall attain a degree of cleanup of hazardous substances, pollutants or contaminants released into the environment and of control of further release at a minimum which assures protection of human health and the environment. Such response actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such hazardous substance, pollutant or contaminant.

2. The Director may promulgate regulations providing the manner in which the Director shall consider any promulgated standard, requirement, criteria, or limitation under a federal or tribal environmental or siting law that is legally applicable to the hazardous substance, pollutant or contaminant concerned, or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance, pollutant or contaminant, in determining the degree of cleanup or response action to be implemented. In applying such applicable or relevant and appropriate requirements (ARARs) to removal actions, the regulations shall recognize that it may not be practicable to achieve such ARARs, taking into account the exigencies of the situation. The regulations may also specify circumstances under which the Director may waive attainment of ARARs.

3. In selecting response actions, the Director may also consider such other guidance or technical information as the Director determines is relevant to the release or threatened release.

#### C. Administrative Record

The Director shall establish an administrative record upon which the Director shall base the selection of a response action. The administrative record shall be available to the public at or near the site at issue. The Director also may place duplicates of the administrative record at any adjacent Chapter House or other location. The Director may, in his or her discretion, provide a subset of the administrative record at or near the site, or at other locations, in lieu of the full administrative record, if it would be administratively inconvenient, due to the size of the record or such other appropriate reasons as the Director determines, to place the full record at such location. If the Director provides a subset rather than the full record, the subset shall include information on the location of the full record, and shall contain documents that inform the public on the nature and extent of risk posed by the site and the response actions considered.

#### D. Public Participation Procedures

##### 1. Removal action

Regulations promulgated under this Section shall establish procedures for the appropriate participation of interested persons in the development of the administrative record on which the Director will base the selection of removal actions and on which judicial review of removal actions will be based. These regulations shall be promulgated pursuant to § 2801 and shall provide for a level of documentation and timing of public review that takes into account such factors as the need to take prompt response action.

## 2. Remedial action

The Director shall provide by regulation for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the Director will base the selection of remedial actions and on which judicial review of remedial actions will be based. These regulations shall be promulgated pursuant to § 2801 and shall include, at a minimum, requirements for each of the following:

a. Notice to potentially affected persons and to the public, by publication in a local newspaper for at least three consecutive publications, of the proposed response action, the site concerned and the parties to the response action, accompanied by a brief analysis of the plan and alternative plans that were considered;

b. A reasonable opportunity to comment and provide information regarding the plan;

c. An opportunity for a public meeting in the affected area;

d. A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations; and

e. A statement of the basis and purpose of the selected action.

The administrative record required under Subsection (C) shall include all items developed and received under this Paragraph.

### E. Interim Record

Until regulations under Subsection 505(D) are promulgated, the administrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this Act shall not include an adjudicatory hearing.

### F. Potentially Responsible Parties

The Director shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this Subsection shall be construed to be a defense to liability.

### G. Permits

No tribal permit shall be required for any portion of any response action conducted entirely onsite, where such response action is selected and carried out in compliance with this Section. For purposes of this Paragraph, onsite means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response

action.

#### H. Requirements for Remedial Actions

##### 1. Removal actions taken at long-term remedial action sites

Any removal action undertaken by the Director under this Act (or by any other person undertaking a response action under this Act) should, to the extent the Director deems practicable, contribute to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned.

##### 2. Cost-effective remedies

The Director shall select appropriate remedial actions determined to be necessary to be carried out under this Act which are in accordance with this Section and, to the extent practicable, the Navajo Nation Contingency Plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the Director shall take into account the total short-and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

##### 3. Preference for treatment

Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances, pollutants or contaminants or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The Director shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the Director shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the Director shall, at a minimum, take into account:

- a. The long-term uncertainties associated with land disposal;
- b. The goals, objectives, and requirements of the Navajo Nation Solid Waste Code, 4 N.N.C. § 101 *et seq.*;
- c. The persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances, pollutants or contaminants and their constituents;
- d. Short-and long-term potential for adverse health effects from human exposure;

e. Long-term maintenance costs;

f. The potential for future remedial action costs if the alternative remedial action in question were to fail; and

g. The potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

The Director shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the Director selects a remedial action not appropriate for a preference under this Subsection, the Director shall publish an explanation as to why such remedial action nevertheless was selected.

#### 4. Alternative remedial actions

The Director may select an alternative remedial action meeting the objectives of this Subsection whether or not such action has been achieved in practice at any other site that has similar characteristics. In making such a selection, the Director may take into account the degree of support for such remedial action by parties interested in such site.

#### 5. Periodic Review of Remedial Actions

If the Director selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the Director shall review such remedial action no less often than each five years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment of the Director that further action is appropriate at such site in accordance with this Act, the Director shall take or require such action. The Director shall report to the Navajo Nation Resources Committee a list of sites for which such review is required, the results of all such reviews, and any further actions taken as a result of such reviews.

#### 6. Notice to interested tribes, states and the USEPA

The Director shall provide notice to interested tribes, states and the US EPA and an opportunity to comment on the Director's proposed plan for remedial action as well as on alternative plans under consideration. The Director's proposed decision regarding the selection of remedial action shall be accompanied by a response to the significant comments submitted by the US EPA or interested tribes or states, including an explanation regarding any decision under this Subsection on compliance with promulgated federal, tribal, or state standards. A copy of such response shall also be provided to the Navajo Nation Resources Committee, the US EPA, and the interested tribes and states.

### **History**

#### **Subchapter 4. Response implementation and enforcement**

##### **§ 2401. General response authority**

###### A. General Response Authority of the Director

When any hazardous substance is released or there is a substantial threat of such a release into the environment, or there is a release or substantial threat of release into the environment of any pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare, the Director is authorized to act, consistent with the Navajo Nation Contingency Plan, to investigate, remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measures, consistent with the Navajo Nation Contingency Plan, that the Director deems necessary to protect the public health, welfare or the environment. The Director shall take such action when one or more of the following situations exist:

1. No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is:
  - a. An owner or operator of the site of concern, and
  - b. Capable of carrying out such corrective action properly, either financially or otherwise;
2. A situation exists which requires prompt action by the Director to protect human health and the environment; and
3. The owner or operator has failed or refused to comply with an order of the Director to comply with corrective action requirements.

The Director is authorized to take removal actions under this Section when such removal is necessary to protect human health, safety, or the environment and sufficient funds exist in the Hazardous Substances Fund.

###### B. Limitations on Response

The Director shall not provide for a response action under this Section in response to a release or threat of release:

1. Of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;
2. Into public or private drinking water supplies due to deterioration of the system through ordinary use.



Notwithstanding the limitations identified in this Subsection, and to the extent authorized by this Section, the Director may respond to any release or threat of release if, in the Director's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.

#### C. Site Coordinator

The Director may appoint a Site Coordinator, who shall perform duties as delegated by the Director, including, but not limited to:

1. Screening sites for entry into a database or inventory;
2. Making preliminary visits to sites for assessment by inspection, investigation, sampling and/or any other relevant means;
3. Communicating with and coordinating actions among Navajo and federal Divisions, Departments, Agencies, and other entities; and
4. Giving notice to the Navajo Department of Emergency Management, the National Response Center, the Arizona Department of Environmental Quality, the New Mexico Environment Department, the Utah Department of Environmental Quality and any other relevant entity upon release or suspected release of hazardous substances.

#### **History**

CF-07-08, February 26, 2008.

#### **§ 2402. Voluntary response**

##### A. Purposes and Objectives

The purposes and objectives of this Section are to increase significantly the pace of response activities at contaminated sites by promoting and encouraging the development and expansion of a voluntary response program, and to benefit the public welfare by returning contaminated sites to economically productive uses.

##### B. In General

The Director may establish by rulemaking and administer a voluntary cleanup program that—

1. Identifies the circumstances and conditions under which a site may be eligible for the voluntary cleanup program;
2. Provides adequate opportunities for public participation, including prior notice and opportunity for comment, in selecting response actions;
3. Has the capacity, through enforcement or other mechanisms, of assuming the responsibility for completing a response action if the

current owner or prospective purchaser fails or refuses to complete the necessary response, including operation and maintenance; and

4. Provides adequate oversight and enforcement authorities to ensure that voluntary response actions are completed in accordance with applicable tribal and federal laws, including applicable permit requirements and any on-going operation and maintenance requirements or long-term remedial activities.

#### C. Application

A person desiring to participate in the Voluntary Cleanup Program must submit to the Director an application containing information regarding the site in question, its proposed future development, an environmental assessment of the site, a description of the proposed cleanup plan, and an application fee, as specified in the regulations promulgated under this Section. If the Director approves the application, a corrective action plan must be prepared and approved by the Director before any work may begin.

#### D. Requirement for Authorized Actions

No person may undertake any investigation or response action under this Section unless the Director has determined that the person meets the criteria and conditions established for participation in the voluntary cleanup program and has approved the application to participate and the proposed corrective action plan.

#### E. Oversight Fees

The Director may require a person participating in the Voluntary Cleanup Program to pay an oversight fee to the NSP to reimburse the NSP for the costs of monitoring the cleanup. The Director shall set the amount of the oversight fee by regulation.

#### F. Certification of Completion

After remediating the site in question, the person undertaking the voluntary cleanup must prepare a completion report for review by the Director and, if the approved corrective action plan has been completed, the Director will issue a certificate of completion certifying that the requirements of the plan have been implemented, the applicable cleanup standards have been met, and the person is released from any further liability under Navajo law for cleanup of the site and for any contamination identified in the environmental assessment submitted with the application. In addition, persons who conduct voluntary cleanups pursuant to an agreement entered into under this Section are eligible for covenants under § 2504(C) of this Act under the same terms and conditions as any party to an agreement under § 2504 of this Act.

### **History**

CF-07-08, February 26, 2008.

**§ 2403. Administrative and civil actions for imminent and substantial**

## **endangerment**

### A. Injunctive Relief

Notwithstanding any permit granted pursuant to the Navajo Nation Code, upon receipt of evidence that a release of a hazardous substance, pollutant or contaminant or a threat of release is presenting an imminent and substantial endangerment to the public health or welfare or the environment, the Director may request that the Attorney General bring suit on behalf of the Nation to immediately restrain, pursuant to this Act, any person causing or contributing to such endangerment to cease such releases, or the Director may take such other action as may be necessary, including but not limited to issuing administrative orders as provided in this Section.

### B. Administrative Orders

In addition to any other action taken by any other person or agency, when the Director determines that there may be an imminent and substantial endangerment to the public health, welfare or the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant from a site, the Director may issue such orders as may be necessary to protect public health, welfare and the environment, pursuant to the procedures set forth in the Uniform Regulations.

### C. Continuing Jurisdiction

Notwithstanding any interim or stabilization measures undertaken by a responsible party or any other person, the Director's authority to require response action under this Section shall continue until the necessary response actions are completed.

### D. Coordination with Other Agencies

Consistent with the Director's general ability to coordinate activities conducted under this Act with other federal, state and tribal agencies, the Director shall provide appropriate coordination of any emergency response actions conducted under this Section with the Navajo Department of Emergency Management.

### E. Reimbursement

Persons who satisfy the requirements of this Section are eligible for reimbursement of response costs:

1. Any person who receives and fully complies with all of the terms of any order issued under Subsection (B) of this Section may, within 60 days after completion of all required action, petition the Director for reimbursement from the Hazardous Substances Fund for the reasonable costs of such action, plus interest. Any interest payable under this Paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for response costs under 42 U.S.C. § 9607.

2. If the Director refuses to grant all or part of a petition made under this Subsection, the petitioner may within 30 days of receipt of

such refusal file an action against the Director in Navajo Nation Court seeking reimbursement from the Hazardous Substances Fund.

3. Except as provided in Paragraph (4), to obtain reimbursement the petitioner shall establish by a preponderance of the evidence that petitioner is not liable for response costs under § 2501(A) of this Act, and that costs for which petitioner seeks reimbursement are reasonable in light of the action required by the relevant order.

4. A petitioner who is unable to establish a lack of liability pursuant to Paragraph (3) may recover reasonable costs of response to the extent that petitioner can demonstrate, on the administrative record, that the Director's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this Subsection shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

Reimbursement is limited by the amounts available in the Hazardous Substances Fund.

#### **History**

CF-07-08, February 26, 2008.

### **Subchapter 5. Liability, Enforcement and Settlement**

#### **§ 2501. Liable persons and standard of liability**

##### **A. Liable Persons**

Notwithstanding any other provisions or rule of law, and subject only to the defenses and limitations set forth in § 2502 of this Act, the following persons shall be liable for the costs and damages described in § 2503 and for compliance with administrative and judicial orders issued pursuant to § 2403:

1. The owner or operator of a site or vessel that is involved in a release or threatened release of any hazardous substance, pollutant, or contaminant;

2. Any person who at the time of disposal of any hazardous substance, pollutant or contaminant owned or operated any site at which such hazardous substance, pollutant or contaminant was disposed of;

3. Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances, pollutants or contaminants owned or possessed by such person or by any other party or entity, at any site or incineration vessel owned or operated by another party or entity and containing such hazardous substances, pollutants or contaminants; and

4. Any person who accepts or accepted any hazardous substance, pollutant or contaminant for transport to disposal or treatment facilities, or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, pollutant or contaminant.

#### B. Standard of Liability

Persons liable under this act shall be strictly liable. Liability shall be joint and several.

#### C. Indemnification

1. No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any site or vessel or from any person who may be liable for a release or threat of release under this Section to any other person the liability imposed pursuant to this Section. Nothing in this Subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this Section.

2. Nothing in this Act, including the provisions of Paragraph (1) of this Subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this Section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

#### D. Impacts from Federal Sites

The Director may request the USEPA Regional Administrator to enforce provisions of federal law against federal sites releasing or threatening to release any hazardous substance, pollutant or contaminant within the Navajo Nation. In addition, the Director may apply requirements concerning removal and remedial actions under this Act to federal sites that are not included on the National Priorities List, provided that such requirements are not more stringent than requirements applicable to non-federal sites.

### **History**

CF-07-08, February 26, 2008.

### **§ 2502. Defenses to liability and limitations on liability**

#### A. Defenses to Liability

There shall be no liability under § 2501(A) of this Act for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance, pollutant or contaminant and the damages resulting therefrom were caused solely by:

1. An act of God;

2. An act of war;

3. An act or omission of a third party other than an employee or agent of the defendant or one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published fee and acceptance for transport by a common carrier by rail);

4. An act or omission of a third party other than the defendant where:

a. The defendant would otherwise be liable as a current or former owner, and the real property at which the site concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance, pollutant or contaminant on, in or at the site, and one or more of the circumstances described in Clauses (1), (2), or (3) is also established by the defendant by a preponderance of the evidence:

(1) At the time the defendant acquired the site the defendant did not know and had no reason to know that any hazardous substance, pollutant or contaminant which is the subject of the release or threatened release was disposed of on, in, or at the site.

(2) The defendant is a government entity which acquired the site by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(3) The defendant acquired the site by inheritance or bequest.

b. To establish that the defendant had no reason to know, as provided in clause (1) of Subparagraph (a) of this Paragraph, the defendant must have undertaken, at time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

c. Nothing in this Paragraph shall diminish the liability of any previous owner or operator of such site who would otherwise be liable under this Act. Notwithstanding this Paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance, pollutant or contaminant at such site when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under § 2501(A)(1) and no defense

under § 2502(A) shall be available to such defendant.

d. Nothing in this Paragraph (4) shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance, pollutant or contaminant which is the subject of the action relating to the site;

5. In order for a defendant to establish a defense under Paragraphs (3) or (4), the defendant must also establish by a preponderance of the evidence that:

a. He or she exercised due care with respect to the hazardous substances, pollutants or contaminants concerned, taking into consideration the characteristics of such hazardous substances, pollutants or contaminants, in light of all relevant facts and circumstances; and

b. He or she took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions;

6. Any combination of Paragraphs (1)-(4) above.

## B. Limitations on Liability

### 1. Limitation on liability of the Navajo Nation

a. In no event shall the Navajo Nation be liable based solely on its ownership of a site or its status as a lessor or the grantor of any land use interest, including but not limited to rights-of-way, easements, and land use permits.

b. The Navajo Nation shall not be liable for the costs and damages provided in § 2503 or for any expenditure for compliance with administrative or judicial orders issued pursuant to § 2403 unless the Navajo Nation Council has specifically appropriated funds for such costs, damages, or compliance. The failure of the Navajo Nation Council to appropriate such funds may not be relied upon as a defense by any other responsible party.

c. The limitations on liability of the Navajo Nation provided in this Subsection shall not apply to enterprises or companies owned, operated, or otherwise affiliated with the Navajo Nation.

### 2. Rendering care or advice

a. Except as provided in Subparagraph (B), no person shall be liable under this Subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the Navajo Nation Contingency Plan or at the direction of a federal on-scene coordinator or a site coordinator appointed under the Navajo Nation Contingency Plan with respect to any releases or threatened releases of a hazardous substance, pollutant or contaminant

creating a danger to public health, welfare or the environment. This Paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

b. Neither the Navajo Nation nor the Chapter governments shall be liable under this Act for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance, pollutant or contaminant generated by or from a site owned by another person. This Paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the tribal or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

c. Savings provision

This Subsection shall not alter the liability of any person covered by the provisions of § 2501(A) of this Act with respect to the release or threatened release concerned.

3. Application of a registered pesticide product

No person may recover under the authority of this Section for any response costs or damages resulting from the application of a pesticide product by a licensed applicator under the Navajo Nation Pesticide Act, 4 N.N.C. § 301 *et seq.*, or registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.* Nothing in this Paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of tribal or federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substances, pollutants or contaminants or for removal or remedial action or the costs of removal or remedial action of such hazardous substances, pollutants or contaminants.

4. Obligation or liability pursuant to permitted release

Recovery by any person (including the Navajo Nation) for response costs or damages resulting from a federally or tribally permitted release shall be pursuant to existing law in lieu of this Section. Nothing in this Paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of tribal or federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance, pollutant or contaminant for removal or remedial action or the costs of removal or remedial action of such hazardous substance, pollutant or contaminant.

**History**

CF-07-08, February 26, 2008.

**§ 2503. Costs and damages**

A. Costs and damages



The persons identified in § 2501(A) shall be liable to the Navajo Nation for:

1. All response costs incurred by the Navajo Nation that are not inconsistent with the Navajo Nation Contingency Plan;

2. Damages for injury to, destruction of, or loss of natural and/or cultural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release;

3. The costs of any health assessment or health effects study carried out under this Act or regulations promulgated hereunder;

4. The costs of constructing and maintaining physical controls to site access, for purposes of public safety and the safety of livestock; and

5. Interest on the amounts recoverable under Paragraphs (1) through (4). Such interest shall accrue from the later of:

a. The date that payment of a specified amount is demanded in writing; or

b. The date of the expenditure concerned.

The rate of interest on the outstanding unpaid balance of the amounts recoverable under this Section shall be the same rate as is specified for interest on recoverable amounts under 42 U.S.C. § 9607. For purposes of applying § 9607 to interest under this Paragraph, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this Paragraph commences.

#### B. Lien

##### 1. In general

All costs and damages for which a person is liable to the Navajo Nation under § 2501(A) of this Act shall constitute a lien in favor of the Navajo Nation upon all real property and rights to such property which:

a. Belong to such person; and

b. Are subject to or affected by a removal or remedial action.

##### 2. Duration

The lien imposed by this Subsection shall arise at the later of the following:

a. The time that costs are first incurred by the Navajo Nation with respect to a response action under this Act.

b. The time that the person referred to in Paragraph (1) is provided (by certified or registered mail) with written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through the operation of any Navajo Nation statute of limitations.

### 3. Notice and validity

The lien imposed by this Subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable law before notice of the lien has been filed in the appropriate office within the state (or county or other governmental subdivision), as designated by applicable law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this Subsection as are afforded under applicable law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this Subsection. The notice shall be filed in the tribal court with jurisdiction for where the real property is located. For purposes of this Subsection, the terms "purchaser" and "security interest" shall have the definitions provided under 26 U.S.C. § 6323(h).

### 4. Action in rem

The costs constituting the lien may be recovered in an action in rem in the tribal court with jurisdiction over property in which the removal or remedial action is occurring or has occurred. Nothing in this Subsection shall affect the right of the Navajo Nation to bring an action against any person to recover all costs and damages for which such person is liable under § 2501(A) of this Act.

## C. Natural and Cultural Resources Liability

### 1. Natural and cultural resources liability

In the case of an injury to, destruction of, or loss of natural or cultural resources under Subsection (A)(2) of this Section, liability shall be to the Navajo Nation for natural and cultural resources within the jurisdiction of the Navajo Nation or belonging to, managed by, controlled by, or appertaining to the Navajo Nation or held in trust for the benefit of the Nation, or belonging to a member of the Nation if such resources are subject to a trust restriction on alienation: Provided, however, that no liability to the Navajo Nation shall be imposed under Subsection (A)(2) where the party sought to be charged has demonstrated that the damages to natural or cultural resources complained of were specifically identified as an irreversible and irretrievable commitment of resources in an environmental impact statement, or other comparable environment analyses, and the decision to grant a permit or license

authorizes such commitment of natural or cultural resources, and the site or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages occurring pursuant to a federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to the Navajo Nation. The President, or his designee, shall act on behalf of the public as trustee of such natural or cultural resources to recover for such damages. Sums recovered shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural or cultural resources. The measure of damages in any action under § 2501 shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural or cultural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural or cultural resource.

## 2. Designation of Navajo Nation officials

a. The President may designate the Navajo Nation official(s) who shall act on behalf of the public as trustees for natural resources and trustees for cultural resources under this Act. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act for those resources under their trusteeship.

b. Any determination or assessment of damages to natural and cultural resources for the purposes of this Act made by the appropriate Tribal trustees in accordance with promulgated regulations or made by a federal trustee pursuant to CERCLA shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act.

## D. Contribution

Any person may seek contribution in tribal court from any other person who is liable or potentially liable under § 2501(A), during or following any action brought under this Act. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this Subsection shall diminish the right of any person to bring an action for contribution in the absence of an action being brought under this Act.

## E. Limitation Period

The limitation period for bringing actions under this Section shall be the same as that specified in 42 U.S.C. § 9613(g), subject to the same conditions as specified therein (as modified to pertain to this Act).

## **History**

CF-07-08, February 26, 2008.

## **§ 2504. Settlements**

## A. Authority to Enter into Agreements

1. The Director, in his or her discretion, may enter into an agreement with any person (including the owner or operator of the site from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any investigation or response action if the Director determines that such investigation or response action will be done properly by such person. Whenever practicable and in the public interest, as determined by the Director, the Director may act to facilitate agreements under this Section that are in the public interest and consistent with the Navajo Nation Contingency Plan in order to expedite effective response actions and minimize litigation. If the Director decides not to use the procedures in this Section, the Director shall notify in writing potentially responsible parties at the site of such decision and the reasons why use of the procedures is inappropriate. A decision of the Director to use or not to use the procedures in this Section is not subject to judicial review.

2. Whenever the Director enters into an agreement under this Act with any potentially responsible party with respect to an action under this Act, the Director shall issue an order or enter into a decree setting forth the obligations of such party. The Navajo Nation Courts may enforce such order or decree. In addition, the President of the Navajo Nation, in his discretion, may request that the Navajo Nation Attorney General petition any federal or state court of competent jurisdiction to enforce such order or decree.

3. Any agreement for the conduct of an investigation or response action under this Section shall provide that the party reimburse the Hazardous Substances Fund for any cost incurred by the Director under, or in connection with, the oversight contract, arrangement or agreement. Reimbursement of oversight costs shall be under such terms and conditions as the Director may prescribe. The Director may contract with or arrange for a qualified person to assist the Director in overseeing and reviewing the data, documents, responsible party conduct, progress of the response action, and other related matters of such investigation or response action.

4. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangement as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or site in question. The Director shall give primary attention to those releases which the Director deems may present a public health threat.

5. If, as part of any agreement, the Director will be carrying out any action and the parties will be paying amounts to the Director, the Director may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

6. The Director need not make any finding regarding an imminent and substantial endangerment to the public health or the environment in

connection with any such agreement.

## B. Special Notice Procedures

### 1. Notice

Whenever the Director determines that a period of negotiation under this Subsection would facilitate an agreement with potentially responsible parties for taking response action and would expedite remedial action, the Director shall so notify all such known parties and shall provide them with information concerning each of the following:

a. The names and addresses of potentially responsible parties, to the extent such information is available.

b. The volume and nature of substances contributed by each potentially responsible party identified at the site, to the extent that such information is available.

c. A ranking by volume of the substances at the site, to the extent such information is available.

The Director may make the information referred to in this Paragraph available in advance of notice under this Paragraph upon the request of a potentially responsible party in accordance with procedures and guidance to be developed by the Director. The provisions regarding protection of confidential information apply to information provided under this Paragraph. Disclosure of information generated by the Director under this Section is subject to other privileges or protections provided by law, including (but not limited to) those applicable to attorney work product. Nothing contained in this Paragraph or in other provisions of this Subchapter shall be construed, interpreted, or applied to diminish the required disclosure of information under other provisions of this Act.

### 2. Negotiation

#### a. Proposals

Persons receiving notice and information under Paragraph (1) of this Subsection with respect to action for imminent and substantial endangerment under this Act shall have 60 days from the date of receipt of such notice to make a proposal to the Director for undertaking or financing the action under § 2403 of this Act. Persons receiving notice and information under Paragraph (1) of this Subsection with respect to action under response authorities of this Act shall have 60 days from the postmark of such notice to make a proposal to the Director for undertaking or financing the response action under § 2401 of this Act.

#### b. Additional parties

If another potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this Subsection concerning a release or threatened release, the Director may bring the additional party into the negotiation or enter into a

separate agreement with such party.

### 3. Preliminary allocation of responsibility

#### a. In general

The Director may develop guidelines for preparing non-binding preliminary allocations of responsibility. In developing these guidelines the Director may include such relevant factors as: volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors. When it would expedite settlements under this Section and remedial action, the Director may, after completion of the remedial investigation and feasibility study, provide a non-binding preliminary allocation of responsibility which allocates percentages of the total cost of response among potentially responsible parties at the site.

#### b. Collection of information

To collect information necessary or appropriate for performing the allocation under Subparagraph (A) or for otherwise implementing this Section, the Director may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the Director deems necessary. Witnesses shall be paid the same fees and mileage as are paid other witnesses in the courts of the Navajo Nation. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any Navajo Nation court in which venue is proper shall have jurisdiction to order such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as contempt.

#### c. Effect

The non-binding preliminary allocation of responsibility shall not be admissible as evidence in any proceeding, and no court shall have jurisdiction to review the non-binding preliminary allocation of responsibility. The non-binding preliminary allocation of responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

#### d. Costs

The costs incurred by the Director in producing the non-binding preliminary allocation of responsibility shall be reimbursed by the potentially responsible parties whose offer is accepted by the Director. Where an offer under this Section is not accepted, such costs shall be considered costs of response.

#### e. Decision to reject offer

Where the Director, in his discretion, has provided a non-binding preliminary allocation of responsibility and the potentially

responsible parties have made a substantial offer providing for response to the Director which he or she rejects, the reasons for the rejection shall be provided in a written explanation. The Director's decision to reject such an offer shall not be subject to judicial review.

#### 4. Failure to propose

If the Director determines that a good faith proposal for undertaking or financing action under § 2403 has not been submitted within 60 days of the provision of notice pursuant to this Subsection, the Director may take an action against any person under this Act.

#### 5. Significant threats

Nothing in this Subsection shall limit the Director's authority to undertake response or enforcement action regarding a significant threat to public health or the environment within the negotiation period established by this Subsection.

### C. Liability and Covenants

#### 1. Liability

Whenever the Director has entered into an agreement under this Section or the voluntary cleanup program under § 2402, the liability to the Navajo Nation under this Act of each party to the agreement, including any future liability to the Navajo Nation, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement pursuant to a covenant not to sue in accordance with Paragraph (2) of this Subsection. A covenant not to sue may provide that future liability to the Navajo Nation of a settling potentially responsible party under the agreement may be limited to the same proportion as that established in the original settlement agreement. Nothing in this Section shall limit or otherwise affect the authority of any court to review in the consent decree process under Subsection (E) of this Section any covenant not to sue contained in an agreement under this Section. In determining the extent to which the liability of parties to an agreement shall be limited pursuant to a covenant not to sue, the Director may be guided by the principle that a more complete covenant not to sue could be provided for a more permanent remedy undertaken by such parties.

#### 2. Discretionary covenants

The Director may, in his or her discretion, provide any person with a covenant not to sue concerning any liability to the Navajo Nation under this Act, including future liability, resulting from a release or threatened release of a hazardous substance, pollutant or contaminant addressed by a response action, whether that action is onsite or offsite, if each of the following conditions is met:

- a. The covenant not to sue is in the public interest;
- b. The covenant not to sue would expedite response action

consistent with the purposes of this Act;

c. The person is in full compliance with a consent decree entered into under this Act for response to the release or threatened release concerned; and

d. The response action has been approved by the Director.

### 3. Special covenants not to sue

In the case of any person to whom the Director is authorized under Paragraph (2) of this Subsection to provide a covenant not to sue, for the portion of investigation or response action:

a. Which involves the transport and secure disposition offsite of hazardous substances, pollutants or contaminants at a site meeting the Navajo Nation disposal requirements, where the Director has rejected a proposed response action that does not include such offsite disposition and has thereafter required offsite disposition; or

b. Which involves the treatment of hazardous substances, pollutants or contaminants so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances, such that, in the judgment of the Director, the substances no longer present any current or future significant risk to public health,

c. Welfare or the environment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or the environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or foreseeable future significant risk to public health, welfare or the environment,

The Director shall provide such person with a covenant not to sue with respect to future liability to the Navajo Nation under this Act for a future release or threatened release of hazardous substances, pollutants or contaminants from such site, and a person provided such covenant not to sue shall not be liable to the Navajo Nation under this Act with respect to such release or threatened release at a future time.

### 4. Requirement that action be completed

A covenant not to sue concerning future liability to the Navajo Nation shall not take effect until the Director certifies that the action which is the subject of the agreement has been completed in accordance with the requirements of this Act at the site that is the subject of such covenant.

### 5. Factors

In assessing the appropriateness of a covenant not to sue under Paragraph (2) and any condition to be included in a covenant not to sue under Paragraph (2) or (3), the Director may consider whether the covenant or condition is in the public interest on the basis of such



factors as the following:

a. The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the site concerned.

b. The nature of the risks remaining at the site.

c. The extent to which performance standards are included in the order or decree.

d. The extent to which the response action provides a complete remedy for the site, including a reduction in the hazardous nature of the substances, as well as the remediation byproducts at the site.

e. The extent to which the technology used in the response action is demonstrated to be effective.

f. Whether the Hazardous Substances Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the site.

g. Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

#### 6. Satisfactory performance

Any covenant not to sue under this Subsection shall be subject to the satisfactory performance by the party concerned of its obligations under the agreement concerned.

#### 7. Additional condition for future liability

a. Except for the portion of the remedial action which is subject to a covenant not to sue under Paragraph (3) or under § 2505 (relating to de minimis settlements), a covenant not to sue a person concerning future liability to the Navajo Nation shall include an exception to the covenant that allows the Director to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the Director certified under Paragraph (4) that the investigation or response action has been completed at the site concerned.

b. In extraordinary circumstances, the Director may determine, after assessment of relevant factors such as those referred to in Paragraph (5) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in Subparagraph (A) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the site.

c. The Director is authorized to include any provisions allowing future enforcement action under this Act that in the discretion of the Director are necessary and appropriate to assure protection of public health, welfare and the environment.

#### D. Actions Against Other Persons

If an agreement has been entered into under this Section, the Director may take any action under this Act against any person who is not a party to the agreement, once the period for submitting a proposal under Subsection (B) of this Section has expired. Nothing in this Section shall be construed to affect either of the following:

1. The liability of any person under this Act with respect to any costs or damages which are not included in the agreement.

2. The authority of the Director to maintain an action under this Act against any person who is not a party to the agreement.

#### E. Consent Decrees

##### 1. Remedial action

Whenever the Director enters into an agreement under this Section with any potentially responsible party with respect to remedial action under this Act, following approval of the agreement by the Attorney General, except as otherwise provided in the case of certain administrative settlements referred to in §§ 2505 and 2506 of this Act, the agreement shall be entered in Navajo Nation court as a consent decree.

##### 2. Effect

The entry of any consent decree under this Subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health, welfare or the environment.

##### 3. Structure

The Director may fashion a consent decree so that the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this Section shall not be considered an admission of liability for any purpose.

##### 4. Public participation

###### a. Filing of proposed judgment

At least 30 days before a final judgment is entered under Paragraph (1), the proposed judgment shall be filed with the Navajo Nation court.

b. Opportunity for comment

The Attorney General of the Navajo Nation shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.

**History**

CF-07-08, February 26, 2008.

**§ 2505. De minimis settlements**

A. De Minimis Settlements

1. Expedited final settlement

Whenever practicable and in the public interest, as determined by the Director, the Director shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under this Act if such settlement involves only a minor portion of the response costs at the site concerned and, in the judgment of the Director, the conditions in any one of the following Subparagraphs (a), (b) or (c) are met:

a. Both of the following are minimal in comparison to other hazardous substances, pollutants or contaminants at the site:

(1) The amount of the hazardous substances, pollutants or contaminants contributed by that party to the site.

(2) The toxic or other hazardous effects of the substances contributed by that party to the site.

b. The potentially responsible party:

(1) Is the owner of the real property at which the site is located;

(2) Did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance, pollutant or contaminant at the site; and

(3) Did not contribute to the release or threat of release of a hazardous substance, pollutant or contaminant at the site through any action or omission.

This Subparagraph (b) does not apply if the potentially

responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance, pollutant or contaminant.

c. The potentially responsible party is a Navajo Chapter or other division of government undertaking household refuse collection or the benefit of its constituency.

#### B. Covenant Not to Sue

The Director may provide a covenant not to sue with respect to the site concerned to any party who has entered into a settlement under this Section unless such a covenant would be inconsistent with the public interest as determined under § 2504(C)(5).

#### C. Expedited Agreement

The Director shall reach any such settlement or grant any such covenant not to sue as soon as possible after the Director has available the information necessary to reach such a settlement or grant such a covenant.

#### D. Consent Decree or Administrative Order

A settlement under this Section shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any site where the total response costs exceed five hundred thousand dollars (\$500,000) (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Director have agreed to extend the time. Such administrative order may be enforced in Navajo Nation court.

#### E. Effect of Agreement

A party who has resolved its liability to the Navajo Nation under this Section shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

#### F. Settlements with Other Potentially Responsible Parties

Nothing in this Section shall be construed to affect the authority of the Director to reach settlements with other potentially responsible parties under this Act.

### **History**

CF-07-08, February 26, 2008.

## **§ 2506. Cost recovery settlement authority**

### **A. Use of Arbitration**

The Director may elect to use arbitration in accordance with the Navajo Nation Arbitration Act as a method of settling claims of the Navajo Nation where the total response costs for the site concerned do not exceed five hundred thousand dollars (\$500,000) (excluding interest).

### **B. Recovery of Claims**

If any person fails to pay a claim that has been settled under this Section, the Director shall request the Attorney General to bring a civil action in the appropriate Navajo Nation court to recover the amount of such claim, plus costs, attorney's fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

### **C. Claims for Contribution**

A person who has resolved his liability to the Navajo Nation under this Section shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement shall not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

## **History**

CF-07-08, February 26, 2008.

## **Cross Reference**

Navajo Nation Arbitration Act, 7 N.N.C. § 1101 *et seq.*

## **§ 2507. Settlement procedures**

### **A. Publication**

At least 30 days before any settlement (including any settlement arrived at through arbitration) may become final under § 2504 or § 2505, the Director shall publish in a local newspaper notice of the proposed settlement for a minimum of three consecutive publications. The notice shall identify the site concerned and the parties to the proposed settlement.

### **B. Comment Period**

For a 30-day period beginning on the first date of publication of notice under Subsection (A) of this Section of a proposed settlement, the Director shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

### **C. Consideration of Comments**

The Director shall consider any comments filed under Subsection (B) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

#### **History**

CF-07-08, February 26, 2008.

### **§ 2508. Settlement of natural and cultural resources claims**

#### **A. Notification of Trustee**

Where a release or threatened release of any hazardous substance, pollutant or contaminant that is the subject of negotiations under this Subchapter may have resulted in damages to natural resources or cultural resources under the trusteeship of the Navajo Nation, the Director shall notify the Resources Committee of the Navajo Nation Council, the Navajo Nation Resource Trustee and the Federal Trustee for the resource of the negotiations and shall encourage the participation of such trustee(s) in the negotiations.

#### **B. Covenant Not to Sue**

An agreement under this Section may contain a covenant not to sue for damages to natural and cultural resources under the trusteeship of the Navajo Nation resulting from the release or threatened release of hazardous substances, pollutants or contaminants that is the subject of the agreement, but only if the Resources Committee of the Navajo Nation Council and the Navajo Nation Resource Trustee have agreed by resolution to such covenant. The Resources Committee of the Navajo Nation Council and the Navajo Nation Resource Trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural and cultural resources damaged by such release or threatened release of hazardous substances, pollutants or contaminants.

#### **History**

CF-07-08, February 26, 2008.

### **§ 2509. Judicial enforcement**

#### **A. Civil Judicial Enforcement**

The Director shall request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties in a maximum amount per day per violation of not less than ten thousand dollars (\$10,000) but not to exceed twenty-five thousand dollars (\$25,000), in any of the following instances:

1. Whenever a person has violated, or is in violation of, any

provision, requirement or prohibition of this Act, including, but not limited to, a regulation or order issued pursuant to this Act;

2. Whenever a person has violated, or is in violation of, any duty to allow or carry out entry, assessment, inspection, sampling, monitoring, or other duty required by the Director;

3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment because of a release or a threatened release, in which case the Director shall request the Attorney General to pursue injunctive relief, but not the assessment of penalties, unless the endangerment to the public health is caused by a violation, as specified in Paragraphs (1) and (2).

#### B. Calculation of Penalties

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this Section, if the Director has notified, in writing, the source of the violation and the Director, or plaintiff, makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter, until the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this Section shall be accomplished by an issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock, Arizona, that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a civil penalty assessed under this Section, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirement; the violator's full compliance history, including the severity and duration of past violations; if any, the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit; if any, resulting from the violation; and any other factors that the court deems relevant.

3. All penalties collected pursuant to this Section shall be deposited in the Hazardous Substances Fund.

#### C. Damages for Non-Compliance with Orders

1. If any person identified in § 2501(A) fails without sufficient cause to properly provide response action upon order of the President pursuant to this Act, such person may be liable to the Navajo Nation for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Hazardous Substances Fund as a result of such failure to take proper action. The President is authorized to commence a civil action against any such person pursuant to § 2501.

2. Any person who, without sufficient cause, violates, or fails or refuses to comply with, any order of the Director under Subsection (A) of this Section or Subsections (A) or (B) of § 2403, may in an action brought in Navajo Nation court to enforce such order, be fined not more than twenty-five thousand dollars (\$25,000) for each day in which such violation occurs or such failure to comply continues. This fine may be in addition to any punitive damages assessed in a cost recovery action under § 2501.

#### D. Criminal Penalties

Any person who intentionally or knowingly:

1. Violates any provision, requirement or prohibition of this Act, including but not limited to a regulation pursuant to this Act or order issued under this Act;

2. Makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, record, report, or other requirement under this Act; or

3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Act;

Shall upon conviction, be punished by a fine in a maximum amount of not more than five thousand dollars (\$5,000) per day per violation. In any instance where the Navajo Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he/she may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to this Act. For the purposes of this Subsection, the term person includes, in addition to the entities referred to in § 2104(Z) of this Act, any responsible corporate officer.

#### E. Jurisdiction and Venue

Any action under this Section shall be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil and criminal penalties up to the amounts provided in this Section, collect any fees or noncompliance penalties owed the Nation under this Act, and award any other appropriate relief.

#### F. Security

The court may, if a temporary restraining order or preliminary injunction is sought under this Act, require filing of a bond or equivalent security.

### **History**

CF-07-08, February 26, 2008.

**Note.** Reference to § 2104(A) (25) for the definition of "person" at Subsection D



was changed to § 2104(Z) to reflect format changes.

## **§ 2510. Administrative assessment of penalties**

### **A. Basis for Penalty**

The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) per day per violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or order issued pursuant to this Act. The Director's authority under this Subsection shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify, or remit, with or without any conditions, any administrative penalty imposed under this Section.

### **B. Hearing Requirement**

The Director shall assess an administrative penalty under this Section by an order made after an opportunity for a hearing, as provided in the Uniform Regulations. Before issuing such an order, the Director shall issue a proposed order to the person on whom the penalty is to be assessed and provide that person with an opportunity to request a hearing in writing within 30 days of the issuance of the proposed order. The hearing shall be conducted pursuant to the Uniform Regulations. The order shall become final immediately upon the expiration of the 30 days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director.

### **C. Calculation of Penalty**

In determining the amount of any penalty to be assessed under this Section, the Director or the court, as appropriate, shall take into account the factors enumerated in § 2509(B)(2) of this Act.

### **D. Judicial Review**

Any person subject to a penalty under this Subsection may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock, AZ, by filing a petition for review in such court within 30 days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. A notice of intent to challenge such penalty assessment, otherwise required by the Navajo Sovereign Immunity Act, 1 N.N.C. § 351 et seq., is not required. Within 30 days thereafter, the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record,

taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this Section.

#### **History**

CF-07-08, February 26, 2008.

**Note.** Corrected the word "be" to "by" to read, "...filing by certified mail..." in Subsection D.

### **§ 2511. Other enforcement actions**

#### **A. Debarment and Exclusion**

Notwithstanding any other provision of this Act, any person who has failed to comply with the requirements of an order under this Act, or who has failed to pay costs or damages under this Act, may be the subject of debarment or exclusion under applicable law.

#### **B. Inconsistent Response Action**

When either the Director or a potentially responsible party pursuant to an administrative order or consent decree under this Act has initiated a remedial investigation and feasibility study or other investigation or evaluation for a particular site under this Act, no potentially responsible party may undertake any response action at the site unless such response action has been authorized by the Director. The Director may take any appropriate action, including issuing an administrative order, to enjoin such inconsistent response action.

#### **History**

CF-07-08, February 26, 2008.

## **Subchapter 6. Contracts, Hiring and Employee Protection**

### **§ 2601. Minority contractors**

In awarding contracts under this Act, the Director shall consider the availability of qualified Navajo firms. As part of the annual report submitted to the Navajo Nation Resources Committee under this Act, the Director shall detail the participation of Navajo firms in contracts awarded under this Act.

#### **History**

CF-07-08, February 26, 2008.

#### **§ 2602. Contracts for response actions**

In awarding contracts to any person engaged in response actions, the Director shall require contractors and subcontractors to comply with federal health and safety standards, known as OSHA standards, as a condition of such contracts.

##### **History**

CF-07-08, February 26, 2008.

##### **Cross Reference**

Navajo Nation Occupational Safety and Health Act, 15 N.N.C. § 1401 *et seq.*

#### **§ 2603. Activities of employees subject to protection**

No person shall fire or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to the Navajo Nation, filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

##### **History**

CF-07-08, February 26, 2008.

#### **§ 2604. Competition**

The Director may adopt title IX of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 541 *et seq.* to govern the relationship between the Navajo Nation and response action contractors and subcontractors in the areas of program management, construction management, architecture and engineering, surveying and mapping, and related services while conducting activities under this Act.

##### **History**

CF-07-08, February 26, 2008.

### **Subchapter 7. Funding**

#### **§ 2701. Hazardous substances fund**

#### A. Establishment

The Director shall establish a Special Revenue Fund, called the Hazardous Substances Fund, to fund the activities of the Navajo Superfund Program in the administration, implementation and enforcement of this Act and the regulations promulgated hereunder, including to fund response actions taken under the Act when other sources of funds are not available at the time the action is taken.

#### B. Sources of Funding

The Hazardous Substances Fund shall contain the following:

1. All tariffs collected from transporters of hazardous substances, pursuant to § 2704;
2. Except as specified otherwise in any appropriations of the Navajo Nation Council, those amounts appropriated for the conduct of the Navajo Superfund Program;
3. All application and registration fees assessed pursuant to § 2703;
4. All fees and penalties recovered pursuant to administrative actions, citizen suits and other enforcement actions brought under this Act;
5. All response costs recovered pursuant to any cost recovery actions brought under this Act;
6. Unless funds are to be used for the purposes of carrying out a settlement agreement as provided in § 2504(A)(5) or a voluntary cleanup agreement under § 2402 of this Act, any payments made by a responsible party pursuant to a settlement agreement or voluntary cleanup agreement under this Act; and
7. Any funds received from any other sources for implementation of the Navajo Superfund Program, but not including grant funds from the United States, or other grant funds which by their terms must be maintained in a separate account;
8. Provided, that the Hazardous Substances Fund shall not contain any funds resulting from natural or cultural resource damage claims brought under this Act.

#### C. Uses of the Fund

##### 1. General uses.

The monies deposited into the Hazardous Substances Fund shall be expended by the Director for the use of the Navajo Superfund Program, as provided in this Section, in accordance with the Special Revenue Fund Management Plan and pursuant to an approved budget. The Director shall report annually to the Navajo Nation Council on the sums deposited into the Fund, including the sources and uses thereof. Any monies contained in

said Fund at the end of the fiscal year shall not be transferred to the General Fund and shall remain available for appropriation as provided in this Section.

2. Limitations on use.

The Director shall expend no monies from the Hazardous Substances Fund to clean up releases at any facility owned by the federal government or the Navajo Nation or its entities (excluding tribal enterprises), any facility not subject to tariffs under this Act, or any facility that has failed to pay any tariffs owed under this Act when due. At such facilities the Director shall use the authorities provided in this Act to order corrective action to clean up such releases. Notwithstanding this Paragraph, the Director may use monies from the Fund to take the corrective actions authorized by §§ 2305 and 2401 to protect human health at such facilities and shall seek full recovery of the costs of all such action pursuant to the provisions of §§ 2501 and 2503 and without consideration of the defenses to liability in § 2502(A). Nothing in this Paragraph shall prevent the Director from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

**History**

CF-07-08, February 26, 2008.

**§ 2702. Natural and cultural resources fund**

A. Establishment

The Director shall establish a fiduciary account, called the Natural and Cultural Resources Fund, which shall be used solely to restore, replace or acquire natural or cultural resources equivalent to those damaged, destroyed or otherwise lost.

B. Sources of Funding

The Natural and Cultural Resources Fund shall be comprised of all funds received from natural and cultural resource damage claims brought pursuant to this Act.

C. Uses of the Fund

The monies deposited into the Fund shall be expended by the Trustee(s) for Natural and Cultural Resources, designated pursuant to § 2503(C), for use only to restore, replace or acquire the equivalent of any natural or cultural resources that have been damaged, destroyed or otherwise lost, pursuant to the provisions of § 2503(C)(1). The Trustee(s) shall report annually, through the Director, on the sums deposited into the Fund, including the sources and uses thereof. Any monies contained in said Fund at the end of the fiscal year shall not revert to the General Fund and shall remain available for appropriation as provided in this Section.

## **History**

CF-07-08, February 26, 2008.

### **§ 2703. Registration and fees**

#### **A. Applicability**

All transporters of hazardous substances within the Navajo Nation shall register annually with the Navajo Nation Superfund Program on forms provided for that purpose and shall submit registration fees together with the registration forms. For purposes of this Section, § 2701, and § 2704, the term "transporter of a hazardous substance" means any person who transports a hazardous substance (as those terms are defined in § 2104) to a location within the Navajo Nation, including but not limited to transport for the purpose of importing or delivering a hazardous substance, or who transports a hazardous substance across any portion of the Navajo Nation, except the term does not include any person who delivers motor vehicle fuel, diesel fuel, or aviation fuel to an aboveground or underground storage tank within the Navajo Nation. The term also does not include the United States or the Navajo Nation.

#### **B. Due Dates and Fees**

The registration form shall be submitted by January 31 of the calendar year following enactment of this Act to cover the preceding calendar year (or portion thereof after this Act became effective), and shall be filed by January 31 of each succeeding calendar year for the previous calendar year. The registration fee shall initially be set at one hundred dollars (\$100), subject to increase by the Director by regulation.

## **History**

CF-07-08, February 26, 2008.

### **§ 2704. Tariff on transporters of hazardous substances**

#### **A. Establishment of Tariff**

Within one year after enactment of this Act, the Director shall impose a tariff on the transportation of hazardous substances within or across the Navajo Nation. The amount of the tariff shall be established by the Director by rulemaking, pursuant to the provisions of § 2801, and shall be levied on transporters of hazardous substances based on the quantities of hazardous substances that they are transporting, in an amount determined by the Director to be sufficient to cover program costs.

#### **B. Rulemaking**

In addition to prescribing the amount of the tariff, the rulemaking shall provide for administration of the tariff, including but not limited to establishing the periods when the tariff is due and record-keeping, reporting,

and auditing procedures to verify the accuracy of payments. The Director also may include provisions for late payment interest and penalties.

#### C. Additional Tariffs

The Director may, by rulemaking, establish tariffs on entities in addition to transporters that are involved with the supply, treatment, storage, or disposal of hazardous substances within the Navajo Nation, provided that the Director determines such a tariff is feasible to impose and administer and will contribute to covering program costs.

### **History**

CF-07-08, February 26, 2008.

## **Subchapter 8. Rulemaking, Judicial Review and Public Participation**

### **§ 2801. Rulemaking**

#### A. Authority to Promulgate Regulations

The Director is authorized to prescribe such regulations as are necessary to implement and enforce this Act. This shall include, but not be limited to, regulations designating hazardous substances, determining reportable quantities, adopting maximum contamination levels and soil action-trigger levels, adopting operating guidances and procedures for the prevention, control, abatement and remediation of hazardous substances in the Nation's environment, and providing procedures for public participation and the development of administrative records. In prescribing regulations, the Director may give consideration to, but is not limited by, the provisions of the Comprehensive Environmental Response, Compensation and Liability Act and the applicable regulations thereunder.

#### B. Use of Federal Regulations

Until such time as the Director promulgates regulations under this Act, the Director is authorized to implement federal regulations adopted pursuant to, or referenced in CERCLA, as provided in this Section.

1. Prior to the adoption of regulations pursuant to this Section, a reportable quantity shall be the amount prescribed in 40 C.F.R. § 302.4 or one pound, if not listed in that Section, except in the case of petroleum, where the reportable quantity shall be 25 gallons for releases on land and, for releases into surface water, such quantity as violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or causes a sludge or emulsion to be deposited beneath the surface of the water.

2. Prior to the promulgation of the Navajo Nation Contingency Plan pursuant to § 2503, the Director may elect to use the federal National Contingency Plan for actions which would be conducted pursuant to the Navajo Nation Contingency Plan when promulgated. In the interests of

expediting cleanup and to the extent otherwise consistent with this Act, the Director is authorized to waive specific requirements of the National Contingency Plan on a site-specific basis.

### C. Rulemaking

1. Rulemakings shall be conducted pursuant to Subpart 4 of the Uniform Regulations. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Navajo Nation that are concerned and shall be given orally in English and Navajo languages over local radio stations. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question, the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least 30 days following notice of the proposed regulation; shall allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally, in Navajo or English, their views, data or arguments; and shall keep the record open for at least 10 days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

2. The final regulation shall be based on the record of the rulemaking proceeding contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

### **History**

CF-07-08, February 26, 2008.

### **§ 2802. Judicial review**

#### A. Petitions for Review

A petition for review of any final action taken by the Director under this Act, including but not limited to promulgation of regulations or standards and issuance of orders, but not including imposition of administrative penalties under § 2510, shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within 60 days from the date the final action is first published, or if the notice is not published, first served on the potentially responsible party or such other person required to be served under this Act, except if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within 60 days after such grounds arise. The date of adoption of any regulation promulgated pursuant to this Act shall be the date of its approval by the Resources Committee of the Navajo Nation Council. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Director at the time of the final action from which the appeal is taken.



## B. Limitations on Review

1. If judicial review of a final action of the Director could have been obtained under Subsection (A) of this Section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

2. With respect to any regulations promulgated under this Act, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time, or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director may convene a proceeding for the reconsideration of the regulation and provide the same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation, although it may be stayed by the Director or the Court for up to three months.

3. Except as otherwise expressly allowed by Navajo law, no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Act. In reviewing alleged procedural errors, the Court may invalidate the regulation or other action only if the errors were so serious and related to matters of such central relevance to the regulation or other action that there is a substantial likelihood that the regulation or other action would have been significantly changed if such errors had not been made.

## C. Standards for Review

In reviewing any final action of the Director pursuant to this Act, the court may reverse any such action that it finds to be:

1. Arbitrary and capricious, an abuse of discretion or otherwise not in accordance with the law;
2. In excess of statutory authority, jurisdiction, or limitations or short of statutory right;
3. Without observance of procedure required by law; or
4. Unsupported by substantial evidence.

## D. Judicial Review of the Response Action Selection

### 1. Limitation

In any judicial action under this Act, judicial review of any issues concerning the adequacy of any response action taken or ordered by the Director shall be limited to the administrative record prepared

pursuant to § 2505(C). Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

## 2. Standard

In considering objections raised in any judicial action under this Act, the court shall uphold the Director's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

## 3. Remedy

If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award:

a. Only the response costs or damages that are not inconsistent with the national contingency plan; and

b. Such other relief as is consistent with the National Contingency Plan.

## 4. Procedural errors

In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made and only to the extent such procedural errors resulted in increased costs.

## E. Challenge to Any Provisions

Any action brought pursuant to the provisions of this Section shall be brought in compliance with the Navajo Sovereign Immunity Act, 1 N.N.C. § 351 *et seq.*, and not in any other manner. In any such action, relief shall be limited to declaratory relief and the Navajo Nation Supreme Court shall have no jurisdiction to grant any other relief. The Navajo Nation Supreme Court shall have exclusive jurisdiction and venue over any action brought pursuant to this Section, except as otherwise provided in this Section.

## F. Challenge to Facial Validity of Act

Any challenge to the lawful authority of the Navajo Nation Council to enact any provision of this Act must be filed in accordance with Navajo law within 90 calendar days after the date of enactment of such provision. Suit shall be filed in the Navajo Nation District Court in Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. For purposes of this Subsection, the date of enactment of each provision of this Act shall be the date of signature by the President of the Navajo Nation after its adoption by the Navajo Nation Council, or the date of its adoption by the Navajo Nation Council if the council overrides a veto by the President. The Navajo Nation District Court in Window Rock shall have exclusive jurisdiction

and venue over any action challenging any provision of this Act. Relief shall be limited to declaratory relief.

### **History**

CF-07-08, February 26, 2008.

**Note.** CERCLA was signed into law by the President of the Navajo Nation on March 10, 2008.

### **§ 2803. Public participation**

#### **A. Dissemination of Information to Public**

The Director shall, by promulgating regulations and establishing agency procedures, provide for information to be disseminated to the public in order to:

1. Inform citizens and officials at all levels of government of the existence and status of sites on the Navajo Nation EPA Site List;

2. Provide citizens with information regarding the hazardous substance, pollutant, and contaminant identification and cleanup process and maintain lists of technical, health, and other relevant experts licensed or located in the Nation, who are available to assist the public;

3. Provide the public with information necessary to develop meaningful comments on critical decisions regarding site characterization, risks posed by the site, and selection of removal and remedial actions; and

4. Provide for early, direct, and meaningful public participation in each significant phase of response activities taken under this Act.

#### **B. Accessibility of Information**

In providing information to the public as required under Subsection (A), the Director shall ensure wide distribution of and access to information in a manner that is easily understood by the public, considering any unique cultural needs of the Navajo people, including presentation of the information orally and distribution of this information in Navajo. In addition, in taking actions under this Act, the Director shall ensure that he or she is aware of and considers the views of the local people and their District, Agency, and Chapter representatives.

#### **C. Regulations for Public Participation**

The Director shall promulgate regulations to implement the requirements of this Section, which shall provide for but not be limited to the following:

1. Any notice and analysis of a proposed response action published under this Act shall include sufficient information as may be necessary

to provide a reasonable explanation of the proposed action and any alternative proposals considered.

2. Any document used to select a response action shall be accompanied by a discussion of the views and preferences of the affected community, any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

3. The timing of public participation prior to the taking of a response action shall take into account the need to take prompt response action. During a time-critical response the Director may forgo or shorten the time for public comment.

#### D. Other information provided to the Community

In addition to other information the Director considers appropriate, the Director shall ensure that the community is provided information on the following:

1. The possibility (where relevant) that members of a community may qualify to receive an alternative water supply;

2. The details of the Superfund process, and rights of private citizens and public interest groups;

3. An objective description of the site's location and characteristics, the known exposure pathways, and the steps being taken to assess the risk presented by the site;

4. The potential for a copy of the administrative record to be located at the affected Chapter House(s), or at a convenient location within an affected District or Agency;

5. The availability or existence of federal Technical Assistance Grants (TAG) with respect to a federal National Priorities List site.

#### E. Public Participation in Settlements

In addition to the public participation rights in this Section, the public also has the right to comment on settlements as provided in § 2504(E) (4) of this Act.

### **History**

CF-07-08, February 26, 2008.

### **§ 2804. Citizen Suits**

#### A. Authority to Bring Civil Actions

1. Except in reference to the timing of judicial review, any person may commence a civil action in the Navajo Nation District Court on his

own behalf against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who is alleged to be in violation with regard to a requirement or standard of this Act, a regulation promulgated pursuant this Act, or an agreement or order agreed to or issued pursuant to this Act.

2. The Navajo Nation courts shall have jurisdiction to enforce such requirements, standards, regulations, agreements or orders and to apply any appropriate civil penalties.

#### B. Notice

An action may not be commenced under Subsection (A)(1) of this Section fewer than 60 days after the plaintiff has given notice of the alleged violation to the Director, the Attorney General, and the person who is alleged to be in violation. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to require compliance with this Act, except that any person may intervene as a matter of right in such an action.

#### C. Venue; Intervention; Service of Complaint

1. Any action in regard to a release, a threatened release, ARAR, order or other requirement may be brought only in the Navajo Nation District Court for the District of Window Rock, Navajo Nation (Arizona).

2. The Director, if not already a party, may intervene as of right in any action brought under this Section.

3. Whenever any action is brought under this Section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this Section in which the Director is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and the Director may submit, on behalf of the Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

#### D. Award of Costs

The court, in issuing a final order in an action brought under this Section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

#### E. Penalty fund

Penalties collected pursuant to this Section shall be deposited in the Hazardous Substances Fund.

### **History**

CF-07-08, February 26, 2008.

**§ 2805. Petition for assessment of release**

Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the Director to conduct a site screening and evaluation, as appropriate, to assess the hazards to public health and the environment which are associated with such release or threatened release.

**History**

CF-07-08, February 26, 2008.

**Title 5**

**Commerce and Trade**

**History**

Common or Contract Carriers previously codified at Chapter 19, §§ 3201-3203 has been redesignated to Title 5, Chapter 3, Subchapter 2, §§ 411-413. (1995)

Signs, Billboards, and Advertising Devices previously codified as Chapter 21, §§ 3401-3412 has been redesignated to Title 5, Chapter 3, Subchapter 3, §§ 421-432. (1995)

**Chapter 1. Industrial Development Program**

**§ 1. Participation in peripheral community programs**

A. The President of the Navajo Nation is directed to advise peripheral communities of the willingness of the Navajo Nation to participate in peripheral community programs for development of industries where such industries will create payrolls for Navajos.

B. Participation in peripheral community programs may include negotiation of arrangements for Navajo Nation participation in provision for plant facilities for prospective industrial operators and training for Navajo workers.

C. Negotiations shall provide adequate assurance covering employment for Navajos and shall be subject to approval of the Navajo Nation Council where the expenditure of Navajo Nation funds is contemplated.

**History**

CO-40-55, 1955 Ex. Vol. p. 332, October 15, 1955.

Development of industrial and business enterprises.

ACMY-131-69, May 15, 1969.

ACAP-100-69, April 14, 1969, Lukachukai, Arizona.

ACAU-162-68, August 16, 1968, Post Offices at Shiprock, Lukachukai and Teec Nos Pos.

ACN-216-67, November 20, 1967, amending ACO-212-67.

ACO-212-67, October 6, 1967, Navajo, New Mexico.

ACS-201-67, September 22, 1967, Padre Point.

ACJY-160-67, July 26, 1967, Window Rock Post Office.

ACJN-147-67, June 30, 1967, Black Creek Canyon Area.

CMA-40-66, March 3, 1966, Public Works and Economic Development Act of 1965.

ACMA-34-65, March 29, 1965, Post-Office facilities.

**Revision note.** Pursuant to CD-68-89, Resolve #9, references to "Chairman" changed to "President".

## **§ 2. Agreements—Generally**

The President of the Navajo Nation is authorized to negotiate, and with the approval of the appropriate oversight Committee of the Navajo Nation Council, to execute on behalf of the Navajo Nation, agreements with federal, state, municipal, or private agencies, including industrial operators and potential industrial operators, which in the President's opinion will further the policy of industrial development. Such agreements may or may not provide for expenditures of funds.

### **History**

CD-68-85.

CD-44-55, § 2, 1955 Res. p. 38, December 8, 1955.

**Leases.** CAU-40-63, August 22, 1963.

CAU-45-76, August 20, 1976.

CN-70-75, November 26, 1975.

CD-78-75, December 18, 1975.

CJA-15-74, January 24, 1974.

CJA-9-74, January 17, 1974.

CAU-63-73, August 31, 1973.

ACMY-189-71, May 12, 1971.

ACAP-69-67, April 13, 1967.

ACW-74-67, May 22, 1967.

CAU-47-73, August 30, 1973.

CMA-49-66, March 8, 1966

CMA-15-64.

CAP-54-66, April 20, 1966.

ACMA-34-66, March 23, 1966.

ACS-111-65, September 20, 1965.

CJA-1-65, January 8, 1965.

**Revision note.** Pursuant to CD-68-89, Resolve clause 9, reference to "Chairman" changed to "President". Previous reference to the "Government Services Committee" is changed to "appropriate oversight committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

#### **Cross References**

Economic Development Committee, economic and business development, powers, see 2 N.N.C. § 724(D).

Intergovernmental Relations Committee, contract powers, see 2 N.N.C. § 824(B) (6).

Standing committee, authority to contract, see 2 N.N.C. § 185(B).

### **§ 3. Borrowing interim construction financing funds**

The President of the Navajo Nation is authorized to execute any and all instruments necessary to arrange for the borrowing of interim construction financing funds for Economic Development Administration projects which have been or may be specifically authorized by the appropriate oversight Committee of the Navajo Nation Council.

#### **History**

ACS-202-67, September 22, 1967.

**Revision note.** Previous reference to the "Government Services Committee" is changed to "appropriate oversight Committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

#### **Cross References**

Outside agreements, see 2 N.N.C. § 824(B) (6).



#### **§ 4. Joint participation**

A. The President of the Navajo Nation, subject to the approval of the appropriate oversight Committee of the Navajo Nation Council, is authorized to negotiate and execute agreements with industrial participants and such others for Navajo Nation assistance in the establishment and continuance of industrial operations contemplated and proposed by such participants, provided that reasonable safeguards are afforded for employment of Navajos in connection with such operations.

B. In the event such joint participation requires the participation of the Navajo Nation as a stockholder in one or more corporations, the members of the appropriate oversight Committee of the Navajo Nation Council and the President of the Navajo Nation are authorized to represent the Navajo Nation in such corporations as trustee stockholders on behalf of the Navajo Nation and its members.

#### **History**

CN-59-56, § 2, 1956 Res. p. 121, November 1, 1956, app. by Commissioner of Indian Affairs December 14, 1956.

**Revision note.** Previous reference to the "Government Services Committee" is changed to "appropriate oversight Committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

#### **Cross References**

Navajo Corporation Code, see 5 N.N.C. § 3100 et seq.

#### **§ 5. Acquisition of land**

A. The President of the Navajo Nation is authorized to enter into option agreements and lease agreements and acquire and accept deeds of land to the Navajo Nation as may be required in connection with execution of the industrialization program.

B. Agreements for the purchase of land for industrial purposes shall be subject to the availability of funds and prior approval of the appropriate oversight Committee of the Navajo Nation Council.

C. Agreements for the lease or option of lands for periods extending beyond one year shall be subject to the prior approval of the appropriate oversight Committee of the Navajo Nation Council.

D. Agreements for the lease of lands for industrial purposes obligating Navajo Nation funds in an amount in excess of one dollar (\$1.00) per year for any period of more than 10 years shall receive prior approval of the Navajo Nation Council.

E. The Navajo Nation Council obligates itself to appropriate Navajo Nation funds in an amount not to exceed ten thousand dollars (\$10,000) annually for the purposes of this Section and subject to the limitations of Navajo

Nation law.

### **History**

CM-39-56, 1956 Res. p. 123, May 25, 1956.

**Revision note.** Section 5(E), "this section" has been deleted, and in lieu thereof, "Navajo Nation Law" has been inserted pursuant to CD-68-89, Resolve 4, which "repeals and declares null and void rules, regulations and laws or parts thereof which are inconsistent with the provisions of Title Two, Navajo Nation Code, as amended herein". Previous reference to the "Government Services Committee" is changed to "appropriate oversight Committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

### **Cross References**

Acquisition of land generally, see 16 N.N.C. § 1 *et seq.*

Committee approval of Navajo Nation agreements, see Committee powers: generally, 2 N.N.C. § 185(B); Resources Committee, 2 N.N.C. § 695; Economic Development Committee, 2 N.N.C. § 724(D); and Intergovernmental Relations Committee, 2 N.N.C. § 824(B)(6).

## **Chapter 2. Navajo Nation Business Opportunity Act**

### **History**

CAP-37-02, April 19, 2002.

CJY-59-85, July 30, 1985.

### **§ 201. Title; Findings; Legislative Purpose and Intent**

A. This Act shall be known and cited as the Navajo Nation Business Opportunity Act; Title 5, Navajo Nation Code, §§ 201 through 215.

B. Whereas the Navajo Nation Council finds:

1. The Navajo Nation is comprised of more than 25,000 square miles of land;

2. The Navajo Nation population now exceeds 250,000 members, of which over 175,000 members reside within the Navajo Nation. In addition, residents of the Navajo Nation include approximately 8,000 non-Navajos;

3. The unemployment rate of the Navajo Nation is approximately fifty percent (50%);

4. In 1996, the United States Congress enacted the Personal Responsibility and Work Reconciliation Act of 1996 (P.L. 104-193 "Welfare Reform Act"). This Act will impact thousands of Navajo people. As a result, there is a need to accelerate the development of privately owned businesses and provide more employment opportunities;

5. There is a need within the Navajo Nation to accelerate business development and economic growth within the Navajo Nation;

6. Although the Navajo Nation has a population that is approximately 90% Navajo, approximately 76% of the contracts by the Navajo Nation between the years 1994 and 2003 were awarded to non-Navajos, according to the Navajo Nation award data; and

7. The Navajo Nation's sovereign status is directly related to its ability and authority to regulate all commercial activities within the Navajo Nation, including those of non-Indians and non-member Indians. In addition, the Treaty of 1868 between the Navajo Nation and the United States recognizes the inherent authority of the Navajo Nation to exclude non-Indians from the Navajo Nation. Pursuant to this authority, engaging in business within the Navajo Nation is a privilege granted by the Navajo Nation and is subject to such conditions as the Navajo Nation may require, subject to applicable federal law. The privilege of entering into the Navajo Nation for the purpose of engaging in business is therefore conditioned upon, among other things, compliance with this Act.

C. The purpose of this Act is to:

1. Promote the economic self-sufficiency of the Navajo Nation by granting "first opportunity" and/or preference in contracting to Navajo and/or Indian owned and operated businesses;

2. Promote competitive bidding and contracting opportunities among Navajo businesses;

3. Develop a dynamic and self-sustaining private sector for the Navajo Nation;

4. Increase Navajo business and employment opportunities for the Navajo people;

5. Provide for business certification in accordance with current Navajo Nation laws; and

6. Regulate the conduct of those engaging in business within the Navajo Nation in order to protect and promote the economic security and welfare of the Navajo Nation.

D. It is not the intent of this Act to require the Navajo Nation or any other public entities or private entities to contract with non-qualified Navajo businesses.

E. It is the intent of this Act to grant first opportunity and contracting preference to qualified Navajo-owned or Indian-owned businesses for all contracts, subcontracts, grants and subgrants issued by public and private entities within the Navajo Nation.

F. The provisions of this Act should be liberally interpreted to promote economic development and the growth of Navajo-owned businesses within

the Navajo Nation.

G. The Navajo Nation shall determine the nature, composition, qualification, and preference certification of all businesses subject to the provisions of this Act.

### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 1, July 30, 1985.

### **§ 202. Definitions**

For all purposes of this Act, the following definitions shall be applicable:

A. "Bid Shopping" is defined herein as any practice involving the solicitation or communication of any competitor's bid prior to and after bid opening, thereby providing an unfair advantage and opportunity to underbid any competitor.

B. "Bidders" is defined as buyers and sellers of goods and services who offer to perform a contract for work and labor or to supply services and goods at a specified price.

C. "Broker" is defined as buyers and sellers of goods and services including agents/negotiators between buyer and seller, who do not have custody of property or will not personally perform the contract to provide the goods or services.

D. "Dealer" is defined as one who buys to sell for resale, not one who buys to keep, or makes to sell.

E. "Established Business" is defined as a for-profit economic entity, firm or other organization, engaged in business activities with ownership, custody and control of an existing adequate inventory or providing professional services with a published address and telephone number and making significant contributions to the Navajo economy.

F. "Front" is defined as a business claiming to have fifty-one percent (51%) or more Navajo or other Indian ownership of any commercial, industrial, or other economic entity or organization, but without the Navajo or other Indian owner or owners exercising the major role in decision-making for operations, profit-sharing and actual management control.

G. "Navajo Indian" or "Navajo" is defined as a person who is an enrolled member of the Navajo Nation.

H. "Navajo Nation" shall have the same definition as used at 1 N.N.C. § 552 including:

1. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

a. All lands within the exterior boundaries of the Navajo Indian Reservation, including the Navajo Partitioned Land, or of the Eastern Navajo portion of the Navajo Nation, including Alamo, Tohajiilee, and Ramah, or of Navajo-dependent Indian Communities;

b. All lands held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indian; and

c. All other lands over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law or to which the Navajo Nation has ownership through the Treaty of 1868.

I. "Other Indian" is defined as an Indian other than Navajo who is an enrolled member of a federally recognized Indian Tribe within the United States.

J. "Owned and Controlled" is defined as having at least fifty-one percent (51%) or more ownership of any commercial, industrial, or other economic entity, firm or organization, provided that such ownership shall consist of active participation in decision-making role in operations, profit-sharing and actual management control.

K. "Prime Contractor" is defined as any party, or entity which undertakes, offers to undertake or purports to have the capacity to undertake contracting of a project for a specified price and is authorized and responsible for the management, coordination, completion, supervision or subcontracting for the contracted project.

L. "Procuring Party" is defined as the party that initiates the proceeding to cause a project to be bid for contracting.

M. "Prospective bidders" is defined as potential buyers or sellers of goods and services who offer to perform a contract for work and labor or supply services and goods at a specific price.

N. "Private entity" is defined as a privately-owned business entity doing business on the Navajo Nation, including corporations which are wholly-owned by the Navajo Nation.

O. "Public entity" is defined as an entity which is a part of the Navajo Nation government.

P. "Subcontractor" is defined as any party or entity to which any contract is let by the prime contractor or its subcontractor for materials, equipment, transportation or other goods and services on that prime contract, regardless of tier.

## **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 2, July 30, 1985.

**Revision note.** The Commerce Department was discontinued pursuant to the 1981 Budget and replaced by the Business Regulatory Department within the Division of Economic Development.

### **§ 203. Jurisdiction; Application; Compliance Requirements and Violations**

A. General Jurisdiction. The Navajo Nation has the inherent sovereign authority to authorize and regulate business activities of business entities within the jurisdiction of the Navajo Nation, as defined in 7 N.N.C. § 254.

B. Application. This Act shall apply uniformly to all public and private entities engaging in business on the Navajo Nation and to the Navajo Nation itself. This Act shall apply to all procurement contracts exceeding fifty thousand dollars (\$50,000) and on a limited basis to those procurement contracts less than fifty thousand dollars (\$50,000).

C. Inapplicability to Lease and Other Transactions. This Act shall not apply to the negotiation, execution, award, transfer, assignment or approval of business site leases, homesite leases, office space leases, shopping center leases, mineral or non mineral leases, subleases, permits, licenses and transactions that are governed by other applicable laws and regulations of the Navajo Nation and the United States. This Act shall not apply to activities of private persons who contract for goods or services for their individual use or benefit.

D. Implementing Federal Indian Preference Laws and Regulations. To the fullest extent possible, this Act and its rules and regulations shall be construed in accordance with applicable federal Indian preference laws and regulations. Specifically, with respect to any self-determination contract or portion of a self-determination contract intended to benefit the Navajo Nation, this Act and any other applicable tribal employment or contract preference laws shall govern with respect to the administration of the contract or portion of the contract in accordance with the Indian Self Determination and Education Assistance Act, 25 U.S.C §§ 450(e)(c). If federal or state funded contracts specifically provide for the application of Indian preference rather than Navajo preference, the procuring party shall attempt to negotiate with such party in order to apply the provisions of this Act. In the event federal or state law expressly precludes the application of this Act, then Indian preference laws shall be applied and shall not constitute a violation of this Act.

E. Falsification or Concealment of Information; Sanctions and Penalties. Any person who authorizes, or knowingly or recklessly omits, or allows, or falsifies, or otherwise misrepresents any fact or matter material to any determination required by this Act, shall be subject to all applicable sanctions and penalties provided under this Act and any other applicable laws or regulations of the Navajo Nation.

F. Bid-Shopping. Bid shopping shall be prohibited.

G. Conflicts of Interest: Disqualification. No official or employee of the Navajo Nation government or entity of the Navajo Nation which is authorized to implement this Act shall promote, approve or participate in any matter pending before that agency or entity, in which such official or employee or any member of his or her immediate family has an economic or other special interest pursuant to the Navajo Nation Ethics in Government Law. The failure or refusal of such official or employee to abstain from such participation as required thereunder, shall render void any approval or action taken by the Navajo Nation Government or entity in which such official or employee participated, to the extent such action is favorable to the business entity in which such official or employee had an interest. The official(s) or employee(s) in conflict shall be subject to all applicable sanctions and penalties provided by law.

### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 3, July 30, 1985.

**Revision note.** CJY-59-85 inadvertently omitted the first Paragraph of § 203(D). See ACJN-112-85, Exhibit B, § 3.4, and Exhibit C, which recommended an "addition to § 3.4 [§ 203(D)]", not a substitution.

### **§ 204. Required Business and Contracting Preference Priorities; Certification Requirements**

A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to the following Navajo business opportunity priority classification:

1. Priority #1. Certification shall be granted to any one hundred percent (100%) Navajo-owned and controlled business, having its principal place of business on or off the Navajo Nation.

2. Priority #2. Certification shall be granted to any fifty-one percent (51%) to ninety-nine percent (99%) Navajo or fifty-one percent (51%) to one hundred percent (100%) other Indian owned and controlled business or one hundred percent (100%) Navajo Nation owned and controlled economic enterprise having its principal place of business on or off the Navajo Nation.

B. Obtaining a Priority Certification and Required Compliance. To receive a priority certification under this Act, the business must satisfactorily demonstrate that the business meets the requirements of § 204(A) (1) or (2).

C. Appeal of Priority Certification Determination. Any business denied a priority classification may appeal the determination pursuant to § 211 hereof.

D. Conditions and Requirements for Broker and Dealer Certification;

Established Businesses. Brokers and dealers as defined in § 202 of this Act shall be certified for those activities which brokers and dealers normally conduct throughout the United States, subject to pre-qualification by the contract-letting, purchasing or procuring entity requesting such broker and/or dealer's services. Certification of brokers and dealers shall further be limited to those having an established business as defined in § 202 herein and certified only for the services being performed. Certification of any broker or dealer shall not qualify any other entity, firm or organization thereof. Such other entities, firms or organizations shall be individually subject to the provisions and conditions herein.

E. Partnership Certification. To be certified as eligible for any Navajo Business Opportunity hereunder, Navajo or other Indian ownership and control must be at least fifty-one percent (51%) of the entire partnership business, as well as the project or transaction for which Navajo Business Opportunity is sought, regardless of the number of general or limited partners.

F. Joint Venture Certification. To be eligible for any Navajo Business Opportunity hereunder, Navajo or other Indian ownership and control must be at least fifty-one percent (51%) of the overall combined joint venture, as well as the project or transaction for which Navajo Business Opportunity is sought, with profits to be divided from each venture in proportion to such respective interest.

#### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 4, July 30, 1985.

**Revision note.** The Commerce Department was discontinued by the 1981 Budget and organization chart. See § C.

#### **§ 205. Navajo Business Opportunity Procedures in Bidding and Procurement**

A. Initial Determination of Maximum Feasible Price or Cost by Contracting or Procuring Party. The determination of the maximum feasible price or cost, in accordance with appropriate Business Regulatory Department rules and regulations, shall be made by the contracting or procuring party prior to soliciting bids and proposals. The maximum feasible price or cost may take into account market price, budgetary constraints and prototype cost and may not be revealed until the award of the contract.

B. Notice to the Business Regulatory Department. Prior to bid openings, the procuring party shall provide to the Business Regulatory Department:

1. A copy of the bid solicitation;
2. A copy of the notice published in the newspaper; and
3. A list of all businesses notified, including the dates and manner of such notices.



C. Bid Opening Procedures and Requirements. The following procedures shall be used at bid openings when there is more than one priority business submitting a bid:

1. All bids submitted by Priority #1 businesses shall be opened first.

2. The procuring entity shall determine the qualifications of the bidders based on qualifications established in accordance § 205(A)(2). Bids submitted by businesses deemed non-qualified or non-responsive shall not be considered.

3. The award shall be made to the qualified Priority #1 bidder with the lowest responsive bid among the Priority #1 bidders provided the bid does not exceed the maximum feasible price or cost.

4. If there is no qualified Priority #1 bidder, or if there is no qualified Priority #1 bidder with a bid less than or equal to the maximum feasible price or cost, the bids of the Priority #2 businesses shall then be opened and award shall be given to the qualified Priority #2 bidder with the lowest responsive bid provided the bid is less than or equal to the maximum feasible price or cost.

5. If no qualified Priority #1 or Priority #2 bidder is entitled to award, bidding may then be open to all other bidders, subject to the same specifications, qualifications and maximum feasible price or cost.

6. Any modifications of the specifications, qualifications or maximum feasible cost or price made subsequent to bid opening and which does not result in a contract award shall be rebid pursuant to the above procedures.

7. Notwithstanding any provision of this Act, in the event that federal law prohibits bid or procurement opportunity or preference as provided herein or prohibits negotiations with a bidder other than the bidder with the lowest bid or price offer, the initial bidding shall be opened to all Priority #1 and #2 businesses; and award shall be made to the bidder offering the lowest price, provided that the bid is less than or equal to the maximum feasible cost or price.

D. Subcontracting Requirements. Prior to the bid opening, prime contractors shall submit to the Business Regulatory Department a subcontracting plan listing the following:

1. Subcontractors and suppliers to be used by the prime contractor;

2. Procedures used in selecting subcontractors and suppliers; and

3. Subcontracts or lease agreements for equipment to be used in performance of the contract.

E. Prime and Subcontractor Performance Bonding: Permitted Alternatives. The prime contractor shall obtain surety bonding or other performance security

from subcontractors to secure their performance and wage obligations including, but not limited to cash bonds, letters of credit and cash monitoring systems such as retention, escrow and/or assignment of construction accounts. The prime contractor shall determine the form of performance security. The prime contractor shall maintain guaranteed security and be ultimately liable for performance of subcontractors.

F. Minimum Subcontract and Procurement Percentage Requirements. The Business Regulatory Department shall have the authority to require all procurement entities and prime contractors to comply with current minimum percentages for procurement and subcontract awards to Navajo-owned and controlled entities, firms and organizations, based upon availability and qualifications of such entities to provide specific products and services.

G. Prior Approval of Modifications. Any contract modification that results in a higher cost or price in excess of twenty percent (20%) of the original amount of the contract or if the procuring party substantially modifies such project, activity or transaction, shall be subject to review and approval by the Business Regulatory Department, to ensure that such modifications are not contrary to the purposes, intent or other provisions of other applicable laws.

H. Required Adherence to Priority Certification. Procuring entities shall not award contracts to non-Navajo owned and controlled entities at a price equal to or greater than the price offered by an equally qualified Priority #1 or #2 business.

#### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 5, July 30, 1985.

#### **Cross References**

Contracts, see 2 N.N.C. § 223.

#### **§ 206. Waivers**

No Waiver of any requirement of this Act shall be granted except by valid resolution of the Navajo Nation Council.

#### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 6, July 30, 1985.

#### **§ 207. Implementation and Compliance with Navajo Nation Business Opportunity Provisions; Specific Duties and Responsibilities**

A. Economic Development Committee. The Economic Development Committee of the Navajo Nation Council shall have the responsibility and authority to review, amend, modify and approve proposed rules and regulations for implementation of this Act.

B. Division of Economic Development. The Division of Economic Development of the Navajo Nation shall be responsible for administering, enforcing and implementing the provisions herein.

C. Business Regulatory Department. The Business Regulatory Department within the Division of Economic Development, shall be responsible for:

1. Developing and maintaining a certification program to determine the appropriate certification priority of business entities.

2. Promulgating rules and regulations to implement this Act. All proposed rules and regulations shall be published for public comments at least 90 days prior to submission to the Economic Development Committee of the Navajo Nation Council for final review and approval.

3. Publishing, maintaining and making available approved rules, regulations, guidelines and forms including provisions of this Act, to ensure that all Navajo Nation entities, all business entities and the Navajo People are kept fully informed of all current laws, rules, regulations and procedures for compliance hereto.

4. Regularly reviewing such rules and regulations in coordination with other Navajo Nation entities and agencies for applicability to economic and market conditions and their relevance to the interests of the Navajo People and the Navajo Nation and the intent of this Act.

5. Enforcing compliance with this Act, pursuant to the intent of this Act and the rules and regulations adopted hereto; requiring applicability of this Act to any proposed contract, subcontract or other transaction to be performed within the Navajo Nation by or on behalf of the Navajo Nation, as part of required clearance procedures, prior to approval by the appropriate oversight committee or authority; and requiring prebid, preconstruction or pre-qualification requirements as needed and appropriate to comply with this Act.

6. Coordinating efforts with federal agencies that require Indian preference or maximum utilization of minority business enterprises.

7. Maintaining and publishing a current Source List of all certified Priority #1 and #2 business entities, persons, firms, enterprises or organizations. By including an entity on such a Source List, the Business Regulatory Department in no way certifies that the entity is qualified to perform in the category in which it is listed. The purpose of this Source List is to utilize such list as a source document only for contract-letting and procuring parties required to determine and notify available Navajo and other Indian-owned entities in the respective areas of commerce which are subject to the provisions of this Act.

8. Providing, in accordance with its responsibilities, capabilities and available resources, in coordination with those of other responsible and appropriate Navajo Nation departments and entities, such community, governmental and business sector educational programs, information and advice as may be necessary and appropriate from time to time, to the continued understanding and awareness by such entities of the policies, objectives, and current procedural requirements for compliance with all provisions of this Act and the current rules and regulations adopted hereunder.

9. Recommend disciplinary action for Navajo Nation employees or officials found to be in violation or noncompliance with this Act pursuant to the applicable Executive, Judicial, or Legislative Navajo Nation Personnel Policies Manual, or the Ethics in Government Law.

#### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 7, July 30, 1985.

CD-68-89, December 15, 1989.

#### **Cross References**

Contracts, generally, see 2 N.N.C. § 185(B).

Contract signatures, see 2 N.N.C. § 222.

#### **§ 208. Certification of Eligible Entities and Authorization of Business Activities**

Establishment of Procedure. The Business Regulatory Department shall have the following duties, responsibilities and authority:

A. Require timely submission of information and documentation on percentage of ownership and organization structure as required herein for certification or recertification eligibility;

B. Deny certification if required information is not provided in a timely manner;

C. Renew, suspend or decertify certifications. Annual, temporary or conditional certifications may be issued based on the circumstances. Certifications shall be reviewed based on new information or changes in organization or operations which materially affect eligibility for certification. Reviews shall be conducted in a manner so as to avoid any loss of eligibility to entities entitled hereto;

D. Certified businesses entities shall be required to disclose changes in organization and/or ownership that may materially affect the eligibility for

preference priority certification; and

E. All confidential certification information shall be kept confidential and shall not be disclosed except as necessary in a proceeding under this Act and other applicable laws.

### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 8, July 30, 1985.

### **§ 209. Monitoring and Enforcement**

A. Navajo Nation Review and Approval Process. All proposed professional services, procurement and construction contracts shall be reviewed by the Business Regulatory Department for compliance with the Act.

B. Procedure Upon Alleged Violation. To investigate alleged violations or noncompliance of this Act, the Business Regulatory Department shall:

1. Investigate any alleged violation and/or complaint under this Act upon receipt of a written document;

2. Prepare a written summary of facts constituting a violation of the Act or applicable rules, and provide all statements of witnesses along with the summary thereof; and

3. Initially seek voluntary compliance and appropriate remedial action pursuant to this Act.

4. If voluntary compliance or remediation is not possible, the Department shall render a decision pursuant to this Act.

5. A decision by the Business Regulatory Department may be appealed pursuant to § 211 of this Act.

C. Interim Project Suspension; Temporary Restraining Orders and Permanent Injunctive Relief from Navajo Nation Court.

1. In the event of a violation of or noncompliance with this Act presenting a probability of continuing material and irreparable harm which is greater than the harm from suspension of performance, the Executive Director of the Division of Economic Development shall, with assistance from the Navajo Nation Department of Justice, on behalf of the threatened interests of the Navajo Nation and of innocent third parties, immediately apply to the District Court of the Navajo Nation for a temporary restraining order and an order to show cause why permanent injunctive relief should not be granted (including orders to permanently cease and desist such performance as determined appropriate) according to the Navajo Nation Rules of Appellate Procedure.

2. If a Navajo Nation Court orders suspension of performance, the Division of Economic Development shall take immediate remedial action as authorized by said Court to prevent or minimize material harm and damage to innocent third parties and to the interests of the Navajo Nation resulting or likely to result from such suspension of performance.

#### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 9, July 30, 1985.

**Note.** § 209(C)(1) reference to Navajo Nation Rules of Civil Appellate Procedure changed to the Navajo Nation Rules of Civil Procedure.

#### **§ 210. Imposition of sanctions**

Upon opportunity for hearing and determination as provided herein, the Administrative Hearing Officer may impose any and all of the following sanctions for violation of this Act or the rules and regulations lawfully promulgated hereunder:

A. Civil monetary fines not to exceed five hundred dollars (\$500.00) per day, per violation.

B. Suspension or termination of a party's authorization to engage in business activity on the Navajo Nation; provided that the party shall be given a reasonable time to remove its equipment and other property it may have on the Navajo Nation and to take such measures to facilitate the satisfaction or assumption of any contractual obligations it has.

C. Prohibit the party from engaging in future business activity on the Navajo Nation for a specified period or permanently, pursuant to applicable laws of the Navajo Nation.

D. Require the party to make such changes in its performance, organization or operations to comply with this Act.

E. Impose other sanctions as appropriate to ensure compliance and to remedy any harm or damages from violation of this Act pursuant to applicable laws.

F. Recommend corrective or remedial action to the President of the Navajo Nation, or the Navajo Nation Council or its appropriate standing committee for Navajo Nation entities in violation or noncompliance with this Act.

#### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

**§ 211. Appeals**

A. Appeals to Business Regulatory Department. Appeals can be made by those businesses who are denied priority certification or parties that are adversely affected by a decision with the Act. Appeals shall not include those matters which are found through an investigation conducted under § 208 (b) of this Act to be private contractual disputes between parties. If a business is denied priority certification, the business may appeal the decision for administrative resolution to the Director of the Business Regulatory Department (or successor agency or designee) by filing with the Director a notice of appeal within 10 days of the date of the written adverse decision. The written notice of appeal shall:

1. Identify the business that was denied certification or license or adversely affected by a decision made pursuant to this Act;
2. Provide a short statement indicating the nature and circumstances of the denial or decision;
3. State the basis for the appeal; and,
4. State the remedial action being sought by the business or party.

B. Appeals to the Hearing Officer. If the Director upholds the Department's decision to deny certification to the affected business, the appealing party may appeal the Director's decision to the Navajo Office of Hearings and Appeals for assignment to an Administrative Hearing Officer.

1. The hearing officer shall hear the appeal within 30 days of receipt of the notice of appeal.
2. Upon mutual agreement with the appealing party, time extensions in increments of not more than 15 days may be granted.
3. Notice shall be provided to the parties at least 10 days in advance of hearing date.
4. Each party at the hearing may be represented by legal counsel and shall have the opportunity to subpoena witnesses and documents, present evidence and examine witnesses.
5. After the hearing each party shall have 10 days to submit in writing proposed findings of facts and conclusions of law. The hearing officer may uphold or reverse the appealed decision(s) or any part thereof, but may not grant any other relief.
6. The hearing officer shall issue written findings of facts and conclusions of law that shall state the decision and grounds thereof.

C. Appeals to the Courts. The decision of the hearing officer may be appealed by the party adversely affected to the Navajo Nation Supreme Court pursuant to the Navajo Nation Rules of Civil Appellate Procedure. The court

shall review the decision of the hearing officer and the administrative record only. The decision shall not be subject to de novo review on appeal. The court may substitute its judgment on those questions of law within its special competence but shall otherwise uphold the decision of the hearing officer where reasonable.

#### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 11, July 30, 1985.

#### **§ 212. Other Navajo Nation Entities and Associated Agencies**

All Navajo Nation entities, departments and other agencies involved in any stage of contracting, subcontracting or other procurement process shall comply with this Act in accordance with applicable law.

#### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 12, July 30, 1985.

#### **§ 213. Severability**

If any provision of this Act or any rule or regulation adopted hereto is found invalid, the remainder of this Act and of the rules and regulations adopted hereto shall not be affected thereby.

#### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 13, July 30, 1985.

#### **§ 214. Effective Date**

The effective date of this Act shall be the date of its approval by the Navajo Nation Council.

#### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 15, July 30, 1985.



## **§ 215. Periodic Review and Amendments**

This Act may be amended from time to time only by the Navajo Nation Council upon the recommendation of the Economic Development Committee.

### **History**

CJA-07-05, January 28, 2005.

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 18, July 30, 1985.

**Note.** Previously numbered Section 216. Former Section 215 deleted.

## **Chapter 3. Control of Businesses within the Navajo Nation**

### **History**

Redesignated. Signs, Billboards, and Advertising Devices was moved from Title 5, Chapter 21, §§ 3401-3412 to Title 5, Chapter 3, Subchapter 3, §§ 421-432. (1995)

### **Subchapter 1. General Provisions**

#### **§ 401. Privilege of doing business—Authority to grant, deny or withdraw**

The Navajo Nation Council, in order to promote the further economic development of the Navajo people, and in order to clearly establish and exercise the Navajo Nation's authority to regulate the conduct and operations of business within the Navajo Nation, hereby declares that the Navajo Nation has the sole and exclusive authority to grant, deny, or withdraw the privilege of doing business within the Navajo Nation, except where such authority is withdrawn from the Navajo Nation by the Constitution and applicable laws of the United States.

### **History**

CMY-33-70, § 1, May 12, 1970.

#### **§ 402. Businesses presently operating within the Navajo Nation**

The privilege of doing business is hereby expressly granted to those businesses presently operating within the Navajo Nation pursuant to leases or permits for the use of land, or pursuant to contractual agreements with the Navajo Nation, its enterprises, and agencies subject to the control or supervision of the Navajo Nation Council or the Economic Development Committee, or with the lessees of the Navajo Nation.

### **History**

CMY-33-70, § 2, May 12, 1970.

## **Cross References**

Economic Development Committee Plan of Operation, 2 N.N.C. § 721 *et seq.*, CD-68-89, December 15, 1989.

### **§ 403. Conditions for continuation**

The grant of the privilege of doing business within the Navajo Nation contained in 5 N.N.C. § 402 is conditioned upon the business' compliance with the applicable laws of the Navajo Nation and upon the continuing effect or validity of prior leases, permits, or contracts authorizing the business to enter upon lands subject to the jurisdiction of the Navajo Nation.

#### **History**

CMY-33-70, § 3, May 12, 1970.

### **§ 404. Revocation; modification or alteration of privilege**

The Navajo Nation Council reserves the right to revoke this grant of the privilege of doing business within the Navajo Nation; to modify, limit, or otherwise alter the extent of this grant; and to establish and enact such laws relating to the establishment or conduct of business within the Navajo Nation as it may deem desirable.

#### **History**

CMY-33-70, § 4, May 12, 1970.

## **Subchapter 2. Common or Contract Carriers**

#### **History**

Redesignated. Common or Contract Carriers was moved from Title 5, Chapter 19, §§ 3201-3203 to Title 5, Chapter 3, Subchapter 2, §§ 411-413. (1995)

### **§ 411. License requirement**

No common or contract carrier shall, by means of its agents or equipment, enter upon or make use of any lands belonging to the Navajo Nation with the intention of picking up ore produced from mines on Navajo Nation land or petroleum products or helium produced at wells on Navajo Nation lands for delivery inside of the Navajo Nation or for the purpose of picking up and transporting any articles whatever except United States mail from one point on Navajo Nation lands to another point on Navajo Nation lands, without first securing a license so to do from the President of the Navajo Nation.

#### **History**

ACMA-59-59, March 27, 1959, app. May 19, 1959.

### **§ 412. Issuance of license; terms and conditions**

A. The President of the Navajo Nation shall issue licenses permitting any common carrier or contract carrier to enter upon and use Navajo Nation lands for business purposes, as aforesaid, upon a showing by the applicant for such license that he or she is of good moral character and is financially responsible and upon receipt by the President of the following stipulation in writing from such applicant, together with a fee of three hundred dollars (\$300.00):

1. The carrier will maintain in force at all times while on Navajo Nation land a liability insurance policy with limits of not less than one hundred thousand dollars (\$100,000) for each person injured or a total of three hundred thousand dollars (\$300,000) for all personal injuries arising out of a single accident, and ten thousand dollars (\$10,000) for all property damage resulting from a single accident.

2. The carrier will pay to the Navajo Nation one percent (1%) of its annual gross revenue from shipments picked up on Navajo Nation lands, provided, however, that the three hundred dollars (\$300.00) initial fee and each subsequent annual fee of three hundred dollars (\$300.00) shall be credited against such percentage fees as they accrue.

3. The carrier will employ Navajos in all its operations on Navajo Nation land in all positions for which they are available and qualified and will establish such reasonable apprentice training program for Navajos in connection with its operations as the President may prescribe, it being understood that one percent (1%) of the actual costs of such apprenticeship or training program shall be deducted from the gross revenues of the carrier upon which said carrier shall be required to pay to the Navajo Nation the percentage fee herein above specified.

4. The carrier will comply with the Navajo Nation labor policy as the same may be set forth from time to time by the Navajo Nation Council, and with all other rules and regulations relating to its use of Navajo Nation land now or hereafter in force.

5. The carrier will pay an annual fee on or before the 31st day of January of each calendar year in the amount of three hundred dollars (\$300.00), which fee shall be credited against its percentage fees for the ensuing year as the same accrue, but no part of which shall be refunded if the percentage fees do not amount to three hundred dollars (\$300.00) during such year, or if the carrier ceases doing business on Navajo Nation land during the year.

6. The carrier will make such of its books and records as are necessary to determine the fees which may be due available to inspection of accountants employed by the Navajo Nation at all reasonable times and at a convenient place designated in advance by the carrier.

B. The President shall include the provisions of Subsection (A) in any license issued by him, and may include such other items and conditions as he deems advisable.

C. Licenses issued pursuant to this Section shall be for a term of not to

exceed five years.

#### **History**

ACMA-59-59, March 27, 1959, app. May 19, 1959.

#### **Cross References**

"Navajo Nation", use of term, see 1 N.N.C. § 501.

#### **§ 413. Navajo Police; exclusion of carriers; impounding equipment**

Any carrier required to be licensed who shall enter upon Navajo Nation land without a license duly issued by the President of the Navajo Nation as provided in 5 N.N.C. § 412, may be excluded from Navajo Nation lands pursuant the procedures set forth at 17 N.N.C. § 1901 et seq.

#### **History**

ACMA-59-59, March 27, 1959, app. May 19, 1959.

#### **Annotations**

#### **1. Treaty of 1868 between the Navajo Tribe of Indians and the United States, at Article II**

*Dodge v. Nakai*, 298 F. Supp. 26, (1969).

#### **Subchapter 3. Signs, Billboards, and Advertising Devices**

#### **History**

Redesignated. Signs, Billboards, and Advertising Devices was moved from Title 5, Chapter 21, §§ 3401-3412 to Title 5, Chapter 3, Subchapter 3, §§ 421-432. (1995)

#### **§ 421. Permits**

No person, firm, corporation, or association of any kind shall erect, attempt to erect, place or maintain any sign or signs, billboard or advertising device or matter of any kind upon any part or portion of the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation without first obtaining a permit.

#### **History**

ACJ-42-57, June 18, 1957.

AC-24-49, 1922-1951, p. 522, December 16, 1949.

#### **Cross References**

"Navajo Nation", use of term, see 1 N.N.C. § 501.

#### **§ 422. Exceptions**

Directional and/or road signs, warning signs, and informative signs pointing out scenic and/or points of historical note and/or importance may be erected without a permit by Department of Interior or the State Commission having jurisdiction of the street, road and/or highway along which the same is to be erected, or by the Navajo Nation.

#### **History**

ACJ-42-57, June 18, 1957, app. September 11, 1957.

#### **§ 423. Application for permit; approval; fees—Generally**

A. Any person, firm, corporation, or association may make application to the Navajo Division of Economic Development, upon forms to be furnished by such Division, and shall obtain the approval of the Navajo Land Department and the road engineer of the subagency jurisdiction where the sign, billboard, or advertising device is to be located, and such other department or office as may have jurisdiction of and/or an interest in the area on the date of the application.

B. The applicant shall pay a five-year permit fee of three hundred dollars (\$300.00) for each permit except permits for directional, informative and/or road signs, which permit or any renewal thereof may be renewed for an additional five-year term, without the filing of a new application, by the payment of the five-year permit fee then in force at the time of such renewal, on or before January 31 of the year ensuing after the termination of the permit or any renewal thereof. Fees shall not be prorated for fractions of a year.

#### **History**

ACJ-42-57, June 18, 1957, app. September 11, 1957.

**Revision note.** References throughout this Subchapter to the "Tribal Enterprise Department" have been changed to the "Division of Economic Development"; similarly, references to the "Land Investigations Department" have been changed to "Navajo Land Department." (2005)

#### **§ 424. Holders of business site leases**

A. The holders of business site leases from the Navajo Nation may make application, as provided in 5 N.N.C. § 423, for a permit for the erection of an informative sign or signs on the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation showing the location of and the type of business and/or accommodations furnished and/or operated by them, and shall pay a permit fee of one hundred twenty-five dollars (\$125.00) for a five-year period for each permit, which permit may be renewed as provided in 5 N.N.C. § 423. Such permit shall be for a sign of a design similar to one of the designs approved.

B. At the time the permit is granted, the Navajo Division of Economic Development shall furnish a numbered permit plate or tag, as provided in 5

N.N.C. § 426, which shall be attached to the sign by the permittee as provided by such Section.

#### **History**

ACJ-42-57, June 18, 1957, app. September 11, 1957.

#### **§ 425. Granting of permits**

The President of the Navajo Nation, with the approval of the Area Director, shall grant permits for the erection and maintenance of signs, billboards or other advertising devices provided that all requirements set forth in this Chapter have been fully and strictly complied with.

#### **History**

ACS-101-58, September 10, 1958.

**Revision note.** The General Superintendent for the Bureau of Indian Affairs is now referred to as the Area Director.

#### **§ 426. Permit plate or tag**

A. At the time the permit is granted, the Navajo Division of Economic Development shall furnish a numbered permit plate or tag showing the period for which the permit was issued, and which the permittee shall affix to the lower left hand corner of the sign, billboard, or advertising device.

B. Any sign, billboard or advertising device not bearing a permit plate or tag shall be removed and destroyed by the duly authorized agent or officer of the Navajo Nation.

#### **History**

ACJ-42-57, June 18, 1957, app. September 11, 1957.

#### **§ 427. Restrictions on location**

A. No permit to erect or maintain a sign, billboard or advertising device, or matter of any kind, except permits for directional, informative and/or road signs, shall be granted except for those areas bordering upon or adjacent to the following streets, roads, and/or highways running into, through or across the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation or any part thereof, to wit:

1. U.S. Highway 66;
2. New Mexico Highway 491;
3. New Mexico Highway 68;
4. Arizona Highway 89-Arizona State Highway 64; and
5. Glen Canyon Dam access highway and such other streets, roads

and/or highways as the appropriate standing committee of the Navajo Nation Council shall from time to time designate and determine.

B. No permit shall be granted to erect or maintain a sign, billboard, or advertising device or matter of any kind, to wit:

1. Nearer than 50 feet to a street, road or highway right-of-way;
2. Nearer than 300 feet to an intersection or railroad crossing;
3. In a stream bed, wash, or arroyo;
4. Determined by the Navajo Division of Economic Development to be apt to obstruct or obscure the view of any person or persons lawfully using the street, road, or highway adjacent to which the same is placed;
5. Nearer than 500 feet to an existing sign;
6. Determined by the Navajo Division of Economic Development to, in any way, interfere with or be a menace to the public health, welfare, and safety of the inhabitants and/or residents of the Navajo Nation; or
7. Legally designated or established park.

#### **History**

ACJ-42-57, June 18, 1957, app. September 11, 1957.

#### **Cross References**

Committee powers, generally, see 2 N.N.C. § 102(G).

Economic Development Committee, powers, see 2 N.N.C. § 724(B).

Transportation and Community Development Committee, powers, see 2 N.N.C. § 423(E).

#### **§ 428. Character**

No permit shall be granted to erect or maintain a sign, billboard or advertising device, or matter of any kind, which is cheap, flimsy, or offensive to good taste and propriety, as determined by the Navajo Division of Economic Development.

#### **History**

ACJ-42-57, June 18, 1957, app. September 11, 1957.

#### **§ 429. Advertising copy; location; change**

Advertising copy may be placed on both sides of a sign or signs, billboard, or advertising device or matter and may be changed at any time without the payment of an additional fee, provided the same is approved by the Navajo Division of Economic Development.

#### **History**

ACJ-42-57, June 18, 1957, app. September 11, 1957.

#### **§ 430. Revocation or termination of permit**

Any permit granted under the provisions of this Chapter may be revoked or terminated if the land upon which the sign or signs, billboard or advertising device is located in pursuance of such permit is or shall be required for the use of the Navajo Nation or any member thereof, or is determined by the Navajo Division of Economic Development to be required for a higher level of use, provided that the unearned portion of the permit fee is refunded to the permittee within a reasonable time after such revocation or termination.

#### **History**

ACJ-42-57, June 18, 1957, app. September 11, 1957.

#### **§ 431. Removal**

Any sign, billboard, or advertising device or advertising matter found remaining on the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation after January 31 following the expiration of the permit or any renewal thereof for the same, shall be removed and destroyed by the duly authorized agent or officer of the Navajo Nation.

#### **History**

ACJ-42-57, June 18, 1957, app. September 11, 1957.

#### **§ 432. Waiver of permit fee**

The President of the Navajo Nation, upon the recommendation of the Navajo Division of Economic Development and with the consent and concurrence of the Vice-President, may waive the payment of the permit fee on behalf of any established and recognized religious and/or charitable organization for the placing or erection of a sign soliciting support for the organization or showing the location of the same.

#### **History**

ACJ-42-57, June 18, 1957, app. September 11, 1957.

### **Chapter 4. Navajo Private Industry Council**

#### **§ 501. Establishment**

A. The Navajo Private Industry Council, hereinafter referred to as "NNPIC", is established pursuant to Public Law 97-300, 29 USC §§ 1512 and 1513, Job Training Partnership Act (JTPA).<sup>1</sup>

B. The NNPIC shall operate within the JTPA yearly funding cycle beginning



July and ending June of each year.

### **History**

ACN-218a-85, Exhibit A, November 14, 1985.

### **§ 502. Purpose**

A. The Navajo Private Industry Council (NNPIC) is established for the following purposes:

1. Provide advice and guidance for involvement of Job Training Partnership Act (JTPA) <sup>1</sup> Programs, as administered by the Navajo Division of Human Resources (NDHR), in the private sector of the Navajo Nation economy;

2. Encourage and recommend creative uses of JTPA resources to assist in the development of the private sector;

3. Develop specific private sector employment and training projects in conjunction and coordination with NDHR and other Navajo Nation departments;

4. Advise and/or make recommendations to the Human Services Committee of the Navajo Nation Council to examine labor policies, standards, specifications, and regulatory elements so as to eliminate burdensome procedures in the development of training activities in the private sector;

5. Assist in the development of economic development plans which relate to the formation of job training activities and new job creation in conjunction with NDHR and other appropriate Navajo Nation departments;

6. Support local Navajo small business initiatives;

7. Promote both private and public development entities to become more responsible to the overall development of the private sector with the purpose of increasing Navajo Nation consumer expenditures; and

8. Develop and design private sector development plans by:

a. Analyzing availability of private sector jobs, including information of employer, occupation, industry, and location;

b. Surveying employment demands and training possibilities in the private sector, such as apprenticeships, in order to develop projections of short and long range labor needs;

c. Refining training and employment programming to accommodate current private sector labor needs;

d. Assessing and using current labor market information contained in all economic development plans;

e. Ensuring that NDHR job training plans are consistent with and complementary to programs funded by other federal agencies and administered by other Navajo Nation departments or non-Navajo Nation entities;

f. Evaluating NDHR/JTPA program and activities and making recommendations thereto;

g. Evaluating NDHR's OJT contracting activities and making recommendations in resolving various problem areas; and

h. Reporting on NNPIC activities to the Human Services Committee of the Navajo Nation Council on a quarterly basis.

### **History**

ACN-218a-85, Exhibit A, November 14, 1985.

**Revision note.** References to "Labor and Manpower Committee" throughout this Chapter have been changed to "Human Services Committee" pursuant to the 1989 Title II amendments. CD-68-89. References to "Navajo Division of Labor NDOL" have been changed to "Navajo Division of Human Resources" pursuant to changes in Plans of Operation relating to organizational structure.

### **§ 503. Powers**

A. The Navajo Private Industry Council (NNPIC) shall have all powers necessary and proper to carry out the purposes set forth in this Plan of Operation.

B. The NNPIC shall:

1. Review and recommend appropriations, allocations, cancellation and reappropriation of funds received under the Job Training Partnership Act (JTPA)<sup>1</sup> for private sector activities;

2. Review and provide recommendations on all draft plans that address job training and employment services in the private sector, after consulting with federal, state, Navajo Nation components, local organizations, institutions, and employers; and

3. Serve as the mediator in resolving any disputes regarding any contract, subcontract, agreement, or amendment between a service provider in the private sector and the Navajo Nation, if said dispute complaints could not be resolved by the NDHR Executive Director or his/her subordinates after review of the complaints.

### **History**

ACN-218a-85, Exhibit A, November 14, 1985.

### **Cross References**

Human Services Committee, powers, see 2 N.N.C. § 604(B).

Intergovernmental Relations Committee, powers, see 2 N.N.C. § 824(B) (6).

**§ 504. Membership; selection; Chairman and Vice-Chairman; term of office**

A. Membership.

1. The Navajo Private Industry Council (NNPIC) shall consist of eight members and shall consist of:

a. Representatives of the private sector, who shall constitute a majority of the membership of the council and who shall be owners of business concerns, chief executives or chief operating officers of non-governmental employers, or other private sector executives who have substantial management or policy responsibility; and

b. Representatives of educational agencies (representative of all educational agencies in the service delivery area), organized labor, rehabilitation agencies, community-based organizations, economic development agencies, and the public employment service.

2. Each member may pick an alternate with delegated voting power to serve whenever the member is absent from meetings. The purpose of the delegated voting power shall be to promote the inclusion and optimal representation in accordance with Job Training Partnership Act (JTPA), § 102(a)(1) and (2).<sup>1</sup> The alternate shall be designated to serve co-terminus with each delegator.

B. Selection.

1. All members of the NNPIC shall be appointed by the President of the Navajo Nation. A majority of the members must represent industries or establishments in the private sector.

2. Recommendation shall be made by the NNPIC to replace any member, including his alternate, who fails to attend for three consecutive scheduled meetings.

3. Should a NNPIC member be terminated because of being unable to attend the meetings, the NNPIC members may tentatively appoint that terminated member's alternate as a member pending the approval of the President of the Navajo Nation.

C. Chairman and Vice-chairman.

1. The Chairman and Vice-Chairman of the NNPIC shall be elected from among its members.

2. The Chairman of the NNPIC shall:

a. Preside over scheduled meetings; in the Chairman's absence, the Vice-Chairman shall preside; and

b. Act as the Chief Administrator over the purpose and

objectives of the NNPIC.

D. Term of Office. The NNPIC members shall serve a term of office coinciding with the USDOL JTPA "designation" periods, which is every two years beginning on July 1, 1995. The President of the Navajo Nation shall appoint members for replacements two months prior to the expiration date. The term shall be staggered at intervals of one year.

#### **History**

ACN-218a-85, Exhibit A, November 14, 1985.

#### **§ 505. Meetings; procedure**

A. Meetings. The Chairman of the Navajo Private Industry Council (NNPIC) shall call a regular meeting at least once every quarter. All meetings of NNPIC shall be open to the general public.

B. Procedure.

1. The NNPIC shall develop its own procedures for the conduct of meetings.

2. All meetings shall be recorded and minutes of each meeting shall be provided.

3. All official business of NNPIC will be transacted by majority vote of those provided.

4. Members of the NNPIC shall be reimbursed for meeting expenses for each meeting during which its assigned business was conducted.

C. Quorum. A quorum shall consist of four members or alternates.

#### **History**

ACN-218a-85, Exhibit A, November 14, 1985.

#### **§ 506. Executive committee**

A. The Navajo Private Industry Council (NNPIC) shall designate subcommittees when deemed necessary and appropriate.

B. A subcommittee shall consist of no less than three members, appointed by the Chairman of the NNPIC.

C. Members of the subcommittees shall be reimbursed for expenses associated with each meeting, including per diem and mileage costs.

#### **History**

ACN-218a-85, Exhibit A, November 14, 1985.

#### **§ 507. Amendments**

This Plan of Operation may be amended from time to time by the Government Services Committee of the Navajo Nation Council upon the recommendation of the Human Services Committee and the Navajo Private Industry Council (NNPIC).

#### **History**

ACN-218a-85, Exhibit A, November 14, 1985.

#### **Cross References**

Standing committee authority over the NNPIC, redesignation pursuant to CD-68-89, December 15, 1989, see 2 N.N.C. § 341 *et seq.*, 2 N.N.C. § 601 *et seq.*

### **Chapter 5. Credit Services Department**

#### **History**

ACF-21-88, February 4, 1988.

Former Subchapters 1, 3, 5, 7 and 9 were rescinded by ACD-234-85, which consolidated and incorporated all resolutions regarding loan activities, and transferred administration of all loan activities to the Navajo Credit Department.

Former Subchapter 1, entitled General Provisions, consisting of §§ 601-624, was derived from CJ-1-48 and ACJ-25-55, and related to the Revolving Credit Fund and loans generally.

Former Subchapter 3, entitled Purchase, Construction or Major Repairs of Buildings, consisting of § 801-810, was derived from ACMA-64-59, related to policy governing loans made for the purchase, construction or major repairs of homes and other buildings.

Former Subchapter 5, entitled Revolving Credit Program; Declaration of Policy and Plan of Operation, consisting of §§ 851-889, was derived from ACMY-63-62, and later superseded by ACAU-102-82, related to loan procedures generally.

Former Subchapter 7, entitled Navajo Small Business Emergency Loan Program, consisting of § 931-940, was derived from ACAU-102-82 and related to providing loan funds to Navajo businesses.

Former Subchapter 9, entitled Navajo Personal Emergency Loan Program, consisting of § 981-989, was derived from ACJY-122-83 and related to providing loan funds to Navajo individuals.

**Revision note.** Resolution ACF-21-88 repealed ACD-234-85 which also involved the repeal of §§ 608-637, 2 N.N.C. § 374(B)(12) delegated the Budget and Finance Committee authority to oversee this loan program.

#### **§ 601. Establishment**

There is established the Credit Services Department within the Division of Finance of the Navajo Nation.

#### **History**

ACF-21-88, Exhibit B, February 4, 1988.

CO-50-87.

ACO-234-85.

CF-13-85.

**Revision note.** ACF-21-88 rescinded ACD-234-85 and §§ 608-637.

#### **§ 602. Purpose**

A. The purpose of the Credit Services Department shall be to provide administration and management of the Personal Loan Program (formerly known as the Emergency Personal Loan Program) and the Navajo Home Loan Program (formerly known as the Navajo Revolving Credit Program), and all of the assets and outstanding accounts receivable associated therein. Specifically the Credit Services Department shall:

1. Administer the Personal Loan Program and the Navajo Home Loan Program in accordance with all Navajo Nation law, and the Operating Policies and Guidelines for the respective programs, as approved by the Budget and Finance Committee of the Navajo Nation Council;

2. Service all accounts receivable associated with the Personal Loan Program and the Navajo Home Loan Program so as to protect the Navajo Nation's interest in property pledged to secure any loans made under the program;

3. Implement collection efforts in regards to funds due and owing the Navajo Nation resulting from loans made under the respective programs;

4. Assist the Budget and Finance Committee of the Navajo Nation Council in the completion of their duties and responsibilities as set forth in their Plan of Operation, as approved by Resolution ACN-229-87; and

5. Disseminate information to the public regarding the respective programs and credit matters generally, and provide technical assistance as needed.

#### **History**

ACF-21-88, Exhibit B, February 4, 1988.

#### **Cross References**

Budget and Finance Committee Authority, see 2 N.N.C. § 374(B)(12) and (13).

Business Industrial Development Funds, see 12 N.N.C. § 1701 *et seq.*

**§ 603. Personnel and organization**

A. There is established the position of Director of the Credit Services Department, and such other professional and support staff positions as may be approved by the Navajo Nation Office of Personnel Management and budgeted by the Navajo Nation Council. The Director shall have the authority to hire the Department's professional and support staff, pursuant to the Navajo Nation Personnel Policies and Procedures. All Department personnel shall be subject to the Navajo Nation personnel compensation, benefits, policies and procedures.

B. The Credit Services Department shall be administratively aligned within the Division of Finance, and under the supervision of the Group Director for Financial Management of the Navajo Nation.

**History**

ACF-21-88, Exhibit B, February 4, 1988.

**§ 604. Duties, responsibilities, and authority of the Credit Services Department**

A. General. The Director shall have the authority necessary and proper to carry out the purposes set forth in § 602 of this Plan of Operation.

B. Specifics. Under general administrative supervision of the Division of Finance and the Group Director of the Financial Management, the Director, or his designee, shall have the authority to:

1. Accept, review, evaluate, and process applications for loans from the respective programs in accordance with operating policies and guidelines adopted by the Budget and Finance Committee;

2. Close approved loans in accordance with operating policies and guidelines approved by the Budget and Finance Committee and accounting policies and procedures of the Navajo Nation;

3. Manage and service loan accounts arising from loans made under the respective programs, and to take, or cause to be taken all appropriate actions to protect property interests of the Navajo Nation;

4. Initiate collection proceedings, including the referral of accounts to the Department of Justice for litigation or other appropriate action, for all sums due and owing the Navajo Nation arising from loans made under the respective programs;

5. Recommend policies and procedures to the Budget and Finance Committee of the Navajo Nation Council;

6. Prepare and present periodic accounting and operational reports to appropriate parties;

7. Execute documents on behalf of the Navajo Nation in regards to the closing of loans, and the placement and release of liens on personal property, and the release of leasehold mortgages pertaining to loans that have been paid in full;

8. Publish or cause to be published, public information material pertaining to the respective programs, and other credit and financing matters; and

9. Complete such other assignments, or take such other action as is necessary to protect the property and assets of the Navajo Nation associated with the respective programs, as may be directed by the Controller of the Navajo Nation.

#### **History**

ACF-21-88, Exhibit B, February 4, 1988.

#### **§ 605. Office location and hours**

A. The administrative office of the Credit Services Department shall be located in Window Rock, Navajo Nation (Arizona). The mailing address is as follows:

Credit Services Department P.O. Box 2405 Window  
Rock, Navajo Nation (Arizona) 86515

B. The office shall be open Monday through Friday, between 8:00 A.M. and 5:00 P.M., or such other regular office hours as may be established for the Navajo Nation government.

#### **History**

ACF-21-88, Exhibit B, February 4, 1988.

#### **§ 606. Miscellaneous**

A. Within this Plan of Operation, the singular shall include the plural, and the masculine shall include the feminine, as is appropriate.

B. The Credit Services Department shall coordinate with all appropriate departments and offices of the Navajo Nation in the administration and management of the respective programs.

#### **History**

ACF-21-88, Exhibit B, February 4, 1988.

#### **§ 607. Amendments to the Plan of Operation**

This Plan of Operation may be amended by the Government Services Committee of the Navajo Nation Council, upon the recommendation of the Budget and Finance Committee of the Navajo Nation Council.



### **History**

ACF-21-88, Exhibit B, February 4, 1988.

ACD-234-85, December 19, 1985, rescinding §§ 801-810, 851-889, 931-940, and 981-989.

**§§ 608 to 637. [Rescinded]**

### **History**

ACF-21-88, Exhibit B, February 4, 1988.

### **Cross References**

Business Industrial Development Fund Loans, see 12 N.N.C. § 1701 *et seq.*

## **Chapter 7. Consumer Protection**

### **Subchapter 1. Unfair Trade Practices**

#### **§ 1101. Title**

This Subchapter may be cited as the Navajo Nation Unfair Consumer Practices Act.

### **History**

CJY-71-99, July 21, 1999.

#### **§ 1102. Purpose**

The purpose of this Act is to protect consumers within the Navajo Nation from a wide range of unfair, deceptive and unconscionable sales practices by sellers of goods and services within the Nation.

### **History**

CJY-71-99, July 21, 1999.

#### **§ 1103. Definitions**

As used in the Navajo Nation Unfair Consumer Practices Act:

A. "Person" includes, where applicable, natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates;

B. "Seller-initiated telephone sale" means a sale, lease or rental of goods or services in which the seller or his representative solicits the sale by telephoning the prospective purchasers and in which the sale is consummated entirely by telephone or mail, but does not include a transaction:

1. In which a person solicits a sale from a prospective purchaser who has previously made an authorized purchase from the seller's business; or

2. In which the purchaser is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635 or regulations issued pursuant thereto;

C. "Trade" or "commerce" includes the advertising, offering for sale, sale or distribution of any services and any property and any other article, commodity or thing of value, including any trade or commerce directly or indirectly affecting the people of the Navajo Nation.

D. "Unfair or deceptive trade practice" means any false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by any person in the regular course of his trade or commerce, which may, tends to, or does, deceive or mislead any person and includes but is not limited to:

1. Representing goods or services as those of another when the goods or services are not the goods or services of another;

2. Causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;

3. Causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;

4. Using deceptive representations or designations of geographic origin in connection with goods or services;

5. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he or she does not have;

6. Representing that goods are original, new, or unused if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand, or if the goods have been used to an extent that is materially different from the fact;

7. Representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;

8. Disparaging the goods, services or business of another by false or misleading representations;

9. Indicating that goods or services will be supplied in greater quantity than the seller intends;

10. Offering goods or services with intent not to supply reasonable expectable public demand;

11. Making false or misleading statements of fact concerning the price of goods or services, the prices of competitors or one's own price at a past or future time or the reasons for, existence of, or amounts of, price reduction;

12. Making false or misleading statements of fact for the purpose of obtaining appointments for the demonstration, exhibition or other sales presentation of goods or services;

13. Packaging goods for sale in a container that bears a trademark or trade name identified with goods formerly packaged in the container, without authorization, unless the container is labeled or marked to disclaim a connection between the contents and the trademark or trade name;

14. Using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

15. Stating that a transaction involves a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies or obligations that it does not involve;

16. Stating that services, replacements or repairs are needed if they are not needed;

17. Failure to deliver the quality or quantity of goods or services contracted for;

18. Stating or suggesting that goods or services are available to the consumer for a reason that does not exist;

19. Stating or suggesting that goods or services have been supplied in accordance with a previous representation, if they have not;

20. Requiring the execution of any consent to storage, consent to repair, or consent to removal of property from the Navajo Nation as a contract condition.

E. "Unconscionable trade practice" means any act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services or in the extension of credit or in the collection of debts which to a person's detriment:

1. Takes advantage of the lack of knowledge, lack of formal education, ignorance, illiteracy, inability to read or understand the language of an agreement or the verbal representation made in connection to a transaction, or the ability, experience or capacity of a person to an unreasonably unfair degree; or

2. Results in a gross disparity between the value received by a person and the price paid; or

3. Results in a gross disparity between the price paid and the price at which similar property or services were readily obtainable in similar transactions by like consumers at the time the transaction was entered into; or

4. Results in a transaction in which the consumer is unable to receive a substantial benefit from the subject of the transaction at the time the transaction is entered into; or

5. Results in a transaction for which there was no reasonable probability of payment of the obligation in full at the time the transaction was entered into; or

6. Results in transaction which is substantially one-sided in favor of the supplier; or

7. Is based upon a misleading statement of opinion which the consumer was likely to rely upon to his or her detriment.

#### **History**

CJY-71-99, July 21, 1999.

#### **Annotations**

##### **1. Unconscionable arbitration clause**

"Considering all of these principles together, the Court holds that the specific arbitration clause in the financing contract is unenforceable. Though arbitration generally is encouraged, clauses that mandate arbitration are not immune from scrutiny for unconscionability or consistency with Fundamental Law." *Green Tree Servicing, LLC v. Duncan*, No. SC-CV-46-05, slip op. at 12 (Nav. Sup. Ct. August 18, 2008).

##### **§ 1104. Unfair or deceptive and unconscionable trade practices prohibited**

Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.

#### **History**

CJY-71-99, July 21, 1999.

#### **Annotations**

##### **1. Unconscionable arbitration clause**

"Considering all of these principles together, the Court holds that the specific arbitration clause in the financing contract is unenforceable. Though arbitration generally is encouraged, clauses that mandate arbitration are not immune from scrutiny for unconscionability or consistency with Fundamental Law." *Green Tree Servicing, LLC v. Duncan*, No. SC-CV-46-05, slip op. at 12 (Nav. Sup. Ct. August 18, 2008).

**§ 1105. Chain referral sales technique; prohibited**

The use or employment of any chain referral sales technique, plan, arrangement or agreement whereby the buyer is induced to purchase merchandise or services upon the seller's representation or promise that if the buyer will furnish the seller names of other prospective buyers of like or identical merchandise that the seller will contact the named prospective buyers and the buyer will receive a reduction in the purchase price by means of a cash rebate, commission, credit toward balance due or any other consideration, is declared to be an unlawful practice within the meaning of the Unfair Consumer Practices Act.

**History**

CJY-71-99, July 21, 1999.

**§ 1106. Misrepresentation of motor vehicles; penalty**

A. The willful misrepresentation of the age or condition of a motor vehicle by any person including regrooving tires or performing chassis repair, without informing the purchaser of the vehicle that the regrooving or chassis repair has been performed, is an unlawful practice within the meaning of the Unfair Consumer Practices Act. Unless the alleged misrepresentation is based wholly on repair of damage, the disclosure of which was not required pursuant to Subsection (B) of this Section when there has been repair for which disclosure is required shall constitute prima facie evidence of willful misrepresentation.

B. Except as provided in Subsections (C) and (D) of this Section, a seller of a motor vehicle shall furnish at the time of sale of a motor vehicle an affidavit that:

1. Describes the vehicle; and

2. States to the best of the seller's knowledge whether there has been an alteration or chassis repair due to wreck damage.

C. No affidavit shall be required pursuant to this Section if the flat rate manual cost of the alteration or chassis repair is less than six percent (6%) of the sales price of the vehicle.

D. In the case of a private-party sale of a vehicle, an affidavit shall not be furnished.

**History**

CJY-71-99, July 21, 1999.

**§ 1107. Private remedies**

A. A person likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers

reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person, is not required.

B. Any person who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlawful by the Unfair Consumer Practices Act may bring an action to recover actual damages or the sum of one thousand dollars (\$1,000), whichever is greater. Where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three thousand dollars (\$3,000), whichever is greater, to the party complaining of the practice.

C. The court shall award attorneys' fees and costs to the party complaining of an unfair or deceptive trade practice or unconscionable trade practice if he prevails. The court shall award attorneys' fees and costs to the party charged with an unfair or deceptive trade practice or an unconscionable trade practice if it finds that the party complaining of such trade practice brought an action for which there was no subjective good faith basis. Attorneys' fees shall be calculated using the Lodestar method.

D. The relief provided in this Section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of the Navajo Nation.

E. In any class action filed under this Section, the court may award damages to the named plaintiffs as provided in Subsection (B) of this Section and may award members of the class such actual damages as were suffered by each member of the class as a result of the unlawful method, act or practice.

F. Proof of an unfair or deceptive trade practice or unconscionable trade practice shall be a defense and absolute bar to recovery to a claim on any contract or obligation filed with the courts of the Navajo Nation. A defendant who prevails on such a defense shall be awarded attorneys fees incurred through responding to the claim, which shall be calculated using the Lodestar method.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1108. Construction**

The Unfair Consumer Practices Act neither enlarges nor diminishes the rights of parties in private litigation.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1109. Door-to-door sales; contracts; requirements; prohibitions**

A. In connection with any door-to-door sale, it constitutes an unfair or deceptive trade practice for any seller to:

1. Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution that is in the same language as that principally used in the oral sales presentation and that shows the date of the transaction and contains the name and address of the seller and, in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

2. Fail to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", that shall be attached to the contract or receipt and easily detachable and that shall contain in ten-point bold face type the following information and statements in the same language as that used in the contract:

"NOTICE OF CANCELLATION

Date

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice or send a telegram to:

---

(Name of seller)

at \_\_\_\_\_

(Address of seller's place of business)

not later than midnight of \_\_\_\_\_.

(Date)

I hereby cancel this transaction.

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Buyer's signature)"

3. Fail, before furnishing copies of the notice of cancellation to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation;

4. Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this Section or 7 N.N.C. § 621, including specifically his right to cancel the sale in accordance with the provisions of this Section;

5. Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel;

6. Misrepresent in any manner the buyer's right to cancel;

7. Fail or refuse to honor any valid notice of cancellation by a buyer and, within 10 business days after the receipt of such notice, fail to:

a. Refund all payments made under the contract or sale;

b. Return in substantially as good condition as when received by the seller any goods or property traded in; and

c. Cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction;

8. Negotiate, transfer, sell or assign any notice or other evidence of indebtedness to a finance company or other third party prior to



midnight of the fifth business day following the day the contract was signed or the goods or services were purchased; and

9. Fail to notify the buyer, within 10 business days of receipt of his notice of cancellation, whether the seller intends to repossess or to abandon any shipped or delivered goods.

B. The cancellation period provided for in this Section shall not begin until the buyer has been informed of his right to cancel and has been provided with copies of the notice of cancellation.

C. For the purposes of this Section:

1. "Business day" means any calendar day except Sunday or the following business holidays: New Year's Day, Washington's birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, Martin Luther King, Jr.'s birthday and any other legal public holiday of the Navajo Nation or the United States;

2. "Consumer goods or services" means goods or services other than perishable goods or agricultural products purchased, leased or rented primarily for personal, family or household purposes, including courses of instruction or training, regardless of the purpose for which they are taken;

3. "Door-to-door sale" means a sale, lease or rental of consumer goods or services with a purchase price of twenty-five dollars (\$25.00) or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the primary place of business of the seller. A door-to-door sale includes seller initiated telephone sales and sales at periodic outdoor markets. A door-to-door sale does not include a transaction:

a. Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;

b. In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. § 1635, or regulations issued pursuant thereto;

c. In which the buyer has initiated the contract and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;

d. In which the buyer has initiated the contract and specifically requested the seller to visit his home for the purpose of

repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion;

e. Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission; or

f. In which a consumer acquires the use of goods under the terms of a rental-purchase agreement with an initial rental period of one week or less, by placing a telephone call to a lessor and by requesting that specific goods be delivered to the consumer's residence or such other place as the consumer directs and consummation of the rental-purchase agreement occurs after the goods are delivered; or

g. For the sale of handcrafts, including but not limited to jewelry, weavings, paintings, drawings, or other works of graphic art and ceramics, and food items or herbs and herbal remedies collected, processed or made, in any manner whatsoever, and offered for sale by an enrolled member of the Navajo Nation.

4. "Place of business" means the main or permanent branch office or local address of a seller;

5. "Purchase price" means the total price paid or to be paid for the consumer goods or services, including all interest and service charges; and

6. "Seller" means any person, partnership, corporation or association engaged in the door-to-door sale of consumer goods or services.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1110. Limitation of retail purchases unlawful**

It is unlawful for any merchant to advertise or offer for sale any item of merchandise with a limitation upon the number of the item that any retail purchaser may purchase at the advertised price. It is further unlawful for any merchant offering or advertising any item of merchandise in his place of business at any given price to refuse to sell to any prospective retail purchaser for cash the whole or any part of his stock of such item at such price. However, this Section shall not be applicable to a purchaser purchasing for resale. All remedies available under the Unfair Consumer Practices Act shall apply to violations of this Subsection.

#### **History**

CJY-71-99, July 21, 1999.

## **Subchapter 2. Pyramid or Multilevel Sales**

### **§ 1111. Title**

This Subchapter may be cited as the Navajo Nation Pyramid Promotional Schemes Act.

#### **History**

CJY-71-99, July 21, 1999.

### **§ 1112. Purpose**

The purpose of this Act is to shield residents of the Navajo Nation from pyramid sales schemes and to provide authority to halt such schemes before residents of the Nation are subjected to financial loss.

#### **History**

CJY-71-99, July 21, 1999.

### **§ 1113. Definitions**

As used in the Pyramid Promotional Schemes Act:

A. "Compensation" includes a payment based on a sale or distribution made to a person who either is a participant in a pyramid promotional scheme or has the right to become a participant upon payment;

B. "Consideration" means the payment of cash or the purchase of goods, services or intangible property but does not include:

1. The purchase of goods or services furnished at cost to be used in making sales and not for resale; or

2. Time and effort spent in pursuit of sales or recruiting activities.

C. "Pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods, services or intangible property by the participant or other persons introduced into the plan or operation.

#### **History**

CJY-71-99, July 21, 1999.

### **§ 1114. Prohibition; defenses excluded**

A. A person shall not establish, operate, advertise or promote a pyramid

promotional scheme.

B. A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation does not change the identity of the scheme as a pyramid promotional scheme nor is it a defense under this article that a participant, on giving consideration, obtains any goods, services or intangible property in addition to the right to receive compensation.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1115. Private remedies**

A. A person likely to be damaged by any method, act or practice which is declared by the Pyramid Promotional Schemes Act to be unlawful may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required.

B. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court may award attorneys' fees to a prevailing defendant if the party complaining of an unlawful practice has brought an action which he or she knew to be groundless.

C. The relief provided in this Section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of the Navajo Nation.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1116. Action by Attorney General**

A. Whenever the Attorney General has reasonable belief that any person is using, has used or is about to use any method, act or practice which is declared by the Pyramid Promotional Schemes Act to be unlawful and that proceedings would be in the public interest, he may bring an action in the name of the Navajo Nation against that person to restrain, by temporary or permanent injunction, the use of such method, act or practice. The action may be brought in the district court of the district in which the person resides or has his principal place of business or in the district court in the district in which the person is using, has used or is about to use the practice which has been alleged to be unlawful under the Pyramid Promotional Schemes Act. The Attorney General acting on behalf of the Navajo Nation shall not be required to post bond when seeking a temporary or permanent injunction.

B. In any action brought under Subsection (A) of this Section, the court may, upon petition of the Attorney General, require that the person engaged in the unlawful practice make restitution to all persons of money, property or other things received from them in any transaction related to the unlawful

practice; and it is further provided that if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Pyramid Promotional Schemes Act, the Attorney General, upon petition to the court, may recover on behalf of the Navajo Nation a civil penalty not exceeding ten thousand dollars (\$10,000) per violation.

#### **History**

CJY-71-99, July 21, 1999.

### **Subchapter 3. Motor Vehicle Warranties**

#### **§ 1117. Title**

This Subchapter may be cited as the Motor Vehicle Warranties Compliance Act.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1118. Purpose**

The purpose of this Act is to provide a mechanism which ensures that consumers of new or used motor vehicles within the Navajo Nation are able to enforce warranty rights in those vehicles.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1119. Definitions**

As used in the Motor Vehicle Quality Assurance Act:

A. "Collateral charges" means those additional charges to a consumer not directly attributed to a manufacturer's suggested retail price label for a new motor vehicle and includes all taxes, license, title and registration fees and other governmental charges related to the purchase of the vehicle;

B. "Comparable motor vehicle" means an identical or reasonably equivalent motor vehicle;

C. "Consumer" means the purchaser, other than for purposes of resale, of a new or used motor vehicle normally used for personal, family or household purposes, any persons to whom such a motor vehicle has been transferred during the duration of an express warranty applicable to the motor vehicle and any other persons entitled by the terms of warranty to enforce the obligations of the warranty;

D. "Express warranty" means any written or oral affirmation of the fact of promise made by a manufacturer to a consumer in connection with the sale or new motor vehicles which relates to the nature of the material or workmanship

or to a specified level of performance over a specified period of time, including any terms or conditions precedent to the enforcement of obligations pursuant to the warranty;

E. "Manufacturer" means any person engaged in the manufacturing, assembling, importing or distributing of a motor vehicle as a regular business;

F. "Motor vehicle" means a passenger motor vehicle including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes, whose gross vehicle weight is less than ten thousand pounds; and

G. "Used motor vehicle" means any motor vehicle that, at the time of purchase by the buyer, has been previously owned by or has been used by the seller in a manner consistent with ownership, or that has a certified odometer reading of five thousand (5,000) miles or more.

### **History**

CJY-71-99, July 21, 1999.

### **§ 1120. Conformation to express warranties for new motor vehicles**

A. If a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties.

B. If the manufacturer or its agent or authorized dealer, after a reasonable number of attempts, is unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle to the consumer, the manufacturer shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the new motor vehicle occurs. As used in this Subsection, a reasonable allowance for use shall be an amount equal to the number of miles driven by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair multiplied by 30 cents per mile. Refunds shall be made to consumers or lienholders as their interests may appear.

C. It shall be presumed that a reasonable number of attempts as mentioned in Subsection (B) of this Section have been undertaken to conform a new motor vehicle to the applicable express warranties if:

1. The same uncorrected nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized

dealers within the express warranty term or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but the nonconformity continues to exist; or

2. The vehicle is in the possession of the manufacturer, its agent or authorized dealer for repair a cumulative total of 30 or more business days during such term or during such period whichever is the earlier date, exclusive of down time for routine maintenance as prescribed by the manufacturer. The term of an express warranty, such one-year period and such 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood or other natural disaster. In no event shall the presumption herein provided apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and an opportunity to cure the defect alleged. The manufacturer shall provide written notice and instruction to the consumer, either in the warranty or a separate notice, of the litigation to file this written notification before invoking the remedies available pursuant to the Motor Vehicle Warranties Compliance Act.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1121. Affirmative defenses**

It shall be an affirmative defense to any claim under the Motor Vehicle Warranties Compliance Act that:

A. An alleged nonconformity does not substantially impair the use and market value of the motor vehicle;

B. A nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle;

C. A claim by a consumer was not filed in good faith; or

D. Any other affirmative defense allowed by law.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1122. Used motor vehicles; title; implied warranty of merchantability disclaimer; waiver; burden of proof; remedies**

A. Unless the seller is a used motor vehicle dealer, before the seller attempts to sell a used motor vehicle the seller shall possess the title to the used motor vehicle and the title shall be in the seller's name.

B. A used motor vehicle dealer shall not exclude, modify or disclaim the implied warranty of merchantability or limit the remedies for a breach of that warrant, except as otherwise provided in this Section, before midnight of the

thirtieth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven 1500 miles after delivery, whichever is earlier. In calculating time under this Subsection, a day on which the warranty is breached is excluded and all subsequent days in which the motor vehicle fails to conform with the implied warranty of merchantability are also excluded. In calculating distance under this Subsection, the miles driven to obtain or in connection with repair, servicing or testing of the motor vehicle that fails to conform with the implied warranty of merchantability are excluded. An attempt to exclude, modify or disclaim the implied warranty of merchantability or to limit the remedies for a breach of that warranty, except as otherwise provided in this Section, in violation of this Subsection renders a purchase agreement voidable at the option of the purchaser.

C. For the purposes of this Section, the implied warranty of merchantability is met if the motor vehicle functions in a safe condition and is substantially free of any defect that significantly limits the use of the motor vehicle for the ordinary purpose of transportation on any public highway. The implied warranty of merchantability expires at midnight of the thirtieth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven 1500 miles after delivery, whichever is earlier. In calculating time under this Subsection, a day on which the warranty is breached is excluded and all subsequent days in which the motor vehicle fails to conform with the implied warranty of merchantability are also excluded. In calculating distance under this Subsection, the miles driven to obtain or in connection with the repair, servicing or testing of the motor vehicle that fails to conform with the implied warranty of merchantability are excluded.

D. The implied warranty of merchantability described in this Section does not extend to damage that occurs after the sale of the motor vehicle and that is the result of any abuse, misuse, neglect, failure to perform regular maintenance or to maintain adequate oil, coolant or other required fluid or lubricant or off road use, racing or towing.

E. If the implied warranty of merchantability described in this Section is breached, the consumer shall give reasonable notice to the seller before the purchaser exercises any remedies. The seller shall have a reasonable opportunity to repair the vehicle and the consumer shall pay one-half of the cost of the first two repairs necessary to bring the vehicle in compliance with the warranty. The consumer's payments are limited to a maximum payment of twenty-five dollars (\$25.00) for each repair. The seller shall pay the costs of all subsequent repairs.

F. The maximum liability of the seller under this Section is limited to the purchase price paid for the used motor vehicle.

G. An agreement for the sale of a used motor vehicle by a used motor vehicle dealer is voidable at the option of the consumer unless it contains on its face the following conspicuous statement printed in bold-faced ten point or larger type set off from the body of the agreement:

"The seller hereby warrants that this vehicle will be fit for the ordinary purposes for which the vehicle is used for 30 days or 1500 miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this agreement. You (the purchaser) will have



to pay up to twenty-five dollars (\$25.00) for each of the first two repairs if the warranty is violated."

H. The inclusion of the statement prescribed in Subsection (G) of this Section in the agreement does not create an express warranty.

I. A consumer of a used motor vehicle may waive the implied warranty of merchantability described in this Section only for a particular defect in the vehicle and only if all of the following conditions are satisfied:

1. The used motor vehicle dealer fully and accurately discloses to the consumer that because of circumstances unusual to the used motor vehicle dealer's business, the used motor vehicle has a particular defect.

2. The consumer agrees to buy the used motor vehicle after disclosure of the defect.

3. Before the sale, the consumer indicates agreements to the waiver by signing and dating the following conspicuous statement that is printed on the first page of the sales agreement in bold-faced ten point or larger type and that is written in the language in which the presentation was made:

"Attention purchaser: Sign here only if the dealer told you that this vehicle has the following problem(s) and that you agree to buy the vehicle on those terms:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_"

J. The dealer has the burden to prove by a preponderance of the evidence that the dealer complied with Subsection (I) of this Section.

K. For any breach of the implied warranty of merchantability described in this Section, the consumer may, once the seller has had a reasonable opportunity to repair as described in Subsection (E), bring an action to recover the purchase price paid. The court shall award attorneys' fees, calculated using the Lodestar method, to a prevailing purchaser.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1123. Limitation of action**

Any action brought to enforce the provisions of the Motor Vehicle Warranties Compliance Act shall be commenced within two years following the date of original delivery of the motor vehicle to a consumer.

#### **History**

CJY-71-99, July 21, 1999.

**§ 1124. Attorney fees**

A consumer who prevails in an action brought to enforce the provisions of the Motor Warranties Compliance Assurance Act shall be entitled to receive attorneys' fees, calculated using the Lodestar method, and court costs from the manufacturer. If a consumer does not prevail in such an action and brings that action for frivolous reasons or in subjective bad faith, the manufacturer shall be entitled to receive attorneys' fees and court costs from the consumer.

**History**

CJY-71-99, July 21, 1999.

**Subchapter 4. Rental-Purchase Agreements**

**§ 1125. Title**

This Subchapter may be cited as the Navajo Nation Rental-Purchase Agreement Act.

**History**

CJY-71-99, July 21, 1999.

**§ 1126. Purpose**

The purpose of this Act is to define the rights of consumers who enter into rental-purchase agreements and to protect their interest in those agreements or the property obtained pursuant to those agreements.

**History**

CJY-71-99, July 21, 1999.

**§ 1127. Definitions**

As used in the Rental-Purchase Agreement Act:

A. "Advertisement" means a commercial message in any medium that solicits a consumer to enter a rental-purchase agreement;

B. "Cash sale price" means the price stated in a rental-purchase agreement for which the lessor would have sold and the consumer would have bought the goods that are the subject matter of a rental-purchase agreement if the transaction had been a sale for cash and may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements;

C. "Consumer" means an individual who rents goods under a rental-purchase agreement to be used primarily for personal, family or household purposes;

D. "Consummation" means the date on which a consumer enters a rental-purchase agreement;

E. "Goods" means personal property of which a consumer acquires use under a rental-purchase agreement;

F. "Lessor" means a person who regularly provides the use of goods under rental-purchase agreements and to whom rental payments are initially payable on the face of the rental-purchase agreement; and

G. "Rental-purchase agreement" means an agreement for the use of goods by an individual for personal, family or household purposes, for an initial period of four months or less, that is automatically renewable with each payment after the initial period, that does not obligate or require the consumer to continue renting or using the goods beyond the initial period and that permits the consumer to become the owner of the goods.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1128. Exempted transactions; relationship to other laws**

The Rental-Purchase Agreement Act does not apply to the following:

A. Rental-purchase agreements made primarily for business, commercial or agricultural purposes;

B. A lease of a safe deposit box;

C. A lease or bailment of personal property that is incidental to the lease of real property and provides that the consumer has no option to purchase the leased property;

D. A lease of a motor vehicle; or

E. A lease of a mobile home.

#### **History**

**Revision note.** For purposes of statutory format, "or" added at end of Subsection (D).

CJY-71-99, July 21, 1999.

**Note.** Section renumbered for consistent Code format. (2004).

#### **§ 1129. General requirements of rental-purchase agreements**

A. Each rental-purchase agreement shall be in writing, dated, signed by the consumer and lessor and completed as to all essential provisions.

B. The printed or typed portion of the rental-purchase agreement, other than instructions for completion, shall be in a size equal to at least

eight-point type. The rental-purchase agreement shall be designated "rental-purchase agreement".

C. The lessor shall deliver to the consumer, or mail to him at his address shown on the rental-purchase agreement, a copy of the agreement as accepted by the consumer. Until the lessor does so, a consumer who has not received delivery of the rented goods shall have the right to rescind his rental-agreement and receive a refund of all payments made. An acknowledgment by the consumer of delivery of a copy of the rental-purchase agreement shall be in a size equal to at least ten-point bold type and, if contained in the agreement, shall appear directly above the consumer's signature.

D. The rental-purchase agreement shall contain the names of the lessor and consumer, the lessor's business address and the residence or other address of the consumer as specified by the consumer.

E. The lessor shall disclose to the consumer the information required by § 1130 of the Rental-Purchase Agreement Act on the face of the rental-purchase agreement above the line for the consumer's signature. The disclosures shall be made at or before consummation of the rental-purchase agreement. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by the disclosures. If a disclosure becomes inaccurate as a result of any act, occurrence or any agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of the Rental-Purchase Agreement Act.

F. A lessor who provides an advertisement in any language other than English shall have rental-purchase agreements printed in each non-English language of the advertisement and shall make those rental-purchase agreements available to consumers.

### **History**

CJY-71-99, July 21, 1999.

### **§ 1130. Disclosures**

A. For each rental-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

1. Whether the periodic payment is weekly, monthly or otherwise, the dollar amount of each payment and the total number and total dollar amount of all periodic payments necessary to acquire ownership of the goods;

2. A statement that the consumer will not own the goods until the consumer has paid the total amount necessary to acquire ownership;

3. A statement advising the consumer whether the consumer is liable for loss or damage to the goods and, if so, a statement that the liability will not exceed the fair market value of the goods as of the time they are lost or damaged;

4. A brief description of the goods, sufficient to identify the

goods to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the goods are new or used. A statement that indicates new goods are used is not a violation of the Rental-Purchase Agreement Act;

5. A statement of the cash sale price of the goods, but if one rental-purchase agreement involves a lease of two or more items as a set, a statement of the aggregate cash price of all items shall satisfy this requirement;

6. The total of initial payments paid or required at or before consummation of the rental-purchase agreement delivery of the goods, whichever is later;

7. A statement that the total amount of payments does not include other charges or fees and a statement of all other charges or fees;

8. A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option, and the price, formula or method for determining the early purchase price;

9. A statement identifying the party responsible for maintaining or servicing the goods while they are being rented, together with a description of that responsibility and a statement that if any part of a manufacturer's express warranty covers the goods at the time the consumer acquires ownership of them, it shall be transferred to the consumer, if allowed by the terms of the warranty;

10. A statement that the consumer may terminate the rental-purchase agreement without penalty by voluntarily surrendering or returning the goods in good repair, reasonable wear and tear excepted, along with any past due rental payments upon expiration of any rental period. This disclosure shall be in bold type;

11. Notice of the right to reinstate a rental-purchase agreement, as provided in the Rental-Purchase Agreement Act; and

12. The following notice printed or typed in size equal to at least ten-point bold type:

"NOTICE TO THE CONSUMER

Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign."

B. With respect to matters governed by the federal Consumer Credit Protection Act, 15 U.S.C. § 1601 *et seq.*, compliance with that act satisfies the requirements of this Section.

**History**

CJY-71-99, July 21, 1999.

**§ 1131. Prohibited provisions**

A rental-purchase agreement shall not contain:

- A. A confession of judgment;
- B. A negotiable instrument;
- C. A security interest or any other claim of a property interest in any property of the consumer;
- D. A wage assignment;
- E. A waiver by the consumer of claims or defenses;
- F. A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises unlawfully or to commit any breach of the peace in the repossession of goods;
- G. A provision either waiving the terms of 7 N.N.C. § 621 or purporting to be an advance consent to the removal of property from the Navajo Nation. The provisions of 7 N.N.C. § 621 shall apply to all rental-purchase agreements;
- H. A provision requiring the purchase of insurance or a liability damage waiver from the lessor for goods that are the subject of the rental-purchase agreement;
- I. A provision that mere failure to return goods constitutes probable cause for a criminal action;
- J. A provision requiring the consumer to make a payment in addition to regular periodic payments in order to acquire ownership of the goods or a provision requiring the consumer to make periodic payments totaling more than the dollar amount necessary to acquire ownership as disclosed pursuant to § 1125 of the Rental-Purchase Agreement Act;
- K. A provision for more than one reinstatement fee on any one periodic payment, regardless of the period of time during which it remains unpaid; or
- L. A provision of or a late charge or any other type of charge or penalty for reinstating a rental-purchase agreement, other than a reinstatement fee; however, a lessor may use the term "late charge" or a similar term to refer to a reinstatement fee.

**History**

CJY-71-99, July 21, 1999.

**§ 1132. Reinstatement**

A. A consumer who fails to make a timely rental payment may reinstate the rental-purchase agreement without losing any rights or options that exist under the agreement by the payment of the following charges within five days of the

renewal date of an agreement with monthly periodic payments or within two days of the renewal date of an agreement requiring periodic payments more frequently than monthly:

1. All past due rental charges;
2. If the goods have been picked up, the reasonable costs of pickup and redelivery; and
3. Any applicable reinstatement fee.

B. If a consumer has paid less than two-thirds of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than 21 days after the date of the return of the goods.

C. If a consumer has paid two-thirds or more of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than 30 days after the date of the return of the goods.

D. Nothing in this Section shall prevent a lessor from attempting to repossess property in conformity with 7 N.N.C. § 621 during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same goods, if available, or with substitute goods of comparable quality and condition.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1133. Renegotiations and extensions**

A. A renegotiation occurs when any term of a rental-purchase agreement that is required to be disclosed by § 1125 of the Rental-Purchase Agreement Act is changed by agreement between the lessor and consumer. A renegotiation creates a new rental-purchase agreement requiring the lessor to give all the disclosures required by § 1125 of the Rental-Purchase Agreement Act.

B. A renegotiation shall not include:

1. Reinstatement of a rental-purchase agreement in accordance with § 1127 of the Rental-Purchase Agreement Act;
2. A lessor's waiver or failure to assert any claim against the consumer;
3. A deferral, extension or waiver of a portion of a periodic payment or of one or more periodic payments; or

4. A change, made at the consumer's request, of the day of the week or month on which periodic payments are to be made.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1134. Advertising**

A. An advertisement that refers to or states the dollar amount of a periodic payment and the right to acquire ownership of a specific item shall also clearly and conspicuously state:

1. That the transaction advertised is a rental-purchase agreement;
2. The total number and total amount of periodic payments necessary to acquire ownership of the item; and
3. That the consumer acquires no ownership rights in the item unless the total amount necessary to acquire is paid.

B. Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable for failure to comply with the provisions of this Section.

C. The provisions of Subsection (A) of this Section shall not apply to an advertisement that does not refer to or state the amount of any payment or that is published in the yellow pages of a telephone directory or in any similar directory of business.

D. Every item displayed or offered under a rental-purchase agreement shall bear a tag or card that clearly and conspicuously indicates in Arabic numerals each of the following:

1. The cash price of the item;
2. The amount of the periodic payment; and
3. The total number and total amount of periodic payments necessary to acquire ownership.

E. An advertisement in any language other than English shall contain disclosures as required by this Section in the non-English language.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1135. Enforcement; remedies; limitations**

A. A lessor who fails to comply with requirements of the Rental-Purchase Agreement Act is liable to the consumer damaged thereby in an amount equal to:



1. The actual damages sustained by the consumer as a result of the lessor's failure to comply and twenty-five percent (25%) of the total of payments necessary to acquire ownership, but not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000); and

2. The costs of the action and attorneys' fees, calculated using the Lodestar method, as determined by the court.

B. A consumer may not take any action to offset the amount for which a lessor is potentially liable under Subsection (A) of this Section against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This Subsection does not bar a consumer then in default on an obligation from asserting a violation of the Rental-Purchase Agreement Act as an original action or as a defense or counterclaim to an action brought by a lessor against the consumer.

C. A consumer may assert a violation of the Rental-Purchase Agreement Act as an original action or as a defense or counterclaim to an action brought by a lessor against the consumer.

D. The remedies of a consumer, pursuant to the provisions of this Section, are in addition to any other rights or remedies available to a consumer pursuant to applicable laws or regulations.

E. No action under this Section may be brought in any court of competent jurisdiction more than two years after the date the consumer made his last rental payment or more than two years after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1136. Lessor's defenses**

A. If a lessor establishes by a preponderance of evidence that a violation of the Rental-Purchase Agreement Act was unintentional or the result of a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, the lessor shall not be subject to the provisions of § 1131 of the Rental-Purchase Agreement Act and the validity of the transaction is not affected. Examples of bona fide errors are clerical errors, calculation errors, errors due to unintentionally improper computer programming or data entry and printing errors, but do not include errors of legal judgment with respect to a lessor's obligations under the Rental-Purchase Agreement Act.

B. A lessor is not subject to the provisions of § 1131 of the Rental-Purchase Agreement Act if, within 60 days after discovering a failure to comply with a requirement of the Rental-Purchase Agreement Act and prior to the institution of an action for noncompliance and prior to the receipt of written notice of the noncompliance from the consumer, the lessor notifies the consumer of the noncompliance and makes whatever adjustments in the appropriate account are necessary to correct the noncompliance.

C. No provision of § 1131 of the Rental-Purchase Agreement Act applies to any action done or omitted in good faith in conformity with some provision of that act, notwithstanding that after the action or omission has occurred the provision is amended, rescinded or determined by judicial or other competent authority to be invalid for any reason.

#### **History**

**Revision Note (2005).** To correct a typographical error, in the first sentence of Subsection (A), "adopted a avoid such errors" was changed to read "adopted to avoid such errors".

CJY-71-99, July 21, 1999.

### **Subchapter 5. Pawn Transactions**

#### **§ 1137. Title**

The provisions of this Subchapter may be cited as the Navajo Nation Pawn Regulation Act.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1138. Definitions**

As used in the Pawn Regulation Act:

A. "Pawnbroker" means a person engaged in the business of making pawn transactions;

B. "Pawn service charge" means the sum of all charges, payable directly or indirectly by the pledger and imposed directly or indirectly by the pawnbroker as an incident to the pawn transaction;

C. "Pawnshop" means the location or premises at which a pawnbroker regularly conducts his business;

D. "Pawn transaction" means either the act between a pawnbroker and a person pledging a good of lending money or extending credit on the security or pledged goods or of purchasing tangible personal property with an express or implied agreement or understanding that it may be redeemed or repurchased by the seller at a stipulated price;

E. "Person" means an individual, partnership, corporation, joint venture, trust, association or any other legal entity however organized;

F. "Pledged goods" means tangible personal property other than choses in action, securities or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with the pawn transaction;

G. "Local law enforcement agency" means the Navajo Department of Public Safety; and

H. "Local government" or "local government authority" means a chapter or other local government.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1139. Purpose**

The purpose of the Pawn Regulation Act is to:

A. Prevent frauds, unfair practices, discriminations against, impositions on, or abuses of, the citizens of the Navajo Nation;

B. Exercise the police power of the Nation to insure a sound system of making pawn transactions and acquiring and disposing of tangible personal property by and through pawnshops and to prevent unlawful pawn transactions, particularly in stolen property, through regulating pawnbrokers and certain persons employed by or in pawnshops;

C. Ensure financial responsibility to the Nation and to the public;

D. Ensure compliance with federal, Navajo Nation and local laws, rules, regulations and ordinances;

E. Assist local governments in the exercise of their police power; and

F. To protect from exploitation, abuse or its own improvidence that segment of society within the Nation which relies from time to time for its need upon money or credit extended by pawnbrokers and given upon the security of art, handcraft or movable personal possessions.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1140. Permits required, inspection fee; penalty**

A. In addition to any occupational or other license required by the local government, every pawnbroker shall obtain a pawnbroker permit from his or her local government, and that permit shall be conspicuously displayed in the pawnbroker's place of business. Said permit will expire on July 1 of each year and must be renewed by that date. Upon obtaining the permit, every pawnbroker shall register with the local law enforcement agency.

B. The local government may impose upon pawnbrokers a pawnbroker permit fee, in an amount to be set by the local government, to cover the expense of administration of the Pawn Regulation Act. No person who has been convicted of a felony shall be eligible for a permit.

C. Doing business as a pawnbroker without a permit constitutes a violation of this Section and is subject to the general penalty provisions of the Pawn Regulation Act.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1141. Administration; applicability of other laws**

A. The local government may adopt such rules and regulations as necessary for the equitable administration of the Pawn Regulation Act.

B. Nothing in the Pawn Regulation Act shall be construed to prohibit a local government from enacting additional requirements governing pawnbrokers, not inconsistent with that Act.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1142. Pawnbroker; bond required**

No person shall engage in business as a pawnbroker without having executed and delivered a bond to his local government in the sum of five thousand dollars (\$5,000). The bond shall be in a form approved by the local government and shall be conditioned upon the conduct of the pawnbroker's business according to the provisions of the Pawn Regulation Act. The bond shall be for the benefit of each and every person damaged by a breach of any condition set forth in the bond. Every pawnbroker shall provide the local government with 30 days' notice in writing of the cancellation of the bond.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1143. Application for permit; requirements**

A. Each application for an original or a renewal permit shall be submitted in writing to the local government and contain such information as is required by the local government and be accompanied by the applicable permit fee amount.

B. Each application shall be accompanied by the name, social security number, address and date of birth of each agent, servant and employee of the applicant engaged in the business of pawn transactions. Changes in such list must be indicated on each renewal application.

C. Every pawnbroker shall furnish with each application for an original or renewal permit proof of execution and delivery of the bond to the local government.

#### **History**

CJY-71-99, July 21, 1999.

**§ 1144. Suspension or revocation of permit; notice; hearing**

A. The local government authority may institute proceedings for the suspension or revocation of any permit issued pursuant to the Pawn Regulation Act upon the filing of a written complaint by the local law enforcement agency, the designated representative of that local law enforcement agency or the Attorney General, charging the permit holder or an employee thereof, of having violated any provision of the Pawn Regulation Act.

B. The local government authority shall serve written notice upon the permit holder of the alleged violation. The notice requirement is satisfied if personal service of the notice is had upon the holder of the permit or is posted in a conspicuous place upon the permit holder's place of business.

C. The local government authority shall set a date for hearing on the complaint not more than 10 days, nor less than five days, after the date of notice unless waived by all parties thereto. The notice provided for in Subsection (B) of this Section shall specify the date and time of the hearing.

D. The permit holder and any other interested person shall have the right to appear at this administrative hearing and to produce evidence. The rules of evidence shall not apply. If, after holding this hearing, the local government authority determines that the permit holder is in violation of the provisions of the Pawn Regulation Act as charged in the complaint, the local government authority shall issue a written order. The order may suspend the permit for a stated period of time or permanently revoke the permit. The local government authority shall cause such order to be served upon the permit holder and filed in the administrative offices of the local government for public inspection within five business days after the hearing. Service of the order on the permit holder shall be as specified in Subsection (B) of this Section, and the official serving the order shall have the authority to remove the permit from the premises and deliver the permit to the local government authority. This hearing shall be the final administrative remedy.

**History**

CJY-71-99, July 21, 1999.

**§ 1145. Pawnbroker reports; records; delivery; violations**

A. Every pawnbroker shall each day accurately complete a report of all used property of every kind received or purchased in a pawn transaction during the preceding business day on a form approved by the local law enforcement agency. Either a driver's license or other photo identification card shall be required of each person entering into a pawn transaction with a pawnbroker. Each item received shall be listed on a separate report form. Said report shall include the following:

1. Name of item;
2. Description of the item including make and model number, if any;

3. Serial number and other identifying marks, if any;
4. Date, time and type of pawn transaction;
5. Name and address of person offering the item;
6. Description of the persons offering the item including sex, complexion, hair color, approximate height and weight, and date of birth; and
7. Type of identification used by person offering item and identifying number of said identification. If the person presents a driver's license, the report shall also indicate the state of issuance.

B. All reports required by this Section shall be completed accurately and be made available by 12 o'clock noon of the day following the day of the pawn transaction and shall be delivered or mailed to the local law enforcement agency within three days of the pawn transaction.

C. Property purchased directly from another permit holder regulated by the Pawn Regulations who has already reported the item pursuant to this Section is exempt from the requirements of this Section.

D. Persistent or frequent erroneous or incomplete entries in or delays in the submitting of the above required reports shall constitute a violation of this Section and are subject to the general penalty provisions of the Pawn Regulations.

E. The reports and records of the permit holder required pursuant to this Section, as well as every item received in pawn, shall be available for inspection by the local government authority, the Attorney General, the local law enforcement agency or any sworn member of that law enforcement agency at all reasonable times.

F. Each item pledged to or purchased by the permit holder for which a report is required shall have attached to it a tag with an alphabetic or numerical identification system matching that item with its corresponding report and record.

### **History**

CJY-71-99, July 21, 1999.

### **§ 1146. Pawn ticket**

A. Every pawnbroker shall at the time of each pawn transaction deliver to the person pawning any good, a ticket signed by the pawnbroker containing the substance of the entry required to be made in his report pursuant to § 1141 of the Pawn Regulation Act.

B. The holder of such ticket shall be presumed to be the person entitled to redeem the pledge and the pawnbroker shall deliver such article to the person so presenting such ticket on payment of principal and all lawful charges.

C. The pawn ticket required by this Section shall further contain all disclosures of credit terms required to be disclosed to the pledger by the federal Truth in Lending Act.<sup>1</sup>

#### **History**

**Revision Note (2002).** Term "of" inserted between "holder" and "such" at Subsection (B).

CJY-71-99, July 21, 1999.

#### **§ 1147. Default; disposition of pledged property**

A. Except as otherwise specified in this Section, upon default by the pledger, the pawnbroker shall comply with the requirements of §§ 9-501 through 9-507, Title 5A, Navajo Nation Code, in the disposition of the pledged goods.

B. Notwithstanding Subsection (A) of this Section, the pawnbroker shall not dispose of the pledged property, except by redemption, until at least 90 days after the indebtedness has become due.

C. Notwithstanding Subsection (A) of this Section, if the pawnbroker disposes of the pledged property by sale in the regular course of his business, such sale shall conform to the requirements of § 9-504, Title 5A, Navajo Nation Code, and if a surplus remains after sale of the pledged property the pawnbroker must make a record of the sale and the amount of the surplus and must notify the pledger by first class mail sent to the pledger's last known address of the amount of the surplus and the pledger's right to claim it at a specified location within 90 days of the date of mailing of the notice if the surplus is one hundred dollars (\$100.00) or less, or within 12 months of the date of the mailing of the notice if the surplus is greater than one hundred dollars (\$100.00). In the event that the first class mail addressed to any person is returned unclaimed to the pawnbroker, then the pawnbroker must post and maintain on a conspicuous public part of his premises an appropriately entitled list naming each such person. Ninety days or 12 months, as applicable, after the date of such mailing whichever is later, the pawnbroker may retain any surplus remaining unclaimed by the pledger as his own property.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1148. Record of disposition of pledged property**

Every pawnbroker shall keep a permanent record, fully itemized, of all pledged property disposed of following default by the pledger. The record shall include the following:

- A. The number of the pawn transaction;
- B. The name and address of the pledgor;

C. The date of the pawn transaction and the date of the last payment received as service charge or on principal;

D. The date of disposition of the pledged property pursuant to § 1147 of the Pawn Regulation Act;

E. The method of disposition of the pledged property; and

F. The amount and disposition of any surplus following disposition of the pledged property.

#### **History**

**Revision Note (2005).** Section referenced in § 1148(D) is corrected to conform with statutory intent.

CJY-71-99, July 21, 1999.

#### **§ 1149. Pawn service charge**

A. For the first 30-day period of the pawn transaction, a pawnbroker may charge seven dollars fifty cents (\$7.50) or ten percent (10%) of the amount loaned, whichever is greater, provided that such charge shall not be made on the refinancing of an existing loan or credit transaction. A loan or extension of credit shall be considered to be refinancing of an existing loan if any part of the proceeds of the subsequent loan is applied toward the payment of a prior loan with the same pawnbroker.

B. For the remaining period of the pawn transaction, including any refinancing, no pawnbroker shall charge directly, indirectly or by any subterfuge a pawn service charge in connection with any pawn transaction at a rate in excess of one and one-half percent ( $1\frac{1}{2}\%$ ) per month on the unpaid principal balance of the loan or extension of credit.

C. The foregoing pawn service charges are limiting maximums and nothing herein shall be construed to prohibit a pawnbroker from contracting for or receiving a lesser rate than here established.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1150. Prohibited practices**

A pawnbroker shall not:

A. Knowingly enter into a pawn transaction with a person under the age of 18 years or under the influence of alcohol, any narcotic, drug, stimulant or depressant;

B. Make any agreement requiring the personal liability of a pledger in connection with the pawn transaction;

C. Accept any waiver, in writing or otherwise, of any right or protection



accorded a pledger under the Pawn Regulation Act;

D. Fail to exercise reasonable care to protect pledged goods from loss or damage;

E. Fail to return a pledged good to a pledger upon payment of the full amount due to the pawnbroker on the pawn transaction. In the event a pledged good is lost or damaged while in the possession of the pawnbroker, the pawnbroker shall compensate the pledger for the reasonable value of the lost or damaged good;

F. Make any charge for insurance in connection with a pawn transaction;

G. Purchase or otherwise receive any item of property from which the manufacturer's name plate, serial number or identification mark has been obviously defaced, altered, covered or destroyed;

H. Purchase or otherwise receive any item of property which the permit holder knows is not lawfully owned by the person offering the same;

I. Enter into a pawn transaction in which the unpaid principle balance exceeds two thousand dollars (\$2,000);

J. Require that any of the proceeds of any cash loan be spent at the pawnbroker's place of business or in any other manner directed by the pawnbroker; or

K. Make any agreement in which the pledged property is a motor vehicle.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1151. General penalties**

Any pawnbroker or permit holder who is found guilty of a violation of any provision of the Pawn Regulation Act shall be guilty of an offense. Any pawnbroker or permit holder who is not a member of the Navajo Nation and who is found guilty of a violation of the Act may be excluded from the Nation pursuant to 17 N.N.C. § 1901. Any pawnbroker or permit holder who violates any provision of the Pawn Regulation Act shall be subject to having his permit revoked or suspended by the local government pursuant to the provisions of § 1140 of the Pawnbrokers Act. Revocation or suspension of such permit will not bar prosecution of the permit holder under the penal provisions of the Pawn Regulation Act. Criminal prosecution will not bar proceedings to revoke or suspend the holder's permit.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1152. Forfeiture**

The violation of any provision of the Pawn Regulation Act in any covered

transaction shall be deemed a forfeiture of the entire amount of the pawn service charge contracted for or allowable under the transaction. In the event a pawn service charge in excess of the amounts allowable under the Pawn Regulation Act has been paid in any covered transaction, the person by who it has been paid, or his or her legal representative, may recover back by civil action triple the amount of service charge paid, or one thousand dollars (\$1,000), whichever is greater. The court shall also award attorneys' fees, calculated by the Lodestar method. Any civil action under this Section shall be commenced within two years from the date the usurious transaction was consummated.

#### **History**

CJY-71-99, July 21, 1999.

### **Subchapter 6. Finance Charge Rates**

#### **§ 1153. Title**

The provisions of this Subchapter may be cited as the Navajo Nation Finance Charge Rate Limitation Act.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1154. Purpose**

The purpose of this Act is to ensure against the lending of money within the Navajo Nation at unconscionable, excessive or usurious rates of interest. The Act also prevents the enforcement of contracts within the Nation, regardless of where they are entered into, which charge usurious interest rates.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1155. Retail Installment Contract Rates**

A. In any retail installment contract, including retail installment accounts, a seller may contract for and if so contracted for, the holder thereof may charge, receive, and collect a finance charge which shall not exceed an annualized rate equal to the prime interest rate, as indicated in the latest print edition of the Wall Street Journal, at the time the contract is executed plus fifteen (15) percentage points above the prime rate. For retail installment contracts, the rate which is stated in the contract may not be changed for any reason during the term of the contract. In the case of retail installment accounts, the finance charge shall only be charged on the outstanding balances of the contract as it changes from month to month.

B. For purposes of this Act, the term "finance charge" shall include all charges which are incident to, or a condition of, the extension of credit.

### **History**

CJA-08-06, January 27, 2006.

CJY-71-99, July 21, 1999.

### **§ 1156. Private remedies**

A. It shall be a complete defense to any claim on a retail installment contract that the rate charged is in excess of the rate authorized by this Act. No amount of charges in excess of those authorized by this Act may be reduced to judgment.

B. Any seller who contracts for a finance charge in excess of the rates authorized by this Act shall be liable for a penalty of three times the amount of the finance charge which is in excess of the rate authorized by this Act, but in any event not less than one thousand dollars (\$1,000).

C. The court shall award attorneys' fees, calculated using the Lodestar method, to any consumer who prevails on a defense or claim under this Act. Any claim under this Act must be brought within two years of the date on which the claim is created.

### **History**

CJY-71-99, July 21, 1999.

## **Subchapter 7. Motor Vehicle Deficiency Charges**

### **§ 1157. Title**

This Subchapter may be cited as the Motor Vehicle Consumer Protection Act.

### **History**

CJY-71-99, July 21, 1999.

### **§ 1158. Purpose**

A. The purpose of the Motor Vehicle Consumer Protection Act is to protect buyers of new or used motor vehicles both inside and beyond the territorial boundaries of the Navajo Nation.

B. The Act is designed to help remedy problems faced by buyers when used motor vehicles break down shortly after their purchase, leaving buyers with no recourse against the seller, and when deficiency judgments are issued against buyers that do not fairly reflect the detriment suffered by the seller, but which create enormous and unjust burdens for the buyers.

C. The protections offered by this Act should be effected by limiting the relief offered by Navajo Nation courts to the seller of a motor vehicle if that

seller fails to offer the buyer such protections as are detailed herein.

### **History**

**Revision Note (2002).** For purposes of statutory format, this Section was designated by Subsections.

CJY-71-99, July 21, 1999.

### **§ 1159. Definitions**

As used in the Motor Vehicle Consumer Protection Act:

A. "Deficiency" means the difference between the contract sales price of a motor vehicle, as contracted for between buyer and seller (including all interest or financing costs charged to the buyer, less any unearned finance charges rebated according the accounting rule of 78ths), and the sum of (a) all payments made toward that contract sales price by the purchaser, and (b) any sum acquired by the seller for the resale of the motor vehicle at auction for the purpose of recouping the contract sales price;

B. "Motor vehicle" means a passenger motor vehicle including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes which is legally registered for use on the Navajo Nation, and whose gross vehicular weight is less than 10,000 pounds;

C. "Used motor vehicle" means any motor vehicle that, at the time of purchase by the buyer, has been previously owned by or has been used by the seller in a manner consistent with ownership, or that has a certified odometer reading of 5,000 miles or more;

D. "Seller" means any person or entity in the business of selling motor vehicles at the rate of five motor vehicles or more per year in the 365 days preceding an action governed by this Subchapter and who is a plaintiff in an action governed by this Subchapter, and does not include individuals who are the sellers of motor vehicles previously used for their own personal, family or household purposes, and who have sold less than five motor vehicles in the year preceding an action governed by this Subchapter;

E. "Buyer" means any person subject to the laws of the Navajo Nation who has bought a motor vehicle and who is the defendant in an action governed by this Subchapter, and may include any cosigner, surety or guarantor to a motor vehicle sales contract;

F. "Principal" means any amount due, on a motor vehicle sales contract or retail installment sales contract, as consideration for the item tendered to the buyer by the seller, exclusive of financing charges;

G. "Financing charges" means any amount due on a retail sales contract as consideration for the extension of credit on a contract, exclusive of the cost of the principal.

### **History**

CJY-71-99, July 21, 1999.

**§ 1160. Limitation on Issuance of Deficiency Judgments for Used Motor Vehicles**

A. No court of the Navajo Nation shall have jurisdiction to enter a judgment, or to recognize or enforce a judgment of a foreign court, requiring a defendant to pay a deficiency on a motor vehicles sales contract or a motor vehicle retail installment sales contract, without first having obtained sufficient evidence of the following:

1. That the seller of the used motor vehicle agreed:

a. In writing and at the time of sale;

b. To accept the return of the used motor vehicle at any time during the duration of a 10-day "grace" period beginning the day following the delivery of the vehicle to the buyer, on the basis of any complaint whatsoever regarding the quality, condition, or price of the vehicle, for a full and immediate refund of all monies paid by the buyer;

c. Had the buyer sign an acknowledgment of this agreement;

d. That such acknowledgment form provided sufficient notification of the buyer's rights under this Subchapter; and

e. That seller provided a copy of such form to the buyer at the time and place of delivery; and

2. That the buyer failed to return the used motor vehicle within that grace period.

B. In the event the vehicle is returned during the grace period, the seller may charge the buyer a reasonable rate for mileage actually used by the buyer, not to exceed 30 cents (.30) per mile.

C. The grace period does not apply to the sale of new motor vehicles.

D. For the purposes of this Section, it will be insufficient evidence for a seller merely to affirm the offer of the required grace period by statement in pleading, unless such pleadings are accompanied by a copy of the written agreement to such a grace period that bears the buyer's signature of acknowledgment dated at the time of sale.

E. In cases where the buyer's English language skills are sufficiently limited to prevent a thorough understanding of written forms or spoken English instructions, as shown by a preponderance of the evidence, the written agreement to the grace period that bears the buyer's signature of acknowledgment must also be accompanied by a certification that a translator assisted to fully explain the agreement.

F. This protection may not be waived by buyers at any time; any attempt to waive these rights shall be considered a nullity by the court despite evidence of consideration paid for the signing of such waiver.

G. In any claim or action brought by a seller in which the seller claims a deficiency which is not authorized by the terms of this Subchapter, the court shall award attorneys' fees, calculated using the Lodestar method, to a buyer who prevails on a defense that the deficiency was not authorized by this Act.

#### **History**

CJY-71-99, July 21, 1999.

#### **§ 1161. Limitation on the Amount of Deficiency Judgments for Motor Vehicles**

A. A judgment against a buyer ordering the payment of a deficiency on a motor vehicle sales contract or a motor vehicle retail installment sales contract shall be calculated to allow only the recovery of the seller's actual costs and projected profits, and therefore shall be limited to an amount not to exceed the sum of:

1. A percentage, calculated as the current prime lending rate plus two percent (2%), of either the seller's original purchase costs for the motor vehicle, if any, or the manufacturer's suggested retail price, whichever in the court's estimation is a more accurate means of discovering the seller's projected profits from the motor vehicle's sale in a given case; plus

2. The seller's original costs to purchase the motor vehicle, if any, minus any amount paid by the buyer toward the principal to the date of the court's order, minus any amount gained by the seller from the resale of the vehicle at auction subsequent to the vehicle's repossession, for the recoupment of the seller's purchase costs; plus

3. Financing charges due under the contract from the date of sale to the date of the court's order, minus any amount paid by the buyer toward the financing charges to the date of the court's order; plus

4. Reasonable documented repossession costs, if any; plus

5. Reasonable documented attorney's fees, if any.

B. The seller's costs must be established by a preponderance of the evidence; however, statistical evidence of costs will not be a substitute for evidence specific to the complaint.

C. In cases where a motor vehicle retail installment contract has been assigned to a party other than the seller, the assignee shall have the same rights and liabilities as would the seller for purposes of recovery under this Act, and the buyer has the same rights and liabilities against that assignee as they would against the seller.

D. For the purposes of this Section, payments made pursuant to motor vehicle retail installment sales contracts are to be allotted to principal and interest according to the accounting method agreed to by the motor vehicle retail installment sales contract.

#### **History**

CJY-71-99, July 21, 1999.

## **Chapter 8. Housing**

### **Subchapter 1. Manufactured Housing**

#### **§ 1301. Title**

This Subchapter may be cited as the "Navajo Nation Manufactured Housing Act".

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1302. Definitions**

As used in the Manufactured Housing Act:

A. "Broker" means any person who, for a fee, commission or valuable consideration, lists, sells, offers for sale, exchanges, offers to exchange, rents or leases or offers to rent or lease pre-owned manufactured homes for another person or who negotiates, offers to negotiate, locates or brings together a buyer and a seller or offers to locate or bring together a buyer and a seller in conjunction with the sale, exchange, rental or lease of a pre-owned manufactured home. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange or lease-purchase of two or more pre-owned manufactured homes to consumers in any consecutive 12-month period;

B. "Certificate of qualification" means a certificate issued by the program to a qualifying party;

C. "Committee" means the Economic Development Committee of the Navajo Nation Council;

D. "Consumer" means any person who seeks or acquires by purchase, exchange or lease-purchase a manufactured home;

E. "Dealer" means any person engaged in the business of buying for resale, selling or exchanging manufactured homes or offering manufactured homes for sale, exchange or lease-purchase to consumers. No person shall be considered a dealer unless engaged in the sale, exchange or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period. A dealer may also engage in any brokerage activities included under the definition of broker in this Section; provided, "dealer" shall not include:

1. Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

2. Public officers while performing their duties as such officers;  
and

3. Finance companies, banks and other lending institutions covering sales of repossessed manufactured houses;

F. "Director" means the director of the manufactured housing program;

G. "Inspection agency" means any firm, partnership, corporation, association or other legal entity or any combination thereof approved in accordance with regulations adopted by the program as having the personnel and equipment available to adequately inspect for the proper construction of manufactured homes or house trailers not used exclusively for recreational purposes;

H. "Inspector" means a person appointed by the program as being qualified to adequately inspect the construction, electrical installations and mechanical installations of manufactured homes and their repair and modification, as well as the installation, tiedowns, blocking, skirting, water, gas and sewer connections of any manufactured homes within the Navajo Nation;

I. "Installer" means any person who installs manufactured homes for remuneration;

J. "Installation" means, but is not limited to, preparation by an installer of a manufactured home site, construction of tie-down facilities and connection to on-site utility terminals;

K. "Manufacturer" means any person who manufactures or assembles manufactured homes or any component of manufactured homes;

L. "Manufactured home" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one integral unit, as well as a single unit.

"Manufactured home" does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property.

"Manufactured home" includes any movable or portable housing structure over twelve feet in width and forty feet in length which is used for nonresidential purposes;

M. "Permit" means a certificate issued by the program to the dealer or installer of a manufactured home indicating that the manufactured home meets the minimum requirements for occupancy provided for by codes or regulations of the program;

N. "Person" includes an individual, firm, partnership, corporation, association or other legal entity or any combination thereof;



O. "Program" means the manufactured housing program of the Business Regulatory Department of the Division of Economic Development;

P. "Qualifying party" means any individual who submits to the examination for a license, other than a broker's or salesperson's license, to be issued under the Manufactured Housing Act to a licensee, other than an individual, and who after passing such an examination is responsible for the licensee's compliance with the requirements of that Act and with the rules, regulations, codes and standards adopted and promulgated in accordance with the provisions of the Manufactured Housing Act;

Q. "Repairman" means any person who, for remuneration or consideration, modifies, alters or repairs the structural, mechanical or electrical systems of a manufactured home; and

R. "Salesperson" means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured homes to consumers as an employee or agent of a dealer.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1303. Purpose**

It is the intent of the Navajo Nation Council that the large and growing manufactured housing industry within the Navajo Nation be supervised and regulated by the Business Regulatory Department of the Division of Economic Development. The purpose of the Manufactured Housing Act is to insure the purchasers and users of manufactured homes of the essential conditions of health and safety which are their right and to provide that the business practices of the industry are fair and orderly among the members of the industry with due regard to the ultimate consumers in this important area of human shelter.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1304. Powers and duties of program**

The program shall:

A. Prepare, administer and grade examinations for licensure under the classification sought by each applicant;

B. Issue licenses and certificates of qualification in accordance with the provisions of the Manufactured Housing Act;

C. Establish and collect fees authorized to be collected by the program pursuant to the Manufactured Housing Act;

D. Subject to the approval of the committee, adopt rules and regulations

relating to the construction, repair, modification, installation, tie-down, hook-up and sale of all manufactured homes, which regulations shall be uniform throughout the Navajo Nation and shall be enforced by inspectors for the program to insure minimum standards of safety within the Navajo Nation and any of its political subdivisions. Ordinances of any political subdivision of the Navajo Nation relating to gas, including natural gas, liquefied petroleum gas or synthetic natural gas, electricity, sanitary plumbing and installation or sale of manufactured homes shall not be inconsistent with any rules, regulations, codes or standards adopted by the program pursuant to the Manufactured Housing Act;

E. Adopt a budget and submit it as designated by law for approval;

F. Make regular reports to the Executive Director of the Division of Economic Development concerning the operations of the program. The report shall contain the program's recommendations for legislation it deems necessary to improve the licensing and the ethical and technical practices of the manufactured housing industry and to protect the public welfare;

G. Subject to the approval of the committee, adopt such rules, regulations, codes and standards as are necessary to carry out the provisions of the Manufactured Housing Act;

H. Prepare a uniform manufacturer's warranty and require its adoption as a condition of licensure by all manufacturers of manufactured homes doing business within the Navajo Nation;

I. Subject to the approval of the committee, adopt by regulation the mobile home construction and safety standards contained in the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.*, as amended;

J. Subject to the approval of the committee, adopt by regulation the mobile home procedural and enforcement regulations, 24 C.F.R. 3282, as amended, promulgated by the Department of Housing and Urban Development pursuant to the National Mobile Home Construction and Safety standards Act of 1974, 42 U.S.C. 5401 *et seq.*, as amended;

K. Issue permits and provide for a single inspection of every installation within the Navajo Nation regardless of the location;

L. Subject to the approval of the committee, adopt regulations prescribing standards for the installation or use of electrical wiring, the installation of all fixtures, plumbing, consumer's gas pipe, including natural gas, liquefied petroleum gas and synthetic natural gas, appliances and materials installed in the course of mechanical installation and the construction, alteration, installation and repair of all manufactured homes intended for use in flood or mudslide areas. The regulations shall give due regard to standards prescribed by the federal insurance administration pursuant to regulation 1910, Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 5757, all as amended, and shall give due regard to physical, climatic and other conditions peculiar to the Navajo Nation;

M. Conduct "inspector schools" so that each inspector under the program's

jurisdiction is capable of giving a complete one-time inspection for the sufficiency of unit installation, construction and mechanical and electrical systems;

N. Enter into cooperative agreements with federal agencies relating to manufactured housing and accept and use federal grants, matching funds or other financial assistance to further the purposes of the Manufactured Housing Act. The program may enter into agreements with Chapters and other local governments to provide for the inspection of manufactured homes by employees of chapters and other local governments, to be performed under the supervision and control of the program. The program may allow all or a portion of the inspection fee collected by a local public body to be retained by the local public body. The portion of the fee retained shall be determined by the program and shall be related to the completeness of the inspection performed;

O. Administer oaths through any member of the program, the director or a hearing officer;

P. Subject to the approval of the committee, adopt rules and regulations for the conduct of hearings and the presentation of views, consistent with the regulations promulgated by the Department of Housing and Urban Development, 24 C.F.R. 3282.151 through 3282.156, as amended;

Q. Subject to the approval of the committee, adopt by regulations a requirement that dealers, repairmen and installers provide to consumers warranties on their product and work and prescribe by regulation minimum requirements of such warranties;

R. Coordinate with the qualifying inspectors for any multiple inspection program provided by Navajo Nation Housing Services or Navajo Housing Authority for inspection of manufactured homes; and

S. Subject to the approval of the committee, adopt regulations codes and standards for manufactured homes used for nonresidential purposes; provided such manufactured home being used for nonresidential purposes on the effective date of this act shall not be required to meet Uniform Building Code standards, except as to requirements for access to the handicapped, but manufactured homes being used for nonresidential purposes after the effective date shall be required to meet Uniform Building Code standards.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1305. Bonding requirements; dealers, brokers, salespersons, manufacturers, repairmen and installers**

A. The program with the approval of the committee, may by regulation require each dealer, broker, salesperson, manufacturer, repairman and installer to furnish and maintain with the program a consumer protection bond underwritten by a corporate surety in a sum to be determined by regulation and in such form, and with either unit or blanket coverage, as required by regulations, to be conditioned upon the dealer, broker, salesperson, manufacturer, repairman or installer complying with the provisions of the

Manufactured Housing Act and any other law applying to the licensee, and also as indemnity for any loss sustained by any person damaged:

1. As a result of a violation by the licensee of any provision of the Manufactured Housing Act or of any regulation of the program adopted pursuant to that Act;

2. As a result of a violation of any regulation adopted by the program;

3. By fraud of a licensee in the execution or performance of a contract; or

4. By misrepresentation or the making of false promises through the advertising or the agents of a licensee.

B. The consumer protection bond may include provisions for the indemnification for any loss sustained by any consumer as the result of the refusal, failure or inability to transfer good and sufficient legal title to the consumer by the transferor or any other party claiming title.

C. The committee may attach and disburse for cause any consumer protection bond furnished to the program pursuant to this Section. The program, subject to the approval of the committee, shall adopt the necessary rules and regulations to administer the provisions of this Section.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1306. License required; classification; examination**

A. No person shall engage in business as a manufacturer, dealer, broker, repairman, installer or salespersons of manufactured homes unless licensed as provided in the Manufactured Housing Act.

B. The committee shall adopt regulations creating a system of license classifications covering the occupations of dealer, broker, manufacturer, repairman, installer and salesperson and providing for the qualifications and examination for each class of license.

C. No person shall import for sale or exchange, or engage in the business of selling leasing or exchanging or offering for sale, lease or exchange, any manufacturer home manufactured by any person who is not licensed as a manufacturer under the Manufactured Housing Act.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1307. Licensure; exemption**

The provisions of § 1306 shall not apply to licensed real estate brokers or salesmen acting as agents for another person in the sale of real property on

which is located one or more manufactured homes whose installation has been approved as provided in regulations of the committee.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1308. License; application; issuance**

A. Application for a license required under § 1306 for one of the classified occupations, or for a certificate of qualification of a qualifying party of a licensee other than an individual licensee, shall be submitted to the program on forms prescribed and furnished by the program. The application shall contain such information and be accompanied by such attachments as are required by regulations of the program. The forms shall be accompanied by the prescribed fee.

B. No license shall be issued by the program to any person unless the program is satisfied that he is or has in his employ a qualifying party who is qualified for the classification for which the application is made and who has satisfied the requirements of Subsection (C) of this Section.

C. An applicant for licensure shall:

1. Demonstrate financial responsibility as required by regulations of the committee;

2. Be of good reputation;

3. Not have engaged illegally in the licensed classification that he is applying for within one year prior to making the application;

4. Demonstrate familiarity with the rules and regulations adopted by the committee concerning the classification for which application is made;

5. If a corporation, have complied with the laws of the Navajo Nation regarding qualifications for doing business within the Nation or have been incorporated in and have and maintain a registered agent and a registered office in the Navajo Nation;

6. If an individual or partnership, have maintained residence or street address in the Navajo Nation for at least 30 days preceding the date of application; and

7. Personally or through the applicant's qualifying party successfully pass an examination administered by the program in the license classification for which application is made.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1309. Qualifying party; examination; certificate**

A. Except as provided in Subsection (C) of this Section, no certificate of qualification shall be issued to any individual desiring to be a qualifying party until he or she has passed with a satisfactory score an examination prepared, administered and graded by the program.

B. The examination where applicable shall consist of:

1. General business knowledge, the rules and regulations of the program and committee and the provisions of the Manufactured Housing Act;

2. Technical knowledge and familiarity with the prescribed codes and minimum standards, which may be prepared and administered by an employee of the program who is expert in the particular classification for which certification is sought; and

3. General knowledge of the statutes of the Navajo Nation relating to the sale, exchange or lease of manufactured homes, contracts of sale, agency and brokerage.

C. If a licensee is subject to suspension by the committee for failure of the licensee to have a qualifying party in his employ, and the employment of the qualified party is terminated without fault of the licensee, then an employee of the licensee who is experienced in the classification for which the certificate of qualification was issued and who has been employed two or more years by the licensee shall be issued without examination a temporary certificate of qualification in the classification for which the licensee is licensed. The temporary qualifying party shall be subject to passing the examination as set forth in this Section within one year from the date of the temporary certificate's issuance.

D. A certificate of qualification is not transferable.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1310. Program fees**

The program shall by regulation establish reasonable annual license fees, fees for examinations and inspection and permit fees. Fees shall be set to reflect the actual cost of licensing and regulation, and in the case of the examination they shall reflect the actual cost of preparing and administering the examination. All fees shall be paid to the Controller for deposit and transfer.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1311. Suspension and revocation**

Any license or certificate of qualification issued by the program shall be suspended for a definite period or revoked by the committee for any of the

following causes:

A. If a licensee or a qualifying party of a licensee violates any provision of the Manufactured Housing Act or any regulations adopted by the program or Committee pursuant to that Act;

B. False, misleading or deceptive advertising;

C. Knowingly contracting or performing a service beyond the scope of the license;

D. Misrepresentation of a material fact by the applicant in obtaining a license or certificate;

E. Misrepresentation or commission of a material fact in any manufactured home transaction;

F. Failure to comply with the warranty requirements of the Manufactured Housing Act or any regulation of the committee pursuant to those requirements;

G. Failure by manufacturer or dealer to transfer good and sufficient title to the purchaser of a manufactured home;

H. Failure by a broker or dealer to provide the buyer and the seller of a preowned manufactured home with a closing statement as required by regulation of the committee;

I. Conviction of a licensee or a qualifying party of a licensee in any court of competent jurisdiction of a felony or any offense involving moral turpitude; or

J. Failure by a dealer or broker in the transfer of a preowned manufactured home not owned at the time of the transaction by the dealer or broker to comply with title transfer provisions set forth by regulation of the program.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1312. Hearing officer**

The Navajo Nation Office of Hearings and Appeals shall preside over and take evidence at any hearing held pursuant to the Manufactured Housing Act.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1313. Committee and program; consumer complaints; orders; suspension; revocation**

In addition to the other duties imposed on the committee and program under the Manufactured Housing Act, the committee and program shall receive

complaints from any consumer who claims to be harmed by any licensee and shall attempt to have the complaints adjusted to the reasonable satisfaction of the consumer. If the committee or program cannot secure a proper adjustment, the committee or program shall prepare a formal complaint for the consumer, and the committee shall determine whether the licensee is in violation of the Manufactured Housing Act or of rules and regulations promulgated under that Act. If the licensee is in violation of the Manufactured Housing Act or of the rules and regulations promulgated under that Act, the committee may order him to comply, may suspend his license until such time as the licensee complies with the order of the committee or may revoke his license.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1314. Unlicensed dealers, brokers, salespersons, repairmen, manufacturers and installers; penalties**

It is unlawful for any person to act in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer within the meaning of the Manufacturer Housing Act without a license required by that Act. Any person who conspires with any person to violate any provision of that Act requiring a dealer, broker, salesperson, repairman, manufacturer or installer to obtain a license and maintain a license in good standing is guilty of an offense and upon conviction shall be punished by a fine of not less than one thousand dollars (\$1,000) or ten percent (10%) of the dollar value of the contracted work performed while acting in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer without having been issued a dealer's, broker's, salesperson's, repairman's, manufacturer's, or installer's license, whichever is greater.

#### **History**

CJA-13-99, January 27, 1999.

**Revision Note (2003).** To correct a typographical error, in the second sentence, "without have been issued" was changed to "without having been issued".

#### **§ 1315. Committee or program; powers of injunctions; mandamus**

The program or committee may enforce the provisions of the Manufactured Housing Act through the Attorney General by injunction, mandamus or any proper legal proceeding in the district court of the district in which the offense was committed.

#### **History**

CJA-13-99, January 27, 1999.

#### **§ 1316. Penalties**

A. Any person who knowingly and willfully violates a provision of the Manufactured Housing Act or any rule, regulation or administrative order of the committee or program in a manner that threatens the health or safety of any



purchaser or consumer commits an offense and on conviction shall be fined not more than one thousand dollars (\$1,000) or shall be confined not longer than one year or both.

B. In any action brought to enforce any provision of the Manufactured Housing Act, the Attorney General, upon petition to the court, may recover on behalf of the Navajo Nation a civil penalty not to exceed one thousand dollars (\$1,000) for each violation, except that the maximum civil penalty may not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one year from the date of the first violation.

C. Failure by a manufacturer or dealer to comply with warranty provisions of the Manufactured Housing Act or any implied warranties or the violation of any provision of the Manufactured Housing Act by any person is an unfair or deceptive trade practice in addition to those practices defined in the Unfair Consumer Practices Act and is actionable pursuant to the Unfair Consumer Practices Act. As such, the venue provisions and all remedies available in the Unfair Consumer Practices Act apply to and are in addition to the remedies in the Manufactured Housing Act.

### **History**

CJA-13-99, January 27, 1999.

## **Chapter 9. Navajo Nation Enterprises**

### **Subchapter 1. Navajo Arts and Crafts Enterprise**

#### **Cross References**

General limitation on compensation of members of boards of enterprise, industries, authorities, colleges, etc., of the Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

#### **United States Code**

Indian Arts and Crafts Board, 25 U.S.C. § 305 *et seq.*

Counterfeiting Indian Arts and Crafts Board trade-mark, 18 U.S.C. § 1158.

#### **Code of Federal Regulations**

Affixation of government certificate of genuineness to Navajo all-wool woven fabrics, see 25 CFR § 307.1 *et seq.*

Regulations for use of certificates of Indian Arts and Crafts Board, see 25 CFR § 308.1 *et seq.*

Standards governing Navajo, Pueblo, and Hopi silver and turquoise products, see 25 CFR § 301.1 *et seq.*

Use of government mark on Navajo, Pueblo, and Hopi silver, see 25 CFR § 304.1 *et seq.*

## **§ 1501. Establishment**

There is established an enterprise of the Navajo Nation known as the Navajo Arts and Crafts Enterprise, hereafter called the "Enterprise".

### **History**

CJY-33-03, July 23, 2003, deletes Subsections (B) and (C).

CJY-49-98, July 21, 1998.

CN-87-72, Plan, §§ I, II, IV, November 9, 1972.

## **§ 1502. History and purposes**

A. The Navajo people have excelled in various crafts for hundreds of years, and by the mid-eighteenth century were specially noted for their weaving, baskets and pottery. The Navajo people also learned ironsmithing and later adapted this craft into silversmithing and a wide variety of silver items developed. Today Navajo handwoven rugs, silver jewelry, baskets, pottery, paintings and other crafts are in high demand worldwide.

Over time some Navajo artisans become so adept at their craft that they produced extra crafts for sale as a means to support their family and to augment cattle, horse and sheep sales and other trading activities. As skills and markets developed for these artisans, competing products began appearing in the market and placed the Navajo craftsman in jeopardy.

Tribal leaders recognized the need to be better represented in the marketplace, and in 1941 chartered the Navajo Arts and Crafts Guild to better market Navajo-made product and counter the increasing supply of imitation items. The "Guild" was changed to "Enterprise" in 1971 and exists today as the only Navajo Nation-owned business enterprise engaged in the purchase and sale of Navajo arts and crafts, and through this marketing channel functions as a defense against competing products flooding the market place and eroding the livelihood of the Navajo artisan and craftsman.

B. The purposes of NACE are:

1. To showcase the artistry and crafts of the Navajo Nation and to be represented in the market place;

2. To establish outlets as may be cost effective for the sale of Navajo arts and crafts and related merchandise on or near the Navajo Nation, throughout the United States and around the world;

3. To provide a source of raw materials at a fair price to Navajo artisans for use in the creation of Navajo arts and crafts;

4. To purchase at fair-market rates finished products at a fair price from Navajo artisans and craftspeople, and from such other sources as may be necessary to provide a fully integrated arts and crafts facility; and

5. To promote Navajo arts and crafts in any and all other ways deemed by NACE to be in the best interests of the Navajo Nation.

#### **History**

CJY-33-03, July 23, 2003, amended Subsection (A) and added new Subsections (B) (1) and (B) (2), renumbered prior Subsections (B) (1) and (B) (2) to (B) (3) and (B) (4) and deleted prior Subsection (B) (3) and (B) (4).

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § III(1.2), November 9, 1972.

#### **§ 1503. Organization**

A. The business and affairs of NACE shall be conducted by a Board of Directors composed of five members, with one member representing a Navajo Nation Craftspeople Association and one member represented by a Navajo Nation Council Delegate. Three members are needed to form a quorum and to conduct business.

B. The NACE Board of Directors shall set policy including, but not limited to, establishing procurement policy, personnel policy, general discount rates and financial policies for NACE.

C. The NACE Board of Directors shall be appointed by the President of the Navajo Nation subject to confirmation by the Economic Development of the Navajo Nation Council.

#### **History**

CJY-33-03, July 23, 2003. Deleted prior Section 1503, Powers; created new Section 1503, Organization, and included thereunder amended Subsection (A) and a new Subsection (B).

CJY-49-98, July 21, 1998.

ACAP-54-84, Section 1, April 13, 1984 which amended CN-87-72, Plan, § V, November 9, 1972.

#### **Cross References**

Confirmation of enterprise Board members, see 2 N.N.C. § 724(E) (1).

General limitation on compensation of members of boards of enterprise, industries, authorities, colleges, etc., of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

#### **§ 1504. Legislative Oversight**

NACE shall operate under the legislative oversight of the Economic Development Committee of Navajo Nation Council pursuant to 2 N.N.C. § 724(E). NACE shall operate pursuant to a Plan of Operation recommended by the NACE

Board of Directors and adopted by the Economic Development Committee of the Navajo Nation Council.

#### **History**

CJY-33-03, July 23, 2003, amended generally. Formerly § 1505.

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § VI, November 9, 1972.

#### **§ 1505. Amendments**

Sections 1501 through 1505 may be amended from time to time by the Economic Development Committee of the Navajo Nation Council upon recommendation of the Board of Directors of NACE.

#### **History**

CJY-33-03, July 23, 2003, Amended generally, formerly § 1506.

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § XIII, November 9, 1972.

**Note.** This Section was previously 5 N.N.C. § 1508.

#### **§ 1506. [Reserved]**

#### **History**

CJY-33-03, July 23, 2003, deleted the "former §1507."

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § VIII, November 9, 1972.

**Note.** This Section was previously 5 N.N.C. § 1509.

#### **Cross References**

Economic Development Committee powers, see 2 N.N.C. § 724.

Budget and Finance Committee authority, see 2 N.N.C. § 374(B)(5).

#### **§ 1507. [Reserved]**

#### **History**

CJY-33-03, July 23, 2003, deleted the "former §1508."

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § IX, November 9, 1972.

**Note.** This Section was previously 5 N.N.C. § 1510.

#### **Cross References**

Budget and Finance Committee powers, see 2 N.N.C. § 374(B) (1).

Economic Development Committee powers, see 2 N.N.C. § 724.

**§ 1508. [Reserved]**

#### **History**

CJY-33-03, July 23, 2003, deleted the "former §1509."

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § X, November 9, 1972.

**Note.** CO-67-78 provided a commercial line of credit for the Navajo Arts and Crafts Enterprise, authorized by the Navajo Tribal Council and in an amount not to exceed five hundred thousand dollars (\$500,000).

**Note.** This Section was previously 5 N.N.C. § 1511.

**§ 1509. [Reserved]**

#### **History**

CJY-33-03, July 23, 2003, deleted the "former §1510."

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § XI, November 9, 1972.

**Note.** This Section was previously 5 N.N.C. § 1512.

**§ 1510. [Reserved]**

#### **History**

CJY-33-03, July 23, 2003, deleted the "former §1511."

CJY-49-98, July 21, 1998.

**§ 1511. [Reserved]**

#### **History**

CJY-33-03, July 23, 2003, deleted the "former §1512."

CJY-49-98, July 21, 1998.

### **Subchapter 3. [Reserved]**

**§§ 1551 to 1568. [Reserved]**

#### **History**

**Note.** Navajo Forest Products Industries' plan of operation codified at 5 N.N.C. §§ 1551-1568 was rescinded and deleted from the Navajo Nation Code by Resolution CAP-23-02, April 17, 2002.

CAP-23-02, April 17, 2002.

ACJY-137-89, July 7, 1989.

ACS-208-76, September 16, 1976.

ACJY-19-70, July 14, 1970.

ACS-210-69, September 3, 1969.

CO-109-66, October 7, 1966.

CF-9-61, February 9, 1961.

ACMA-39-61, March 7, 1961.

CN-68-60, November 21, 1960

ACS-174-60, September 20, 1960.

CJ-38-58, § 3, July 23, 1958.

CF-14-58.

ACF-19-57, February 26, 1957.

CA-42-52, August 12, 1952.

1922-1951 Res. p. 616, July 12, 1951.

### **Subchapter 5. Navajo Agricultural Products Industry**

#### **§ 1601. Establishment**

There is hereby established the Navajo Agricultural Product Industry (NAPI), as an enterprise of the Navajo Nation.

#### **History**

CJY-60-01, July 20, 2001.

CJY-50-97, July 22, 1997.

ACO-232-75, § 2, October 16, 1975.

ACMA-77-72, § 1, March 16, 1972.

ACAP-123-70, Plan, § 2, April 16, 1970.

#### **Cross References**

General limitation on compensation of members of boards of enterprises, industries, authorities, colleges, etc. of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

#### **§ 1602. Purpose**

NAPI is organized to operate a profitable commercial farm in accordance with its plan of operation and applicable laws and regulations, separate and distinct from the Navajo Indian Irrigation Project.

#### **History**

CJY-60-01, July 20, 2001.

CJY-50-97, July 22, 1997.

ACAP-123-70, Plan, § 3, April 16, 1970.

#### **§ 1603. Organization**

A. Board of Directors for NAPI shall be appointed by the President of the Navajo Nation and confirmed by the Economic Development Committee of the Navajo Nation Council.

B. The Board of Directors shall set policy including, but not limited to, establishing personnel policies, procurement policies and financial policies for NAPI. The Board of Directors shall hire and supervise the Chief Executive Officer who shall hire under contract a Chief Financial Officer. The Chief Financial Officer shall be accountable to the Board of the Directors and to the Chief Executive Officer and shall be supervised by the Chief Executive Officer in conformity with job descriptions established for the Chief Financial Officer and the Chief Executive Officer, and with Navajo Agricultural Products Industry's approved policies and procedures. The Chief Financial Officer shall submit all monthly, quarterly and annual reports to the Chief Executive Officer and Board of Directors simultaneously.

C. The Chief Executive Officer shall administer the daily operations of NAPI. The Chief Executive Officer shall be responsible and accountable to the Board of Directors and shall employ necessary personnel in accordance with the personnel policies applicable to NAPI.

D. No elected official of the federal, state or Navajo Nation government shall be a member of the Board of Directors. No employee of the federal, state or Navajo Nation government shall be a member of the Board of Directors.

#### **History**

CO-39-08, October 22, 2008.

**Note (2008).** Slightly reworded at Subsection B by adding the word "who" in the second sentence for grammatical purposes.

CJY-60-01, July 20, 2001.

CJY-50-97, July 22, 1997.

ACAP-123-70, Plan, § 3, April 16, 1970.

#### **§ 1604. Legislative oversight**

The Navajo Agricultural Products Industry shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 724(E). NAPI shall operate pursuant to a Plan of Operation recommended by the NAPI Board of Directors in consultation with the President of the Navajo Nation and adopted by the Economic Development Committee of the Navajo Nation Council.

#### **History**

CJY-60-01, July 20, 2001, deleted Section on NAPI's powers.

CJY-50-97, July 22, 1997.

ACD-353-71, § 1, December 15, 1971.

ACAP-123-70, Plan, § 7, April 16, 1970.

#### **Cross References**

Economic Development Committee powers, see 2 N.N.C. § 724(E).

#### **§ 1605. Amendments**

Sections 1601 through 1605 may be amended from time to time by the Navajo Nation Council upon the recommendation of the Economic Development Committee of the Navajo Nation Council after consultation with the Navajo Agricultural Products Industry Board of Directors and the President of the Navajo Nation.

#### **History**

CJY-60-01, July 20, 2001, deleted Section of Indemnification of Officers, Employees and Members of Board.

CJY-50-97, July 22, 1997.

ACAP-123-70, Plan, § 7, par. 5, April 16, 1970.

#### **§ 1606. [Reserved]**

#### **History**



CJY-60-01, July 20, 2001, deleted Section on Board Membership.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

**§ 1607. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on meetings.

CJY-50-97, July 22, 1997.

ACO-418-73, § 1, October 10, 1973.

ACAP-123-70, April 16, 1970.

**§ 1608. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on NAPI officers.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

**§ 1609. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on the General Manager.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

**§ 1610. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on Navajo Nation Investment.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

**§ 1611. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on the accounting system.

CJY-50-97, July 22, 1997.

ACAP-123-70, Plan, § 13, passed April 16, 1970, as amended by ACD-217-89, December 8, 1989, amending ACAP-123-70, April 16, 1970.

**§ 1612. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on books and records.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

**§ 1613. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on audits.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

**§ 1614. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on insurance.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

**§ 1615. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on training of Navajos.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

**§ 1616. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on immunity from suits.

CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

**§ 1617. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on compliance with Navajo Nation law.

CJY-50-97, July 22, 1997.

**§ 1618. [Reserved]**

**History**

CJY-60-01, July 20, 2001, deleted Section on amendments.

CJY-50-97, July 22, 1997.

**§§ 1619 to 1636. [Reserved]**

**Subchapter 6. Native Broadcast Enterprises**

**History**

**Redesignated.** KTNN Radio Station Enterprise was previously codified at 21 N.N.C. §§ 601-617. CAP-23-03, April 24, 2003, amended KTNN's enabling legislation, renamed the enterprise and moved enacted enabling legislation for Native Broadcast Enterprises to Title 5, Chapter 9, Subchapter 6, §§ 1651-1655.

**§ 1651. Establishment**

There is hereby established the Native Broadcast Enterprises (NBE) as an enterprise of the Navajo Nation.

**History**

CAP-23-03, April 24, 2003.

**§ 1652. Purpose**

The NBE is organized to operate KTNN (AM), a clear channel 50,000 watts commercial radio station operating on 660 kilohertz, and KWRK (FM), a 100,000 watts commercial radio station operating on 96.1 megahertz, and any other business ventures the enterprise may undertake to further this purpose. This enterprise shall operate as a commercial, profit-making, quasi-independent entity of the Navajo Nation subject to the Federal Communication Commission's Rules and Regulations.

**History**

CAP-23-03, April 24, 2003.

**§ 1653. Organization**

A. A management board for NBE shall be appointed by the President of the Navajo Nation and confirmed by the Economic Development Committee of the Navajo Nation Council. The management board shall be held to the same standards and governed by the same laws as the board of directors of a private corporation.

B. The management board for NBE shall set policy, including but not limited to, establishing personnel policies, procurement policies and financial policies for NBE.

C. The general manager shall administer the daily operations of NBE. The general manager shall be responsible and accountable to the management board and shall employ necessary personnel in accordance with the personnel policies applicable to NBE.

#### **History**

CAP-23-03, April 24, 2003.

#### **§ 1654. Legislative Oversight**

The Native Broadcast Enterprise shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council pursuant to 2 N.N.C. § 724(E). NBE shall operate pursuant to a plan of operation recommended by the NBE management board in consultation with the President of the Navajo Nation and adopted by the Economic Development Committee of the Navajo Nation Council.

#### **History**

CAP-23-03, April 24, 2003.

#### **§ 1655. Amendments**

This enabling legislation may be amended from time to time by the Navajo Nation Council upon recommendation of the NBE management board in consultation with the President of the Navajo Nation and approval by the Economic Development Committee of the Navajo Nation Council.

#### **History**

CAP-23-03, April 24, 2003.

#### **§§ 1656 to 1686. [Reserved]**

#### **History**

CAP-23-03, April 24, 2003.

### **Subchapter 7. Navajo Nation Gaming Enterprise**

#### **§ 1701. Establishment**

The Navajo Nation, a federally-recognized Indian tribe, hereby establishes a Navajo Nation Gaming Enterprise as a tribal gaming enterprise of the Navajo Nation (Enterprise).

#### **History**

CS-34-06, September 26, 2006.

#### **§ 1702. Status of the Enterprise**

A. The Enterprise is a legal entity wholly owned by the Navajo Nation, a federally recognized tribe.

B. The duration of the Enterprise is perpetual.

C. As a legal entity of the Navajo Nation, the Enterprise is entitled to the privileges and immunities of the Navajo Nation. The Enterprise shall possess all of the attributes of Navajo sovereignty, including but not limited to immunity from suit, freedom from levy and execution, and exemption from state and federal taxes, unless, either by contract approved by the Enterprise in conformity with this enabling legislation or by resolution of the Navajo Nation Council, any such attribute of sovereignty is expressly waived or abrogated as to any transaction involving the Enterprise.

D. Neither the Executive Director of the Gaming Regulatory Office nor any other public official or public employee of the Navajo Nation (individually or collectively) shall have any role in the management of the Enterprise or any licensed gaming establishment.

#### **History**

CS-34-06, September 26, 2006.

#### **§ 1703. Purpose**

A. To be a Tribal Gaming Enterprise to conduct gaming operations within the Navajo Nation under the auspices of the Indian Gaming Regulatory Act of 1988 (Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168), Navajo Gaming Ordinance, (5 N.N.C. § 2001 *et seq.*) and the gaming compacts entered into between the Navajo Nation and any State.

B. To generate gaming revenues and provide a fair return to the Navajo Nation in accordance with the Indian Gaming Regulatory Act, Navajo Gaming Ordinance, and other applicable laws of the Navajo Nation.

#### **History**

CS-34-06, September 26, 2006.

#### **§ 1704. Place of business**

A. The Enterprise's principal place of business shall be Window Rock,

Navajo Nation (Arizona), unless otherwise designated by the Board of Directors.

B. The Enterprise may maintain other business offices within or outside the Navajo Nation, as may be designated from time to time by the Board. The business of the Enterprise may be transacted at such other offices with the same effect as that conducted at the principal place of business.

### **History**

CS-34-06, September 26, 2006.

### **§ 1705. Powers**

Consistent with the purposes for which the Enterprise is created and subject to the limitations in § 1706, the Enterprise shall have the following powers:

A. To engage in related business activities in its own name or under such other names as the Board of Directors may choose either within or outside the Navajo Nation.

B. To maintain bank accounts that are separate from Navajo Nation accounts, such accounts shall be used for the operation of gaming and related business activities.

C. To buy, sell, lease and otherwise acquire and maintain real property, buildings, offices, shops and other appurtenances necessary and proper for the carrying on of gaming and related activities.

D. To acquire by assignment, gift, exchange, purchase or otherwise, to own, hold, operate, use, improve, lease, rent, sell, convey, dispose of, encumber and otherwise deal in real and personal property of any and all kinds, including but not limited to business, securities, goodwill, franchises, patents, trademarks, copyrights and assets of any kind, and in connection therewith undertaking, either wholly in part, liabilities of whatever kind.

E. To enter into, make, assign, and take assignments of any and all forms of contracts, agreements, joint ventures, guarantees, commitments, assurances, and any and all forms of lawful undertaking with any person, partnership, corporation, state government or political subdivision thereof, or any form of legal entity, for any purpose that is reasonably related to the lawful purposes of the Enterprise.

F. To waive the Enterprise's immunity from suit so as to permit suit against the Enterprise in the courts of the Navajo Nation, the courts of the United States or of any state. Such waiver shall be approved by the Board by a duly adopted resolution.

G. To borrow money and to make, accept, endorse, execute and issue bonds, debentures, promissory notes, and other corporate obligations for money borrowed, or in payment for property acquired for any of the purposes of the Enterprise, and to secure payment of any obligation by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon,

assignment of, or agreement in regard to all of any part of the property, rights or privileges of the Enterprise.

H. To have a corporate seal at the discretion of the Board of Directors.

#### **History**

CS-34-06, September 26, 2006.

#### **§ 1706. Limitation of powers**

A. The acts or omissions of the Enterprise (whether pursuant to the powers enumerated in this plan of operation or otherwise) shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation, and only the assets, revenues and income held by or in the name of the Enterprise shall be subject (to the extent otherwise permitted herein or by law) to the debts, obligations or other liabilities created or incurred by the Enterprise.

B. Unless expressly authorized by the Navajo Nation Council and except as to the Enterprise and its property, the Enterprise may not:

1. Enter into any agreement of any kind whatsoever on behalf of or that purports to bind the Navajo Nation;

2. Enter into any agreement of any kind whatsoever on behalf of or that purports to bind the gaming revenues of the Navajo Nation;

3. Pledge the credit of the Navajo Nation;

4. Dispose of, sell, mortgage, pledge, or otherwise encumber any real or personal property of the Navajo Nation;

5. Waive any rights, privileges or immunities of the Navajo Nation, or release any obligations to the Navajo Nation;

6. Sell or otherwise dispose of all or substantially all of the Enterprise's assets; or

7. Engage in any activity that violates any Navajo Nation law.

#### **History**

CS-34-06, September 26, 2006.

**Note.** Reworded at B.2.

#### **§ 1707. Board of directors and officers; number; appointment; composition term, removal and compensation**

A. Oversight authority. The business and affairs of the Enterprise shall be overseen exclusively by its Board of Directors. In general, the Board of

Directors shall be responsible for establishing overall policies and objectives for the management of the affairs and assets of the Enterprise and for periodically reviewing and evaluating management results.

B. Number. The Board of Directors shall consist of nine members. The Board shall select from among its membership a Chairperson, Vice Chairperson, and Secretary/Treasurer. The Chairperson shall preside at meetings of the Board and shall act on behalf of its Board with such authority as is conferred by the Board. The Chairperson shall not vote on any matter voted on by the Board of Directors unless there is a tie. The Vice Chairperson shall act in the Chairperson's absence. The Secretary/Treasurer shall arrange the meetings of the Board, keep minutes of the Board meetings, send notices of meetings to the Board members, maintain the record of the Board, and prepare correspondence and documents for the Board and its members.

C. Board of Directors selection. The Navajo Nation's Department of Personnel Management shall receive and assess all applications of potential members. The Department of Personnel Management shall refer all qualified applicants to the President of the Navajo Nation. The President of the Navajo Nation shall select Board members. Such selections are subject to confirmation by the Navajo Nation Council.

D. Composition. At least one director shall be a Certified Public Accountant; at least one member shall possess a Juris Doctorate; at least one member shall have experience in gaming management or gaming operations; and at least five members be enrolled members of the Navajo Nation to represent each of the five agencies.

E. Quorum. The presence of five members of the Board shall constitute a quorum for transacting any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Board. All actions, with the exception of procedural motions, shall be recorded and documented in written resolutions certified by the presiding Chairperson.

F. Vacancies. In the event a vacancy occurs in the Board of Directors, the vacant position shall be filled in the manner set forth in Subsection (C) of this Section. A director selected to fill a vacancy shall serve the remaining term of his/her predecessor.

G. Qualifications. At all times the nominees and the Directors shall possess the following qualifications:

1. Shall have knowledge of Class II and Class III operations and/or work experience in the gaming industry;
2. Shall be at least 25 years of age;
3. Shall possess a bachelors or graduate degree, preferably in finance, accounting, marketing, economics, management, law or related fields;
4. Shall not be a board member of a Navajo Nation-owned corporation, enterprise or authority; and



5. Shall not be a public official or public employee of the Navajo Nation.

H. Licensure. Each appointee for the position of the Board of Directors of the Enterprise shall obtain a Gaming Facility Operator's License from the Gaming Regulatory Office before submission of the appointment to the Navajo Nation Council for confirmation. The appointee shall obtain a Gaming Facility Operator's License within 90 days of the appointment. Each member of the Board of Directors shall maintain a Gaming Facility Operator's License from the Gaming Regulatory Office.

I. Term of office. Directors shall be appointed for four-year staggered terms and shall hold office until the qualification and selection of their successors. The initial Board of Directors shall be divided into three groups. The first group of three shall serve for two years, the second group of three shall serve for three years, and the third group of three shall serve four years. Thereafter, all terms shall be for four years.

J. Discretionary removal. Any Director may be removed at a duly called meeting of the Board of Directors, by a majority vote of the full membership of the Board of Directors, for just cause. Just cause includes, but is not limited to: failure to attend three consecutive meetings of the Board, or an inability to fulfill the duties of a Director.

K. Automatic removal. Any Director shall be automatically removed for the following: failure to maintain a Gaming Facility Operator's License, death, submission of resignation, or failure to maintain the qualifications of a Board of Director as set forth in Subsection (G) of this Section.

L. Compensation. Directors shall receive a quarterly stipend of \$4,500 plus expenses for travel and training. Directors shall not receive any other type of compensation for their service, except quarterly stipends for attendance at regular and special meetings of the Board of Directors, and for other official business of the Enterprise.

#### **History**

CS-34-06, September 26, 2006.

#### **§ 1708. Chief Executive Officer; functions; duties**

A. The Navajo Nation's Department of Personnel Management shall receive and assess all applications for the position of Chief Executive Officer. The Department of Personnel Management shall only refer applicants to the Board of Directors who meet the qualifications set forth in Subsection (B) below and whom the Department determines are able to obtain a Navajo gaming license. The Board of Directors may only select a Chief Executive Officer from the pool of qualified applicants referred by the Department of Personnel Management. The Chief Executive Officer of the Enterprise shall be employed under a written employment contract for a four-year term approved by the Board of Directors. The commencement of the employment contract is contingent upon the Chief Executive Officer obtaining a gaming license within 90 days of the execution of

the contract. The Board of Directors shall periodically review the job performance of the Chief Executive Officer. The Chief Executive Officer shall be removed only for breach of contract.

B. The Chief Executive Officer shall possess the following qualifications: a bachelor's degree, and a minimum of ten years of experience in upper management of a hospitality or gaming business.

C. The Chief Executive Officer shall, among other things, execute the general policies formulated by the Board of Directors and organize the operation of the Enterprise into business units (casino facilities, etc.) each with its own specific duties and responsibilities.

D. The Chief Executive Officer shall employ by contract General Managers for each of the Enterprise's business units (casino facilities, etc.).

E. The Chief Executive Officer shall exercise best judgment to determine the manner by which general policies set forth by the Board of Directors are to be effectuated.

F. The Chief Executive Officer shall be the active, operating executive of the Enterprise and shall prepare plans and annual budgets, as well as make suggestions as to policies and any proposals for improvements.

G. The Chief Executive Officer shall have the full authority and control of all employees of the Enterprise and be responsible for all department heads or other executives carrying out their assignments.

H. The Chief Executive Officer shall be responsible for the general supervision of the performance of staff with respect to all matters such as adherence to a corporate vision statement, marketing, conformance to industry standards, department inspection, cost control, employee relations and in-service training.

I. The Chief Executive Officer shall render regular reports to the Board of Directors and perform all other functions and duties specified in this Chapter.

J. The Chief Executive Officer shall have the authority to hire all such employees necessary and proper to carry out the business needs of the Enterprise.

### **History**

CS-34-06, September 26, 2006.

### **§ 1709. Interim Chief Executive Officer**

A. Hiring of Interim Chief Executive Officer. Until a contract is executed between the first Chief Executive Officer and the Board of Directors, the duties of the Chief Executive Officer may be performed by an Interim Chief Executive Officer appointed by the President of the Navajo Nation and confirmed by the Economic Development Committee of the Navajo Nation Council. The

Interim Chief Executive Officer must possess the minimum qualifications for the Chief Executive Officer, and shall have all the powers and responsibilities of that position.

B. Subsequent vacancies in the Chief Executive Officer position. When subsequent vacancies occur in the Chief Executive Officer position, the Board of Directors shall appoint an Interim Chief Executive Officer, who shall serve until a contract is executed between the Chief Executive Officer and Board of Directors. The Chief Financial Officer shall serve as Acting Chief Executive Officer until the Board of Directors appoints an Interim Chief Executive Officer.

#### **History**

CS-34-06, September 26, 2006.

#### **§ 1710. Chief Financial Officer; functions; duties**

A. The Chief Financial Officer of the Enterprise shall be employed under a written employment contract with the Chief Executive Officer. The job performance of the Chief Financial Officer shall be periodically reviewed by the Chief Executive Officer.

B. The Chief Financial Officer shall oversee the management of the day-to-day operations of the financial and related functions of the Enterprise.

C. The Chief Financial Officer shall be responsible for the overall direction of the financial results of the Enterprise including strategic planning, operations, investment portfolios, cash management, financial reports, financial analysis, and other financial concerns.

D. The Chief Financial Officer shall complete all financial reporting requirements to Navajo Nation, state and federal agencies.

E. The Chief Financial Officer shall ensure compliance and review for internal controls as required by the Navajo Nation, state and federal agencies.

F. The Chief Financial Officer shall assist operational management with financial reports and analysis and make presentations before the Navajo Nation as required.

#### **History**

CS-34-06, September 26, 2006.

#### **§ 1711. Indemnification of directors, officers and employees**

While acting in their official capacities, the Enterprise shall indemnify any officer, employee or member of the Board of Directors or former officer, employee or member of the Board of Directors, or any person who may have served at its request as an officer, employee or member of another entity, against reasonable expenses incurred by him or her in connection with the defense of

any action, suit or proceeding in which he or she is made a party by reason of being, or having been such officer, employee or member of such entity; except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. The Enterprise shall also reimburse any officer, employee or member of the Board of Directors or such other entity, for reasonable costs of settlement of any such action, suit or proceeding if it shall be found by a majority of the Board of Directors other than directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Enterprise and the Navajo Nation that such settlement be made. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such person may be entitled to receive, but shall be subject to any applicable limitation thereon.

#### **History**

CS-34-06, September 26, 2006.

#### **§ 1712. Bylaws, meetings**

A. The Board of Directors shall adopt bylaws for the Enterprise and such bylaws may be amended or repealed as provided therein. The bylaws of the Enterprise shall provide for the time and place of the annual meeting of the Board of Directors. The Board shall hold four regular meetings per year, one of which shall be the annual meeting, plus any other special meetings as may be called by the Chairperson of the Board of Directors.

B. The bylaws shall further provide for notice of meetings, waiver of notice, fiscal year, and for all other matters necessary for the orderly and efficient operation and management of the Enterprise.

#### **History**

CS-34-06, September 26, 2006.

#### **§ 1713. Inspection of books, records and reports**

The Enterprise shall open to the inspection of the Navajo Nation Council, the President of the Navajo Nation and the Attorney General of the Navajo Nation or their authorized representatives, the accounts, books and papers of the Enterprise at all reasonable business hours. The accounts and records of the Enterprise shall be maintained in the Navajo Nation and audited at the close of each fiscal year. Copies of the audit report shall be furnished to the President of the Navajo Nation, the Budget and Finance Committee of the Navajo Nation Council and to such other persons or entities as the President of the Navajo Nation or chairperson of the Economic Development Committee of the Navajo Nation Council shall direct.

#### **History**

CS-34-06, September 26, 2006.

**§ 1714. Distribution of revenue**

The gaming revenues of the Enterprise shall be disbursed by the Enterprise to the Navajo Nation in accordance with a Navajo Nation gaming revenue distribution plan, subject to the approval of the Navajo Nation Council.

**History**

CS-34-06, September 26, 2006.

**§ 1715. Insurance**

The Enterprise shall carry adequate insurance consistent with applicable laws and gaming compacts.

**History**

CS-34-06, September 26, 2006.

**§ 1716. Sovereign immunity**

A. While acting in their official capacities, the Enterprise, its Board of Directors, officers, and employees are immune from suit, and the assets and other property of the Enterprise are exempt from any levy or execution, except as provided:

1. In the Navajo Nation Sovereign Immunity Act (1 N.N.C. § 551 *et seq.*); or

2. When the Enterprise's Board of Directors has, in any particular matter by duly adopted resolution, waived the Enterprise's immunity from suit so as to permit suit against the Enterprise in the courts of the Navajo Nation, the courts of the United States or of any state as may be appropriate and agreed to by the Board of Directors.

B. Any waiver of immunity by the Enterprise shall not be construed to waive any immunity of the Navajo Nation or other person or entity, nor shall the provisions of the Navajo Sovereign Immunity Act, (1 N.N.C. § 551 *et seq.*) be deemed altered or amended.

**History**

CS-34-06, September 26, 2006.

**§ 1717. Compliance with Navajo law**

The Enterprise, its Board of Directors, officers, employees, and agents shall conduct the business of the Enterprise in compliance with all applicable laws of the Navajo Nation.

#### **History**

CS-34-06, September 26, 2006.

#### **§ 1718. Legislative oversight**

The Enterprise shall operate under the legislative oversight of the Navajo Nation Council.

#### **History**

CS-34-06, September 26, 2006.

#### **§ 1719. Amendments**

This plan of operation may be amended from time to time by the Navajo Nation Council. No amendment to this plan of operation shall be considered by the Navajo Nation Council unless such amendment has been considered by the Enterprise's Board of Directors and the Economic Development Committee.

#### **History**

CS-34-06, September 26, 2006.

### **Subchapter 8. Tribal Gaming Enterprises**

#### **§ 1731. Establishment**

The Navajo Nation, a federally-recognized Indian tribe, hereby establishes the Tsé Daak'áán Gaming Enterprise as a tribal gaming enterprise of the Navajo Nation ("Enterprise.")

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1732. Status of the Enterprise**

A. The Enterprise is a legal entity wholly owned by the Navajo Nation, a federally recognized Indian tribe.

B. The duration of the Enterprise is perpetual.

C. As a legal entity of the Navajo Nation, the Enterprise is entitled to the privileges and immunities of the Navajo Nation. The Enterprise shall possess all of the attributes of Navajo sovereignty, including but not limited

to immunity from suit, freedom from levy and execution, and exemption from state and federal taxes, unless, either by contract approved by the Enterprise in conformity with this enabling legislation or by resolution of the Navajo Nation Council, any such attribute of sovereignty is expressly waived or abrogated as to any transaction involving the Enterprise.

D. Neither the Executive Director of the Gaming Regulatory Office nor any other public official or public employee of the Navajo Nation (individually or collectively) shall have any role in the management of the Enterprise or any licensed gaming establishment.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1733. Purpose**

The purpose for which the Enterprise is organized and created is as follows:

A. To be a Tribal Gaming Enterprise to conduct gaming operations within the Navajo Nation under the auspices of the Indian Gaming Regulatory Act of 1988 (Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168), Navajo Gaming Ordinance (5 N.N.C. § 2001 *et seq.*), and the gaming compacts entered into between the Navajo Nation and any State.

B. To generate gaming revenues and provide a fair return to the Navajo Nation in accordance with the Indian Gaming Regulatory Act, Navajo Gaming Ordinance, and other applicable laws of the Navajo Nation.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1734. Place of business**

A. The Enterprise's principal place of business shall be the Tsé Daak'áán Chapter, Navajo Nation (New Mexico), unless otherwise designated by the Board of Directors.

B. The Enterprise may maintain other offices within or outside the Navajo Nation, as may be designated from time to time by the Board. The business of the Enterprise may be transacted at such other offices with the same effect as that conducted at the principle place of business.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06,

December 22, 2006.

**§ 1735. Powers**

Consistent with the purposes for which the Enterprise is created and subject to the limitations in § 1736, the Enterprise shall have the following powers:

A. To engage in related business activities in its own name or under such other names as the Board of Directors may choose either within or outside the Navajo Nation.

B. To maintain bank accounts that are separate from Navajo Nation accounts, such accounts shall be used for the operation of gaming and related business activities.

C. To buy, sell, lease and otherwise acquire and maintain real property, buildings, offices, shops and other appurtenances necessary and proper for the carrying on of gaming and related activities.

D. To acquire, by assignment, gift, exchange, purchase or otherwise, to own, hold, operate, use, improve, lease, rent, sell, convey, dispose of, encumber and otherwise deal in real and personal property of any and all kinds, including but not limited to business, securities, goodwill, franchises, patents, trademarks, copyrights and assets of any kind, and in connection therewith undertaking, either wholly or in part, liabilities of whatever kind.

E. To enter into, make, assign, and take assignments of any and all forms of contracts, agreements, joint ventures, guarantees, commitments, assurances, and any and all forms of lawful undertaking with any person, partnership, corporation, state government or political subdivision thereof, or any form of legal entity, for any purpose that is reasonably related to the lawful purposes of the Enterprise.

F. To waive the Enterprise's immunity from suit so as to permit suit against the Enterprise in the courts of the Navajo Nation, the courts of the United States or of any state. Such waiver shall be approved by not less than three-fourths (3/4) vote of the full membership of the Board of Directors by a duly adopted resolution.

G. To borrow money and to make, accept, endorse, execute and issue bonds, debentures, promissory notes, and other corporate obligations for money borrowed, or in payment for property acquired for any of the purposes of the Enterprise, and to secure payment of any obligation by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all of any part of the property, rights or privileges of the Enterprise.

H. To have a corporate seal at the discretion of the Board of Directors.

**History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06,



December 22, 2006.

**Note.** Slightly reworded by adding the word "or" at Subsection D to read "...wholly or in part..."

#### **§ 1736. Limitation of Powers**

A. The acts or omissions of the Enterprise (whether pursuant to the powers enumerated in this plan of operation or otherwise) shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation, and only the assets, revenues and income held by or in the name of the Enterprise shall be subject (to the extent otherwise permitted herein or by law) to the debts, obligations or other liabilities created or incurred by the Enterprise.

B. Unless expressly authorized by the Navajo Nation Council and except as to the Enterprise and its property, the Enterprise may not:

1. Enter into any agreement of any kind whatsoever on behalf of or that purports to bind the Navajo Nation;
2. Enter into any agreement of any kind whatsoever on behalf of or that purports to bind the gaming revenues of the Navajo Nation;
3. Pledge the credit of the Navajo Nation;
4. Dispose of, sell, mortgage, pledge, or otherwise encumber any real or personal property of the Navajo Nation;
5. Waive any rights, privileges or immunities of the Navajo Nation, or release any obligations to the Navajo Nation;
6. Sell or otherwise dispose of all or substantially all of the Enterprise's assets; or
7. Engage in any activity that violates any Navajo Nation law.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

**Note.** Slightly reworded by adding the word "of" to the heading, "Limitation of Powers."

#### **§ 1737. Board of directors and officers; number; appointment; composition, term and removal**

A. Oversight Authority. The business and affairs of the Enterprise shall be overseen exclusively by its Board of Directors. In general, the Board of

Directors shall be responsible for establishing overall policies and objectives for the management of the affairs and assets of the Enterprise and for periodically reviewing and evaluating management results.

B. Number. The Board of Directors shall consist of seven members. The Board shall select from among its membership a Chairperson, Vice-Chairperson, and Secretary/Treasurer. The Chairperson shall preside at meetings of the Board and shall act on behalf of its Board with such authority as is conferred by the Board. The Chairperson shall not vote on any matter voted on by the Board of Directors unless there is a tie. The Vice-Chairperson shall act in the Chairperson's absence. The Secretary/Treasurer shall arrange the meetings of the Board, keep minutes of the Board meetings, send notices of meetings to the Board members, maintain the records of the Board, and prepare correspondence and documents for the Board and its members.

C. Board of Directors Selection. The President of the Tsé Daak'áán Chapter shall select Board members. Such selections are subject to confirmation by the Navajo Nation Council.

D. Composition. At least one director shall be a Certified Public Accountant; at least one member shall possess a Juris Doctorate; at least one director shall have experience in gaming management or gaming operations; and at least four members be enrolled members of the Navajo Nation.

E. Quorum. The presence of four members of the Board shall constitute a quorum for transacting any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Board. All actions, with the exception of procedural motions, shall be recorded and documented in written resolutions certified by the presiding Chairperson.

F. Vacancies. In the event a vacancy occurs in the Board of Directors, the vacant position shall be filled in the same manner set forth in Subsection C of this Section. A director selected to fill a vacancy shall serve the remaining term of his/her predecessor.

G. Qualifications. At all times the nominees and the Directors shall not be a public official or public employee of the Navajo Nation.

H. Licensure. Each appointee for the position of member of the Board of Directors of the Enterprise shall obtain a Gaming Facility Operator's License from the Gaming Regulatory Office before submission of the appointment to the Navajo Nation Council for confirmation. The appointee shall obtain a Gaming Facility Operator's License within 90 days of the appointment. Each member of the Board of Directors shall maintain a Gaming Facility Operator's License from the Gaming Regulatory Office.

I. Term of Office. Directors shall be appointed for four years staggered terms and shall hold office until the qualification and selection of their successors. The initial Board of Directors shall be divided into three groups. The first group of two shall serve for two years, the second group of two shall serve for three years, and the third group of three shall serve four years. Thereafter all terms shall be for four years.

J. Discretionary Removal. Any Director may be removed at a duly called meeting of the Board of Directors, by a majority vote of the full membership of the Board of Directors, for just cause. Just cause includes, but is not limited to: failure to attend three consecutive meetings of the Board, or an inability to fulfill the duties of a Director.

K. Automatic Removal. Any Director shall be automatically removed for the following: failure to maintain a Gaming Facility Operator's License, death, submission of resignation, or failure to maintain the qualifications of a Board of Director as set forth in this Section.

L. Compensation. Directors shall receive a quarterly stipend of \$4,500 plus expenses for travel and training. Directors shall not receive any other type of compensation for their service, except quarterly stipends for attendance at regular and special meetings of the Board of Directors, and for other official business of the Enterprise.

### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

### **§ 1738. Chief Executive Officer; functions; duties**

A. The Chief Executive Officer of the Enterprise shall be employed under a written employment contract for a four-year term approved by the Board of Directors. The commencement of the employment contract is contingent upon the Chief Executive Officer obtaining a Navajo gaming license within 90 days of the execution of the contract. The Board of Directors shall periodically review the job performance of the Chief Executive Officer. The Chief Executive Officer shall be removed only for breach of contract.

B. The Chief Executive Officer shall possess the following qualifications: a bachelor's degree, and a minimum of ten years of experience in upper management of a hospitality or gaming business.

C. The Chief Executive Officer shall, among other things, execute the general policies formulated by the Board of Directors and organize the operation of the Enterprise.

D. The Chief Executive Officer shall exercise best judgment to determine the manner by which general policies set forth by the Board of Directors are to be effectuated.

E. The Chief Executive Officer shall be the active, operating executive of the Enterprise and shall prepare plans and annual budgets, as well as make suggestions as to policies and any proposals for improvements.

F. The Chief Executive Officer shall have full authority and control of all employees of the Enterprise and be responsible for all department heads or other executives carrying out their assignments.

G. The Chief Executive Officer shall be responsible for the general

supervision of the performance of staff with respect to all matters such as adherence to a corporate vision, marketing, conformance to standards, department inspection, cost control, employee relations and in-service training.

H. The Chief Executive Officer shall render regular reports to the Board of Directors and perform all other functions and duties specified in this Chapter.

I. The Chief Executive Officer shall have the authority to hire all such employees necessary and proper to carry out the business needs of the Enterprise.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1739. Interim Chief Executive Officer**

A. Hiring of Interim Chief Executive Officer. Until a contract is executed between the first Chief Executive Officer and the Board of Directors, the duties of the Chief Executive Officer may be performed by an Interim Chief Executive Officer appointed by the President of the Tsé Daak'áán Chapter and confirmed by the Tsé Daak'áán Chapter. The Interim Chief Executive Officer must possess the minimum qualifications for the Chief Executive Officer, and shall have all the powers and responsibilities of that position.

B. Subsequent Vacancies in the Chief Executive Officer Position. When subsequent vacancies occur in the Chief Executive Officer position, the Board of Directors shall appoint an Interim Chief Executive Officer, who shall serve until a contract is executed between the Chief Executive Officer and Board of Directors. The Chief Financial Officer shall serve as Acting Chief Executive Officer until the Board of Directors appoints an Interim Chief Executive Officer.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1740. Chief Financial Officer; functions; duties**

A. The Chief Financial Officer of the Enterprise shall be employed under a written employment contract with the Chief Executive Officer. The job performance of the Chief Financial Officer shall be periodically reviewed by the Chief Executive Officer.

B. The Chief Financial Officer shall oversee the management of the day-to-day operations of the financial and related functions of the Enterprise.

C. The Chief Financial Officer shall be responsible for the overall direction of the financial results of the Enterprise including strategic planning, operations, investment portfolios, cash management, financial reports, financial analysis, and other financial concerns.

D. The Chief Financial Officer shall complete all financial reporting requirements to Navajo Nation, state, and federal agencies.

E. The Chief Financial Officer shall ensure compliance and review for internal controls as required by the Navajo Nation, state and federal agencies.

F. The Chief Financial Officer shall assist operational management with financial reports and analysis and make presentations before the Navajo Nation Council as required.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1741. Indemnification of directors, officers and employees**

While acting in their official capacities, the Enterprise shall indemnify any officer, employee or member of the Board of Directors or former officer, employee or member of the Board of Directors, or any person who may have served at its request as an officer, employee or member of another entity, against reasonable expenses incurred by him or her in connection with the defense of any action, suit or proceeding in which he or she is made a party by reason of being, or having been such officer, employee or member of such entity; except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. The Enterprise shall also reimburse any officer, employee or member of the Board of Directors or such other entity, for reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the Board of Directors, other than directors involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Enterprise and the Navajo Nation that such settlement be made. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such person may be entitled to receive, but shall be subject to any applicable limitation thereon.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1742. Bylaws, meetings**

A. The Board of Directors shall adopt bylaws for the Enterprise and such bylaws may be amended or repealed as provided therein. The bylaws of the Enterprise shall provide among other things for the time and place of the annual meeting of the Board of Directors. The Board shall hold four regular

meetings per year, one of which shall be the annual meeting, plus any other special meetings as may be called by the Chairperson of the Board of Directors.

B. The bylaws shall further provide for notice of meetings, waiver of notice, fiscal year, and for all other matters necessary for the orderly and efficient operation and management of the Enterprise.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1743. Inspection of books, records and reports**

The Enterprise shall open to the inspection of the President of the Navajo Nation and the Attorney General of the Navajo Nation or their authorized representative, the accounts, books and papers of the Enterprise at all reasonable business hours. The accounts and records of the Enterprise shall be maintained on the Navajo Nation and audited at the close of each fiscal year. Copies of the audit report shall be furnished to the President of the Navajo Nation, the Budget and Finance Committee of the Navajo Nation Council and to such other persons or entities as the President of the Navajo Nation or chairperson of the Economic Development Committee of the Navajo Nation Council shall direct.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1744. Distribution of revenue**

The gaming revenues of the Enterprise shall be disbursed by the Enterprise to the Navajo Nation in accordance with the Tsé Daak'áán Chapter gaming revenue distribution plan pursuant to the approved Memorandum of Agreement between the Navajo Nation and Tsé Daak'áán Chapter.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1745. Insurance**

The Enterprise shall carry adequate insurance consistent with applicable laws and gaming compacts.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1746. Sovereign Immunity**

A. While acting in their official capacities, the Enterprise, its Board of Directors, officers, and employees are immune from suit, and the assets and other property of the Enterprise are exempt from any levy or execution, except as provided:

1. In the Navajo Sovereign Immunity Act (1 N.N.C. § 551 *et seq.*);  
or

2. When the Enterprise's Board of Directors has, in any particular matter by duly adopted Resolution, waived the Enterprise's immunity from suit so as to permit suit against the Enterprise in the courts of the Navajo Nation, the courts of the United States or of any state as may be appropriate and agreed to by the Board of Directors.

B. Any waiver of immunity by the Enterprise shall not be construed to waive any immunity of the Navajo Nation or other person or entity, nor shall the provisions of the Navajo Sovereign Immunity Act, (1 N.N.C. § 551 *et seq.*) be deemed altered or amended.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1747. Compliance with Navajo law**

The Enterprise, its Board of Directors, officers, employees, and agents shall conduct the business of the Enterprise in compliance with all applicable laws of the Navajo Nation.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1748. Legislative Oversight**

The Enterprise shall operate under the legislative oversight Navajo Nation Council.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

#### **§ 1749. Amendments**

This plan of operation may be amended from time to time by the Navajo Nation Council. No amendment to this plan of operation shall be considered by the Navajo Nation Council unless such amendment has been approved by Enterprise's Board of Directors and the Economic Development Committee.

#### **History**

CJA-04-07, January 24, 2007. Override of Presidential veto of CD-62-06, December 22, 2006.

### **Subchapter 9. Navajo Nation Hospitality Enterprise**

#### **§ 1841. Establishment as independent enterprise**

A. The Navajo Nation Hospitality Enterprise "NNHE" is hereby continued and established as a Navajo enterprise of the Navajo Nation.

B. NNHE is a constituent part of the Navajo Nation and is and shall be wholly owned by the Navajo Nation.

C. NNHE has and shall possess all of the attributes of Navajo sovereignty, including but not limited to immunity from suit, freedom from levy and execution, and exemption from state, federal and tribal taxes, unless, by either contract approved by NNHE in conformity with its plan of operation or by resolution of the Navajo Nation Council any such attribute of sovereignty is expressly waived or abrogated as to NNHE or to any transaction involving NNHE.

#### **History**

CD-79-02, December 30, 2002.

ACAU-157-89, August 3, 1989.

ACJY-127-85, July 10, 1985.

**Historical Revision note.** ACAP-84-87 amended ACJY-127-85, Exhibit B, § I, July 10, 1985 changing "Window Rock Motor Inn Enterprise" to "Navajo Nation Hospitality Enterprise", and changed the name of the "Window Rock Motor Inn" to "Navajo Nation Inn". Former Plan of Operation of Window Rock Motor Inn, derived from ACO-118-82 codified at §§ 1841-1853, was expressly rescinded by ACJY-127-85, and by which a new Plan of Operation was adopted and codified at §§ 1841-1857.

#### **Cross References**

Enterprise reorganization, see 2 N.N.C. § 724(E)(1).

General limitation on compensation of members of boards of enterprises, industries, authorities, colleges, etc., of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.



**§ 1842. Purpose**

NNHE is organized to:

A. Work in conjunction with government agencies of the Navajo Nation to expand employment training and management opportunities for the Navajo people, and to stimulate economic development throughout Navajo Indian country;

B. Establish and maintain an independent, profitable, growing, financially self-sustaining and successful Navajo Nation-owned business enterprise;

C. Generate revenue for the Navajo Nation; and

D. Provide professional motel and restaurant, retail, wholesale, and recreational (including gaming as authorized by the Navajo Nation in accordance with applicable Navajo and federal law) services and qualify facilities to the public.

**History**

CD-79-02, December 30, 2002.

ACAU-157-89, August 3, 1989.

ACJY-4-87, January 14, 1986, amending ACJY-127-85, Exhibit B, § III, July 10, 1985.

**§ 1843. Organization**

A. The business and affairs of NNHE shall be managed by a five-person Board of Directors, the members of which shall meet the qualifications established in NNHE's plan of operation. The Board of Directors shall conduct its business in a similar manner as boards of directors of successful corporations in the hospitality business, to the extent feasible and permitted under NNHE's plan of operation and other applicable Navajo law.

B. The Board of Directors shall set the policies for NNHE and ensure compliance with such policies. The Board of Directors shall hire the Chief Operating Officer of NNHE under a written contract, and shall supervise, adjust the compensation for, and otherwise reward and discipline such Chief Operating Officer consistent with such contract and any applicable Navajo law.

C. The Chief Operating Officer shall manage and administer the day-to-day operations of NNHE. The Chief Operating Officer shall be responsible and accountable to the Board of Directors.

**History**

CD-79-02, December 30, 2002.

ACAU-157-89, August 3, 1989.

ACJY-127-85, Exhibit B, § IV, July 10, 1985.

#### **§ 1844. Legislative Oversight**

NNHE shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council pursuant to 2 N.N.C. § 724(E). NNHE shall operate pursuant to a plan of operation recommended by the NNHE Board of Directors in consultation with the President of the Navajo Nation and the Board of Directors of NNHE.

#### **History**

CD-79-02, December 30, 2002.

ACAU-157-89, August 3, 1989.

ACJY-127-85, July 10, 1985.

#### **Cross References**

Economic Development Committee confirmation, see 2 N.N.C. § 724(E).

#### **§ 1845. Amendments**

The NNHE enabling legislation, 5 N.N.C. §§ 1841-1845, may be amended from time to time by the Navajo Nation Council upon the recommendations of the Economic Development Committee of the Navajo Nation Council, after consultation between such Committee and the President of the Navajo Nation and the Board of Directors of NNHE.

#### **History**

CD-79-02, December 30, 2002.

ACAU-157-89, August 3, 1989.

ACJY-127-85, July 10, 1985.

**§§ 1846 to 1857. [Reserved]**

**Note.** CD-79-02, December 30, 2002, generally amended §§ 1841-1857

#### **Subchapter 11. [Superseded]**

**§§ 1901 to 1919. [Superseded]**

#### **History**

CD-68-89, December 15, 1989.

Authorities of Navajo Housing and Development Enterprises were re delegated in 1989 to various standing committees or to the Navajo Nation Council, including

the Transportation and Community Development Committee, the Human Services Committee, and the Economic Development Committee.

### **Subchapter 13. Navajo Engineering and Construction Authority**

#### **§ 1971. Establishment; place of business; commencement and duration**

A. There is established an enterprise of the Navajo Nation known as the Navajo Engineering and Construction Authority (NECA), hereafter called the "Authority."

B. The Authority's main office and principal place of operation shall be in Shiprock, Navajo Nation (New Mexico), but other offices and places for conducting business, both within and without the Navajo Nation, may be established from time to time by the Board of Directors.

C. The time of commencement of this Authority shall be the date on which the Navajo Nation Council passes a resolution to that effect and the duration of the Authority shall be perpetual.

#### **History**

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989 amending CJN-56-72, Plan, §§ I, II, IV, June 13, 1972.

CJN-37-75, June 16, 1975.

CAU-80-74, August 1, 1974.

#### **Cross References**

General limitation on compensation of board members of enterprise, industries, authorities, colleges, etc., of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

#### **§ 1972. Purposes and powers**

A. The purposes for which the Authority is organized are as follows:

1. To engage in the general engineering and heavy construction industry;

2. To train Navajo people in the engineering and construction industry, including training in the management of the Authority;

3. To provide employment to the Navajo Nation, its enterprises and individual members, in engineering and construction and related businesses;

4. To be the premier heavy construction contractor emphasizing the values of excellence, service and employee development; and

5. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes set forth herein consistent with all applicable laws or regulations, and this plan of operation.

B. Subject to applicable federal and Navajo laws and regulation, the Board of Directors of the Authority shall exercise the following powers and duties:

1. The Board shall have authority and responsibility for the management and operation of the Authority.

2. The Board shall direct the operations of the Authority to accomplish the purposes and to exercise the powers set forth herein without previous authorization or subsequent approval and all parties dealing with the Authority shall have the right to rely upon action taken by the Board pursuant to such authorization.

3. The Board shall exercise full power and shall be ultimately responsible for the custody and management, operation, inventory and maintenance of all property of the Authority; the bidding, planning, design and construction of all projects undertaken by the Authority, and the planning, construction and operation of all new facilities to be acquired by the Authority.

4. The Board shall be responsible for making investment decisions, subject to the limitations contained herein, or limitations as may be included in advance of funds; for the establishment and maintenance of effective operating policies; for the creation of and delegation of Board authority to subcommittees of the Board; for the selection of management personnel; and for continuous supervision of the performance of the Authority.

5. The Board shall exercise its authority in the best interests of the Navajo Nation and within the limits of responsible business judgment, with the limitation that it shall not incur obligations in excess of the ability of the Authority to pay or perform. Nothing herein shall be construed as authorizing the Authority to mortgage or encumber trust or restricted property without the consent of the Navajo Nation Council or the appropriate committee delegated the authority to consent thereto.

6. To elect or appoint or hire by contract as provided in this Section, officers, agents, auditors, attorneys, and such professional consultants as in the opinion of the Board may be needed from time to time. The Board, at Authority expense, shall require the bonding of all officers, agents or employees responsible for the handling or safety of funds, property or other assets of the Authority or the Navajo Nation.

7. To act as agent in any state, territory, districts or possessions of the United States, or in any foreign country on behalf of the Authority, within the scope of duties authorized.

8. To deal in real property. To acquire, hold, own, utilize, improve, manage, operate, exchange, sell, deal in, dispose of, and to

negotiate leases, or mortgages of, either alone or in conjunction with others, real estate of every kind, character and description or any interest therein, necessary or incidental to the purposes set forth herein. The Authority shall comply with all federal and Navajo law governing real property transactions.

9. To deal in personal property. To acquire, hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property, and interest therein and commodities of every kind, character and description necessary or incidental to the purposes set forth herein.

10. To deal in inventories, copyrights and trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire, or otherwise), hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor.

11. To execute guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Authority, to the extent that such guaranty is made pursuant to the purposes set forth herein, provided, that property subject to restrictions on alienation or otherwise held in trust status may not be used as security of any kind without the consent of the Navajo Nation Council or the appropriate committee of the Navajo Nation Council delegated the authority to consent thereto, and the consent of the Secretary of the Interior or his authorized representative.

12. To make contracts. To enter into, make, perform, and carry out, or cancel, or rescind contracts for any lawful purposes set forth in 5 N.N.C. § 1972 including contracting for funds from whatever source without prior or subsequent approval or authorization by the Navajo Nation and to delegate so much of this authority as may be advisable to the General Manager or to the President of the Board of Directors. Any contract hiring or retaining an attorney is subject to applicable federal or Navajo Nation laws, rules and regulations. Nothing in this Section shall be construed as a waiver of the sovereign immunity of the Authority or the Navajo Nation.

13. To borrow money, make and issue bonds and notes. To borrow money, make and issue notes, obligations and bonds of the Authority for any of its purposes, and to secure payment thereof by pledge of, or lien on, all or any of its fixtures, personalty, revenues, income or contracts. With respect to any person, firm or corporation, or any federal, Navajo Nation or state agency subscribing to or acquiring notes or bonds of the Authority issued for the purposes of the Authority, the Navajo Nation shall not limit or alter the rights or powers vested in the Authority until all such notes or bonds at any time issued, together with interest hereon, are fully met, paid and discharged.

14. To the extent necessary to carry out the business of the

Authority, to lend money, to purchase, acquire, own, hold, guarantee, sell, assign, transfer, mortgage, pledge, or otherwise dispose of and deal in shares, bonds, notes, debentures or other securities or evidences of indebtedness of any other person, corporation or association, whether domestic or foreign, and whether now or hereafter organized or existing; and while the holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

15. With the approval of the appropriate oversight committee of the Navajo Nation Council, to enter into management agreements, joint ventures, limited partnerships and/or general partnership agreements with any corporation, association, syndicate, partnership, entity, person or governmental, municipal or public authority, domestic or foreign, in the carrying on of any business which the Authority is authorized to carry on, or any business or transaction deemed necessary, convenient, or incidental to carrying out the purposes of the Authority.

16. To acquire, by purchase or otherwise the goodwill, business, property rights, franchises and assets of every kind, with or without undertaking either wholly or in part the liabilities of any person, firm, association or corporation, and to acquire any related business as a going concern or otherwise by purchase of the assets thereof wholly or in part, or by acquisition of the shares or any part thereof, or in any other manner, and to pay for the same in cash or in the bonds or other evidences or indebtedness of this Authority, or otherwise; to hold, maintain and operate, or in any manner dispose of the whole or any part of the goodwill, business, rights, and property so acquired, and to conduct in any lawful manner the whole or any part of any related business so acquired; and to exercise all the powers necessary or convenient in and about the management of such business.

17. In its sole discretion, to declare a dividend out of the surplus earnings of the Authority to the Navajo Nation. Any such declaration shall require the unanimous vote of the Board.

18. To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or attainment of any of the objects herein before enumerated, either alone or in association with other authorities, corporations, firms and individuals, as principal, agent, broker, contractor, trustee, partner or otherwise, and in general to engage in any and all lawful business that may be necessary or convenient in carrying on the business of said Authority and for the purposes pertaining thereto, and to do any and every other act or acts, thing or things, incidental to, growing out of, or connected with said business, or any part or parts thereof.

#### **History**

CJY-33-08, July 25, 2008.

**Note.** Slightly reworded at Subsection (B)(8) by adding the word "The" at the beginning of the Subsection.

EDCD-118-92, December 21, 1992.

CN-67-89, November 30, 1989.

CJN-56-72, Plan, § III, June 13, 1972, as amended by ACO-373-72, §§ 1a, 1b, 1c, October 13, 1972.

ACO-373-72, §§ 1a, 1b, 1c, October 13, 1972 amended CJN-56-72, Plan § III, June 13, 1972.

**Revision notes.** Section 1972(B)(12) includes new language pursuant to Resolution EDCD-118-92. See Navajo Nation Attorney Generals Opinions dated April 26, 1992. (2004).

Previous reference to the "Government Services" at § 1972(B)(15) changed to "appropriate oversight committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004).

#### **Cross References**

Government Services Committee authority, see 2 N.N.C. § 343(B)(4).

#### **§ 1973. Board of directors and officers; number, appointment, composition term and removal, employment of general manager**

A. The business and affairs of the Authority shall be conducted by a Board of Directors of seven directors. The President of the Navajo Nation or his designee shall serve as a non-voting *ex officio* member.

B. The presence of four directors of the Board shall constitute a quorum for the transaction of any business. The act of the majority of the directors present and voting at a meeting at which a quorum is present, shall be the act of the Board. All actions, with the exception of procedural motions, shall be recorded and documented in written resolutions certified by the presiding officer.

C. The Board of Directors shall be appointed by the President of the Navajo Nation with confirmation by the appropriate oversight committee of the Navajo Nation Council. Any new director shall be appointed to the Board for a four year term, and the terms of his reappointment thereafter, if any, shall be limited to one four year term. Present Board directors shall serve out their present terms before this provision applies to them. Board directors shall serve until their reappointment or their successors are duly qualified and confirmed.

D. At least six directors of the Board shall be enrolled members of the Navajo Nation. Individuals with experience and/or education in the engineering, construction, architectural, legal, accounting, management, or other construction related field shall be given preference for appointment to the Board.

E. Vacancies on the Board of Directors may be filled by the President of the Navajo Nation for the remainder of the term of the vacating director.

F. Any director may be removed at a duly called meeting of the Board of Directors, by a two-thirds vote of the full membership thereof, for just cause only. Just cause shall include, but not be limited to, failure to attend three consecutive meetings of the Board.

G. A President, Vice-President, Secretary and Treasurer of the Board shall be elected at the annual meeting of the Board of Directors. All such officers must be directors of the Board of Directors, and shall hold office until their successors are elected and qualified. Any such Officer may be removed from office by the Board of Directors in the manner provided for in the bylaws of the Authority.

H. A General Manager shall be employed under contract approved by the Board of Directors. The Board of Directors shall have the authority to set salary, benefits, incentives, bonuses, and other provisions of such a contract. The General Manager shall be the Chief Executive Officer of the Authority, and shall direct, supervise and manage all of the operations of the Authority pursuant to the contract. He shall be responsible to the Board of Directors as a Chief Executive Officer of a corporation would be. He shall render reports to the Board and prepare periodical strategic business plans and perform all other functions and duties specified herein and as may be assigned by the Board of Directors.

#### **History**

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

ACD-256-75, § 1, December 10, 1975. ACD-256-75 added Vice-Chairman of the Navajo Tribal Council to the board in Subsection (A).

CJN-56-72, Plan, § V, June 13, 1972. ACO-373-72, § 1(d), October 13, 1972.

#### **Cross References**

Economic Development Committee authority, see 2 N.N.C. § 724(E)(1).

#### **§ 1974. Compliance with Navajo law**

The Authority, its Board members, officers, and employees shall conduct the business of the Authority in compliance with the laws of the Navajo Nation, including but not limited to, the Navajo Nation Ethics in Government Law and the Navajo Preference in Employment Act, as may be amended from time to time.

#### **History**

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

CJN-56-72, Plan, § V, June 13, 1972.

ACO-373-72, § 1(d), October 13, 1972.



#### **§ 1975. Indemnification of directors, officers and employees**

Any person made a party to any action, suit or proceedings by reason of the fact that he, his testator or intestate, is or was a director, officer, attorney, auditor or employee of the Authority or of any corporation which he served as such at the request of the Authority, shall be indemnified by the Authority against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such officer, director, attorney, auditor or employee is liable for misconduct in the performance of his duties or was acting outside the scope of his authority and employment by the Authority.

#### **History**

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

CJN-56-72, Plan, § XIII, June 13, 1972.

#### **§ 1976. Bylaws, meetings, compensation**

A. The Board of Directors shall adopt bylaws for the Authority and such bylaws may be amended or repealed as provided therein. The bylaws of the Authority shall provide among other things for the time and place of the annual meeting of the Board of Directors.

B. The Board shall hold four regular meetings per year, one of which shall be the annual meeting, plus such other special meetings as may be called by the Board or by the President of the Board.

C. The bylaws shall further provide for notice of meetings, waiver of notice, the compensation and/or reimbursement of directors of the Board, creation of and delegation of Board authority to subcommittees, and for all other matters necessary for the orderly and efficient operation and management of the affairs and dealings of the Authority.

#### **History**

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

CJN-56-72, Plan, § XIII, June 13, 1972.

#### **§ 1977. Executive Committee**

The officers of the Board of Directors shall serve as an Executive Committee. The Executive Committee may meet, in the intervals between meetings of the Board of Directors and to the extent provided by the bylaws of the Authority, exercise the powers of the Board of Directors in the management of

the affairs and business of the Authority insofar as such powers may lawfully be delegated to a committee. The Executive Committee shall report its actions to the Board of Directors.

#### **History**

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

CJN-56-72, Plan, § XIII, June 13, 1972.

#### **§ 1978. Inspection of books, records and reports**

A. The Authority shall open to the inspection of the President of the Navajo Nation and the Attorney General of the Navajo Nation or their authorized representative, the accounts, books and papers of the Authority at all regular business hours. The accounts and records of the Authority shall be maintained in the Navajo Nation and audited at the close of each fiscal year. Copies of the audit report shall be furnished to the President of the Navajo Nation, the Budget and Finance Committee of the Navajo Nation Council and to such other persons or entities as the President of the Navajo Nation or chairperson of the appropriate oversight committee of the Navajo Nation Council shall direct.

B. The Authority shall prepare and deliver to the Navajo Nation Council, annual financial and progress reports of the Authority and such other reports to the committees of the Navajo Nation Council as may be required by the appropriate oversight committee or by law.

#### **History**

CJY-33-08, July 25, 2008.

CJN-56-72, Plan, § VIII, June 13, 1972 as amended by CN-67-89, passed November 30, 1989.

#### **Cross References**

Economic Development Committee authority, see 2 N.N.C. § 724(E)(1).

#### **§ 1979. Private property exempt**

The private property of each and every officer and director of the Authority, real or personal, tangible, or intangible, now owned or hereafter acquired by any of them, is and shall be forever exempt from all debts and obligations of the Authority of any kind whatsoever.

#### **History**

CN-67-89, November 30, 1989.

CJN-56-72, June 13, 1972.

#### **§ 1980. Sovereign Immunity**

A. The Authority and its Board of Directors and Officers and employees while acting in their official capacities are immune from suit, and the assets and other property of the Authority are exempt from any levy or execution, except:

1. As provided in the Navajo Sovereign Immunity Act (1 N.N.C. § 551 *et seq.*); or

2. When the Authority's Board of Directors has, in any particular matter by duly adopted Resolution, waived the Authority's immunity from suit so as to permit suit against the Authority in the courts of the Navajo Nation, the courts of the United States or of any state as may be appropriate and agreed to by the Board of Directors.

B. The acts or omissions of the Authority (whether pursuant to the powers enumerated in this plan of operation or otherwise) shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation. Only the assets, revenues and income held by or in the name of the Authority shall be subject (to the extent otherwise permitted herein or by law) to the debts, obligations or other liabilities created or incurred by the Authority.

C. Any waiver of immunity by the Authority shall not be construed to waive any immunity of the Navajo Nation or other person or entity, nor shall the provisions of the Navajo Sovereign Immunity Act, (1 N.N.C. § 551 *et seq.*) be deemed altered or amended.

D. This Section shall not be amended so as to diminish any existing rights of owners, sureties or other person with whom the Authority has a contractual relationship at the time of such amendment, and, to that extent, the authority of the appropriate oversight committee of the Navajo Nation Council to adopt and amend this plan of operation of the Authority is limited.

E. In the event the Authority is sold, dissolved or merged to or into any other entity, the provisions of this Subsection and the rights created hereunder shall survive such sale, dissolution or merger.

#### **History**

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989, and CO-46-88, October 28, 1988.

**Note (2005).** Previous reference to the "Government Services Committee" at § 1980(D) changed to "appropriate oversight committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989.

#### **Cross References**

Navajo Nation Sovereign Immunity Act, see 2 N.N.C. § 554(c).

Economic Development Committee powers, see 2 N.N.C. § 724(E)(1).

## **§ 1981. Amendments**

This Plan of Operation may be amended from time to time by the Board of Directors of NECA with the approval by the appropriate oversight committee of the Navajo Nation Council. Provided however, that §§ 1972(B)(17), 1973(F) and 1980 shall not be amended except by the Navajo Nation Council, and to that extent the authority of the appropriate oversight committee of the Navajo Nation Council to adopt and amend this plan of operation is limited.

### **History**

CJY-33-08, July 25, 2008.

CN-67-89, November 30, 1989.

**Note (2005).** Previous references to the "Government Services Committee" are changed to "appropriate oversight committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989.

### **Cross References**

Economic Development Committee process, see 2 N.N.C. § 724(E)(1).

## **Subchapter 15. Board Member Compensation**

### **§ 1991. Board member compensation; conflicts of interest; meetings**

A. No enterprise (including the various industries, authorities, colleges, Office of Navajo Economic Opportunity, etc.) shall pay any Board member more than two hundred fifty dollars (\$250) per day/plus actual travel and lodging expense.

B. Without the prior approval of the President of the Navajo Nation, no enterprise shall hold more than one meeting per month nor more than ten per year, provided that two additional sessions shall be allowed on an emergency or special meeting basis.

C. No member of any enterprise management board shall serve as an employee or consultant to that enterprise or as an employee or officer of any entity with a contract with that enterprise.

D. Any member of an enterprise management board who is such an employee or consultant or officer or employee of a contracting entity shall sever such relationship or resign from the enterprise management board within 30 days after approval of this resolution.

### **History**

CN-59-87, November 18, 1987, amended ACMY-35-79, §§ 1-4, May 15, 1979; CN-59-87 amended § 1991(A).

CJN-56-72, Plan, § XI, June 13, 1972.

**Revision note.** Slightly reworded for purposes of statutory form.

## **Subchapter 17. DINETECHS Enterprise**

### **History**

ACMA-66-89 authorized the creation of Dinetechs Enterprise and approved a Joint Venture agreement with the Navajo Nation. No Navajo Nation Council approved Plan of Operation was adopted.

Chapter 10. Ordinance for the Regulation of Gaming Activities within the Navajo Nation

### **History**

CAP-34-02, April 18, 2002.

CO-75-01, October 16, 2001.

## **Subchapter 1. Finding and Purposes**

### **§ 2001. Legislative Findings**

The Navajo Nation Council of the Navajo Nation hereby finds:

A. That the orderly and honest conduct of gaming activities within the Navajo Nation will be of vital importance to the economy of the Nation, and to the general welfare of its members;

B. That the growth and success of gaming within the Navajo Nation is dependent upon public confidence and trust that such activities are conducted honestly and that they are free from criminal and corrupt elements, and that the facilities in which such activities are conducted are designed and maintained to assure the safety and comfort of patrons of the gaming activities;

C. That such public confidence and trust can only be maintained by the comprehensive regulation of all persons, practices, and activities related to the operation of the Nation's gaming facilities; and

D. All of the Nation's establishments where gaming is conducted, and all persons holding positions of responsibility with respect to any such activity, must therefore be licensed, and their activities monitored to assure that the public health, safety and general welfare of the inhabitants of the Nation and the patrons of its gaming facilities are fully protected, and so as to assure the economic success of gaming activities within the Nation.

### **History**

CO-75-01, October 16, 2001.

### **§ 2002. Purposes**

This Ordinance is enacted, and shall be interpreted, so as to accomplish the following purposes:

A. The maintenance of the highest standards of honesty and integrity in the operation of any and all gaming activities within the Navajo Nation;

B. The maintenance of public confidence and trust in the honesty and integrity of such gaming activities, and in the persons engaged in such activities;

C. The maximum reasonable economic return to the Navajo Nation as the owner of gaming facilities within the Nation consistent with the fair and reasonable expectations of patrons of such activities and the assurance of their safety and comfort in participating in gaming activities; and

D. Compliance with all applicable laws of the Navajo Nation and the United States of America, including but not limited to the Indian Gaming Regulatory Act of 1988.<sup>1</sup>

### **History**

CO-75-01, October 16, 2001.

## **Subchapter 2. Definitions**

### **§ 2003. Definitions**

For Purposes of this Ordinance:

A. "Act" means the Indian Gaming Regulatory Act of 1988, Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168, and all regulations promulgated pursuant thereto.

B. "Class I Gaming" means all forms of gaming defined as Class I in Section 4(6) of the Act, 25 U.S.C. § 2703(6).

C. "Class II Gaming" means all forms of gaming defined as Class II in Section 4(7) of the Act, 25 U.S.C. § 2703(7).

D. "Class III Gaming" means all forms of gaming as defined in Section 4(8) of the Act, 25 U.S.C. § 2703(8).

E. "Commission" means the National Indian Gaming Commission established pursuant to 25 U.S.C. § 2704.

F. "Compact" means a Tribal-State Compact entered into between the Navajo Nation and a State pursuant to Section 11(d) of the Act, 25 U.S.C. § 2710(d), for purposes of regulating Class III gaming activities conducted within the Nation, and all amendments and modifications thereto.

G. "Distributor" means a person who distributes Class II and Class III Gaming Devices and/or component parts thereof.

H. "Executive Director" means the Executive Director of the Gaming Regulatory Office.

I. "Gaming Activity" means all forms of Class II and Class III Gaming owned and operated by the Nation and conducted within the territorial jurisdiction of the Nation.

J. "Gaming Device" or "Electronic Game of Chance" means a microprocessor-controlled electronic device which allows a player to play games of chance, some of which are affected by skill, which device is activated by the insertion of a coin, currency, tokens or by the use of a credit, and which awards game credits, cash, tokens or replays, or a receipt that can be redeemed by the player for any of the foregoing. Game play may be displayed by:

1. Video facsimile; or

2. Mechanical rotating reels whereby the software of the device predetermines the stop positions and the presence, or lack thereof, of a winning combination and pay out, if any.

K. "Gaming Employee" means any person employed as a Primary Management Official or Key Employee of a Gaming Operation of the Nation and any person employed in the operation or management of a gaming operation, including but not limited to, any person whose employment duties require or authorize access to restricted areas of a Gaming Facility not otherwise open to the public. Gaming Employee does not mean janitors, cooks, waitresses or waiters, and other employees not directly involved in the Gaming Operation within a Gaming Facility.

L. "Gaming Facility" means the buildings or structures licensed and approved by the Nation in which gaming activities are conducted.

M. "Gaming Facility Operator" means the Nation, a wholly owned Tribal Enterprise, or such other entity of the Nation as the Nation may from time to time designate as the wholly-owned tribal entity having full authority and responsibility for the operation and management of Class II or Class III Gaming Activities.

N. "Gaming Operation" means any Gaming Activity conducted within a Gaming Facility.

O. "Gaming Ordinance" means this Ordinance which governs the conduct of Gaming Activities within the Navajo Nation, all amendments thereto, and all regulations promulgated thereunder.

P. "Gaming Services" means the providing of any goods or services, except for legal services, to a Gaming Facility Operation in connection with the operation of Class II or Class III gaming, including but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance or security services for the Gaming Facility in an amount in excess of ten thousand dollars (\$10,000) in any single month.

Q. "Indian Lands" means land as defined in 25 U.S.C. § 2703(4)(A) and (B), subject to the provisions of 25 U.S.C. § 2719.

R. "Key Employee" means a Gaming Employee who performs one or more of the following functions:

1. Bingo caller;
2. Counting room supervisor;
3. Chief of security;
4. Custodian of gaming supplies; or
5. Floor Manager;
6. Custodian of Gaming Devices including persons with access to cash and accounting records within such devices;
7. Dealer;
8. Pit boss;
9. Croupier;
10. Approval of Credit; or

If not otherwise included, any other person whose total cash compensation from the Gaming Operation is in excess of fifty thousand dollars (\$50,000) per year; or, if not otherwise included, the four most highly compensated persons in the Gaming Operation.

S. "Management Contractor" means a management contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

T. "Management Contractor" means a natural person or entity that has entered into a Management Contract with the Nation or a Gaming Facility Operator which has been approved pursuant to 25 U.S.C. §§ 2710(d)(9) and 2711.

U. "Manufacturer" means a natural person or entity that manufactures Gaming Devices and/or component parts thereof as defined by this Ordinance for use or play in the Gaming Facilities.

V. "Nation" means the Navajo Nation.

W. "Navajo Nation Council" means the Navajo Nation Council of the Navajo Nation.

X. "Net Revenue" means the gross revenues of any gaming activity less amounts paid out as, or paid for, prizes and total gaming related operating expenses, excluding management fees.

Y. "Office of Attorney General" means the Office of the Attorney General of the Navajo Nation.

Z. "Person" includes a corporation, company, partnership, firm,



association or society as well as a natural person. When "person" is used to designate the violator or offender of any law, it includes a corporation, company, partnership, firm, association, or society of persons.

AA. "Primary Management Official" means the person having management responsibility under a Management Contract; or any person who has authority to hire and fire employees or to set up working policy for a Gaming Operation; or the chief financial officer or other person who has financial management responsibility for a gaming operation.

BB. "Principal" means with respect to any entity:

1. Each of its officers and directors;
2. Each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, or general manager;
3. Each of its owners or partners, if an unincorporated business;
4. Each of its shareholders who own more than five percent (5%) of the shares of the corporation; and
5. Each person other than a banking institution who has provided financing for the entity constituting more than five percent (5%) of the entity; and
6. Each of the beneficiaries, and trustee of a trust.

CC. "Privacy Act" means the Privacy Act of 1974, as amended (P.L. 93-579, as amended; 5 U.S.C. § 552(a)), and the obligations and responsibilities placed on the United States government under the Privacy Act as applied to the Commission pursuant to the Indian Gaming Regulatory Act.

DD. "Public Employee" means a public employee within the meaning of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3751, *et seq.*

EE. "Public Official" means a public official within the meaning of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3751 *et seq.*

FF. "State" means the State of Arizona, New Mexico, or Utah and any of their authorized officials, agents and representatives.

GG. "Tribal Gaming Enterprise" means the Nation, an enterprise of the Nation, or such other entity of the Nation designated by the Navajo Nation Council to conduct a Gaming Operation.

#### **History**

CAP-34-02, April 18, 2002, amended Subsection (X).

CO-75-01, October 16, 2001.

### **Subchapter 3. Tribal Ownership and Use of Net Revenues**

#### **§ 2004. Tribal Ownership of Gaming Activities**

All Gaming Activities within the Nation shall be owned entirely by the Nation and conducted and operated by a Tribal Gaming Enterprise, with the following exceptions:

- A. Class I Gaming; and
- B. Small bingo games and raffles as provide in § 2047 of this Ordinance.

#### **History**

CO-75-01, October 16, 2001.

#### **§ 2005. Use of Net Revenues**

All net revenues received by the Nation from all Gaming Activities shall be utilized according to applicable Navajo Nation laws and in accordance with the National Indian Gaming Regulatory Act <sup>1</sup> and CFR 25.

#### **History**

CO-75-01, October 16, 2001.

### **Subchapter 4. Navajo Gaming Regulatory Office**

#### **§ 2006. Establishment of the Gaming Regulatory Office**

There is hereby established the Navajo Gaming Regulatory Office within the Executive Branch of the Navajo Nation Government, with legislative oversight by the Economic Development Committee of the Navajo Nation Council, and shall have overall civil regulatory authority over Gaming Activities within the Nation as specifically provided herein.

#### **History**

CO-75-01, October 16, 2001.

#### **§ 2007. Personnel**

A. The Navajo Gaming Regulatory Office (hereinafter "the Gaming Regulatory Office"), shall consist of an Executive Director, Inspectors and such assistants and other staff as the Executive Director shall determine are required from time to time, subject to funding provided by the Navajo Nation Council.

1. No employee of the Gaming Regulatory Office shall:
  - a. be employed by a Gaming Facility Operator.
  - b. have an immediate family member employed by a Gaming

Facility Operator.

2. No former employee of the Gaming Regulatory Office shall be employed by a Gaming Facility Operator within six months of leaving employment of the Gaming Regulatory Office.

3. No employee of the Gaming Regulatory Office shall be employed by or hold, directly or indirectly, a financial interest in an organization or entity which,

a. has entered into a Management Contract with the Nation or a Gaming Facility Operator;

b. is a distributor;

c. provides gaming services; or

d. provides financing to the Nation or a Gaming Facility Operator for purposes of conducting gaming operations within the Nation.

B. The Executive Director of the Gaming Regulatory Office shall be retained by contract by the President of the Navajo Nation, such contract being approved by the Navajo Nation Council for a four year term, and such contract being executed by the President. The job performance of the Executive Director shall be reviewed periodically by the President who shall submit a written report of each such review to the Speaker of the Navajo Nation Council. The Executive Director of the Gaming Regulatory Office shall be removable only for breach of contract.

C. The Executive Director shall be a person of the utmost honesty and integrity, shall not have been convicted of a felony or a misdemeanor involving theft, embezzlement or a crime involving moral turpitude, whose prior activities, reputation, habits and associations shall not pose a threat to the public interest or to the effective regulation of gaming, or create or, enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming.

D. The contract of the Executive Director shall require the Executive Director to be the Nation's designated agent for service of any official determination, order or notice of the Commission. The contract shall further require the Executive Director to have a bachelor's degree in business administration or related field and at least six years of experience in gaming management and/or regulation, or the contract shall require the Executive Director to have a master's degree in business administration or related field and at least four years of experience in gaming management and/or regulation.

E. Inspectors shall act under the authority and supervision of the Executive Director. Inspectors shall have the right to inspect any Gaming Facility at any time and shall have immediate and unrestricted access to any and all areas of a Gaming Facility.

F. The background of every employee, Inspector, and the Executive Director of the Gaming Regulatory Office shall be investigated by the Nation's Personnel Department to ensure qualification for employment in the Gaming

Regulatory Office. Except for the Executive Director, who shall be subject to Section 2007(C), no person shall be employed by the Gaming Regulatory Office if the Nation's Personnel Department determines that such person:

1. Has been convicted of any felony within the past 10 years or any gaming offense;

2. Has knowingly and willfully provided materially important false statements for information on his or her license application; or

3. Has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

### **History**

CO-75-01, October 16, 2001.

### **§ 2008. Powers and Duties of the Gaming Regulatory Office**

Subject to all of the provisions of this Ordinance, the Gaming Regulatory Office shall have the following powers and duties, which it may exercise directly or through such agents or employees as it deems appropriate:

A. To have and to exercise full authority and responsibility for the regulation of Gaming Activities within the Nation, as provided in this Ordinance and the Act.

B. To enter at any time any Gaming Facility within the Nation for the purpose of inspecting the facility, its employees and operations, its equipment and supplies, and its business records, books of account, and any and all other financial records or documents pertaining to the business operations of the facility, and to make such summaries or copies of any and all such documents or other records for the purpose of ensuring compliance with the provisions of this Ordinance or the Act.

C. To issue subpoenas and compel the attendance of witnesses at any place within the Nation, to administer oaths and to require testimony under oath;

D. To seize and remove from any Gaming Facility and impound any equipment, supplies, documents or records for the purpose of examination in connection with an investigation.

E. To review for compliance with all applicable laws and regulations and to make recommendations thereon to the Department of Justice for their approval:

1. the terms of any and all proposed contracts between the Navajo or a Tribal Gaming Enterprise and any person or entity which provide for the management or operation of any Gaming Facility within the Nation;

2. the provisions of any and all Gaming Services; and

3. the terms of any lease of land which is the site or proposed site of such Gaming Facility;

F. To investigate any aspect of Gaming Activities within the Nation in order to protect the public interest in the integrity of such Gaming Activities and to prevent improper or unlawful conduct in the course of such Gaming Activities, and to investigate any report of a failure of any Gaming Operation within the Nation to comply with the provisions of this Ordinance or the Act and to require such Gaming Operation to take any corrective action deemed necessary by the Gaming Regulatory Office upon such terms and conditions as the Gaming Regulatory Office may determine appropriate;

G. To establish a list of persons who, because of their criminal history or association with career offenders or career offender organizations pose a threat to the integrity of the Gaming Activities of the Nation, or are barred from any Gaming Operation within the Nation pursuant to § 2049(F) of this Ordinance;

H. To approve the rules of each game of chance operated by the Nation pursuant to § 2004 of this Ordinance;

I. To require that all contracts for supplies, services, of concessions in an amount in excess of ten thousand dollars (\$10,000) annually (except contracts for professional legal or accounting services) relating to such gaming be subject to annual audits by an independent certified public accountant licensed in a state;

J. To perform background investigations on every applicant for a Gaming Facility Operator's License, a Gaming Manager's License, a Manufacturers/Suppliers License, a Gaming Employee's License and every applicant for a position of Primary Management Official or Key Employee with a Gaming Facility Operator;

K. To approve or deny applications for licenses or to limit, condition, restrict, revoke or suspend any license which it has granted;

L. To issue licenses and employee identification cards on such forms as may be designated by the Gaming Regulatory Office;

M. To issue a notice of violation to, or impose a civil penalty upon, any person or entity for violation(s) of any provision(s) of this Ordinance or the Act;

N. To detain persons who may be involved in illegal activities for purposes of notifying and summoning appropriate law enforcement authorities; and

O. To do all other things reasonably necessary for the proper and efficient fulfillment of the powers and responsibilities of the Gaming Regulatory Office under this Ordinance or the Act.

P. To create and establish a revolving account to deposit the fees collected from the license applicants. The account shall be used to pay for the expenses of operating the Office including, but not limited to the salaries of additional personnel, equipment, vehicles, travel, and other expenses related to the operation of the Office. The Plan of Operation for the revolving account shall be approved by the Economic Development Committee and Budget and Finance Committee of the Navajo Nation Council.

### **History**

CO-75-01, October 15, 2001.

### **§ 2009. Issuance of Regulation**

A. The Gaming Regulatory Official shall from time to time promulgate and issue regulations governing any aspect of its responsibilities under this Ordinance, which so long as they are in furtherance of and not in conflict with any provision of this Ordinance, shall have the force of law. Without limitation, the matters to be addressed by such regulations may include the following:

1. The time and manner for applying for a Gaming Operator's License under this Ordinance, and the specific information to be provided in connection with such application, including information necessary for adequate assessment of the applicant's background, and the manner in which such applications will be processed;

2. The procedure by which applicants for licenses under this Ordinance shall apply for such licenses, including the information to be provided by the applicant necessary for adequate assessment of the applicant's background, and the manner in which such applications will be processed; and

3. The specific types of accounting, security, record keeping and reporting measures required by this Ordinance or the Act to be in place and functioning at any Gaming Facility licensed under this Ordinance.

B. Except in emergency situations addressed in Subsection (C) below, prior to promulgating a final regulation, the Gaming Regulatory Office shall publish the regulation in proposed form. The proposed regulation shall be provided directly to the President of the Nation, the Speaker of the Navajo Nation Council, the Chairperson and each member of the Economic Development Committee of the Navajo Nation Council, the Office of the Attorney General, and to any other interested person or interested office or agency of the Nation. The proposed regulation shall be accompanied by a notice stating that the Gaming Regulatory Office will accept written comments for no less than 30 days following the date of publication. As provided in this Section, "publish" shall mean publication in newspaper(s) of general circulation within the Nation. In the event of significant public interest with respect to any regulation, the Gaming Regulatory Office may hold a public hearing prior to issuing a final regulation. Notice of such hearing shall be given as set forth above, and in addition shall be mailed directly to any person submitting comments on the proposed regulation. Except as provided in Subsection (C) of this Section, no final regulation shall be issued until the Gaming Regulatory

Office has reviewed all comments received by the close of the comment period, as well as all presentations made at any hearing held pursuant to this Subsection.

C. In the event the Gaming Regulatory Office determines that an immediate rule-making is necessary to avoid serious jeopardy to the integrity of any Gaming Activity within the Nation, or otherwise to deal with an emergency situation affecting the responsibilities of the Gaming Regulatory Office, the Gaming Regulatory Office may, upon making an express written finding as to such emergency, issue a final regulation to take effect immediately; provided, that the Gaming Regulatory Office shall publish notice and request comments on such regulation in the same manner as is provided above and upon consideration of any comments received, shall make such amendments to such final regulation as the Gaming Regulatory Office deems appropriate.

D. All final regulations adopted by the Gaming Regulatory Office shall be officially filed with the Reporting Section of the Navajo Nation Council, the Office of the President, the Office of the Attorney General, and Records and Communications.

#### **History**

CO-75-01, October 15, 2001.

#### **§ 2010. Petition for Self-Regulation**

Upon the Gaming Regulatory Office's determination that the Nation is eligible therefor, the Gaming Regulatory Office may submit to the Commission an application for a certificate of Self-Regulation, under the provisions of 25 U.S.C. § 2710(C)(4). The Gaming Regulatory Office shall do everything necessary and appropriate to obtain such certificate and to maintain the certificate in good standing.

#### **History**

CO-75-01, October 15, 2001.

#### **§ 2011. Independence of Gaming Regulatory Office**

The Gaming Regulatory Office is constituted as an independent regulatory agency of the Nation. The Gaming Regulatory Office shall not be subject to political direction or influence in the performance of its duties from any public official or public employee of the Nation.

#### **History**

CO-75-01, October 15, 2001.

#### **§ 2012. Relation to Gaming Management**

Neither the Executive Director of the Gaming Regulatory Office nor any other public official or public employee of the Nation (individually or collectively) shall have any role in the management of any licensed gaming establishment. Aside from the specific duties of the Executive Director, as

defined in this ordinance, all decisions, policies, and actions with regard to the operation of any licensed gaming establishment are the prerogative and responsibility of the gaming management as described in Subchapters 5 and 6 of this Ordinance.

#### **History**

CO-75-01, October 15, 2001.

### **Subchapter 5. Gaming Facility Operator's License**

#### **§ 2013. Requirement of License**

Each Tribal Gaming Enterprise established by the Navajo Nation Council to conduct a Gaming operation within the territorial jurisdiction of the Nation shall obtain a Gaming Facility operator's License from the Gaming Regulatory Office before the Tribal Gaming Enterprise may commence operation of a Gaming Activity. Each appointee for the position of member of the Board of Directors of such Tribal Gaming Enterprise shall also obtain a Gaming Facility Operator's License from the Gaming Regulatory Office before submission of the appointment to the Navajo Nation Council for approval.

#### **History**

CO-75-01, October 15, 2001.

#### **§ 2014. Standards of Suitability**

A. Tribal Gaming Enterprise. No Tribal Gaming Enterprise shall be issued a Gaming Facility Operator's License by the Gaming Regulatory Office unless the Gaming Regulatory Office is satisfied that the Tribal Gaming Enterprise is established and organized pursuant to a plan of operation adopted by the Navajo Nation Council.

B. Board of Directors. No member of the Board of Directors of a Tribal Gaming Enterprise established by the Navajo Nation Council to conduct a gaming operation shall be issued a Gaming Facility Operator's License or have his license renewed by the Gaming Regulatory Office if the Gaming Regulatory Office determines that such person:

1. Has been convicted of any felony or gaming offense;
2. Has knowingly and willfully provided materially important false statements or information on his license application;
3. Has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits or associations pose a treat to the public interest or to the effective regulation and control of gaming or creates or enhances the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; or



4. Has a conflict of interest or a potential for a conflict of interest if a member of the Board of Directors. Any Public Official or Public Employee of the Nation shall be deemed to have a conflict of interest.

#### **History**

CO-75-01, October 15, 2001.

### **Subchapter 6. Gaming Manager's License**

#### **§ 2015. Requirement of License**

No person, corporation, partnership, or other entity shall manage any Gaming Operation as the general manager of a Tribal Gaming Enterprise without first obtaining a Gaming Manager's License from the Gaming Regulatory Office. In the case of a corporation, partnership or other entity, each Principal of the corporation, partnership or other entity must also obtain a Gaming Manager's License from the Gaming Regulatory Office.

#### **History**

CO-75-01, October 15, 2001.

#### **§ 2016. Standards of Suitability**

A. Individuals. No person shall be issued a Gaming Manager's License or have his license renewed under this Chapter if the Gaming Regulatory Office determines that such person:

1. Has been convicted of any felony or gaming offense;
2. Has knowingly and willfully provided materially important false statements or information on his license application;
3. Has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; or
4. Has a conflict of interest or a potential for a conflict of interest if a gaming manager. Any Public Official or Public Employee of the Nation shall be deemed to have a conflict of interest.

B. Corporations, Partnerships, and other Entities.

1. No corporation, partnership, or other entity shall be issued a Gaming Manager's License or have its License renewed by the Gaming Regulatory Office unless the Gaming Regulatory Office is satisfied that such corporation, partnership or other entity:

a. Is an organization and in good standing under the laws of the jurisdiction where it was established, and is qualified to do business within the Nation and the State;

b. Is in sound financial condition, as shown by a financial status;

c. Is not now and has not been in the past five years the subject of any criminal investigation by any tribal, federal, or state law enforcement authority, as shown by an affidavit of Principals of the organization having personal knowledge thereof;

d. Has established a reputation for financial integrity and sound business practices, or if the organization was recently formed, that all persons having any role in its formation, including persons supplying financing, are persons qualified to be licensed individually under the terms of this Subchapter.

e. Has established that any person having a role in the formation or acting as a Principal of the organization is not a Public Official or Public Employee of the Nation; and

f. In all other respects will be reliable and trustworthy, and whose involvement in Gaming Activities within the Nation will be in the best interests of the Nation.

2. As a condition of any such license, the Gaming Regulatory Office shall require that any licensed corporation, partnership or other entity:

a. Maintain an office within the Nation; and

b. Give notice to the Gaming Regulatory Office within 10 days of any material change in any information disclosed in the application for which prior notice was not feasible, including but not limited to, any change in its Principals.

#### **History**

CO-75-01, October 15, 2001.

**Note (2003).** To correct a typographical error in the first sentence of Subsection (B)(1), "or have its license re-need" was changed to read "or have its license renewed".

### **Subchapter 7. Manufacturers/Suppliers License**

#### **§ 2017. Requirement of License**

Each Manufacturer and each Distributor of Gaming Devices, and each supplier of Gaming Services shall be licensed by the Gaming Regulatory Office prior to the sale or lease of any Gaming Devices or Gaming Services to a Gaming Facility Operator licensed under this Ordinance. In addition, any person,

corporation, partnership or other entity extending or guarantying financing for the Gaming Operation or the Gaming Facilities shall be licensed by the Gaming Regulatory Office, unless such person, corporation, partnership or entity is an agency of the United States or a lending institution licensed and regulated by the State or the United States.

### **History**

CO-75-01, October 15, 2001.

### **§ 2018. Standard of Suitability**

A. Individuals. No person shall be issued a license or have his license renewed under this Chapter if the Gaming Regulatory Office determines that such person:

1. Has been convicted of any felony or gaming offense;
2. Has knowingly and willfully provided materially important false statements or information on his license application;
3. Has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulations and control or gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or carrying on of the business and financial arrangements incidental hereto; or
4. Has a conflict of interest or a potential for a conflict of interest. Any Public Official or Public Employee of the Nation shall be deemed to have a conflict of interest.

#### **B. Corporations, Partnerships, and Other Entities**

1. No corporation, partnership, or other entity shall be issued a license or have its license renewed under this Subchapter unless the Gaming Regulatory Office is satisfied that such corporation, partnership or other entity:

a. Is organized and in good standing under the laws of the jurisdiction where it was established, and is qualified to do business within the Nation and the State;

b. Is in sound financial condition, as shown by a financial statement certified by a certified public accountant to be a current, complete and accurate depiction of the organization's financial status;

c. Is not now and has not been in the past five years the subject of any criminal investigation by an tribal, federal, or state law enforcement authorities, as shown by an affidavit of principals of the organization having personal knowledge thereof;

d. Has established a reputation for financial integrity and

sound business practices, or, if the organization was recently formed, that all persons having any role in its formation, including persons supplying financing, are persons qualified to be licensed individually under the terms of this Subchapter;

e. Has established that any person having a role in the formation or acting as a Principal of the organization is not a Public Official or Public Employee of the Nation; and

f. Is in all other respects reliable and trustworthy, and whose involvement in Gaming Activities within the Nation will be in the best interests of the Nation as set forth in this Ordinance.

2. As a condition of any such license, the Gaming Regulatory Office shall require that any licensed corporation, partnership or other entity give notice to the Gaming Regulatory Office within 10 days of any material change in any information disclosed in the application for which prior notice was not feasible, including but not limited to, any change in its Principals.

#### **History**

CO-75-01, October 15, 2001.

**Note (2003).** To correct a typographical error in Subsection (A) and Subsection (B)(1), "re-need" was changed to read "renewed".

### **Subchapter 8. Gaming Employee's License**

#### **§ 2019. Requirement of License**

Every Gaming Employee of a Gaming Facility Operator shall be licensed by the Gaming Regulatory Office prior to commencement of employment.

#### **History**

CO-75-01, October 15, 2001.

#### **§ 2020. Standards of Suitability**

No person shall be issued a Gaming Employee's License or have his License renewed under this Subchapter if the Gaming Regulatory Office determines that such person:

A. Has been convicted of any felony within the past 10 years or any gaming offense;

B. Has knowingly and willfully provided materially important false statements or information on his or her license or employment application; or

C. Has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create

or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

D. Has a conflict of interest or a potential for a conflict of interest if a Gaming Employee. Any Public Official or Public Employee of the Nation shall be deemed to have a conflict of interest.

#### **History**

CO-75-01, October 15, 2001.

**Note (2003).** To correct a typographical error in Section 2020, first sentence, "re-need" was changed to "renewed".

### **Subchapter 9. License Application Procedures**

#### **§ 2021. Application Requirements; Processing**

A. Each application for a license under Subchapters 5, 6, 7 or 8 of this Ordinance must be submitted to the Gaming Regulatory Office on forms prescribed by the Gaming Regulatory Office, and must be accompanied by the required fee and such supporting information as the Gaming Regulatory Office prescribes by regulation which shall include:

1. In the case of individual persons:

a. Full name, including any aliases by which applicant has ever been known;

b. Social security number;

c. Date and place of birth, gender, current citizenship, and all languages spoken or written;

d. Currently and for the previous five years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

e. The names and current addresses of at least three personal references, including one personal reference who was acquainted with, the applicant during each period of residence listed under Paragraph 1(d) of this Subsection (A);

f. Education history;

g. Current business or employment and residence telephone numbers;

h. A description of any existing and previous business relationships with Indian tribes including ownership interests in those businesses;

i. Description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

j. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

k. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

l. All criminal proceedings, except for minor traffic offenses, to which the applicant has been a party including description of the charge, the name and address of the court involved and the date and disposition;

m. A set of fingerprints;

n. A current photograph; and

o. A complete and current financial disclosure statement.

2. In the case of corporations, partnerships or other entities applying for a license under Subchapters 5, 6, 7 or 8 of this Ordinance:

a. The name, address, and other additional pertinent background information on each of the principals;

b. The name, address, and other additional pertinent background information on each of its related, associated, affiliated, parent or subsidiary corporations, partnerships, entities or individuals;

c. A description of any previous experience that each Principal has had with other Indian tribes involving gaming, any management contract, or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had contact relating to gaming; and

d. A complete financial statement of each Principal.

B. The Gaming Regulatory Office and its staff may assist any applicant in assembling all information required for processing of the application, but no application will be processed until it is complete. The Gaming Regulatory Office staff may at any time after an application is submitted request the applicant in writing to supply additional information to enable the Gaming Regulatory Office to complete the processing of the application, which request must be complied with forthwith.

C. The application forms used by the Gaming Regulatory Office shall contain the Privacy Act notice and the notice regarding false statements, and in the form required by the Commission, pursuant to 25 C.F.R. Part 556, and each applicant shall consent in writing to the release of any information that may be relevant to the Gaming Regulatory Office's inquiry into the applicant's

background from any person or entity. Any and all information obtained by the Gaming Regulatory Office in the course of reviewing an application will remain confidential, and will not be released by the Gaming Regulatory Office to any other person or agency (other than the commission if disclosure is required under the Act) without the applicant's consent, or pursuant to an order of court or other body of competent jurisdiction.

D. The Gaming Regulatory Office shall issue a decision on the application in writing. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office on such application. In the event any application for a license is denied, the decision shall specify the reason for such denial.

### **History**

CO-75-01, October 15, 2001.

### **§ 2022. Fees**

The Gaming Regulatory Office shall collect the following fees in connection with the processing of applications and the issuance of licenses:

#### A. Gaming Facility Operator's License:

##### 1. Initial application fee:

a. Tribal Gaming Enterprise: fifty thousand dollars (\$50,000).

b. Member, Board of Directors: five hundred dollars (\$500.00).

##### 2. Annual renewal fee:

a. Tribal Gaming Enterprise: fifteen thousand dollars (\$15,000).

b. Member, Board of Directors: one hundred dollars (\$100.00).

#### B. Gaming Manager's License:

1. Initial application fee: one thousand dollars (\$1,000).

2. Annual renewal fee: five hundred dollars (\$500.00).

#### C. Manufacturers/Suppliers License:

##### 1. Initial application fee:

a. Manufacturer/Distributor of Gaming Devices: one thousand dollars (\$1,000.00).

b. Supplier of Gaming Services: one hundred dollars

(\$100.00).

c. Third Party Financier one thousand dollars (\$1,000).

2. Annual renewal fee:

a. Manufacturer/Distributor of Gaming Devices: five hundred dollars (\$500.00).

b. Supplier of Gaming Services: fifty dollars (\$50.00).

c. Third Party Financier: five hundred dollars (\$500.00).

D. Gaming Employee's License:

1. Initial application fee of twenty-five dollars (\$25.00)

2. Annual renewal fee of ten dollars (\$10.00).

E. Other Fees. The Gaming Regulatory Office may by regulation prescribe such other fees as it deems appropriate.

#### **History**

CO-75-01, October 15, 2001.

#### **§ 2023. License Terms: Renewal**

A. Each Gaming Facility Operator's License, Gaming Manager's License, Manufacturers/Suppliers License and Gaming Employee's License issued by the Gaming Regulatory Office hereunder shall have a primary term of one year. Such license may be renewed for subsequent one-year periods upon proper application therefor, on forms specified by the Gaming Regulatory Office, but no licensee shall have any vested right to renewal of any license issued hereunder.

B. The Gaming Regulatory Office shall issue a temporary license within 60 days of the receipt of a completed application for licensing pursuant to Subchapters 5, 6, 7 and 8 of this Ordinance unless the background investigation undertaken by the Gaming Regulatory Office discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant pursuant to this Ordinance are apparent on the face of the application. The temporary license shall become void and be of no effect upon either the issuance of a license or upon the issuance of notice of denial of the license in accordance with the provisions of this Ordinance.

#### **History**

CO-75-01, October 15, 2001.

#### **§ 2024. [Reserved]**

#### **§ 2025. Non-transferability of License**

Each Gaming Facility Operator's License, Gaming Manager's License



Manufacturers/Suppliers License, and Gaming Employee's License issued by the Gaming Regulatory Office hereunder is valid only for the person or entity at the place of business shown on the license. The license is not transferable or otherwise assignable without prior approval from the Gaming Regulatory Office.

### **History**

CO-75-01, October 15, 2001.

## **Subchapter 10. Background Investigations; Notifications**

### **§ 2026. Background Investigations**

A. Unless otherwise provided in a tribal-state compact entered into between the Navajo Nation and a state, the Gaming Regulatory Office shall at all times have in place, and shall regularly update and improve, a system for conducting background investigations of every applicant for licensing under the ordinance. Such system shall comply with the requirements of this Ordinance and the Act, and shall include, at a minimum, utilization of records of all available tribal, state and federal law enforcement agencies, resources of the Commission, communications with other Indian tribes engaged in gaming activities, and any and all other sources of information accessible to the Gaming Regulatory Office for this purpose. Such system shall ensure that all applicants are notified of their rights under the Privacy Act as specified in 25 C.F.R. Part 556.

B. Every applicant for licensing under this Ordinance shall be subjected to a thorough background investigation, and such investigations shall be updated upon application for renewal of a license, and at such other times as the Gaming Regulatory Office may determine appropriate.

C. The Gaming Regulatory Office shall prepare a background investigation report on every applicant for licensing under the ordinance which shall include all of the following:

1. Steps taken in conducting a background investigation;
2. Results obtained;
3. Conclusions reached; and
4. The bases for those conclusions.

D. The cost of performing the background investigations on Gaming Employees shall be an expense of the Gaming Facility Operator who has hired or proposes to hire the employee.

E. The Gaming Regulatory Office shall at all times maintain files containing the results of any background investigations conducted by it. Such files shall be retained for no less than three years from the date of termination of employment or expiration of the license. Such files shall contain systems designed to safeguard the identities of confidential informants from inadvertent disclosure.

## **History**

CO-75-01, October 15, 2001.

### **§ 2027. Criminal History Checks**

A. Unless otherwise provided in a tribal-state compact entered into between the Navajo Nation and the State of New Mexico or the State of Arizona, the Navajo Nation Department of Public Safety will take fingerprints when required and send them to the Commission. The Commission will send the fingerprints to the Federal Bureau of Investigation (FBI) which will review them for any federal criminal activity including all felonies and misdemeanors. The FBI will send the fingerprints back to the Commission along with a report stating any recorded federal criminal activity, and the Commission will return the reviewed fingerprints with the FBI report to the Navajo Nation Department of Public Safety.

B. As part of the background investigation, the applicant will be required to disclose whether they have ever been prosecuted or convicted of a felony or a misdemeanor. In addition, unless otherwise provided in a tribal-state compact entered into between the Navajo Nation and the State of New Mexico or the State of Arizona, the Navajo Nation Department of Public Safety will review the records of the Tribal Court and also the statewide district, supreme and superior courts for New Mexico and Arizona for any criminal records as prospective employee may have.

## **History**

CAP-34-02, April 18, 2002, added a new section.

CO-75-01, October 15, 2001.

### **§ 2028. Notification to the Gaming Commission**

A. Within the time requirements established by the Commission the Gaming Regulatory Office shall transmit to the Commission a complete copy of license applications or such other information as may be required by the Commission. After completion of the background check of the applicant, and within the time requirements established by the Commission, the Gaming Regulatory Office shall provide to the Commission a complete report on the results of the background investigation. In the event the Gaming Regulatory Office receives any information from the Commission concerning the applicant, such information shall be taken into account by the Gaming Regulatory Office in its action on the application. The Gaming Regulatory Office shall notify the Commission if the Gaming Regulatory Office does not license an applicant.

B. Upon issuance of a license under this Ordinance, the Gaming Regulatory Office shall give notice thereof to the Commission. Should the Gaming Regulatory Office receive information from the Commission indicating that a Primary Management Official or Key Employee does not meet the standard established in this Ordinance or in the Act for issuance of such a license, the Gaming Regulatory Office shall immediately suspend such license and give written notice thereof to the licensee. The Gaming Regulatory Office shall

also notify the licensee that the licensee has 15 days following receipt of the notice of suspension to request that the Gaming Regulatory Office reconsider the notice of suspension. Upon such request for reconsideration, the Gaming Regulatory Office shall consider such oral statement(s) or written documentation as the licensee may present to the Gaming Regulatory Office at the time and place designated by the Gaming Regulatory Office. Within 15 days of receipt of such statement(s) or documentation, or the licensee's request for reconsideration, whichever is later, the Gaming Regulatory Office shall issue a written decision. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office. The Gaming Regulatory Office shall notify the Commission of its decision.

#### **History**

CO-75-01, October 15, 2001.

### **Subchapter 11. Gaming Facility License**

#### **§ 2029. Requirement of License**

No person or entity may commence any Gaming Activities subject to regulation hereunder at any facility or location within the Nation until such facility or location has received a gaming facility license under the provisions of this Subchapter, nor shall any person or entity offer any new or different Gaming Activities, as defined by regulations to be issued by the Gaming Regulatory Office, at any facility or location that is already licensed, without first obtaining an amended license for, such new and different Gaming Activities from the Gaming Regulatory Office.

#### **History**

CO-75-01, October 15, 2001.

#### **§ 2030. Standards for Issuance of License**

The Gaming Regulatory Office shall not issue a Gaming Facility License for any facility or location at which Gaming Activities are to be offered within the Nation unless the Gaming Facility meets the following requirements:

A. The physical facility within which the Gaming Activities are to be conducted is constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety;

B. The Gaming Activities to be conducted with the facility will lawfully be carried on by the Nation under the Act, and that the facilities are appropriate to the carrying on of such activities;

C. The Gaming Facility Operator will adequately staff and equip the facility to ensure the safety, comfort and convenience of the patrons thereof, and that the Gaming Facility Operator has taken adequate measures to provide for traffic, emergency service accessibility, food, drink and sanitary needs for patrons and employees, security, law enforcement and other concerns raised by the type of Gaming Activity proposed to be undertaken in compliance with

this Ordinance and the Act;

D. The Nation or Tribal Gaming Enterprise has agreed to a Management Contract or has made provision for management of the facility under terms and provisions that ensure that the activities will be carried out in a manner consistent with the requirements of this Ordinance, that the contracting party or parties have received appropriate licenses issued under the provisions of this Ordinance, and that all employees hold Gaming Employee's Licenses issued under the provisions of this Ordinance; and

E. In all other relevant respects, the facility will be operated in a way that is fully consistent with the provisions of this Ordinance, and that its operation will further the interests of the Nation with respect to its operation of gaming activities.

#### **History**

CAP-34-02, April 18, 2002, amended Subsection (A).

CO-75-01, October 15, 2001.

#### **§ 2031. Application for a New or Amended Gaming Facility License Procedure**

A. An application for a new or amended Gaming Facility License shall be submitted by the Tribal Gaming Enterprise prior to the commencement of operations at the facility or the commencement of the new activity at the facility for which an amended license is required.

B. The Gaming Regulatory Office shall prescribe the information required to be submitted with such applications, but at a minimum, such application for licensing a new facility shall include the following:

1. The name, specific position and job description of all persons to be employed as Primary Management Officials or Key Employees at the facility;

2. Job descriptions for every other position in which persons will be employed at the facility;

3. A detailed description of each Gaming Activity to be engaged in at the facility, together with expected payouts to winners;

4. A description of the internal controls, plan of organization and all coordination methods and measures for the safeguarding of assets, ensuring the accuracy and reliability of its accounting data, promoting operational efficiency and encouraging adherence to prescribed managerial policies;

5. Detailed plans for the facility, including landscaping, traffic controls, parking, food and drink services, and other physical aspects of the building.

6. A detailed description of how security will be maintained at the facility, identifying the persons, agencies or entities that will provide

such security;

7. A detailed description of how gaming proceeds will be accounted for and disposed of on a daily basis;

8. A copy of any proposed Management Contract or other contractual arrangement by which the activities at the facility are to be managed;

9. A description of provisions for dealing with fire or other potential emergencies at the facility;

10. A detailed description of how sewage and other waste products from the facility will be handled and disposed of; and

11. Any other information relevant to the proposed operation of the facility or requested by the Gaming Regulatory Office as part of the application.

C. An application for an amended license to conduct new or different Gaming Activities at a licensed location or to otherwise alter the terms or conditions of an existing license, shall, at a minimum, include the following information:

1. Any change in information previously provided in the original license application or any previous application for an amended license for the facility;

2. A detailed description of the changes in the facility or in the activities to be carried on therein for which the amended license is required, together with a statement of the reasons for such change;

3. If a proposed change will require any change in the existing Management Contract with respect for the facility, a copy of the proposed amendment to such contract or new contract; and

4. Any other information relevant to the changes or new activities requiring the amendment.

D. In its decision to license any facility, or to amend any existing license to permit the conduct of new or different Gaming Activities at a licensed facility, the Gaming Regulatory office may specify, consistent with the provisions of the Ordinance, terms or conditions it believes necessary or appropriate to ensure the health and safety of patrons and employees of any such facility, the integrity of the Gaming Activities carried on at such facility, and the security of gaming proceeds. If dissatisfied with any such condition, the applicant may request that the Gaming Regulatory Office reconsider its determination. Upon such request for reconsideration, the Gaming Regulatory Office shall issue a written decision within 15 days of its receipt of the request for reconsideration. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office.

## **History**

CO-75-01, October 16, 2001.

**§ 2032. Fees**

The Gaming Regulatory Office shall collect the following fees in connection with the processing of application and the issuance of licenses:

A. Gaming Facility License:

1. Annual fee of thirty thousand dollars (\$30,000).
2. Application for amendment of an existing Gaming Facility License: fifteen thousand dollars (\$15,000).

B. The annual fee shall be payable in equal quarterly installments, the first of which shall be payable within 15 days of receipt of notice of approval of the Gaming Facility License. The remaining installments shall be paid on the first day of each succeeding calendar quarter.

C. The Gaming Regulatory Office may by regulation prescribe such other fees as it deems appropriate.

**History**

CO-75-01, October 16, 2001.

**§ 2033. License Terms; Renewal**

Each Gaming Facility License issued by the Gaming Regulatory Office shall be for a term of two years. Such license may be renewed for subsequent three year terms upon proper application on forms specified by the Gaming Regulatory Office.

**History**

CO-75-01, October 16, 2001.

**Subchapter 12. Facility Inspection; Notice of Violation; Complaints; Judicial Review**

**§ 2034. Facility Inspection**

The Gaming Regulatory Office shall, no less than monthly and at such other times as it believes are warranted, cause detailed inspections to be made of each Gaming Facility licensed under the provisions of this Ordinance, to assure that such facility is being operated in accordance with the terms of the license and of the provisions of this Ordinance and the Act.

**History**

CO-75-01, October 16, 2001.

**§ 2035. Notice of Violation**

A. The Executive Director of the Gaming Regulatory Office shall issue a notice of violation to any person or entity determined by the Gaming Regulatory Office to be in violation of any provision of this Ordinance or the Act.

B. A notice of violation shall contain:

1. A citation to the ordinance, regulation or federal law that has been or is being violated;

2. A description of the circumstances surrounding the violation, set forth in common and concise language;

3. The action which must be taken to correct the violation;

4. Notice that the violation must be corrected within 15 days from receipt of the notice of violation;

5. Notice of a civil fine or other enforcement action that will or may be imposed if the violation is not corrected;

6. Notice that a written response to the notice of violation must be submitted to, and received by, the Gaming Regulatory Office within 15 days of the receipt of the notice of violation; and

7. Notice that the cited violation shall be the written decision of the Gaming Regulatory Office if no written response to the notice of violation is submitted to the Gaming Regulatory Office within the time prescribed in § 2035(B)(6).

C. In the event the violation is not corrected, or a written response to the notice of violation is not made within 15 days following receipt of the notice of violation, the Gaming Regulatory Office may take one or more of the following actions:

1. Suspend or revoke the license of the person or entity to whom the notice of violation was directed;

2. Assess a civil penalty in accordance with the provisions of this Ordinance;

3. Forcibly eject the violator from the premises of the Gaming Facility;

4. Seize the Gaming Facility and all equipment, records, and proceeds of Gaming Activities located within the Gaming Facility; or

5. Upon consultation with the Nation's Attorney General, initiate in the District Court of the Navajo Nation a civil action or criminal complaint to enforce the Ordinance, regulations of the Gaming Regulatory Office or the Act.

D. Each person or entity to whom a notice of violation is issued shall submit a written response to the Gaming Regulatory Office together with any

additional written information the person believes the Gaming Regulatory Office should consider. Such response and supporting documentation must be received by the Gaming Regulatory Office within 15 days of the receipt of the notice of violation. Upon receipt of the written response, the Gaming Regulatory Office shall issue a written decision within 15 days. Such written decision shall constitute final action of the Gaming Regulatory Office with respect to such notice of violation. No action to enforce the notice of violation shall be taken by the Gaming Regulatory Office until the Gaming Regulatory Office issues its written decision; provided that, the Gaming Regulatory Office may summarily suspend any license issued under this Ordinance or take such other immediate action if the continued licensing of, or conduct by, a person or entity constitutes an immediate threat to the public health, safety or welfare. The notice of violation is the final action of the Gaming Regulatory Office if no written response to the notice of violation is submitted to the Gaming Regulatory Office within the time prescribed in § 2035(B)(6).

E. The Gaming Regulatory Office may employ a Hearing Officer to hear and decide matters to be heard by the Gaming Regulatory Office in accordance with the provisions of this Ordinance; provided, sufficient funds are appropriated or made available for a Hearing Office and appropriate staff.

#### **History**

CO-75-01, October 16, 2001.

#### **§ 2036. Investigation of Complaints**

A. The Gaming Regulatory Office shall investigate all sworn complaints that are filed with the Gaming Regulatory Office alleging that a licensee is acting in violation of the terms of any license, or a Gaming Facility is not being maintained in accordance with the terms of any license or does not adequately protect the health, safety and welfare of the employees or patrons.

B. The Gaming Regulatory Office shall give written notice of and provide a copy of the sworn complaint to the licensee. The licensee shall file with the Gaming Regulatory Office a written reply to the complaint within 15 days of receipt of the notice and complaint.

C. Following receipt of the licensee's response to the complaint, the Gaming Regulatory Office shall cause a full investigation to be made of the allegations. If the Gaming Regulatory Office determines that a violation of the Ordinance or the Act has occurred or is occurring, the Executive Director shall issue a notice of violation in accordance with the provisions of the Chapter.

#### **History**

CO-75-01, October 16, 2001.

#### **§ 2037. Judicial Review**

A. Any person or entity who has been issued a notice of violation by the Executive Director of the Gaming Regulatory Office and who has submitted a written response to the Gaming Regulatory Office in compliance with the



provisions of § 2035(D) of this Subchapter, may apply to the District Court of the Navajo Nation for review of such notice of violation. Any applicant for a license under this Ordinance, and any person or entity licensed pursuant to this Ordinance, and any patrol of a gaming operation may apply to this District Court of the Navajo Nation for review of a final action of the Gaming Regulatory Office.

B. Any such application for court review must be made within 15 days of receipt of notice of the final action of the Gaming Regulatory Office. The person or entity requesting judicial review shall be the moving party and shall have the burden of proof by clear and convincing evidence.

C. The reviewing court shall decide all relevant questions of law presented, interpret statutory provisions, and determine the basis for the action of the Gaming Regulatory Office. The reviewing court shall uphold the action of the Gaming Regulatory Office unless the court determines that such action was:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
2. Contrary to statutory right, power, privilege, or immunity;
3. In excess of statutory jurisdiction, authority, or limitations, or in violation of statutory right;
4. Without observance of procedure required by law; or
5. Unsupported by substantial evidence.

#### **History**

CO-75-01, October 16, 2001.

### **Subchapter 13. Gaming Operation**

#### **§ 2038. Scope of Permissible Gaming**

The Gaming Activity permitted to be conducted in a licensed Gaming Facility are those which may lawfully be carried on by the Nation under applicable provisions of federal law including, but not limited to the Act, subject to any limitations which may be imposed by this Ordinance.

#### **History**

CO-75-01, October 16, 2001.

#### **§ 2039. Hours, Days, Other Standards**

A. For all activities on Indian lands located outside the State of New Mexico the Gaming Regulatory Office may by regulation establish the permissible hours and days of operation of Gaming Activities. The regulations may authorize a licensed gaming facility to remain open and conduct Gaming

Activities 24 hours a day, seven days a week. The Gaming Regulatory Office may also, by regulation, establish other standards of operation for such facilities, as the Gaming Regulatory Office deems appropriate.

B. For all activities on Indian lands located within the State of New Mexico, the following standards shall apply:

1. The Navajo Nation shall take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938,<sup>1</sup> the federal Occupational Safety and Health Act of 1970,<sup>2</sup> and any other federal laws relating to wages, hours of work and conditions of work, and the regulations issued thereunder;

2. On any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;<sup>3</sup>

3. The Navajo Nation, the gaming enterprise and a Management Contractor shall not discriminate in the employment of persons to work for the gaming enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap. This provision shall not be deemed to prohibit the application of the Navajo Preference in Employment Act;

4. All employees of a gaming establishment shall be provided employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable programs of the State of New Mexico;

5. A grievance process shall be provided for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;

6. New Mexico State Department of Environment inspectors shall be permitted to inspect Gaming Facilities' food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to New Mexico' Food Service Sanitation Act <sup>4</sup> are maintained;

7. Gaming enterprises are prohibited from cashing any paycheck or any type of government assistance check, including Social Security, AFDC, pension and other similar checks, for any patron;

8. Gaming enterprise are prohibited from extending credit by accepting IOUs or markers from its patrons;

9. Odds shall be posted on each electronic and electromechanical gaming device;

10. Automatic teller machines on Gaming Facility premises shall be programmed so that the machines will not accept cards issued by New Mexico to AFDC recipients for access to AFDC benefits;

11. Each electronic or electromechanical Gaming Device in use at the Gaming Facility shall pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%);

12. No later than 90 days after this compact takes effect, all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the activity of each gaming machine in use at the Gaming Facility, and that such data shall be electronically accessible to New Mexico gaming representative upon entry of appropriate security codes;

13. Employees of a Gaming Facility are prohibited from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the gaming facility;

14. Gaming Facility employees that dispense, sell, serve or deliver alcoholic beverages shall attend alcohol server education classes similar to those classes provided for in the New Mexico Liquor Control Act;

15. Gaming Facility operators shall purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars (\$1,000,000) per incident and two million dollars (\$2,000,000) aggregate per policy year;

16. Alcoholic beverages shall not be sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;

17. The Tribal Gaming Enterprise shall spend an amount that is no less than one-quarter of one percent (.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gambling;

18. Governing any Management Contract regarding its Class III Gaming Activity such that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;

19. The operation of any Class III Gaming shall be prohibited for at least four consecutive hours daily, Monday through Thursdays (except federal holidays);

20. Gaming Facility operators and the Navajo Nation shall not provide, allow, contract to provide or arrange to provide alcoholic beverages, food or lodging for no charge or at reduced prices at a gaming facility or lodging facility as an incentive or enticement for patrons to game; and

21. The Navajo Nation, the Navajo Gaming Regulatory Office or a

Management Contractor shall be prohibited from contributing directly, or through an agent, representative or employee, revenue for a gaming enterprise owned by the Navajo Nation, or anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by New Mexico's Campaign Reporting Act.

#### **History**

CO-75-01, October 16, 2001.

#### **§ 2040. Employee and Player Age Limit**

No person under 21 year of age shall be permitted to place any wager, directly or indirectly, in any gaming activity. No person under 18 years of age shall be employed by a Gaming Facility Operator or by the Gaming Regulatory Office. The Gaming Regulatory Office shall by regulation establish measures by which licensees shall enforce the provisions of this Section.

#### **History**

CO-75-01, October 16, 2001.

#### **§ 2041. Management Security**

A. The Gaming Facility Operator shall have the responsibility for the on-site operation, management and security of the Gaming Facility, and shall comply with all requirements of this Ordinance and the Act. The Gaming Facility Operator shall adopt reasonable procedures, consistent with this Ordinance and the Act, designed to provide for the following: the physical safety of its employees; the physical safety of patrons in the Gaming Facility; the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department; and the protection of the patrons' and the gaming operation's property from illegal activity.

B. The Gaming Facility Operator shall designate an agent for service of any official determination, order or notice of the Commission.

#### **History**

CO-75-01, October 16, 2001.

#### **§ 2042. Internal Controls**

A. The Gaming Regulatory Office shall by regulation establish and the Gaming Facility Operators shall implement minimum standards of internal controls to be in place at each licensed Gaming Facility, which shall include systems of accounting and administrative controls. Internal controls include the plan of organization and all of the coordinate methods and measures adopted within a Gaming Operation to safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency and encourage adherence to prescribed managerial policies.

B. The system of accounting controls shall provide a plan of organization

and a description of procedures and records that will permit reasonable assurance that the following objectives will be maintained:

1. Safeguarding of assets;
2. Reliability of financial records;
3. Execution of transaction in accordance with management's general or specific authorization;
4. Recording of transactions as necessary to permit recording of gaming revenue and to maintain accountability for assets;
5. Access to assets only in accordance with management's authorization; and
6. Comparison of records of assets with existing assets at reasonable intervals with provision for appropriate action with respect to any differences.

C. The system of administrative controls shall include a complete plan of organization that will provide appropriate segregation of functional responsibilities and sound practices to be followed in the performance of those duties by competent and qualified personnel. The plan of organization shall be diagrammatic and narrative describing the interrelationship of functions and the division of responsibilities upon which the system of internal control relative to gaming operations is based.

D. Upon written application to the Gaming Regulatory Office, the licensee may request any material change in the internal control system it determines appropriate. The Gaming Regulatory Office shall notify the licensee in writing that such application is accepted or rejected, within 30 days of receiving such application. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office.

E. The system of accounting controls shall include a detailed system for counting cash receipts at least daily, and shall be appropriate to the types of Gaming Activities carried on at the facility and the physical characteristics of the system utilized for collecting cash.

F. The Gaming Regulatory Office shall require that all bank accounts maintained by the operators of the Gaming Facility shall be identified by bank and account number and that all signatories to such accounts be identified by name.

### **History**

CO-75-01, October 16, 2001.

### **§ 2043. Annual Independent Audit**

A. Each licensed Gaming Facility Operator shall provide at its own expense an audited financial statement for its licensed Gaming Facility to the Gaming Regulatory Office at least annually, on a date to be established by the

Gaming Regulatory Office, and at such other times as the Gaming Regulatory Office may require.

B. The audit shall be conducted by an independent certified public accountant licensed in a state, who shall submit an audit report expressing an unqualified or qualified opinion or if appropriate, disclaim an opinion on the statement taken as a whole in accordance with generally accepted auditing standards of the accounting profession. The examination and audit shall disclose whether the accounts, records, and internal controls and accounting procedures maintained by the licensed Gaming Facility are in compliance with this Ordinance and the Act. To facilitate the completion of such audits, each licensed Gaming Facility Operator shall make and maintain complete, accurate and legible records of all transactions pertaining to any Gaming Activities and any other revenue producing activities conducted by the licensee at or in conjunction with any licensed Gaming Facility. Such records as well as all original entry transaction records shall be maintained for at least five years from the date on which they are made, and during the pendency of any litigation arising thereunder. Such records shall be maintained on the licensed premises or at a location approved by the Gaming Regulatory Office.

C. Each licensed Gaming Facility Operator shall maintain general accounting records on a double entry system of accounting with detailed, supporting subsidiary, records sufficient to furnish the information required for the standard financial reports to adequately reflect gross income and expenses related to gaming and subsidiary operations.

D. The Gaming Regulatory Office shall from time to time prescribe a uniform chart of accounts and accounting classifications in order to assure consistent and effective disclosure of financial information.

E. The Gaming Regulatory Office, when it deems necessary, may request additional information from either the licensee, or its independent accountant through the licensee, regarding either the financial statements, the audit or both. The licensee shall provide to the Gaming Regulatory Office copies of all letters from the independent accountant to the licensee regarding internal control matters within 30 days after receipt by the licensee.

F. The Gaming Regulatory Office shall provide copies of all annual audits of Gaming Activities and licensees to the Commission as required under the Act, within the time requirements established by the Commission, and shall cooperate with the Commission with respect to any additional information required.

#### **History**

CO-75-01, October 16, 2001.

#### **§ 2044. Public Disclosure of Payouts**

A schedule of payout information as to all Gaming Activities carried on within a licensed Gaming Facility shall be displayed at all times within the facility at a location clearly visible to patrols, and shall be updated regularly.

#### **History**

CO-75-01, October 16, 2001.

**§ 2045. Patron Disputes**

A. Refusal to Pay Winnings. Whenever the Gaming Facility Operator refuses payment of alleged winnings to a patron, and the Gaming Facility Operator and the patron are unable to resolve the dispute to the satisfaction of the patron and if the dispute involves:

1. At least five hundred dollars (\$500.00), the Gaming Facility Operator shall notify the Gaming Regulatory Office as soon as possible; or

2. Less than five hundred dollars (\$500.00), the Gaming Facility Operator shall inform the patron of his or her right to request that the Gaming Regulatory Office conduct an investigation. The Gaming Regulatory Office shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

B. Notice to Patrons. The Gaming Regulatory Office shall mail written notice by certified mail, return receipt requested, to the Gaming Facility Operator and the patron of its decision resolving the dispute within 30 days after the date that the Gaming Regulatory Office first receives notification from the Gaming Facility Operator or a request to conduct an investigation from the patron.

C. Effective Date of Decision. The decision of the Gaming Regulatory Office is effective on the date it is received by the aggrieved party as reflected on the return receipt.

D. Review of Decision. Within 30 days after the date of receipt of the written decision, the aggrieved party may file a petition with the Gaming Regulatory Office requesting a review of the decision. The Gaming Regulatory Office may set a hearing on the matter or may make a decision based solely upon the prior decision and other documentation provided to it by the patrol and the gaming facility operator. The Gaming Regulatory Office shall then issue a written decision and mail it to the parties pursuant to the procedures set forth in § 2045(B). The written decision of the Gaming Regulatory Office shall be the final decision of the Gaming Regulatory Office.

**History**

CO-75-01, October 16, 2001.

**§ 2046. Play by Employees**

No Primary Management Official, Key Employee, member or staff of the board of directors of a Tribal Gaming Enterprise, Management Contractor, employee of a Gaming Facility, and no employee of the Gaming Regulatory Office shall play or be permitted to play either in person or through an agent in any Gaming Activity carried on in any Gaming Facility licensed by the Gaming Regulatory Office pursuant to this Ordinance.

### **History**

CO-75-01, October 16, 2001.

### **§ 2047. Small Bingo Games and Raffles**

Any non-profit organization, upon proper application to the Gaming Regulatory Office, may conduct or operate a small bingo game or raffle within the territorial jurisdiction of the Nation, in accordance with the regulatory provisions of the Indian Gaming Regulatory Act and the regulations issued by the Gaming Regulatory Office specifying the manner in which such games may be conducted.

### **History**

CAP-34-02, April 18, 2002, amended the Section and deleted Subsection (A), (B), (C) and (D).

CO-75-01, October 16, 2001.

### **§ 2048. Processing of Contracts**

The Department of Justice shall review the recommendation of the Gaming Regulatory Office and, if in compliance with applicable law and regulation, approve the terms of any and all proposed contracts between the Nation or a tribal gaming enterprise and any person or entity which provide for the management or operation of any gaming facility within the Nation, the provision of any and all games services, as well as the terms of any lease of land which is the site or proposed site of such gaming facility.

### **History**

CO-75-01, October 16, 2001.

## **Subchapter 14. Violations and Remedies**

### **§ 2049. Violations.**

It shall be a violation of this Ordinance for any person to:

A. Conduct or operate any Gaming Activities within the Nation except as provided in this Ordinance;

B. Receive, distribute, apply or direct any property, funds, proceeds or other asset of any Gaming Activity to the benefit of any individual or other person except as authorized by this Ordinance or by any duly enacted resolution of the Navajo Nation Council;

C. Tamper with any equipment used in the conduct of Gaming Activities with the intent to cause any person to win or lose any wager other than in accordance with the publicly announced rules of such Gaming Activities;

D. Do any other act in connection with the conduct of any Gaming



Activities with the intent to affect the outcome of any wager other than in accordance with the publicly announced rules of such Gaming Activities;

E. Participate as a player in any Gaming Activities if such person is prohibited under § 2046 from participating in such Gaming Activities; or

F. Participate as a player in any Gaming Activities while such person is listed as a person barred from the Nation's Gaming Facilities as provided in § 2008(G).

**History**

CO-75-02, October 16, 2001.

**§ 2050. Civil Penalties**

Any person who violates any provision of this Ordinance or the Act shall be subject to civil penalties including exclusion from employment by a Gaming Facility Operator, exclusion from attendance at any Gaming Facility, exclusion from the Nation if the person is a nonmember of the Nation, or a civil fine of not more than ten thousand dollars (\$10,000) for each such violation.

**History**

CO-75-02, October 16, 2001.

**§ 2051. Civil Remedies**

The Gaming Regulatory Office may in the name of the Nation bring a civil action in the courts of the Nation to enforce the provisions of this Ordinance or the Act or to enjoin or otherwise prevent any violation of this Ordinance or the Act occurring within the territorial jurisdiction of the Nation.

**History**

CO-75-02, October 16, 2001.

**Subchapter 15. Amendments; Compliance with Applicable Laws; etc.**

**§ 2052. Amendments**

This Ordinance may be amended by action of the Navajo Nation Council.

**History**

CO-75-02, October 16, 2001.

**§ 2053. Compliance with the Act**

All Gaming Activities conducted pursuant to this Ordinance shall comply with the terms and conditions of the Act.

**History**

CO-75-02, October 16, 2001.

**§ 2054. Severability**

If any Section, provision, or portion of this Ordinance is adjudged to be invalid by a court of competent jurisdiction, the remainder of this Ordinance will remain valid.

**History**

CO-75-02, October 16, 2001.

**§ 2055. Non-liability**

The Nation declares that there is no liability on the part of the Nation, its agencies, agents, or employees for any damages which may occur as a result of reliance upon or conformity with the requirements of this Ordinance. The Nation by adoption of this Ordinance does not waive its sovereign immunity in any respect.

**History**

CO-75-02, October 16, 2001.

**§ 2056. Navajo Preference**

Preference in employment and contracting at licensed gambling establishments shall be in compliance with the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, and the Navajo Nation Business Preference Law, 5 N.N.C. § 201 *et seq.*

**History**

CO-75-02, October 16, 2001.

**§ 2057. Prior Inconsistent Law**

All prior laws inconsistent with this Ordinance are hereby expressly repealed to the extent of their inconsistency.

**History**

CO-75-02, October 16, 2001.

**Chapter 11. Navajo Nation Business Site Leasing Act**

**Subchapter 1. Generally**

**History**

CJA-12-01, January 26, 2001.

CAU-42-87, August 12, 1987.  
CAP-34-71, April 15, 1971.  
CMY-43-70, May 19, 1970.  
CAU-59-65, August 4, 1965.  
CAP-31-65, April 13, 1965.  
ACAU-124-65, § 1, August 2, 1962.  
ACMA-38-60, § 3, March 9, 1960.  
ACF-12-60, § 1, February 9, 1960.  
ACAU-58-57, August 23, 1957.  
CS-33-54, September 9, 1954.

#### **Cross References**

Trading Post site leases, see 2701 *et seq.* of this title.

#### **Annotations**

See annotations under Licenses and Permits in digest.

#### **§ 2301. Title; policy**

A. This Chapter shall be known and cited as the Navajo Nation Business Site Leasing Act of 2000; 5 N.N.C. §§ 2301-2305.

B. It shall be the policy of the Navajo Nation that its business site leasing system should accomplish the following goals:

1. To establish streamlined process for the Navajo Business Site Leasing;
2. To authorize the Economic Development Committee to promulgate Navajo Business Site Leasing Regulations;
3. To authorize the Economic Development Committee of the Navajo Nation Council to delegate its approval authority to the Division of Economic Development of the Executive Branch, an entity or chapters of the Navajo Nation according to rules and regulations governing such delegations and rescission of such delegations as developed and approved by the Committee;
4. To protect Navajo land and resources by regulating and limiting types of land use and impacts;
5. To protect public health and welfare by establishing terms and conditions for business activities and by prescribing sanctions for

violations of those terms and conditions;

6. To promote self-determination and encourage economic self-sufficiency, including economic development that increases employment, business activities and standard of living for members of the Navajo Nation; and

7. To encourage business development within the Navajo Nation, and in particular, to encourage Navajos to enter and develop successful business ventures by developing streamlined leasing procedures and providing appropriate incentives and opportunities.

### **History**

CJA-12-01, January 26, 2001, amended Subsection A, B, C and D.

CAU-42-87, August 12, 1987.

### **§ 2302. Navajo Business Site Leasing Regulations of 2000**

A. This Act is an enabling legislation that authorizes the Economic Development Committee to promulgate the Navajo Business Site Leasing Regulations; provided, however, that the Business Site Leasing Regulations contain factors that:

1. Protect and preserve Navajo trust assets from loss, damage, unlawful alienation, waste and depletion;

2. Promote the Navajo Nation control, interest of the Navajo Nation and support the use of the trust assets;

3. Provide asset management system that prudently oversees the management, tracking and inventory of tribal assets;

4. Account for and timely identify, collect, deposit and distribute income from the trust assets or reinvest income or monies into economic development activities or projects;

5. Provide for records and recording system for accounts and leases and other operational and information system; and

6. Provide other provisions that promote modern and up-to-date leasing practices.

B. The Act also authorizes the Economic Development Committee to delegate its approval authority to the Division of Economic Development of the Executive Branch, an entity or chapters of the Navajo Nation provided that the boundaries and principles of the delegation of authorities are appropriately created.

C. According to the authority of promulgating Navajo Business Site Leasing Regulations, the Economic Development Committee shall adopt Navajo Business Site Leasing Regulations governing Navajo trust lands, separate and apart, from Navajo Business Site Leasing regulations governing Navajo fee lands or other types of Navajo lands.

D. A copy of the Business Site Leasing Regulations promulgated under this Act shall be filed with the Central Records Office of the Navajo Nation and any amendments thereof.

#### **History**

CJA-12-01, January 26, 2001.

CAU-42-87, August 12, 1987.

#### **§ 2303. Definitions**

A. "Economic Development Committee" means a standing committee of the Navajo Nation Council established pursuant to Navajo Nation Council Resolution CD-68-89. See 2 N.N.C. § 721 *et seq.*

B. "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

C. "Navajo Nation Land" means land or any interest therein held by the United States in trust for the Navajo Nation and land that is held by the Navajo Nation subject to federal restrictions against alienation or encumbrance, excluding allotment lands. Navajo Nation land also means Navajo fee land.

D. "Business purposes" means any person, partnership, association, cooperative, company, corporation or other legal entity lawfully engaged in employment, occupation, profession, commercial or industrial activity for gain or livelihood.

E. "Regulations" means the rules and regulations duly adopted by the Economic Development Committee to govern the leasing, permitting and licensing of Navajo Nation land for business purposes under the provisions of this Act, and to govern delegation of authority.

F. "Lease" means business site lease, permits and licenses granting land use privileges in Navajo Nation land for business purposes.

G. "Asset management system" means a system that is designed for the purposes of leasing, renting, operating and maintaining the premises, managing the demised premises and structures affixed to the premises, and a system that accounts, provides for inventory of and tracking of income or money, lands and other property.

#### **History**

CJA-12-01, January 26, 2001.

CAU-42-87, August 12, 1987.

**Note.** CD-62-89 inserted for CJA-1-87, see Subsection (A).

#### **§ 2304. Severability**

The provisions of this Act are severable and if any provision of this Act, or its application to any person or circumstance is held invalid by a final judgment of the Navajo Nation Court, such decision shall not affect the validity of the remaining portions of this Act.

#### **History**

CJA-12-01, January 26, 2001. Previous § 2304 was rescinded and this new § 2304 was previously codified as § 2318 of this Subchapter.

CAU-42-87, August 12, 1987.

#### **§ 2305. Review of authority**

The Economic Development Committee and the Chief of the Office of Business and Economic Development or its successor shall, from time to time, review the authority granted to them under this Act and propose amendments and additions thereto to the Navajo Nation Council in order to improve and streamline the business site leasing process.

#### **History**

CJA-12-01, January 26, 2001.

CAU-42-87, August 12, 1987.

#### **§ 2306. Prior inconsistent law(s)**

Upon the effective date of this Navajo Nation Business Site Leasing Act of 2000, all prior inconsistent laws, rules, policies, ordinances, and regulations of the Navajo Nation branches, divisions, departments, offices and political subdivisions thereof, are hereby superseded and/or amended to comply herewith.

#### **History**

CJA-12-01, January 26, 2001.

CAU-42-87, August 12, 1987.

**§§ 2310 to 2321. [Rescinded]**

#### **History**

CJA-12-01, January 26, 2001.

### **Chapter 12. Administration of Weights and Measures**

#### **§ 2401. Administration of Chapter; Director; appointment**

A. There is hereby established as a component of the Business Regulatory Department, the Administration of Weights and Measures.

B. The Director of the Business Regulatory Department shall administer the provisions of this Chapter.

C. The Director, with the approval of the Economic Development Committee, shall appoint a Deputy Director of the Department.

D. The Director shall be chosen based on practical experience, training and knowledge in weights and measures practice, procedures, laws and administrative functions.

E. This Chapter shall become effective on January 1, 1993.

#### **History**

CN-74-92, November 4, 1992.

#### **§ 2402. Standard weights and measures**

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of such systems shall be used for all commercial purposes in the Navajo Nation. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents, as published by the National Institute of Standards and Technology are recognized and shall govern weighing and measuring equipment and transactions in the Navajo Nation.

#### **History**

CN-74-92, November 4, 1992.

#### **§ 2403. Physical standards**

Weights and measures that are traceable to the United States prototype standards supplied by the Federal government, or approved as being satisfactory by the National Institute of Standards and Technology, shall be the Navajo Nation's primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Institute of Standards and Technology. All secondary standards may be prescribed by the Director and shall be certified upon their initial receipt and as often thereafter as deemed necessary by the Director.

#### **History**

CN-74-92, November 4, 1992.

#### **§ 2404. Technical requirements for commercial devices**

The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices as adopted by the National Conference on Weights and Measures and published in the National Institute of Standards and Technology Handbook 44, "specifications, tolerances, and other technical requirements for commercial weighing and measuring devices" shall apply to

commercial weighing and measuring devices in the Nation. The edition of the National Institute of Standards and Technology Handbook 44 used by the Nation shall be determined by rule.

### **History**

CN-74-92, November 4, 1992.

### **§ 2405. Powers and duties; definition**

A. The Department shall:

1. Maintain custody of the Nation's standards of weights and measures that are traceable to the United States prototype standards and that are supplied to the states by the Federal government or that are otherwise approved as being satisfactory by the National Institute of Standards and Technology.

2. Keep the Nation's primary standards in a safe and suitable place in the Business Regulatory Department and ensure that they shall not be removed from the laboratory except for repairs or for calibration as may be prescribed by the National Institute of Standards and Technology.

3. Keep accurate records of all standards and equipment.

4. Make any rules necessary to carry out the provisions of this Chapter and issue reasonable rules for the enforcement of this Chapter, which rules shall have the force and effect of law. In making such rules, the Director shall consider, so far as is practicable, the requirements established by other states and by authority of the United States, except that no rules shall be made in conflict with the provisions of this Chapter.

5. Publish such rules adopted pursuant to this Chapter and issue copies to all applicants for license and certification. Updated copies of the rules shall be distributed to all current licensees and certification holders when there is a change in the rules.

6. Establish labeling standards, establish standards of weight, measure of count and establish reasonable standards of fill for any packaged commodity, and the Director may establish standards for open dating information.

7. Grant, pursuant to this Chapter, exemptions from the licensing provisions of this Chapter for commercial weighing and measuring instruments when the ownership and use of the instrument or device are limited to federal, state or local government agencies in the performance of official functions.

8. Delegate to appropriate personnel any of the responsibilities of the Director for the proper administration of this Chapter.



9. Test annually the standards of weight and measure used by any city or town within the Navajo Nation and approve the same when found to be correct.

10. Inspect and test weights and measures kept, offered or exposed for sale.

11. Inspect and test, to ascertain if they are correct, weights and measures commercially used either:

a. In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count.

b. In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

12. Test all weights and measures used in checking the receipt or disbursement of supplies in every institution, for the maintenance of which funds are appropriated by the Navajo Nation Council.

13. Test, approve for use and affix a seal of approval for use of all weight, measure, commercial devices and liquid fuel measuring devices manufactured in or brought into the Navajo Nation as it finds to be correct, and shall reject and mark as rejected such weights, measures and devices as it finds to be incorrect. Weights, measures and devices that have been rejected may be seized by the Department if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The Department shall condemn and may seize weights, measures and devices found to be incorrect that are not capable of being made correct.

14. Sample and test gasoline which is stored, sold or exposed or offered for sale or which is stored for use by a fleet owner to determine whether the gasoline meets the standards for gasoline set forth in the regulations and in any rule adopted by the Director pursuant to this Chapter.

15. Inspect facilities at which gasoline or oxygenated fuel is stored, sold or exposed or offered for sale to determine whether dispensing devices are properly labeled.

16. Issue weighing and measuring instructions and rules, in addition to the certificate of approval, for the information of consumers and the operators of such devices.

17. Weigh, measure or inspect packaged commodities kept, offered or exposed for sale, sold or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this Chapter or rules adopted pursuant thereto. In carrying out the provisions of this Section, the Director shall employ recognized sampling procedures, such as are designated in appropriate National Institute of Standards and Technology Handbooks and supplements thereto, except as modified or rejected by

rule.

18. Allow reasonable variations from the stated quantity of contents only after a commodity has entered intrastate commerce. Such variations shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice.

19. Provide for the weights and measures training of inspection personnel and establish minimum training requirements which shall be met by all tribal weights and measures inspection personnel in the Navajo Nation.

20. Prescribe the standards of weight and measure and additional equipment methods of test and inspection to be employed in the enforcement of this Chapter. The Director may prescribe or provide the official test and inspection forms to be used in the enforcement of this Chapter.

21. Apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any provision of this Chapter.

22. Employ such personnel as needed to assist in administering the provisions of this Chapter.

23. Establish by rule labeling standards for tanks and containers of liquid fuels and used oil.

B. The Director may provide for the periodic examination and inspection of metering devices of utility companies, including but not limited to such devices utilized to measure usage of electricity, natural gas or water by a consumer.

C. The Directory may establish standards for the presentation of cost-per-unit information. Nothing in this Subsection shall be construed to mandate the use of cost-per-unit information in connection with the sale of any standard packed commodity.

D. The Director may, when necessary to carry out the provisions of this Chapter, adopt and enforce rules relating to quality standards for gasoline, motor fuel, kerosene, oil, except used oil fuel, and hazardous waste fuel, lubricating oils, lubricants, antifreeze and other liquid or gaseous fuels. The Director shall adopt rules to ensure that oxygenated fuels, as described in the regulations of this Chapter, stored, sold, or exposed or offered for sale are blended and stored, sold, exposed or offered in such a manner as to assure that the oxygenated fuels are properly blended, that they meet the standards set forth in the regulations, and in rules adopted pursuant to this Chapter, and that dispensers at which the oxygenated fuels and fuels described pursuant to the regulations are dispensed and labeled as defined by rules of the Department in such manner as to notify persons of the type of oxygenated fuel being dispensed and the percentage of oxygenate by volume contained in the oxygenated fuel. The Director of the Department of Weights and Measures shall consult with the Director of the Nation's Environmental Protection Agency in adopting rules

pursuant to this Subsection.

E. All testing and inspection conducted pursuant to this Chapter shall, to the extent practicable, be done without prior notice and by a random or systematic method determined by the Director. The testing and inspection may be done by private persons and firms pursuant to contracts entered into by the Director in accordance with Title Two of the Nation's laws. The Director shall establish, by rule, qualifications of persons and firms for selection for purposes of this Subsection. The persons or firms conducting the testing and inspection shall immediately report to the Department any violations of the provisions of this Chapter and incorrect weights, measures and devices for investigation and enforcement by the Department. A person or firm that tests or inspects a weight, measure or device which is rejected shall not correct that defect causing the rejection.

F. The Director has full enforcement powers prescribed under this Section with respect to used oil.

G. For purposes of the labeling requirements prescribed in this Section, "oxygenated fuel" means a motor fuel blend containing 1.8 percent (1.8%) or more by weight of oxygen.

#### **History**

CN-74-92, November 4, 1992.

#### **§ 2406. Enforcement powers of the Director and inspectors**

A. When necessary for the enforcement of this Chapter, the Director or his agents and inspectors shall:

1. Enter any commercial, nonprofit business, or governmental premises during normal operating hours, except that if such premises are not open to the public, he shall first present his credentials.

2. In instances in which violations of applicable standards are found, issue stop-use, hold and removal orders with respect to any weights and measures commercially used, stop-sale, hold and removal orders with respect to any packaged commodities or bulk commodities kept, offered or exposed for sale and stop-use, stop-sale, hold and removal orders with respect to any liquid fuel or used oil kept, offered or exposed for sale. The Director of the Department of Weights and Measures shall inform the Director of the Navajo Nation's Environmental Protection Agency of any action taken pursuant to this paragraph which relates to used oil.

3. Seize or use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package or commodity found to be used, retained, offered or exposed for sale or sold in violation of the provisions of this Chapter or rules adopted pursuant thereto.

4. Any evidence seized by the Administration of Weights and Measures may not be sold within the jurisdiction of the Navajo Nation for

a period of 10 days. Any party adversely affected by this seizure may file documents before the Administrative Hearing Officer seeking temporary relief.

5. Stop any commercial vehicle upon reasonable cause to believe that the vehicle contains evidence of a violation of any provision of this Chapter and, after presentment of his credentials, inspect the contents, require that the person in charge of the vehicle produce any documents in his possession concerning the contents and require him to proceed with the vehicle to some specified place for inspection.

6. With respect to the enforcement of this Chapter, the Director or his agents or inspectors may issue a citation to any violator of this Chapter in accordance with rules developed by the Department.

7. The Director, his agents or an inspector may apply for a special inspection warrant of real or personal property for the purpose of enforcement of this Chapter. Such warrant shall be developed by the Director.

### **History**

CN-74-92, November 4, 1992.

### **§ 2407. Enforcement**

Procedure upon allegation of violation.

A. The Administration of Weights and Measures shall have the authority to investigate any violation and/or complaint under this Chapter.

B. Upon finding of good cause for determination of allegations which, if true, would constitute violation of or noncompliance with any provisions of this Chapter or of any rules or regulations lawfully adopted hereunder, the Administration of Weights and Measures shall investigate such allegations, compiling a complete written report of such investigation, including witness statements; and shall first seek to obtain voluntary compliance and remedial action deemed appropriate under the provisions of this Chapter, to obtain voluntary compliance therewith.

C. If the Administration of Weights and Measures finds noncompliance, the Administration of Weights and Measures may file a complaint with the Administrative Hearing Officer.

1. The complaint and hearing shall be carried out pursuant to procedures drafted by the Administrative Hearing Officer. The procedures shall provide due process but shall not be bound by the formal rules of evidence.

2. The Administrative Hearing Officer shall have the authority to conduct hearings on the matter, and shall sit in the capacity of a quasi-judicial body, with authority to administer oaths and to subpoena witnesses and the production of documents and other objects.

### **History**

CN-74-92, November 4, 1992.

### **§ 2408. Sanctions**

Upon opportunity for hearing and determination as provided herein, the Administrative Hearing Officer may impose any and all of the following sanctions for violation of this Chapter or the rules and regulations lawfully promulgated hereunder:

A. Monetary fines not to exceed five hundred dollars (\$500.00) per day, per violation.

B. Suspension or termination of a party's authorization to engage in business activity on the reservation; provided that the party shall be given a reasonable time to remove its equipment and other property it may have on the reservation and to take such measures to facilitate the satisfaction or assumption of any contractual obligations it has, as approved by the Committee.

C. Prohibit the party from engaging in future business activity on the reservation for a specified period or permanently, in accordance with the provisions and procedures of applicable laws of the Navajo Nation.

D. Require the party to make such changes in its performance, procedures or policies as is necessary in order to comply with these requirements.

E. In accordance with all applicable laws of the Navajo Nation, impose such other sanctions as may be appropriate and necessary to ensure compliance and to remedy any harm done through violation of the requirements of this Chapter.

### **History**

CN-74-92, November 4, 1992.

### **§ 2409. Appeals**

Any party complainant or respondent shall have the right to appeal any final adverse decision of the Administrative Hearing Officer to the appropriate Navajo Nation District Court. Such appeal shall be limited to questions of law and whether the decision is supported by substantial evidence.

### **History**

CN-74-92, November 4, 1992.

### **§ 2410. Severability**

If any provision of this Chapter or any rule or regulation adopted

hereunder or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter and of the rules and regulations adopted hereunder or the application of such provision to other persons or circumstances shall not be affected thereby.

### **History**

CN-74-92, November 4, 1992.

## **Chapter 13. Regulation of Tour and Guide Services**

### **§ 2501. Permits**

A. No person, firm, association or corporation shall, either directly or indirectly, furnish, provide or conduct tour and guide services for hire, for the purposes of touring, visiting, sightseeing or like activities within the Navajo Nation, unless said person, firm, association or corporation shall first obtain a permit from the Parks and Recreation Department of the Navajo Nation to perform such activities within the Navajo Nation.

B. Any person, firm, association or corporation desiring to obtain such permit shall deliver to the Parks and Recreation Department of the Navajo Nation a true copy of the articles of association, partnership, incorporation or organization, whichever the case may be, or similar legal instrument, together with a verified statement showing the rates to be charged for the activity involved, and the basis therefor; and a proposed schedule of routes, distances, and times to be covered by such activity and a valid and original certification of insurance in minimum amount required for the service to be provided.

C. At the time of filing an application for a permit under Subsection (B) of this Section, each person, firm, association or corporation shall pay the Parks and Recreation Department of the Navajo Nation a fee in accordance with a schedule approved by the Resources Committee of the Navajo Nation Council:

D. Nothing in this Section shall relieve any applicant from any other requirements of this Chapter.

E. Upon compliance with all the requirements set forth in Subsections B and C of this Section, and upon satisfaction of the Parks and Recreation Department of the quality of the activity, the Parks and Recreation Department shall issue to the applicant a permit to perform such activities or services within the Navajo Nation. Provided, however, no such permit shall be issued unless the applicant shall first undertake in writing to hold the Navajo Nation harmless for any damages occasioned by the activities of such permittee within the Navajo Nation, and to indemnify the Navajo Nation for any liability which might accrue because of the activities or services of such permittee within the Navajo Nation, and to further agree or abide by any and all regulations adopted, published and enforced pursuant to this chapter. Such permit shall expire on the date specified on the permit and may be renewed annually on a calendar year basis in accordance with this chapter.

## History

CJA-06-05, January 28, 2005.

CN-82-72, Exhibit A, §§ 1-3, 5, November 2, 1972.

**Notes.** 1. References to the "Commerce Department" are referred to as the Division of Economic Development for the purposes of this Chapter.

2. "Treasurer's Office" was repealed by CF-5-73, February 1, 1973. References to the "Treasurer's Office" to have been changed to the Office of the Controller. See generally 12 N.N.C. § 201 et seq.

### § 2502. Adoption of regulations

The Parks and Recreation Department is authorized and directed to adopt, publish and enforce such reasonable rules, regulations and directives as are necessary or convenient to implement this Chapter and to ensure that all facilities, services, vehicles and personnel engaged in the described activities conducted within the Navajo Nation are of such quality as will not discredit the Navajo Nation. The Parks and Recreation Department is granted such authority as is necessary to ensure compliance with this Chapter and with the rules, regulations and directives adopted and published pursuant to this Chapter.

## History

CJA-06-05, January 28, 2005.

CN-82-72, Exhibit A, § 4, November 2, 1972.

**Notes.** 1. "Commerce Department" was discontinued by the 1981 Budget and Organization chart. References to the "Commerce Department" are referred to the "Division of Economic Development" for the purposes of this Chapter.

2. "Treasurer's Office" repealed by CF-5-73, February 1, 1973. References to the "Treasurer's Office" have been changed to the "Office of the Controller." See generally 12 N.N.C. § 201 et seq.

### § 2503. Revocation of permit; Denial of application

A. If, during the period of any permit, the Parks and Recreation Department shall determine that any person, firm, association, or corporation holding a permit shall have failed to abide by the reasonable rules, regulations or directives adopted and published by the Parks and Recreation Department, a notification of such violation or non-compliance shall be forwarded by the Parks and Recreation Department to such person, firm, association or corporation, requiring correction of the discrepancy within the 10 days. If such violation or non-compliance is not corrected within 10 days, then, upon adequate notice and fair hearing in accordance with rules of procedures to be established by the Parks and Recreation Department, such permit shall be suspended and the applicable person, firm, association or corporation shall not be permitted to conduct such activities or services within the Navajo Nation until such violation or non-compliance is corrected.

After correction of such violation or non-compliance, the permit to provide or conduct tour and guide activities or services shall be reactivated by written authorization of the Parks and Recreation Department. If the Permittee remains in violation or non-compliance after 30 calendar days from date of suspension and the Permittee is making an effort to correct the violation or non-compliance, the Parks and Recreation Department shall issue a notice in writing to the Permittee that said permit is revoked.

B. Upon denial or revocation of permit, an aggrieved party may appeal such denial or revocation, within 15 days, to the Office of Hearings and Appeals of the Navajo Nation for review, which forum is hereby specifically granted jurisdiction to hear such appeals. Review by the Office of Hearings and Appeals of the Navajo Nation shall be limited to questions of abuse of discretion and lack of reasonable basis for denial or revocation. After hearing the appeal, the Office of Hearings and Appeals of the Navajo Nation may either affirm the denial or revocation or remand for reconsideration by the Parks and Recreation Department in accordance with the findings of the Office of Hearings and Appeals of the Navajo Nation. Evidence or information not presented to the Parks and Recreation Department shall not be admissible before, or considered by the Office of Hearings and Appeals of the Navajo Nation.

#### **History**

CJA-06-05, January 28, 2005.

CN-82-72, Exhibit A, §§ 6-8, November 2, 1972.

**Notes.** 1. Navajo "Court of Appeals" is referred to as the Supreme Court of the Navajo Nation. See generally 7 N.N.C. § 201 *et seq.*

2. Division of Economic Development, see 2 N.N.C, Subchapter 21.

#### **§ 2504. Operation without permit**

A. Any person, firm, association or corporation who shall furnish, provide or conduct any of the prescribed activities or services without first obtaining and without having in its possession a valid permit duly issued as provided for in § 2501 is in violation of this Chapter.

B. The Parks and Recreation Department is hereby authorized to initiate an action in the appropriate District Court of the Navajo Nation, at the discretion of the Parks and Recreation Department and when circumstances warrant, to recover on behalf of the Navajo Nation an amount not exceeding five hundred dollars (\$500.00) for each separate occurrence. Jurisdiction over such actions is hereby specifically granted to the District Court of the Navajo Nation.

C. A person, firm, association or corporation not domiciled on the Navajo Nation and who is in violation of this chapter shall be required to terminate the tour or guide service and exist the Navajo Nation by the most direct route. A person, firm, association or corporation domiciled on the Navajo Nation and who is in violation of this chapter shall be required to terminate the tour or guide service immediately and comply with the requirements of this chapter.



### **History**

CJA-06-05, January 28, 2005.

CN-82-72, Exhibit A, §§ 9, 10, November 2, 1972.

**Note.** References to "Trial Court" have been changed to the appropriate District Court of the Navajo Nation. See generally 7 N.N.C. § 201 *et seq.*

### **§ 2505. Severability clause**

If any provision of this Chapter or the application of such provision to any person, firm, association or corporation or circumstances shall be held invalid, the remainder of the Chapter and the application of such provision to persons, firms, associations or corporations or circumstances other than those as to which it is held invalid shall not be affected thereby.

### **History**

CJA-06-05, January 28, 2005.

CN-82-72, Exhibit A, § 11, November 2, 1972.

## **Chapter 15. Traders and Trading Posts**

### **United States Code**

Traders with Indians, see 25 U.S.C. §§ 261-264.

### **Code of Federal Regulations**

Licensed Indian traders, see 25 CFR §§ 140.1 to 140.26.0136.

Peddler's permits, see 25 CFR § 141.12.

## **Subchapter 1. Leasing Regulations Generally**

### **§ 2701. Authority of Economic Development Committee—Generally**

A. The Economic Development Committee is authorized and empowered by and with the advice of the Navajo Nation Department of Justice to fix and determine the final terms and conditions for settling disputes, terminating leases for any cause, and any and all other matters of whatsoever kind or character in regard to trading-post site leases, and to add any other terms or conditions deemed necessary or advisable to protect the best interest of the Navajo Nation, subject to approval of the Secretary of the Interior or his authorized representative.

B. The Economic Development Committee shall adopt such regulations or procedures as are deemed necessary to expedite the leasing of trading posts on the Navajo Nation.

### History

Subsection (A): CJ-38-54, § 3, 1954 Res. p. 143, June 3, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955; Subsection (B): ACN-42-54, § 10, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

CF-14-54, 1954 Res. p. 139, February 12, 1954, contained substantially the same provisions as CJ-38-54, but it was returned by the Indian Office for reconsideration May 27, 1954.

CO-73-53, 1953 Res. p. 180, October 9, 1953, authorized consideration of proposed Trading Site Lease Regulations.

CJ-7-53, 1953 Res. p. 175, January 14, 1953; CJ-2-52, 1952 Res. p. 92, January 17, 1952; 1922-1951 Res. p. 523, October 19, 1950; 1922-1951 Res. p. 514, December 2, 1949; 1922-1951 Res. p. 513, December 2, 1949; 1922-1951 Res. p. 511, December 2, 1949; 1922-1951 Res. p. 510, December 2, 1949; 1922-1951 Res. p. 508, December 2, 1949; 1922-1951 Res. p. 507, December 2, 1949; 1922-1951 Res. p. 506, December 2, 1949; 1922-1951 Res. p. 505, December 9, 1948; 1922-1951 Res. p. 503, June 28, 1948; 1922-1951 Res. p. 496, March 20, 1948; 1922-1951 Res. p. 494, July 11, 1947; 1922-1951 Res. p. 554, September 15, 1938, authorized various rules and regulations governing licenses or permits to traders.

**Revision note.** Navajo Nation Business Site Leasing Act of 1987 gave authority to the Economic Development Committee 5 N.N.C. § 2301 *et seq.*; see also, Economic Development Committee powers, 2 N.N.C. § 724(B)(1).

### Cross References

Business leases, permits and licenses, see § 2301 *et seq.* of this title.

### United States Code

Lease of restricted lands, see 25 U.S.C. § 635 (see Acts of Congress in Appendix of N.N.C.).

### Code of Federal Regulations

Leases and permits, see 25 CFR § 162.100 *et seq.*

**§§ 2702 to 2704. [Superseded]**

### History

Superseded. CAU-42-87, codified at 5 N.N.C. § 2301, *et seq.*

ACAU-196-87 established the Division of Economic Development which abolished the Trading Superior's Office.

CD-43-54, § 3, 1954 Res. p. 164, December 9, 1954, app. by Acting General Superintendent, app. by Indian Office January 17, 1955.

1922-1951 Res. p. 507, December 2, 1949, established position of Trading Supervisor, set forth the compensation and duties thereof, and provided for clerical assistance.

#### **Cross References**

Changes in location of mission and trading post sites, see note under 16 N.N.C. § 1151.

#### **§ 2705. Multiple ownership**

Whenever the Economic Development Committee finds that the ownership of three or more trading posts tends to create monopoly in trading on the Navajo Nation or in any trading area of the Navajo Nation, it may issue a short term lease, or leases, for any such posts in excess of one for not less than three years; subject to the condition that at the expiration of such three-year term the Economic Development Committee may order the disposition of one or more such posts within the ensuing four years.

#### **History**

CJ-38-54, § 2, 1954 Res. p. 143, June 3, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

#### **Cross References**

Navajo Business Site Leasing Act of 1987, see 5 N.N.C. § 2301 *et seq.*

#### **§ 2706. [Superseded]**

#### **History**

CAU-42-87, August 12, 1987.

This is governed by 5 N.N.C. § 2301 *et seq.*, the Navajo Nation Business Site Leasing Act.

#### **§ 2707. [Superseded]**

#### **History**

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2311.

#### **§ 2708. [Superseded]**

#### **History**

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2317.

#### **§ 2709. [Superseded]**

#### **History**

CAU-42-87, August 12, 1987. See 22 N.N.C. § 1101 *et seq.*, the Navajo Nation

Water Code.

**§ 2710. [Superseded]**

**History**

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2316.

**§ 2711. [Superseded]**

**History**

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2317.

**§ 2712. Books and records**

A. The duly authorized representatives of the Navajo Nation shall have the right to inspect or audit the books and records of each lessee at any reasonable time. Lessees shall keep such records and books of account as are ordinarily kept by operators of similar businesses. In the event of failure or refusal to keep records adequate for the purpose of complying with the lease, the Division of Economic Development may require the keeping of approved records and books of account, and refusal or failure to comply with such requirement shall constitute cause for termination of the lease.

B. Lessees whose books and records are regularly kept and maintained at a place other than the trading site shall notify the Nation's representatives of the place where they may be inspected and audited, provided, however, that such place shall be in a town bordering the Navajo Nation.

**History**

CJ-38-54, § 1(d), 1954 Res. p. 143, June 3, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

**§ 2713. Legal tender**

No tin money or other substitutes of any character for the currency of the United States shall be used as legal tender in lieu of money in any trading post leased pursuant to the provisions of this Subchapter.

**History**

ACN-42-54, § 9, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

**§ 2714. Check cashing**

Whenever checks are cashed at trading posts, leased pursuant to the provisions of this Subchapter, the entire proceeds of such checks shall be paid in cash to the payee.

**History**

ACN-42-54, § 9, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

**§ 2715. Influencing of Navajo Nation elections**

A. No non-Navajo lessee shall, directly or indirectly, influence or seek to influence, the action of any Navajo Nation election or the election or defeat of any candidate for office by any method whatsoever.

B. Any such attempt on the part of any employee or agent of the lessee shall be conclusively presumed to be the action of the lessee. Violation of the provisions of this Section shall be deemed cause for termination of lessee's lease, or refusal to grant a lease for more than three years at the discretion of the Economic Development Committee.

**History**

ACN-42-54, § 8, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

**Cross References**

Causes for termination of lease generally, see § 2710 of this title.

Elections generally, see 11 N.N.C. § 1 *et seq.*

Influencing elections, see 11 N.N.C. § 209 and §§ 361-364.

**§ 2716. [Deleted and superseded]**

**History**

CO-73-90, see 15 N.N.C. § 601 *et seq.*, Navajo Preference in Employment Act.

Subchapter 3. Fact Finding Board [Superseded]

**History**

**Revision note.** Subchapter 3. Fact Finding Board has been superseded by 6 N.N.C. § 2301, Navajo Nation Business Site Leasing Act of 1987.

**Chapter 17. Non-Navajo Guides**

**§ 3001. License requirement**

It shall be unlawful and a trespass for any person other than a Navajo Indian to act as a guide for hire or to conduct any tourist upon Navajo Nation lands for a consideration without first obtaining a license for that purpose from the Navajo Parks Commission.

**History**

CD-74-62, §§ 9 and 10, December 6, 1962 and CF-31-57, § 7, February 16, 1957

amended CM-32-56, § 1, 1956, Res. p. 166, May 22, 1956, app. by General Superintendent, June 1, 1956.

**Amendments 1962.** CD-74-62, § 9, December 6, 1962, amended this Section and §§ 3002 and 3003 of this Title by substituting "Navajo Parks Commission" for "Chairman of the Navajo Tribal Council", wherever the words appeared. CF-31-57, February 16, 1957, which had amended the Section to substitute "Navajo Park Commission" for "Chairman of the Navajo Tribal Council" was repealed by CD-74-62, § 10.

**Amendments 1957.** CM-32-56 was amended by CF-31-57, § 7, which substituted words "Navajo Tribal Park Commission" for words "Chairman of the Navajo Tribal Council" wherever they appeared.

#### **Cross References**

Navajo Tribal Parks Commission generally, see 19 N.N.C. § 201 *et seq.*

#### **§ 3002. Issuance of license; term; fees**

The Navajo Parks Commission may issue a license to any person of good moral character and of adequate finances to act as a guide for tourists on Navajo Nation lands. Such license shall be for a term not to exceed five years and shall provide for the payment to the Navajo Nation of ten percent (10%) of the receipts of such person on account of acting as a guide or conductor of tourists on Navajo Nation lands. A minimum advance fee of one hundred dollars (\$100.00), which shall be credited against the percentage fees, shall be collected before any such license shall be issued.

#### **History**

CD-74-62, §§ 9 and 10, December 6, 1962 and CF-31-57, § 7, February 16, 1957 amended CM-32-56, § 1, 1956, Res. p. 166, May 22, 1956, app. by General Superintendent, June 1, 1956.

**Amendment 1962.** See Note under § 3001 of this title.

**Amendment 1957.** See Note under § 3001 of this title.

#### **§ 3003. Rules and regulations; authority to adopt**

The Navajo Parks Commission is authorized to adopt rules and regulations and do all things necessary to implement or supplement the provisions of this Chapter.

#### **History**

CD-74-62, §§ 9 and 10, December 6, 1962 and CF-31-57, § 7, February 16, 1957 amended CM-32-56, § 1, 1956, Res. p. 166, May 22, 1956, app. by General Superintendent, June 1, 1956.

### **Chapter 19. Navajo Nation Corporation Code**

## **Subchapter 1. General Corporation Law**

### **§ 3100. Policy and purpose**

The Navajo Nation Corporation Code is hereby enacted:

A. The purpose of this Code is to permit the formation of various corporate entities and require registration of foreign corporations; and to regulate such entities so as to promote economic growth and further the exercise of tribal sovereignty in the governance of its territory and citizens.

B. This Code is based upon the American Bar Association's Model Business Corporation Act, the Model Close Corporation Act and the Model Code, and the various agricultural cooperative acts of several states. The interpretation of this Code shall be based on Navajo Nation Court interpretation and such interpretation shall give the utmost respect in deciding the meaning and purpose of this Code to the unique traditions and customs of the Navajo people. General decisional law interpreting similar provisions of the above Model Acts and state agricultural cooperative acts may be used as guidance.

C. Unless otherwise expressly provided by law, the sovereign immunity of the Navajo Nation shall not extend to corporate entities organized under this Code, nor shall such entities be considered a subdivision, entity or enterprise of the Navajo Nation, nor shall the Navajo Nation be liable for the debts or obligations of any kind of such entities.

D. The provisions of this Code shall be fully implemented within 180 days of the date of its adoption by the Navajo Nation Council; provided however, the issuance of certificates of incorporation shall be issued on the date of adoption. The Division of Economic Development through its Business Regulatory Department shall administer the provisions of this Code. The Division of Economic Development is directed to prepare an appropriate supplemental budget for carrying out its responsibilities under this Code.

### **History**

CJA-2-86, January 30, 1986.

### **Annotations**

#### **1. Construction and application**

"The Navajo Nation Council adopted the concept of corporations from *Bilagáana* law. Like other jurisdictions, the Navajo Nation provides the opportunity to incorporate, that is, to create a legal entity called a corporation. See 5 N.N.C. §§ 3100 *et seq.* (2005)." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 10 (Nav. Sup. Ct. August 7, 2006).

#### **2. Corporation as a person**

"The decision to incorporate renders a corporate entity a separate 'person' from its officers and staff for purposes of the unauthorized practice of law. One primary motivation to incorporate is to separate the personal liability of

officers, staff, and shareholders from that of the corporate entity, so that when the entity is sued for actions taken by those natural persons, the judgment is satisfied by the corporation's funds." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 11 (Nav. Sup. Ct. August 7, 2006).

"While the resulting corporation is treated as a 'person' for various purposes, the Court holds it has a separate legal existence from its officers and staff and is therefore a separate 'person' for purposes of the prohibition against the unauthorized practice of law. The choice to incorporate carries benefits but also, importantly, consequences. Among the consequences of incorporation is the inability of its agents to represent the corporate entity 'pro se'." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 11 (Nav. Sup. Ct. August 7, 2006).

### **Article 1. Title; Definitions; Purposes**

#### **§ 3101. Short title**

This Chapter shall be known and may be cited as the "Navajo Nation Corporation Act."

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3102. Definitions**

A. "Articles of Incorporation" include the original articles of incorporation, articles of merger or consolidation and all amendments thereto.

B. "Attorney General" means the Attorney General of the Navajo Nation.

C. "Authorized shares" means the aggregate number of shares, whether with or without par value, which the corporation is authorized to issue.

D. "Capital surplus" means the entire surplus of a corporation other than its earned surplus.

E. "Corporation" or "domestic corporation" means a for profit or non-profit corporation subject to the provisions of this Chapter, except a foreign corporation.

F. "Court", except where otherwise specified, means the Navajo Nation District Court having jurisdiction over civil actions.

G. "Department" means the Department of Commerce within the Division of Economic Development or its designated successor.

H. "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated



capital, and capital surplus to the extent such distribution and transfers are made out of earned surplus. Earned surplus shall also include any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

I. "Foreign corporation" means a corporation for profit or not for profit organized under laws other than the laws of the Navajo Nation.

J. "Incorporator" means a signer of the original articles of incorporation.

K. "Insolvent" means that the total liabilities of the corporation exceed a fair valuation of its total assets.

L. "Navajo Indian Country" has the same meaning as in 7 N.N.C. § 254.

M. "Non-profit corporation" means a corporation, no part of the income or profit of which is distributable to its members, directors or officers, except this Chapter shall not be construed as prohibiting the payment of reasonable compensation for services rendered or a distribution upon dissolution or liquidation as permitted by Subchapter 2.

N. "Person" means both natural persons, either Navajo or non-Navajo, and foreign and domestic corporations and tribal governments and their political subdivisions.

O. "Registered office" means that office maintained by the corporation within Navajo Indian Country, the address of which is on file with the department.

P. "Shareholder" means one who is a holder of record of shares in a corporation.

Q. "Shares" are the units into which the shareholders' right to participate in the control of the corporation, in its surplus or profits, or in the distribution of its assets, are divided.

R. "Stated capital" means, at any particular time, the sum of:

1. The par value of all shares of the corporation having a par value that have been issued;

2. The amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and

3. Such amounts not included in subdivisions 1 and 2 of this Paragraph as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as has been effected in a manner permitted by law.

4. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a for profit foreign corporation shall be determined on the same basis and in the same manner as stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by this Chapter.

S. "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

T. "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares but not "outstanding" shares.

#### **History**

CJA-2-86, January 30, 1986.

#### **Annotations**

##### **1. Non-profit**

"NHA formed Cabinets as a subsidiary of NHA to operate the cabinet business referenced in the lease with the Navajo Nation. Resolution No. NHA-3016-98, Whereas clause nos. 3, 4 (March 5, 1998). Cabinets incorporated as a non-profit entity under the Navajo Nation Non-Profit Corporation Act, 5 N.N.C. § 3301 *et seq.*" *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 5 (Nav. Sup. Ct. February 11, 2004).

##### **§ 3103. Authorized purposes for organization of corporation**

Corporations for profit may be organized under this Chapter for any lawful purpose or purposes.

#### **History**

CJA-2-86, January 30, 1986.

##### **§ 3104. General powers**

A. Each corporation shall have the power:

1. To have perpetual succession of its corporate name unless a limited period of duration is stated in its articles of incorporation;

2. To sue and be sued, complain and defend, in its corporate name;

3. To have a corporate seal, which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced, provided however corporate seals shall not duplicate or closely resemble the seals of the Navajo Nation or its entities;

4. To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, including shares or other interests in, or obligations of, other domestic or foreign corporations, non-profit corporations, associations, partnerships, limited partnerships, or individuals or governmental units or bodies, wherever situated;

5. To redeem, acquire, cancel reacquired shares, reacquire and restore to the status of authorized but unissued, shares of stock issued by the corporation, but subsequently acquired by the corporation;

6. To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

7. To lend money to, and otherwise assist, its employees;

8. To make contracts including contracts of guaranty, suretyship and indemnification and incur liabilities; to borrow money, to issue its notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property or income, except for property or income held in trust subject to legal restrictions on hypothecation;

9. To invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned;

10. To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Chapter outside of Navajo Indian Country and to exercise in any reservation, state, territory, district, or possession of the United States, or in any foreign country the powers granted by this Chapter subject to the laws of such jurisdictions;

11. To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation;

12. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the Nation, for the administration and regulation of the affairs of the corporation;

13. To make contributions to charitable organizations;

14. To cease its corporate activities and surrender its corporate franchise; and

15. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed.

B. Corporations organized under this Chapter shall not have the power to engage in banking business.

### **History**

CJA-2-86, January 30, 1986.

**§ 3105. Corporate name**

A. The corporate name of a domestic corporation:

1. Shall contain the word "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words;

2. Shall not include the words "trust" or "trust company", separately or in combination to indicate or convey the idea that the corporation is engaged in trust business unless such corporation is to be and becomes actively and substantially engaged in trust business or such corporation is a holding company holding substantial interest in companies actively and substantially engaged in trust business;

3. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

4. Shall not be the same as, or deceptively similar to, the name of any other entity organized or registered under this Code; and

5. Shall not contain the words "Navajo Nation" or "Navajo Tribe", nor in any way imply that it is associated with the Navajo Nation government or a Navajo Nation entity, unless the Navajo Nation is a majority stockholder.

**History**

CJA-2-86, January 30, 1986.

**Article 2. Organic Documents**

**§ 3106. Incorporators**

One or more persons may act as incorporators of a corporation by signing and filing in duplicate with the department articles of incorporation. Upon filing of the articles of incorporation and compliance with applicable regulations, the Department shall issue a certificate of incorporation.

**History**

CJA-2-86, January 30, 1986.

**Note.** The "Department", as referred to in this Subchapter, is the Business Regulatory Department within the Division of Economic Development.

**§ 3107. Contents of articles of incorporation**

A. The articles of incorporation shall set forth:

1. The name of the corporation;
2. The period of duration, which may be perpetual;
3. The purpose or purposes for which the cooperation is organized;
4. A brief statement of the character of the business which the corporation initially intends to conduct;
5. The class and aggregate number of shares which the corporation shall have the authority to issue and the par value of each of said shares, or a statement that all of said shares are without par value;
6. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation;
7. The address, including street and number, if any, of its principal office, and the name of its initial registered agent at such address;
8. The number of directors constituting the initial board of directors and the names and addresses, including street and number, if any, of the persons who are to serve as directors until the first annual meeting of shareholders; or until their successors are elected and qualified. The minimum number of directors constituting the initial board shall be one;
9. The name and address, including street and number, if any, of each incorporator; and
10. A provision stating that the corporation will agree to abide by all criminal, civil and regulatory laws of the Navajo Nation.

B. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Chapter. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

C. The articles of incorporation may provide for arbitration of any deadlock or dispute involving the internal affairs of the corporation.

### **History**

CJA-2-86, January 30, 1986.

### **Annotations**

#### **1. Construction and application**

"We believe the Navajo Nation possesses the same authority over corporations organized under Navajo law, as such corporations elected to incorporate under Navajo law, and therefore must abide by Navajo law as a condition of their existence. Cf. 5 N.N.C. § 3107(A)(10) (requiring explicit agreement by

for-profit corporations to abide by Navajo law in articles of incorporation)." *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 7 (Nav. Sup. Ct. February 11, 2004).

**§ 3108. Effect of issuance of certificate of incorporation**

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Chapter, except as against the Navajo Nation in a proceeding to cancel or revoke the certificate of incorporation.

**History**

CJA-2-86, January 30, 1986.

**§ 3109. Bylaws**

The power to make, alter, amend, or repeal the bylaws of the corporation shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law, or the articles of incorporation.

**History**

CJA-2-86, January 30, 1986.

**Article 3. Stock and Stockholders**

**§ 3110. Power to issue shares**

Each corporation shall have the power to create and issue the number of shares in its articles of incorporation.

**History**

CJA-2-86, January 30, 1986.

**§ 3111. Subscriptions, considerations, payment for shares, and determination of amount of stated capital**

Subscriptions, consideration, payment for shares and determination of amount of stated capital, shall be governed consistent with the provisions of the Model Business Corporation Act (as revised and approved as of January 1, 1986, by the American Bar Association Committee on Corporate Laws).

**History**

CJA-2-86, January 30, 1986.

**§ 3112. Transfer of stock**

Stock shall be freely alienable except to the extent restricted by the articles of incorporation or bylaws, and except that this Section shall not be construed to restrict the operations of applicable blue sky or securities laws. No public offering of a security may be made without proof to the Department of compliance with such applicable blue sky or securities laws.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3113. Denial or restriction of voting rights**

A corporation may deny or restrict the voting rights of any of its stock, in its articles of incorporation, so long as it does not restrict or deny voting class shareholders' right to cumulative voting and preemptive right to acquire additional shares of the corporation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3114. Expenses of organization, reorganization, and financing**

The reasonable charges and expenses of organization or reorganization of a corporation may be paid out of the consideration received by the corporation in payment for its shares without thereby rendering such shares not fully paid.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3115. Stock certificates; representation of shares; signers; restrictions or limitations on transferability; contents**

A. The shares of a corporation shall be represented by certificates signed by the president. In case any officer who has signed such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if such officer had not ceased to hold such office at the date of its issue.

B. Every certificate representing shares, the transferability of which is restricted or limited, shall set forth a summary statement of any such restriction or limitation upon the transferability of such shares, on its face, and shall set forth on the back thereof a full statement of any such restriction or limitation upon the transferability of such shares, or shall state that the corporation will furnish to any shareholder upon request and without charge such statement.

C. Each certificate representing shares shall also state:

1. That the corporation is organized under the laws of the Navajo Nation;

2. The name of the person to whom issued;

3. The number and class of shares which such certificate represents; and

4. The par value of each share represented by such certificate, or a statement that the shares are without par value.

D. No certificate shall be issued for any share until such share is fully paid.

### **History**

CJA-2-86, January 30, 1986.

### **§ 3116. Liability of subscribers and shareholders**

A. A holder or a subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued, which, as to shares having a par value, shall be not less than the par value thereof, except as set forth in Subsection (C) below. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid, shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

B. No person holding shares as executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall be personally liable as a shareholder, but the shareholder estate and funds in the hands of said executor, administrator, conservator, guardian, trustee, assignee, or receiver shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

C. A holder or subscriber to shares of a corporation is presumed not to be personally liable for the debts of the corporation, but may be personally liable to the corporation in proportion to their ownership interest, after all assets of the corporation have been applied to claims of creditors, and the debts, obligations and liabilities of the corporation are not thereafter paid and discharged, to the extent determined by the court based upon the application of general decisional law relating to the piercing of the corporate veil, pursuant to 7 N.N.C. § 204. The court may consider in making shareholders liable hereunder, whether under the circumstances giving rise to claims of creditors, the acts or omissions by the corporation involved:

1. Fraud;
2. Misrepresentation;
3. Thin-capitalization;
4. Ultra-hazardous activities;



5. Violation of applicable consumer protection laws;
6. Criminal wrong-doing;
7. Failure to maintain a reasonable amount of liability insurance coverage for the acts or omissions of its directors, officers, employees or agents; or
8. Failure to comply with any provision of this Code.

D. No right to contribution shall exist between the shareholders and no liability under this Section shall be asserted more than one year from the later of the time a creditor's claim in tort or contract accrued or the date such claim should have been discovered.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3117. Voting of shares; exclusion of shares or corporation's own stock; determination of number of outstanding shares**

A. Unless otherwise provided in the articles of incorporation, each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

B. Shares of treasury stock belonging to a corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.

C. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his/her duly authorized attorney in fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his/her personal representatives or assigns; but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold, until the contract of pledge or sale is fully executed.

D. In all elections for directors every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by him/her, for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of such directors multiplied by the number of his/her shares shall equal, or to distribute such votes on the same principle among any number of such candidates.

#### **History**

CJA-2-86, January 30, 1986.

**§ 3118. Certain holders; proxy presumed valid**

A. Shares outstanding in the name of another corporation may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. A proxy purporting to be executed by a corporation shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

B. Shares outstanding in the name of a deceased person may be voted by his/her administrator or executor, either in person or by proxy. Shares outstanding in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy, but no guardian, conservator, or trustee shall be entitled, as such fiduciary, to vote shares held by him/her without evidence of the guardian, conservator, or trust relationship with the shareholder.

C. Shares outstanding in the name of a receiver or a trustee in bankruptcy may be voted by such a receiver or trustee, and shares held by or under the control of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee without the transfer thereof into his/her name, if authority to do so be contained in an appropriate order of the court, by which such receiver or trustee in bankruptcy was appointed.

D. Shares outstanding in the name of a partnership may be voted by any partner. A proxy purporting to be executed by a partnership shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

E. Shares outstanding in the name of two or more persons as joint tenants, or tenants in common, or tenants by the entirety, may be voted in person or by proxy by any one or more of such persons. If more than one of such tenants shall vote such shares, the vote shall be divided among them in proportion to the number of such tenants voting in person or proxy unless a different apportionment by such tenants is requested in writing prior to the vote.

**History**

CJA-2-86, January 30, 1986.

**§ 3119. Stockholders' meetings**

A. The bylaws of a corporation shall provide for an annual meeting of stockholders.

B. Meetings of shareholders may be held at such place within or without the boundaries of Navajo Indian Country as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the principal office of the corporation.

C. Special meetings of the shareholders may be called by the president, the secretary, the board of directors, the holders of not less than one-fifth of all the outstanding shares entitled to vote, or by such other officers or persons as may be provided in the articles of incorporation, or the bylaws.

### **History**

CJA-2-86, January 30, 1986.

#### **§ 3120. Notice**

A. Except as provided herein, written or printed notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting.

B. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his/her address as it appears on the records of the corporation, with postage thereon prepaid.

C. Notice may be waived in writing by any shareholder, and will be deemed to be waived by any shareholder attending the meeting in person.

### **History**

CJA-2-86, January 30, 1986.

#### **§ 3121. Quorum of shareholders required**

A. Unless otherwise provided in the articles of incorporation, or bylaws, a majority of the outstanding shares having voting power, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders; provided, that in no event shall a quorum consist of less than one-third of the outstanding shares having voting power.

B. The shareholders present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

C. If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, at which time any business may be transacted that may have been transacted at the meeting as originally called.

D. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number is required by this Chapter, or the articles of incorporation; provided however, that in elections of directors, those receiving the greatest number of votes shall be deemed elected even though not receiving a majority.

### **History**

CJA-2-86, January 30, 1986.

**§ 3122. Dividends declaration and payment on outstanding shares; restrictions on payment on dividends**

The board of directors of a corporation may declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, subject to the following provisions:

A. No dividend shall be declared or paid at a time when the corporation is insolvent or its net assets are less than its stated capital, or when payments thereof would render the corporation insolvent or reduce its net assets below its stated capital;

B. Dividends may be paid out of earned surplus or surplus arising from the surrender to the corporation of any of its shares, provided that the source of such dividends shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof. The limitations of this Paragraph shall not limit nor be deemed to conflict with the provisions of this Chapter in respect of the distribution of assets as a liquidating dividend;

C. If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred from earned surplus to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregated par value of the shares to be issued as a dividend;

D. If a dividend is declared payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred from earned surplus to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregated value so fixed in respect of such shares. The amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof;

E. A split-up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this Section;

F. No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation; and

G. Subject to any restrictions contained in its articles of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (oil, gas or other minerals) may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such wasting assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation, and may pay dividends from the net profits so determined by the directors.

**History**

CJA-2-86, January 30, 1986.

**Note.** Section renumbered for consistent Code format. (2004)

**§ 3123. Stockholders' right on inspection**

A stockholder of a corporation or his/her agent may inspect and copy during usual business hours any records or documents of the corporation relevant to its business and affairs, including any:

- A. Bylaws;
- B. Minutes of the proceedings of the stockholders and directors;
- C. Annual statement of affairs;
- D. Stock ledger; and
- E. Books of account.

**History**

CJA-2-86, January 30, 1986.

**Note.** Section renumbered for consistent Code format. (2004).

**§ 3124. Statement of affairs**

A. Once during each calendar year, one or more stockholders of a corporation may present to any officer of the corporation a written request for a statement of its affairs.

B. Within 20 days after a request is made for a statement of corporation's affairs, the corporation shall prepare and have available on file at its principle office a statement, verified under oath by its president or treasurer or its Vice-President or assistant treasurer, which sets forth fairly and accurately, in reasonable detail, the corporation's assets and liabilities as of a reasonable current date. This statement once prepared, shall fulfill the request for such a statement made by any shareholder for the following 12 months.

**History**

CJA-2-86, January 30, 1986.

**Article 4. Board of Directors; Officers**

**§ 3125. Organization meeting of Directors**

Unless otherwise provided in the articles of incorporation, after the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held within the United States, at the call of a majority of the directors so named, for the

purpose of adopting bylaws, electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five days notice thereof by mail to each director so elected, which notice shall state the time and place of the meeting; provided however, that if all the directors shall waive notice in writing and fix a time and place for said organization meeting, no notice shall be required of such meeting.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3126. Board of Directors; powers authorized; qualifications**

A. The business and affairs of a corporation shall be managed by a board of directors. Directors need not be shareholders in the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

B. Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any director, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers, or otherwise.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3127. Number; election**

The number of directors shall be fixed by the bylaws, except as to the number constituting the first board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of share holders or until their successors shall have been elected and qualified. Each director shall hold office for the term for which he/she is elected or until his/her successor shall have been elected and qualified.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3128. Classification**

The bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. Absent any

such classifications the term of a director shall be for one year. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3129. Vacancies**

Any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual meeting or at a special meeting of shareholders entitled to vote called for that purpose. Any vacancy occurring in the board of directors for any cause other than by reason of an increase in the number of directors may be filled by an affirmative vote of a majority of the remaining directors, unless the articles of incorporation otherwise provide. A director elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3130. Quorum**

A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3131. Executive committee; powers**

If the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors then of the number stated in the articles of incorporation, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the bylaws of the corporation shall have and may exercise all of the authority of the board of directors in the management of the business and affairs of the corporation, but, the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

### **History**

CJA-2-86, January 30, 1986.

### **§ 3132. Place of meetings; special meetings**

Meetings of the board of directors, regular or special, may be held at such place within or without the boundaries of Navajo Indian Country as may be provided in the bylaws or by resolution adopted by a majority of the board of directors.

### **History**

CJA-2-86, January 30, 1986.

### **§ 3133. Notice of meetings; waiver of notice**

Meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

### **History**

CJA-2-86, January 30, 1986.

### **§ 3134. Officers; powers authorized**

A. The officers of a corporation shall consist of at least a president and secretary, and may additionally consist of one or more vice-presidents and a treasurer, as may be prescribed by the bylaws. Each officer shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. If the bylaws so provide, any two or more offices may be held by the same person.

B. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

### **History**

CJA-2-86, January 30, 1986.

### **§ 3135. Removal**



Any officer or agent elected or appointed by the board of directors may be removed by a majority vote of the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3136. Execution of documents**

Notwithstanding any contrary provision of law, an individual who holds more than one office in a corporation may act in more than one capacity to execute, acknowledge, or verify any instrument required to be executed, acknowledged, or verified by more than one officer.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3137. Books and records; requirements for right to examine and make extracts therefrom**

A. Each corporation shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its principal place of business or at the office, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Books, records and minutes shall be in written form, or in any other form capable of being converted into written form within a reasonable time.

B. Nothing herein contained shall impair the power of the court upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him/her, to compel by mandamus or otherwise the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3138. Liability of directors in certain cases**

A. In addition to any other liabilities imposed by law upon directors of a corporation:

1. Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this Chapter or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets

which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this Chapter or the restrictions in the articles of incorporation;

2. Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this Chapter or contrary to any restrictions contained in the articles of incorporation shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this Chapter; and

3. The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

B. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter under Subsection (A) is taken shall be presumed to have assented to the action taken unless his/her dissent shall be entered in the minutes of the meeting or unless he/she shall file his/her written dissent to such action with the secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered or certified mail to the secretary of the corporation before five o'clock in the afternoon of the next day which is not a holiday or a Saturday after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

C. A director shall not be liable under Subsection (A) if he/she relied and acted in good faith upon financial statements of the corporation represented to him/her to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he/she be so liable if in good faith in determining the amount available for any such dividend or distribution he/she considered the assets to be fairly valued at their book value.

D. Any director against whom a claim shall be asserted under or pursuant to this Section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing or who should have reasonably known that such dividend or distribution to have been made in violation of this Chapter, in proportion to the amounts received by them.

E. Any director against whom a claim shall be asserted under or pursuant to this Section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

F. No liability under this Section shall be asserted more than one year from the later of the time the claim accrued or the date such claim should have been discovered.

#### **History**

CJA-2-86, January 30, 1986.

### **Article 5. Merger and Dissolution**

#### **§ 3139. Voluntary dissolution, consolidation, merger, or transfer of assets**

A voluntary dissolution, consolidation, merger or transfer of assets of a corporation shall be made in a manner consistent with the provisions applicable to domestic corporations under the corporation laws in the Model Business Corporation Act and Model Non-profit Corporation Act (as revised and approved as of January 1, 1986, by the American Bar Association Committee on Corporate Laws). However, approval of any proposed voluntary dissolution, consolidation, merger or transfer of assets under this Chapter requires the affirmative vote of at least a majority of stockholders of the corporation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3140. Involuntary dissolution by shareholders**

Any stockholder of a corporation may petition the court for dissolution of the corporation on the ground that there is such internal dissension among the stockholders of the corporation that the business and affairs of the corporation can no longer be conducted to the advantage of the stockholders generally.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3141. Involuntary dissolution by Attorney General of the Navajo Nation**

A corporation may be dissolved involuntarily by a judgment of the court in an action filed against it by the Attorney General when any one of the following is established:

- A. The corporation has failed to comply with the provisions of this Code or regulations promulgated thereunder;
- B. The corporation procured its formation through fraudulent misrepresentation or concealment of material fact;
- C. The corporation has violated the laws of the Navajo Nation;
- D. The corporation has failed to file the statement of change of

registered agent required by this Chapter within 30 days after such change is duly authorized by the corporation; or

E. The corporation has continued or persisted over a period of time to conduct its business in a fraudulent or otherwise illegal manner.

### **History**

CJA-2-86, January 30, 1986.

**Note.** Section renumbered for consistent Code format. (2004).

### **§ 3142. Revocation by Department**

A. The articles of incorporation of a corporation may be revoked by the Department if the corporation has failed to comply with the provisions of this Code or regulations promulgated thereunder.

B. The articles of incorporation shall not be revoked by the Department unless:

1. It shall have given the corporation not less than 60 days notice thereof by mail addressed to the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business; and

2. Specifies the violation and gives the corporation a reasonable opportunity to comply or cure said violation.

C. Upon such revocation, the Department shall:

1. Issue a certificate of revocation in duplicate;

2. File one such certificate in its office; and

3. Mail to such corporation at the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation.

D. Upon the issuance of such certificate of revocation, the existence of such corporation shall terminate, subject to the provisions of Subsection (E) of this Section. If the corporation has not applied for reinstatement within the six month period following the issuance of a certificate of revocation, the Department shall release the corporate name for use by any proposed domestic corporation, any foreign corporation applying for authority to do business within Navajo Indian Country or for use by a person intending to register the name as a trade name.

E. A corporation may apply for reinstatement within six months from the date a certificate of revocation is issued by the Department. If none of the conditions set forth in Subsection (A) of this Section exists at the time of such application of reinstatement and, if such corporation has paid all fees, penalties, and costs incurred by the Department, the Department shall issue a certificate of reinstatement.

F. The Department shall make available to the public a list, compiled annually, of the corporations whose articles of incorporation were revoked during the preceding year.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3143. Venue and process**

Actions by the Attorney General for the involuntary dissolution of a corporation shall be commenced either in the court in which the known place of business or registered agent of the corporation is situated, or if the corporation has failed to maintain a registered agent or known place of business, then in the court of Window Rock. Process shall issue and be served as in other civil actions.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3144. Jurisdiction of Court to liquidate assets and business of corporation**

The Court shall have full power to liquidate the assets and business of a corporation. It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3145. Procedure in liquidation of corporation by Court**

A. In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

B. After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings, and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sales. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders

according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

C. The court shall have power to allow from time to time as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceedings, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

D. A receiver of a corporation appointed under the provisions of this Section shall have authority to sue and defend in all courts in his/her own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction over the corporation and its property, wherever situated.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3146. Filing of claims in liquidation proceedings**

In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day of the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3147. Discontinuance of liquidation proceedings**

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3148. Judgment of involuntary dissolution**

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and

liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, and all the property and assets have been applied to their payment, the court shall enter a judgment dissolving the corporation, whereupon the existence of the corporation shall cease.

#### **History**

CJA-2-86, January 30, 1986.

**Note.** The "Department" as referred to in this Section is the Business Regulatory Department within the Division of Economic Development.

#### **§ 3149. Filing of judgment of dissolution**

When the court enters a judgment dissolving a corporation, the clerk of such court shall cause a certified copy of the judgment to be filed with the Department. No filing fee shall be charged by the department.

#### **History**

CJA-2-86, January 30, 1986.

**Note.** The "Department" as referred to in this Section is the Business Regulatory Department within the Division of Economic Development.

#### **§ 3150. Deposit with Division of Finance of amount due certain shareholders**

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Division of Finance and shall be paid over to such creditor or shareholder or to his/her legal representative upon proof satisfactory to the Division of Finance of his/her right thereto, and shall escheat to the Navajo Nation if unclaimed for a period of not less than five years.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3151. Survival of remedy after dissolution**

The dissolution of a corporation either by the issuance of a certificate of dissolution or revocation by the Department, or dissolution of a judgment of the court, or by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers or shareholders, for any right to claim existing, or any liability incurred, prior to such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of

its period of duration, such corporation may amend its articles of corporation at any time within five years of the expiration of its period of duration.

#### **History**

CJA-2-86, January 30, 1986.

### **Article 6. Registered Agent**

#### **§ 3152. Registered agent required**

Each corporation shall have and continuously maintain within Navajo Indian Country a registered agent, which agent may be either an individual resident within Navajo Indian Country or a corporation authorized by its own articles of incorporation to act as such agent and authorized to transact business within Navajo Indian Country.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3153. Change of registered agent**

A. A corporation may change its registered agent by filing with the Department a statement setting forth:

1. The name of the corporation;
2. The name and address of its then-registered agent;
3. The name and address of its successor registered agent;
4. The date upon which such change shall take effect; and

5. That such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

B. Such statement shall be executed in duplicate by the corporation and delivered to the Department. If the Department finds that such statement conforms to the provisions of this Chapter, it shall:

1. Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
2. File one of such duplicate originals in its office; and
3. Return the other duplicate original to the corporation or its representative.

C. The change of registered agent shall become effective upon the filing of such statement by the Department.



D. Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Department, which shall forthwith mail one copy thereof to the corporation at its principal office as shown on the records of the Department. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the Department or upon the appointment of a successor agent becoming effective, which ever occurs first. No fee or charge of any kind shall be imposed with respect to a filing under this Subsection.

E. A registered agent may change his/her address by filing with the Department a statement setting forth:

1. The name of the registered agent;
2. The present address, including street and number, if any, of such registered agent;
3. The names of the corporation or corporations represented by such registered agent at such address;
4. The address, including street and number, if any, to which the office of such registered agent is to be changed; and
5. The date upon which such change will take place.

F. Such statement shall be executed in duplicate by such registered agent in his/her individual name, but if such agent is a corporation, domestic or foreign, such statement shall be executed by such corporation by its president or Vice-President and delivered to the Department. However, if the registered agent represents more than one corporation, he/she shall file an additional copy for such additional corporation. If the Department finds that such statement conforms to law, it shall, when all fees and charges have been paid as prescribed in this Chapter:

1. Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;
2. File one of such duplicate originals in its office; and
3. Return the other duplicate original to the registered agent.

G. The change of address of such registered agent as to the domestic corporation or corporations named in such statement shall become effective upon the filing of such statement by the Department, or on the date set forth in such statement as the date on which such change of location of such registered office will take place, whichever is later.

#### **History**

CJA-2-86, January 30, 1986.

**§ 3154. Registered agent as an agent for service; service when no registered agent**

A. The registered agent so appointed by a corporation shall be an agent of such corporation upon whom process against the corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be made by delivering a copy of such process, notice, or demand to any officer, director or managing agent of the corporation, in lieu of the registered agent.

B. Whenever a corporation shall fail to appoint or maintain a registered agent within Navajo Indian Country, or whenever any such registered agent cannot with reasonable diligence be found at his/her office within Navajo Indian Country or whenever the articles of incorporation of any domestic corporation shall be revoked, then the Department shall be an agent of such corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service upon the Department of any such process, notice, or demand shall be made by delivering to and leaving with the Department, or with any clerk having charge of its office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is so served, the Department shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office.

C. The Department shall keep a permanent record of all processes, notices, and demands served upon it under this Section, and shall record therein the time of such service and its action with respect thereto.

D. Service of process upon the Department as agent, pursuant to this Section shall not constitute an action against or service upon the Navajo Nation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3155. Failure to maintain registered agent**

Any corporation incorporated or reincorporated under this Code which fails or refuses to maintain a registered agent within Navajo Indian Country, in accordance with the provisions of this Chapter, shall be subject to a civil sanction in the amount of two hundred fifty dollars (\$250.00). The Attorney General upon the recommendation of the Department shall seek the imposition of such in the Window Rock District Court.

#### **History**

CJA-2-86, January 30, 1986.

### **Article 7. Filings; Amendments**

#### **§ 3156. Articles of incorporation; procedure for filing**

A. Duplicate originals of the articles of incorporation shall be

delivered to the Department. If the Department finds that the articles of incorporation conform to law, it shall, when all fees have been paid as to this Chapter prescribed:

1. Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

2. File one of such duplicate originals in its office; and

3. Issue a certificate of incorporation to which it shall affix the other duplicate original. Such certificate of incorporation may be evidenced by the signature of the director of the Department or his/her designee on the duplicate original of the articles of incorporation.

B. The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the Department shall be delivered to the incorporators or their representatives.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3157. Amendment of articles of incorporation; contents restricted; purposes**

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired; provided, that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and, if a change in shares or the rights of shareholders, or any exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation are stated.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3158. Procedures before acceptance of subscription to shares**

Amendments to the articles of incorporation before any subscriptions to shares have been accepted by the board of directors shall be made in the following manner:

A. Amended articles of incorporation modifying, changing, or altering the original articles of incorporation shall be signed by all of the living or competent incorporators who signed the original articles of incorporation and filed with the Department. Such amended articles of incorporation shall contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amended articles of incorporation;

B. Such amended articles of incorporation shall be delivered in duplicate original to the Department. If the Department finds that such amended articles of incorporation conform to law, it shall, when all fees

have been paid as in this Chapter prescribed:

1. Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

2. File one of such duplicate originals in its office; and

3. Issue an amended certificate of incorporation, to which it shall affix the other duplicate original. Such certificate may be evidence in the same manner as provided in § 3156(A)(3);

C. The amended certificate of incorporation with the duplicate original of the amended articles of incorporation affixed thereto shall be delivered to the corporation or its representative; and

D. Upon the issuance of the amended certificate of incorporation, the amended articles of incorporation shall become effective and shall take the place of the original articles of incorporation.

#### **History**

CJA-2-86, January 30, 1986.

**Note.** Section renumbered for consistent Code format. (2004).

#### **§ 3159. Procedures after acceptance of subscription to shares**

Amendments to the articles of incorporation after acceptance of any subscriptions to shares shall be made in the following manner:

A. The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

B. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effective thereby shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting;

C. At such meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote; and

D. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

#### **History**

CJA-2-86, January 30, 1986.

**Note.** Section renumbered for consistent Code format. (2004).

**§ 3160. Articles of amendment; contents**

A. The articles of amendment shall be executed in duplicate by the corporation by its president or a Vice-President and shall be set forth:

1. The name of the corporation;
2. The amendment so adopted;
3. The date of the adoption of the amendment by the shareholders;
4. The number of shares outstanding and the number of shares entitled to vote;
5. The number of shares voted for and against such amendment, respectively;
6. If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected; and
7. If such amendment effects a change in the amount of stated capital, or paid-in surplus, or both, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of capital surplus, either stated capital or paid-in surplus, as changed by such amendment.

B. If issued shares without par value are changed into the same or a different number of shares having par value, the aggregate par value of the shares into which the shares without par value are changed shall not exceed the sum of:

1. The amount of stated capital represented by such shares without par value;
2. The amount of surplus, if any, transferred to stated capital on account of such change; and
3. Any additional consideration paid for such shares with par value and allocated to stated capital.

**History**

CJA-2-86, January 30, 1986.

**§ 3161. Procedure for filing**

A. Duplicate originals of the articles of amendment shall be delivered to the Department. If it appears to the Department that the articles of amendment conform to law, it shall, when all fees have been paid as in this Chapter

prescribed:

1. Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof,

2. File one of such duplicate originals in its office; and

3. Issue a certificate of amendment to which it shall affix the other duplicate original. Such certificate may be evidenced in the same manner as provided in § 3156(A)(3).

B. The certificate of amendment with the duplicate original of the articles of amendment affixed thereto shall be delivered to the corporation or its representative.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3162. Effect of certificate of amendment**

A. Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

B. No amendment shall effect any existing cause of action in favor of or against such corporation, or any pending suit to which the corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

#### **History**

CJA-2-86, January 30, 1986.

### **Article 8. Department; Fees and Charges**

#### **§ 3163. Department; duties and functions**

A. The Department shall be charged with the administration and enforcement of this Code. Said Department is authorized to employ such personnel as may be necessary for the administration of this Code.

B. Every certificate and other document or paper executed by the Department, in pursuance of any authority conferred upon it by this Chapter, and sealed with the seal of the Navajo Nation, and all copies of such papers as well as of documents and other papers filed in accordance with the provisions of this Chapter, when certified by it and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceedings in any court and before a public officer, or official body.

C. The Department is authorized to promulgate, upon the review and

approval of the Attorney General and the Economic Development Committee of the Navajo Nation Council, regulations to effectuate the policies and purposes of this Code, or to modify or vary any provision of this Code incorporating by reference any Model Corporation Act. Provided, the Department shall set forth in such regulations what specific policy or purpose is purported to be furthered by such regulation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3164. Fees and charges**

The Department shall impose fees and charges in accordance with schedules promulgated by regulation pursuant to § 3163, provided however, the initial fee for filing of articles of incorporation shall be ten dollars (\$10.00).

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3165. Non-payment of fees; sanctions**

A. The Department shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation organized under the provisions of this Chapter until all fees and charges provided to be paid in connection therewith shall have been paid to it or while the corporation is in default in the payment of any fees charges, or sanctions herein provided to be paid by or assessed against it. Nothing in this Section shall prevent the filing, without the payment of all such fees, charges, and sanctions, of a written notice of resignation by a registered agent of a corporation.

B. No corporation required to pay a fee, charge, or sanction under this Chapter shall maintain within Navajo Indian Country any civil action until all such fees, charges, and sanctions have been paid in full.

C. The Navajo Nation shall have the right to offset any amounts due and owing from a corporation under this Code against payments due from the Navajo Nation to such corporation.

#### **History**

CJA-2-86, January 30, 1986.

### **Article 9. Foreign Corporation**

#### **§ 3166. Admission of foreign corporation**

A. No foreign corporation shall have the right to transact business within Navajo Indian Country until it shall have been authorized to do so as provided in this Chapter. No foreign corporation shall be authorized under this Chapter to transact within Navajo Indian Country any business which a

corporation organized under this Chapter is not permitted to transact. A foreign corporation shall not be denied authority by reason of the fact that the laws under which such corporation is organized governing its organization and internal affairs differ from the laws of this Chapter, and nothing in this Chapter shall be construed to authorize regulation of the organization or the internal affairs of such corporation.

B. Without excluding other activities which may not constitute transacting business within Navajo Indian Country, a foreign corporation shall not be considered to be transacting business within Navajo Indian Country, for the purposes of this Chapter, by reason of carrying on within Navajo Indian Country any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

2. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

3. Maintaining checking or savings accounts;

4. Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;

5. Effecting sales through independent contractors;

6. Soliciting or receiving orders outside Navajo Indian Country in pursuance of letters, circulars, catalogs or other forms of advertising or solicitation and accepting such orders outside Navajo Indian Country and filling them with goods shipped into Navajo Indian Country;

7. Creating as borrower or lender, or acquiring indebtedness, mortgages or other security interests in real or personal property; or

8. Securing or collecting debts or enforcing any rights in property securing the same.

C. The provisions of this Section shall not apply to the question of whether any foreign corporation is subject to service of process and suit within Navajo Indian Country.

D. The Department may promulgate regulations governing the registration and regulation of unincorporated associations, consistent with the policies and purposes contained herein.

### **History**

CJA-2-86, January 30, 1986.

### **§ 3167. Powers of foreign corporation**

A foreign corporation authorized to transact business under this Chapter



shall, until withdrawal as provided in this Chapter, enjoy the right to engage in any lawful activities, and shall be subject to the applicable provisions of this Chapter.

### **History**

CJA-2-86, January 30, 1986.

### **§ 3168. Corporate name of foreign corporation**

No authority shall be given a foreign corporation unless the corporate name of such corporation:

A. Shall contain the word "association", or "bank", "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words, or such corporation shall, for use within Navajo Indian Country, add at the end of its name one of such words or an abbreviation thereof;

B. Shall not contain any word or phrase likely to mislead the public or which indicates or implies that it is organized for any purpose other than any specific purpose contained in its articles of incorporation;

C. Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of the Navajo Nation, or any foreign corporation authorized to transact business within Navajo Indian Country, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Chapter or any trade name, except that this provision shall not apply if the foreign corporation applying for authority files with the department any one of the following:

1. A resolution of its board of directors adopting a fictitious name for use in transacting business within Navajo Indian Country which fictitious name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business within Navajo Indian Country of any trade name;

2. The written consent of such other corporation or holder of a reserved or trade name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

3. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name within Navajo Indian Country.

D. Notwithstanding the provisions of Subsection (A)(1) of this Section, shall not include the words "bank", "trust", or "trust company" separately or in combination to indicate or convey the idea that the corporation is engaged in banking or trust business unless such corporation is to be and becomes actively and substantially engaged in banking or trust business or such corporation is a holding company holding substantial interest in companies actively and substantially

engaged in banking or trust business; and

E. Shall not contain the words "Navajo Nation" or "Navajo Tribe", nor in any way imply that it is associated with the Navajo Nation government or a Navajo Nation entity.

#### **History**

CJA-2-86, January 30, 1986.

**Note.** Section renumbered for consistent Code format. (2004).

#### **§ 3169. Change of name by foreign corporation**

Whenever a foreign corporation which is authorized to transact business within Navajo Indian Country shall change its name to one under which authority would not be granted to it on application therefore, it shall not thereafter transact any business within Navajo Indian Country until it has changed its name to a name which is available to it under the laws of the Navajo Nation, or has otherwise complied with the provision of this Chapter.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3170. Application for authority to transact business**

A foreign corporation, in order to procure authority to transact business within Navajo Indian Country, shall make application therefor in accordance with regulations promulgated by the Department.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3171. Known place of business and registered agent of foreign corporation**

Each foreign corporation authorized to transact business within Navajo Indian Country shall have and continuously maintain within Navajo Indian Country:

A. A known place of business which shall be the office of its registered agent, unless otherwise designated in its application for authority; and

B. A registered agent, which agent may be either an individual resident of the Navajo Nation, a domestic corporation, or a foreign corporation authorized to transact business within Navajo Indian Country.

C. Notification of any change of the known place of business or registered agent of a foreign corporation shall be in accordance with regulations promulgated by the Department.

#### **History**

CJA-2-86, January 30, 1986.

**Note.** Section renumbered for consistent Code format. (2004).

**§ 3172. Service of process on foreign corporation**

A. The registered agent so appointed by a foreign corporation authorized to transact business within Navajo Indian Country shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served, and which, when so served, shall be lawful personal service on the corporation. Process, notice or demand may be served upon an officer, director or managing agent of the corporation in lieu of the registered agent.

B. Whenever a foreign corporation authorized to transact business within Navajo Indian Country shall fail to appoint or maintain a registered agent at the address shown on the records of the Department, the Department shall make available to any person the last known address of such corporation, its shareholders and officers upon whom any such process, notice or demand may be served. The litigant instituting an action shall be responsible for serving the corporation with process, in accordance with the Navajo Rules of Civil Procedure.

C. Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

**History**

CJA-2-86, January 30, 1986.

**§ 3173. Revocation of authority**

A. The authority of a foreign corporation to transact business within Navajo Indian Country may be revoked by the Department if the corporation fails to comply with the provisions of this Code or regulations promulgated thereunder.

B. The authority of a foreign corporation shall not be revoked by the Department unless:

1. It shall have given the corporation not less than 60 days notice thereof by mail addressed to the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation. Upon the issuance of such certification of revocation, the existence of such corporation shall terminate; and

2. It specifies the violation and gives the corporation a reasonable opportunity to comply or cure said violation.

C. Upon such revocation, the department shall:

1. Issue a certificate of revocation in duplicate;

2. File one such certificate in its office; and

3. Mail to such corporation at the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation. Upon the issuance of such certification of revocation, the existence of such corporation shall terminate.

D. The Department shall make available to the public a list, compiled annually, of the foreign corporations for which authority to transact business within Navajo Indian Country has been revoked during the preceding year.

### **History**

CJA-2-86, January 30, 1986.

### **§ 3174. Transacting business without authority**

A. No foreign corporation transacting business within Navajo Indian Country without authority shall be permitted to maintain any action, suit or proceeding in any Navajo Nation Court, until such corporation shall have been authorized to transact business. Nor shall any action, suit or proceeding be maintained in any such court by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation within Navajo Indian Country, until authority to transact business has been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

B. The failure of a foreign corporation to obtain authority to transact business within Navajo Indian Country shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any Navajo Nation Court.

C. A foreign corporation which transacts business within Navajo Indian Country without authority shall be liable to the Navajo Nation, for the years or portions thereof during which it transacted business within Navajo Indian Country without authority, in an amount equal to all fees which would have been imposed by this Chapter upon such corporation had it duly applied for, and received authority to transact business within Navajo Indian Country as required by this Chapter and thereafter filed all reports required by this Chapter, plus all penalties imposed by this Chapter for failure to pay such fees. The Attorney General shall have authority to bring proceedings to recover all amounts due the Navajo Nation under the provisions of this Section.

D. The Attorney General or any other person may bring and maintain an action to enjoin any foreign corporation from transacting business within Navajo Indian Country without authority. Upon a foreign corporation obtaining authority such action shall be dismissed but the plaintiff therein shall recover his/her costs and reasonable attorneys' fees. A determination by a court that a party to the action is a foreign corporation which was requested to, but, failed to qualify as a foreign corporation under this Chapter shall be prima facie evidence against such foreign corporation in any other action

brought by or against it by any other person of such requirement to and failure to qualify.

#### **History**

CJA-2-86, January 30, 1986.

### **Article 10. Reports and Filing**

#### **§ 3175. Annual report of domestic and foreign corporations**

Each domestic corporation, and each foreign corporation authorized to transact business within Navajo Indian Country, shall file with the Department an annual report and accounting in accordance with regulations promulgated by the Department.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3176. Civil liability for false statements**

A. If, as required by regulation, any report, certificate or other statement made, or public notice given by the officers or directors of a corporation is false in a material representation, or if any book, record or account of the corporation is knowingly or wrongfully altered, the officers, directors or agents knowingly or wrongfully authorizing, signing or making the false report, certificate, other statement or notice or authorizing or making the wrongful alteration are in their person jointly and severally liable to a person who has become a creditor or share holder of the corporation upon the faith in the false, material representation or alteration therein for all damages resulting therefrom.

B. An action for the liability imposed by this Section shall be commenced within two years after discovery of the false representation or alteration and within six years after the certificate, report, public notice or other statement or the alteration has been made or given by the officers, directors or agents of the corporation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3177. Civil investigatory demand or signature violations; corporate records; classification**

A. A person who knowingly fails or refuses within the time prescribed by this Chapter to answer truthfully and fully any civil investigatory demand propounded to him/her by the Department in accordance with this Chapter, or who signs any articles, statement, report, application or other document filed with the Department which is known to the person as false in any material respect, is guilty of a misdemeanor and is subject to a civil sanction of five hundred dollars (\$500.00), or a sentence not to exceed six months in jail, or both,

and, in the case of a non-Indian is subject to such civil sanction and exclusion from Navajo Indian Country.

B. A person who with the intent to defraud or deceive knowingly falsifies, alters, steals, destroys, mutilates, defaces, removes or secretes the books, records or accounts of a corporation is guilty of a misdemeanor and is subject to a civil sanction of five hundred dollars (\$500.00), or a sentence not to exceed six months in jail, or both, and, in the case of a non-Indian is subject to such civil sanction and exclusion from Navajo Indian Country.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3178. Civil investigative demands by the Department**

The Department may propound to any corporation, domestic or foreign, subject to the provisions of this Chapter, and to any director, officer, shareholders or employee thereof, such civil investigative demands as may be reasonably necessary and proper to enable it to ascertain whether such corporation has complied with all the provisions of this Chapter or applicable regulations promulgated thereunder. The Department may also depose directors, officers, shareholders or employees for the same purpose. The Department by regulations shall specify the manner and method of responding to such civil investigative demands.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3179. Public records; information disclosed by annual reports; certificates of disclosures civil investigative demands**

Articles of Incorporation, amendments thereto, dissolution and certificates of incorporation, dissolution, revocation or reinstatement shall be maintained on file by the Department and available for public inspection and copying. Annual reports or information received in response to regulations or civil investigative demands propounded by the Department shall not be open to public inspection, nor shall the Department disclose any facts or information obtained therefrom, except as the same are to be made public or in the event such civil investigative demands or the answers are required for evidence in any court proceeding.

#### **History**

CJA-2-86, January 30, 1986.

### **Article 11. Miscellaneous**

#### **§ 3180. Jurisdiction of Navajo Nation Courts**

A. The Court shall have original jurisdiction to the extent permitted by due process over any action against, or by, any domestic or foreign

corporation, or for actions arising under this Chapter including actions by an aggrieved party contesting acts or omissions by the Department, under this Chapter. In the case of contests of Department acts or omissions, the Department shall provide for informal hearings within 30 days of a written request. Such written request shall be filed within 10 days of the alleged act or omission giving rise to the contested issue. Timely filing of such shall be jurisdictional to any subsequent court proceeding. A decision by the Department on the contested issue shall be rendered in writing within 30 days from the date of such hearing. Failure to render such decision within 30 days shall constitute denial of the requested relief.

B. Within 30 days of a written decision or a denial of requested relief or a failure to act on a written request after 60 days of receipt of such request an aggrieved party may bring an action *de novo*, either in the court where the principle place of business is located or in the court in Window Rock, to compel, by injunctive or mandamus relief, the Department to discharge its statutory obligations or to refrain from violating such party's legal rights.

C. Nothing in this Section shall be construed as an exception to or repeal of the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, as may be amended from time to time.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3181. Certified copies to be received in evidence**

All copies of documents except for annual reports or responses to civil investigatory demands delivered to and filed by the Department in accordance with the provisions of this Chapter when certified by it, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Department under seal, as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3182. Greater voting requirements**

Whenever with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation or bylaws require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this Subchapter with respect to such action, the provisions of the articles of incorporation or bylaws shall control.

#### **History**

CJA-2-86, January 30, 1986.

**§ 3183. Action by shareholders without a meeting**

A. Any action required by this Chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting, if a consent in writing setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

B. Such consent shall have the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the Department under this Chapter.

**History**

CJA-2-86, January 30, 1986.

**§ 3184. Unauthorized assumption of corporate powers**

All persons who assume to act as a corporation without authority to do so, or who procured incorporation through fraudulent misstatements or omissions of material fact in documents filed with the Department, shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. Ratification of preincorporation acts constitute authority to act in a corporate capacity as used herein.

**History**

CJA-2-86, January 30, 1986.

**§ 3185. Indemnification of officers, directors, employees and agents**

A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, if he/she acted, or failed to act, in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the corporation, but, with respect to any criminal action or proceeding, the corporation shall not pay criminal fines for which a person is personally liable.

**History**

CJA-2-86, January 30, 1986.

**§ 3186. Defense of ultra vires**

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act, or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:



A. In a proceeding by a shareholder against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

B. In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation; or

C. In a proceeding by the Attorney General, as provided in this Chapter, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business.

#### **History**

CJA-2-86, January 30, 1986.

### **Subchapter 2. Close Corporations**

#### **History**

[Subchapter 2 redesignated] Common or Contract Carriers previously codified as Chapter 19, §§ 3201-3203 has been redesignated to Title 5, Chapter 3, Subchapter 2, §§ 411-413.

#### **§ 3201. Short title**

This Chapter shall be known and may be cited as the "Navajo Nation Close Corporation Act".

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3202. Definitions**

A. "Capital units" means the proportions of the proprietary interest in the corporation owned by the investors;

B. "Corporation" or "closed corporation" means a corporation for profit organized pursuant to the provisions of this Chapter;

C. "Good faith" or "in good faith" means an act or thing done when it is

in fact done honestly, whether it be done negligently or not;

D. "Investor" means one who is the owner of capital units in a close corporation; and

E. "Manager" means the person or persons named in the articles of incorporation, either originally or by amendment thereto, in the capacity of manager or assistant manager, and does not include any person who is not so named.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3203. Mandatory provisions of articles of incorporation**

A. The articles of incorporation of a close corporation shall set forth:

1. The name of the corporation which shall contain the words "close corporation" or an abbreviation therefor;

2. The name and address of the manager or managers of the corporation;

3. The names, addresses and amount of initial contribution of capital units of each of the original investors. The number of original investors shall not exceed 30;

4. The aggregate amount in dollars of the initial capital units to be paid to be the corporation; and

5. The name and address of the corporation's initial registered agent.

B. It shall not be necessary to set forth in the articles of incorporation any corporate powers or any corporate purposes.

#### **History**

CJA-2-86, January 30, 1986.

**Note.** Section renumbered for consistent Code format. (2004).

#### **§ 3204. Optional provisions of articles of incorporation**

The articles of incorporation of a close corporation may set forth any of the following:

A. The period of duration, if less than perpetual;

B. Any restrictions on the authority of the manager or managers of the close corporation;

C. Any reservations of authority to the investors;

D. Any restriction on the power of any investor to sell, transfer or to create a security interest in his/her capital units. No restriction on the power to sell, transfer or create a security interest shall be binding except as to persons who have actual knowledge thereof unless such restriction is set forth in the articles of incorporation;

E. Any restriction on the subsequent issuance of additional capital units;

F. Whether the corporation will have the power to acquire its capital units and if so any restrictions or limitations thereon. If no power to acquire its capital units is set forth in the articles of incorporation, the corporation may not acquire any of its outstanding capital units;

G. Any provisions which provide for arbitration or other non-judicial procedure seeking resolution of any dispute as provided in § 3206;

H. Any provisions for replacement or succession of a manager inconsistent with § 3205(D);

I. Any provision which either relieves the manager entirely of the obligation to make accountings to investors or which modifies the period or form of such accounting in a manner inconsistent with § 3205(E);

J. Any provision for annual or other periodic meetings of investors. If no such provision is set forth in the articles of incorporation, there shall be no requirement for meetings for investors;

K. Any requirement for bond or other security to be given to the corporation by a manager to secure the faithful performance of his/her duties;

L. Any restrictions upon competition by investors directly or indirectly with the business of the corporation;

M. Any provision for delegation of his/her authority by a manager;

N. Any provision for a dissolution option pursuant to § 3207;

O. Any provision for varying relationships among investors as to relative rights in capital units; and

P. Any other provisions consistent with law which the incorporators elect to set forth.

### **History**

CJA-2-86, January 30, 1986.

### **§ 3205. Managers**

A. All managers shall be natural persons. It is the purpose of this Chapter that the corporation be operated on a day-to-day basis by one manager, by managers having divided functions or by assistant managers who can serve

either as alternates to the manager or assume some portion of managerial responsibility. As among the corporation, its investors, and any manager, there shall be no limitations on the authority of a manager unless specifically limited by provisions of the articles of incorporation, the written employment contract of such manager, or the records of the corporation evidencing the acts of the investors. Any person other than manager or investor who deals in good faith with the corporation will not be subject to any limitation on the authority of any manager, even though such manager's authority is expressly limited in the articles of incorporation.

B. No manager may delegate any of his/her authority to any other agent, employee or representative of a corporation unless authority to do so is contained in the articles of incorporation or is granted by act of the investors.

C. Any manager shall have the same rights, duties, obligations and privileges as a person who is both a director and officer of a corporation for profit under the provisions of Subchapter 1, except as specifically modified in this Chapter.

D. Any manager may be replaced or succeeded by a new manager at any time by a majority of the votes of the investors, unless otherwise provide by the articles of incorporation. Such replacement shall be effective when a certificate of change of manager, sworn under oath by an investor is filed with the Department stating the name of the replaced manager and the name and address of the new manager and that such new manager was elected by the required vote.

E. Unless the articles of incorporation or vote of the investors provided otherwise, a manager shall mail to each investor an annual accounting and annual report. Such annual accounting and report shall be mailed or delivered to the investors within 30 days after the date filing is required.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3206. Settlement of disputes; arbitration**

The articles of incorporation may provide for arbitration of any deadlock or dispute involving the internal affairs of the corporation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3207. Option to dissolve**

A. The articles of incorporation of any corporation may include a provision granting to any investor or investors an option to have the corporation dissolved at will or upon the performance or occurrence of any specified event or contingency. Whenever any such option to dissolve is exercised, the investor or investors exercising such option shall give written notice thereof to all other investors. After the expiration of 30 days

following the mailing of such notice, the dissolution of the corporation shall proceed as if the required vote had consented to the dissolution of the corporation as provided by § 3139.

B. If the articles of incorporation as originally filed do not contain a provision authorized by Subsection (A) of this Section, the articles of incorporation may be amended to include such provision if adopted by the affirmative vote of all investors. If the articles of incorporation as originally filed contain a provision authorized by Subsection (A) of this Section, such provision may be amended only by the affirmative vote of all investors.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3208. Purposes**

Close corporations may be organized under this article for any lawful purpose or purposes.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3209. Capital units, transfer and encumbrances**

A. Until a statement substantially in the form set forth in Subsection (B) of this Section has been filed with the Department, any transfer, hypothecation, other voluntary encumbrance of security interest in, or of any capital unit or units shall be void as to creditors and subsequent purchasers for valuable consideration without notice.

B. The state of transfer, hypothecation or other voluntary encumbrance or security interest in or of any capital unit or units in a close corporation shall be acknowledged and be substantially in one of the following forms:

1. Transfer:

On the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the undersigned

(name of transferor) transferred to (name of transferee), whose address is (address of transferee) (all or a stated percentage) of the undersigned's interest in the capital units of (name of corporation), a Navajo close corporation.

\_\_\_\_\_

(Signature of transferor)

acknowledgment

2. Hypothecation, other voluntary encumbrance or security interest:

On the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the undersigned (name of debtor) hypothecated and voluntarily encumbered to (name of creditor) (all or a stated percentage) of the undersigned's interest in the capital units of (name of corporation), a Navajo close corporation.

\_\_\_\_\_

(Signature of debtor)

acknowledgment

### **History**

CJA-2-86, January 30, 1986.

### **§ 3210. Definition of relative rights of capital units**

"Relative rights of capital units" means all the rights, privileges, obligations and duties of the capital units and may include, but are not limited to, disproportionate variations of the following:

- A. Participation in dividends or distributions from operating income;
- B. Participation in dividends or distributions from income other than operating income;
- C. Participation in distributions of the proceeds of a sale of all or substantially all of the assets of the corporation with further disproportionate variation depending upon the degree of gain or loss;
- D. Participation in distribution upon liquidation or dissolution;
- E. Voting rights;
- F. Restrictions of limitations on transfer;
- G. The obligation to perform services or provide goods or other property to the corporation;
- H. The obligation to devote time and energies which are collateral to corporate purposes; and
- I. Assessments, if any.

### **History**

CJA-2-86, January 30, 1986.

### **§ 3211. Changes in investor relationship**

Unless otherwise provided by the articles of incorporation, any redemption, termination or cancellation of capital units, acquisition of capital units by the corporation, issuance of additional units or any change in the relative rights of capital units other than transfers or encumbrances

provided for in § 3209, shall be effective only upon an amendment of the articles of incorporation. The unanimous vote of all outstanding capital units shall be required to amend the articles of incorporation to create or to change the relative rights in capital units.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3212. Variable relative rights**

The articles of incorporation may provide for varying relationships among investors as to relative rights in capital units. It is not necessary that each close corporation provide in its articles of incorporation for variable relative rights of capital units as encumbered in this Section. Only those variable relative rights of capital units set forth in the articles of incorporation shall apply to the particular close corporation. When no provision is made in the articles of incorporation concerning a particular relative right of capital units, then that particular relative right of capital units shall be proportionate to the dollar amount of the capital units.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3213. Limitation of liability**

The investor shall not be liable for the debts, obligations or liabilities of the close corporation, except that investors will be held in the same standards as subscribers and shareholders as set forth in § 3116(C).

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3214. Appointment of conservator**

A. The court in which the known place of business or registered agent of the corporation is situated, may in an action by an investor, appoint a conservator or interim manager of the corporation if the court finds that a deadlock or dispute involving the internal affairs of the corporation impairs or threatens to impair the value of the assets or the continued conduct of the business of the corporation. Upon or subsequent to appointing such a conservator or interim manager, the court may enter orders, which, despite any contract or provision of the articles of incorporation to the contrary:

1. Suspend, revoke or nullify the authority, in whole or in part, of any existing manager or managers or any conservator or interim manager appointed in any arbitration pursuant to § 3206;
2. Define the authority of such conservator or interim manager;
3. Set the compensation of such conservator or interim manager to be paid by the corporation; and/or

4. Resolve, partially resolve or aid in the resolution of any such deadlock or dispute.

B. When any order or appointment is issued pursuant to Subsection (A) of this Section, the clerk of the court shall immediately supply a copy thereof to the Department.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3215. Involuntary dissolution or liquidation pursuant to court order**

The court shall have full power to liquidate the assets and business of a close corporation.

A. In an action filed by an investor when the court finds:

1. That a deadlock or dispute involving the internal affairs of the corporation, continues to impair or threatens to impair the value of the assets or the continued conduct of the business of the corporation, notwithstanding bona fide attempts to utilize the arbitration provisions in the articles of incorporation if available and the provisions of § 3214;

2. That a deadlock or dispute involving the internal affairs of the corporation, impairs or threatens to impair the value of the assets, or the continued conduct of the business of the corporation, and no provision is contained in the articles of incorporation for arbitration of such disputes and that it would be a useless effort to invoke the provisions of § 3214;

3. That the investors are so divided respecting the manager of the business and affairs of the corporation that either the corporation is suffering or will suffer irreparable injury, or the business and affairs of the corporation can no longer be conducted to the advantage of the investors generally, and the provisions of §§ 3206 and 3214 are inapplicable; or

4. That the corporation has abandoned its business and has failed within a reasonable period of time to take steps to dissolve and liquidate its affairs and distribute its assets.

B. In an action filed by the Attorney General in the manner provided by § 3141.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3216. Court relief other than dissolution, liquidation or appointment of conservator**



A. The court in an action filed by an investor seeking relief under § 3215, shall have full power to make any such order or grant any such relief other than dissolution or liquidation as in its discretion it may deem appropriate including but not limited to:

1. Canceling, altering or amending any provisions contained in the articles of incorporation of such close corporation;

2. Directing, prohibiting or enjoining any act of the corporation or other persons who are parties to the court action; or

3. Providing for the purchase by the corporation or by other investors at their fair market value the capital units of the person bringing such action.

B. Relief under this Section may be granted even though the court does not find any of the elements prescribed for relief under § 3215.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3217. Merger of close corporations**

Any two or more Navajo close corporations may merge as may be provided for pursuant to § 3139.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3218. Conversion of corporate status**

A. A close corporation may convert its status to that of a corporation organized pursuant to Subchapter 1 by amending its articles of incorporation to delete therefrom all reference to the term "close corporation", including its use in the name of the corporation, and to comply with § 3107. Such an amendment shall be adopted by a two-thirds vote of the voting rights of the capital units unless the articles of incorporation require a greater vote to convert. The articles of incorporation as amended shall also provide for the cancellation of capital units and the basis on which shares will be issued in lieu thereof.

B. The conversion of a close corporation is affected if there has been substantial compliance in good faith with the requirements of Subsection (A) of this Section.

C. A corporation organized pursuant to Subchapter 1 having 30 or fewer shareholders may convert its status to that of a close corporation and be subject to the provisions of this article by amending its articles of incorporation to comply with § 3203. A resolution so amending its articles of incorporation shall be adopted by the unanimous vote of all shareholders whether otherwise entitled to vote or not. The resolution amending the articles of incorporation shall provide for the cancellation of all issued

outstanding shares of stock and state the relative rights of capital units.

D. No conversion pursuant to this Section shall be deemed a termination or dissolution of the corporate entity or a sale or exchange of the shares of capital units.

#### **History**

CJA-2-86, January 30, 1986.

### **§ 3219. Application of General Corporation Law**

Close corporations organized pursuant to this Subchapter are subject to the provisions of Subchapter 1 except insofar as this Subchapter modifies or differs from such provision, in which case this Chapter prevails. This Chapter shall be applicable to all close corporations except as otherwise provided. This Chapter shall be construed to simplify the management, structure, and operations of close corporations.

#### **History**

CJA-2-86, January 30, 1986.

## **Subchapter 3. Non-Profit Corporations**

### **§ 3301. Short title**

This Chapter shall be known and may be cited as the "Navajo Nation Non-Profit Corporation Act".

#### **History**

CJA-2-86, January 30, 1986.

### **§ 3302. Definitions**

The definitions of Subchapter 1 are applicable in this Chapter.

#### **History**

CJA-2-86, January 30, 1986.

### **§ 3303. Conversion of corporate status prohibited**

No non-profit corporation organized under this Chapter may convert its status to a corporation organized for profit, either foreign or domestic, or merge or consolidate with a domestic corporation or foreign corporation organized for profit, unless the corporation surviving the merger or consolidation is a non-profit corporation.

#### **History**

CJA-2-86, January 30, 1986.

**§ 3304. Purposes**

Corporations may be organized under this Chapter for any lawful purpose or purposes, including without limitation any of the following purposes:

- A. Charitable;
- B. Benevolent;
- C. Eleemosynary,
- D. Educational;
- E. Civic;
- F. Patriotic;
- G. Political;
- H. Religious;
- I. Social;
- J. Fraternal;
- K. Literary;
- L. Cultural;
- M. Athletic;
- N. Scientific;
- O. Agricultural;
- P. Horticultural;
- Q. Animal husbandry; or
- R. Professional, commercial, industrial or trade associations.

**History**

CJA-2-86, January 30, 1986.

**§ 3305. Members**

A. A non-profit corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of each class shall be set forth in the articles of incorporation or bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or bylaws. A corporation may issue certificates evidencing membership rights,

voting rights, or ownership rights, as authorized in the articles of incorporation or bylaws.

B. Members are not liable for the debts, obligations or liabilities of the corporation.

C. A corporation formed under this Chapter by a recognized Chapter of the Navajo Nation shall have one class of members, and any Navajo 18 years or older who is entitled to vote within said chapter in Navajo Nation or chapter elections shall be entitled to be a member of said corporation, and shall be entitled to vote on matters on which members are entitled to vote.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3306. Bylaws**

The power to make, alter, amend, or repeal the bylaws of the non-profit corporation shall be vested in the board of directors unless reserved to the members by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law, or the articles of incorporation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3307. Meetings of members**

A. Meetings of members may be held at such place within or without Navajo Indian Country as stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings shall be held at the known place of business of the non-profit corporation.

B. An annual meeting of the voting members, if any, shall be held at such time as stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any 13 month period the court may, on the application of any voting member, order a meeting to be held. Failure to hold such annual meeting shall not work as a forfeiture of the corporate charter or dissolution of the corporation.

C. Special meetings of the voting members, if any, may be called by the board of directors, the members having at least one-tenth of the votes entitled to be cast at such meeting or any other person as may be authorized in the articles of incorporation or bylaws.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3308. Notice of members' meetings**

Unless otherwise provided in the articles of incorporation or bylaws,

written notice stating the place, day and hour of the meeting, and in case of a special meeting, the purpose for which the meeting is called, shall be mailed or delivered not less than ten nor more than 50 days before the date of the meeting by an officer of the non-profit corporation, at the direction of the person calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be addressed to the member at his/her address as it appears on the records of the corporation. When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given at the adjourned meeting if the time and place of the meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which may have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each member entitled to vote at the meeting.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3309. Voting**

A. Except for a non-profit corporation formed by a chapter of the Navajo Nation, the right of the members or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

B. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy executed in writing by the member or by his/her duly authorized attorney in fact. No proxy may be valid after 11 months from the date of its execution.

C. If directors or officers are to be elected, the bylaws may provide that the elections be conducted by mail.

D. If a corporation has no members or its members have no right to vote, the directors have the sole voting power, unless otherwise provided in the articles of incorporation or bylaws.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3310. Quorum**

The bylaws may provide the number or percentage of members entitled to vote, present or represented by proxy, or the number or percentage of votes entitled to be cast by members present or represented by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provisions, members present or represented by proxy, holding one-tenth of the votes entitled to be cast shall constitute a quorum.

#### **History**

CJA-2-86, January 30, 1986.

**§ 3311. Board of directors**

A. The affairs of a non-profit corporation shall be managed by a board of directors except as may be otherwise provided in Subsection (B). Directors need not be members of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

B. The articles of incorporation may vest the management of the affairs of the corporation in its members or may limit the authority of the board of directors to whatever extent is set forth in the articles of incorporation or bylaws.

**History**

CJA-2-86, January 30, 1986.

**§ 3312. Number, election and classification and removal of directors**

A. Unless the articles of incorporation provide otherwise, a non-profit corporation may have only one director. The number of directors shall be fixed by or in the manner provided in the articles of incorporation or bylaws. The number of directors may be increased or decreased by amendment to, or in the manner provided, in the articles of incorporation or bylaws, but no decrease in number may have the effect of shortening the term of any incumbent director. If the number of directors has not been fixed by, or in the manner provided, in the articles of incorporation or bylaws, the number shall be the same as the number of initial directors.

B. The person(s) constituting the initial board of directors shall be named in the articles of incorporation to hold office until the first annual election of directors, or for any other period as may be specified in the articles of incorporation or bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or bylaws. In the absence of a provision prescribing the manner of election or appointment of directors, the members having voting rights shall elect the directors, or, if a corporation has no members or no members having voting rights, the directors are elected or appointed by the incumbent directors or by the officer, representative body of any organization or society or other person designated in the articles of incorporation or bylaws. In the absence of a provision fixing the term of office, the term of office of a director is one year.

C. Directors may be divided into classes, and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he/she is elected or appointed, and until his/her successor is elected or appointed and qualified, or until his/her earlier death, resignation or removal. Any director may resign at any time upon written notice to the corporation.

D. A director may be removed from office pursuant to any procedure

provided in the articles of incorporation or bylaws.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3313. Vacancies**

Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum, or by a sole remaining director, and any director so chosen shall hold office until the next election of directors when his/her successor is elected and qualified. Any newly created directorship shall be deemed a vacancy. Unless otherwise provided in the articles of incorporation or bylaws, when one or more directors resigns from the board, effective at a future time, a majority of the directors then in office, including those who have so resigned, may fill such vacancy, the vote on the vacancy to take effect when such resignation becomes effective. Each director so chosen shall hold office as provided for the filling of other vacancies. If by reason of death, resignation or otherwise, a non-profit corporation has no directors in office, any officer or members may call a special meeting of members for the purpose of electing the board of directors unless otherwise provided in the articles of incorporation or bylaws.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3314. Quorum of directors**

A majority of the number of directors fixed pursuant to the articles of incorporation or bylaws constitutes a quorum unless otherwise provided in the articles of incorporation or bylaws, but in no event may a quorum consist of less than one-third of the total number of directors.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3315. Committees of the board of directors**

A. A majority of the full board of directors may designate from among the directors one or more committees each of which, to the extent provided in the articles of incorporation or bylaws, may be given all the authority of the board of directors, except no such committee may exercise the authority of the board of directors in reference to the following matters:

1. Submission to the members of any matter that requires an act of the members;
2. Filling vacancies on the board of directors or on any committee of the board of directors;
3. Adoption, amendment or repeal of bylaws; or

4. Fixing compensation of directors.

B. The board of directors, with or without cause, may dissolve any such committee or remove any director from the committee at anytime. The designation of any such committee and the delegation of authority shall not operate to relieve the board of directors or any director of any responsibility imposed by law.

**History**

CJA-2-86, January 30, 1986.

**§ 3316. Place and notice of directors' meeting**

A. Meetings of the board of directors, regular or special, shall be held at least annually either within or without Navajo Indian Country, and may be held by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

B. Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at any regular or special meeting of the board of directors need not be specified in the notice or waiver of notice of such meeting unless required by the articles of incorporation or bylaws.

**History**

CJA-2-86, January 30, 1986.

**§ 3317. Officers**

A. The officers of a non-profit corporation shall consist of a president, a secretary and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Other officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the one person.

B. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as provided in the bylaws or determined by resolution of the board of directors not inconsistent with the bylaws.

C. The articles of incorporation or bylaws may provide that any one or more officers of the corporation shall be *ex officio* members of the board of



directors.

D. The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or bylaws.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3318. Removal of officers**

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interests of the non-profit corporation will be served by the removal, but such removal shall be without prejudice to the contract rights, if any, of the person removed. Election or appointment of an officer or agent shall not in itself create contract rights.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3319. Books and records**

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees of the board of directors. Each corporation shall keep at its registered agent's office, or its known place of business within Navajo Indian Country, a record of the name and addresses of its members entitled to vote. Books, records and minutes shall be in written form, or in any other form capable of being converted into written form within a reasonable time.

B. Each member entitled to vote, upon written demand stating the purpose of the examination, may examine, in person or by agent or attorney, at any reasonable time for any proper purpose, the corporation's relevant books and records of account, minutes and record of members and may make copies of or extracts from the books, records or minutes.

C. Nothing contained in this Section shall impair the power of any court of competent jurisdiction, upon proof by a member of proper purpose, to compel the production for examination or copying by such member of the books and records of account, minutes and record of members of a corporation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3320. Shares of stock and dividends prohibited**

A non-profit corporation shall not have or issue shares of stock. No dividend may be paid and no part of the income or profit of such corporation may be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount of its members, directors or officers

for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this Chapter, but no such payment benefit or distribution may be deemed to be a dividend or a distribution of income or profit.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3321. Loans to directors and officers prohibited**

A non-profit corporation shall not lend money to or use its credit to assist its directors, officers or employees. Any director, officer or employee who assents to or participates in the making of any such loan shall be personally liable to the corporation for the amount of such loan together with interest at eighteen percent (18%) per annum until the repayment of the loan.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3322. Incorporators**

One or more persons capable of contracting may act as incorporators of a corporation by signing and delivering to the department an original and one or more copies of articles of incorporation for such corporation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3323. Articles of Incorporation**

A. The articles of incorporation shall state:

1. The name of the corporation;
2. The period of duration, if less than perpetual;
3. The purpose or purposes for which the corporation is organized, which may be stated to include conducting any or all lawful affairs for which corporations may be incorporated under this Subchapter;
4. A brief statement of the character of affairs which the corporation initially intends to actually conduct in this state. Such statement shall not limit the character of affairs which the corporation ultimately conducts;
5. The name and address of its initial registered agent;
6. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as

directors until the first annual election of directors or until their successors are elected and qualify;

7. The name and address of each incorporator; and

8. Any other provision not inconsistent with law which the incorporators elect to set forth.

B. It is not necessary to state in the articles of incorporation any of the corporate powers enumerated in this Chapter.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3324. Filing of articles of incorporation**

A. When the articles of incorporation have been delivered for filing, the Department shall determine that the articles:

1. Set forth the information required by § 3323; and

2. Do not adopt as the name of the corporation a name which is in violation of § 3105.

B. Upon making such determinations, the Department shall proceed with filing the articles.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3325. Effect of filing articles of incorporation**

Upon the filing of the articles of incorporation, the corporate existence begins, and the filing is conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with, and that the non-profit corporation has been incorporated under this Subchapter, except as against the Navajo Nation in a proceeding for involuntary dissolution of the corporation or revocation of the articles of incorporation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3326. Organization meeting**

A. After delivery of the articles of incorporation for filing, an organization meeting of the initial board of directors shall be held at the call of a majority of the incorporators for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days notice of the meeting by mail to each director so named, which notice shall state the time and place of the meeting.

B. A first meeting of the members may be held at the call of a majority of the directors upon at least three days notice for those purposes as stated in the notice of the meeting.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3327. Right to amend articles of incorporation**

A corporation may amend its articles of incorporation in any lawful respect.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3328. Procedures to amend articles of incorporation**

A. Amendments to the articles of incorporation shall be made in the following manner:

1. If there are members entitled to vote on the proposed amendment, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of those members, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this Subchapter for the giving of notice of meetings of members. The proposed amendment may be adopted only by act of the members; or

2. If there are no members or no members entitled to vote on the proposed amendment, an amendment may be adopted by act of the board of directors.

B. Any number of amendments may be submitted and voted upon at any one meeting.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3329. Articles of amendment**

The articles of amendment shall be executed by the non-profit corporation in duplicate and shall state:

A. The name of the corporation;

B. The amendments adopted;

C. The date of the adoption of the amendments; and

D. That the amendments were duly adopted by act of the members or of the board of directors.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3330. Filing of articles of amendment; effect of amendment**

A. When the articles of amendment have been delivered for filing, the Department shall determine that the articles set forth the information required by § 3329.

B. Upon making such determination, the Department shall proceed with the filing the articles.

C. Upon the delivery of the articles of amendment to the Department, the amendment shall become effective and the articles of incorporation shall be deemed to be amended, except that, if the determination of the requirements of this Chapter for filing are not satisfied completely, the articles of amendment shall not be filed, the amendment shall not become effective and the articles of incorporation shall not be deemed to have been amended.

D. No amendment may affect any existing claim in favor of or against the non-profit corporation or any pending action or proceeding to which the corporation is a party or the existing rights of persons other than members. If the corporate name is changed by amendment, no action or proceeding brought by or against the corporation under its former name may abate for that reason.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3331. Sale, lease, exchange, mortgage or pledge of assets**

A. A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of a non-profit corporation may be made only upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as are authorized in the following manner:

1. If there are members entitled to vote on the matter, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of those members, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of the corporation shall be given to each member entitled to vote at such meeting within the time and the manner provided by this Subchapter for the giving of notice of meetings, the members may

authorize such sale, lease exchange, mortgage, pledge or other disposition and may fix or may authorize the board of directors to fix, any or all of the terms and conditions and the consideration to be received by the corporation. Such authorization shall require an act of the members; or

2. If there are no members or no members entitled to vote on the matter, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of a corporation may be authorized by act of the board of directors.

B. If the authorization provides, the board of directors may abandon the sale, lease, exchange, mortgage, pledge or other disposition subject to the contractual rights of third parties.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3332. Application of general corporation law**

The provisions of the general corporation laws of the Navajo Nation, and all powers, rights and duties thereunder, where applicable, shall apply to non-profit corporations organized hereunder, except when in conflict with the provisions of this Chapter.

#### **History**

CJA-2-86, January 30, 1986.

### **Subchapter 4. Agricultural Cooperatives**

#### **History**

[Subchapter 4 redesignated] Signs, Billboards, and Advertising Devices previously codified as Chapter 21, §§ 3401-3412 has been redesignated to Title 5, Chapter 3, Subchapter 3, §§ 421-432.

CJA-2-86, January 30, 1986.

**Note.** Issuance of Chapter. CMY-38-69, May 22, 1969, Northern Arizona Livestock Association, Inc.

#### **Annotations**

See annotations under Licenses and Permits, and under Taxation in digest.

#### **§ 3401. Short title**

This Subchapter shall be known and may be cited as the "Navajo Agricultural Cooperative Act".

#### **History**

CJA-2-86, January 30, 1986.

**§ 3402. Definitions**

A. The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bees, and any farm and ranch products;

B. The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

C. The term "association" means any corporation organized under this Chapter of any association organized under the cooperative marketing acts of any other tribe or state. Associations organized hereunder shall be deemed non-profit because as they are organized not to make profit for themselves or for their members but only for their members as producers.

**History**

CJA-2-86, January 30, 1986.

**§ 3403. Organizers**

A. Five or more persons engaged in the production of agricultural procedures may form an association under this Subchapter.

B. An agricultural cooperative organized under this Chapter by recognized chapters of the Navajo Nation shall permit as members entitled to hold common stock, or if organized without common stock, as members entitled to vote, all Navajos 18 years or older who are entitled to vote within said chapter in Navajo Nation or chapter elections.

**History**

CJA-2-86, January 30, 1986.

**§ 3404. Purpose**

An association may be organized to engage in any activity in connection with the production, cultivation, marketing or selling of agricultural products produced by and marketed for its members, or in the harvesting, preserving, drying, processing, canning, storing, handling, shipping or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities. Provided, however, any such activities may extend to nonmembers and to the production, cultivation of lands owned or cultivated by them and their products.

**History**

CJA-2-86, January 30, 1986.

## **§ 3405. Powers**

Associations organized under this Chapter shall have all of the powers granted to corporations organized under Subchapter 1, and in addition shall specifically have the following powers:

A. To engage in any activity in connection with the production, cultivation of farm products, including the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members, or the production, manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this Subchapter;

B. To borrow money and make advances to members;

C. To act as the agent or representative of any member or members in any of the above-mentioned activities;

D. To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer, or pledge shares of capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association; including the power to subscribe, pay for and own the capital stock of Banks for Cooperatives organized under the "Farm Credit Act of 1933" passed by the Congress of the United States and approved June 16, 1933;

E. To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

F. To buy, hold and exercise privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto;

G. To extend its activities to the products and supplies of non-members;

H. To consolidate with the consent of individual permittees land use permits and grazing permits under long-term agricultural business land leases with the Navajo Nation;

I. To enter into leasehold assignments, approved by the Navajo Nation, and the Secretary of the Interior or his/her authorized designee, with suppliers of agricultural production credit; and

J. To enter into management contracts and joint venture agreements for the mutual benefit of its members.

## **History**

CJA-2-86, January 30, 1986.

## **§ 3406. Members**



A. Under the terms and conditions prescribed in its bylaws, an association may admit as members, or issue common stock to only persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

B. If a member of a non-stock association be other than a natural person, such member may be represented by an individual, associate officer or member thereof, duly authorized in writing.

C. Any association as defined in § 3402(C) may become a member or stockholder of any other association or associations organized hereunder.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3407. Liability for debts**

The stockholders or members of an association organized under this Chapter shall not be individually liable for the debts of such association except as they may be held liable under provisions of Subchapter 1.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3408. Articles of incorporation**

Each association formed under this Chapter must prepare and file articles of incorporation, setting forth:

- A. The name of the association;
- B. The purpose for which it is formed;
- C. The place where its principal business will be transacted;
- D. The term for which it is to exist, which may be perpetual;
- E. The number of directors thereof, which must not be less than five and may be any number in excess thereof, and the term of the office of such directors;

F. If organized without capital stock, whether the property rights and interests of each member shall be equal or unequal; and if unequal, the property rights and interests of each member shall be set forth by the general rule or rules applicable to all members by which the property rights and interest, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of

incorporation shall not be altered, amended or repealed except by the written consent or the vote of three-fourths of the members; and

G. If organized with capital stock, the amount of such capital stock and the number of shares into which it is divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the nature and extent of the preferences and privileges granted to each. The incorporators must sign and file in duplicate the articles in accordance with the provisions of the general non-profit corporation law of the Navajo Nation; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in the courts, and other places, as prima facie evidence of the facts contained therein, and of the incorporation of such association. No part of such capital stock shall be required to be subscribed and/or paid in as a prerequisite to the filing of such articles of incorporation; provided further that such association may, from time to time sell and issue to their members or stockholders, shares of capital stock in such manner as provided in the bylaws.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3409. Amendments to articles of incorporation**

The articles of incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds vote of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation when so adopted shall be filed in accordance with the provisions of the general non-profit corporation law of the Navajo Nation.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3410. Bylaws**

Each association incorporated under this Chapter must, within 30 days after its incorporation, adopt for its regulation and the management of its affairs, bylaws, not inconsistent with the powers granted by this Chapter. A majority vote of the members or common stockholders is necessary to adopt such bylaws. Each association, under its bylaws, may also provide for any or all of the following matters:

- A. The time, place and manner of calling and conducting its meetings;
- B. The number of stockholders or members constituting a quorum;
- C. The right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner and effects of such vote and the method and manner in which an association which is a member may cast its vote;
- D. The number of directors constituting a quorum;

E. The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof;

F. Penalties for violations of the bylaws;

G. The amount of entrance, organization and membership fees, if any, the manner and method of collection of the same, and the purposes for which they must be used;

H. The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him/her and the time of payment and the manner of collection; the marketing contract between the association to him/her and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

I. The number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership or common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock, the manner of assignment and transfer of the interest of members and of shares of common stock, and conditions upon which, and time when membership of any member shall cease. The automatic suspension of the rights of a member when he/she ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his/her membership, or at the option of the association by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his/her property interest in the association and shall fix the amount thereof in money, which shall be paid to him/her within one year after such expulsion or withdrawal; and

J. The distribution of earned surplus to members and nonmembers on the basis of patronage and land contribution.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3411. Meetings; notice; election of directors and officers**

Meetings, notice and election of directors and officers shall be governed by the provisions of Subchapter 3 pertaining to non-profit corporations.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3412. Stock-membership certificates**

A. When a member of an association established without capital stock, has paid his/her membership fee in full, he/she shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the notice, but such retention as security shall not affect the members' right to vote.

B. Except for debts lawfully contracted between him/her and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his/her membership, fee or his/her subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

C. No stockholder or a cooperative association shall own more than one-fifth of the issued common stock of the association; and an association, in its bylaws, may limit the amount of common stock which one member may own to any amount less than one-fifth of the issued common stock.

D. No member or stockholder shall be entitled to more than one vote.

E. Any association organized with stock under this Subchapter may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retrievable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

F. The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

G. The association may at any time, except when the debts of the association exceed fifty percent (50%) of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one year thereafter.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3413. Removal of officer or director**

A. Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten percent (10%) of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association; by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy.

B. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall

have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; the person or persons bringing the charges against him/her shall have the same opportunity.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3414. Referendum**

Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership of the stockholders for decision at the next special or regular meeting. A special meeting may be called for that purpose.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3415. Marketing contract**

A. The association and its members may make and execute marketing contracts requiring the members to sell, for a period of time, not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, if any, and other proper reserves; and interest not exceeding eight percent (8%) per annum upon common stock.

B. The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him/her of any provisions of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts. In the event of any breach or threatened breach of such marketing contract by the member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof.

C. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3416. Patronage distributions including land rentals**

The earned surplus of an association organized under this Chapter, including revenues received from land rentals, shall be apportioned, distributed, and paid periodically on the basis of patronage and land use rights contributed to the association as the bylaws shall provide.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3417. Preferred stock**

An association organized hereunder may issue preferred capital stock for any purpose so long as fair value is received therefore.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3418. Annual reports**

Each association formed under this Chapter shall prepare and make out an annual report on forms furnished by the department containing the name of the association, its principal place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of members and amount of membership fees received, if a non-stock association; the total expenses of operation; the amount of its indebtedness, or liability, and its balance sheets.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3419. Bond**

Each and all officers, employees and agents, handling funds, or property of the corporation or funds of any person placed under the control of or in the possession of said corporation, shall be required to execute and deliver to the corporation a bond of indemnity, indemnifying the corporation and members against any fraudulent, dishonest or unlawful act on the part of such officers and employees and other acts as provided in the bylaws of the association. In case the officers and directors of any corporation authorized to be created under the provisions of this Chapter, shall fail to have all officers, employees and agents handling such funds or property execute the bond provided for herein, each and all of said officers and directors shall be personally liable for all losses occasioned by such failure and which might have been recovered on said bond.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3420. Interest in other corporations or associations**

An association may organize, form, operate, own, control, have an

interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engage in preserving, drying, pressing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the agricultural products handled by the association, or by the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of the Navajo Nation, its warehouse receipts shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3421. Contracts and agreement with other associations**

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative corporation, association or associations, formed in the Navajo Nation or other tribal government or any other state for the cooperative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3422. Association heretofore organized**

Any corporation association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this Chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the Department, to the effect that the corporation or association has, by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this Subchapter. Articles of incorporation shall be filed as required in § 3407 of this Chapter except that they shall be signed by the members of the board of directors.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3423. Breach of contract or false reports**

Any person or person or any corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an

association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be liable to the association aggrieved thereby in a civil suit for damages suffered in three times the amount of actual damage proven for each offense.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3424. Associations not in restraint of trade**

No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the association and its members nor any agreements authorized in this Subchapter, be considered illegal or in restraint of trade.

#### **History**

CJA-2-86, January 30, 1986.

#### **§ 3425. Application of general corporation law**

The provision of the general corporation laws of the Navajo Nation, and all powers, rights and duties thereunder shall apply to associations organized hereunder except when in conflict with the provisions of this Subchapter. Provided, however, that any cooperative marketing association incorporated under the laws of the Navajo Nation may apply for and be granted a permit to do business as a foreign corporation under laws organized for a similar purpose. Provided further, that such foreign cooperative marketing associations shall not be required to have a paid-up capital or any portion of the capital paid-up in order to be entitled to such permit.

#### **History**

CJA-2-86, January 30, 1986.

### **Chapter 21. Navajo Nation Limited Liability Company Act**

#### **Article 1. General Provisions**

#### **§ 3600. Policy and purpose**

The Navajo Nation Limited Liability Company Act is hereby enacted:

A. The purpose of this Act is to permit the formation of various limited liability entities and require registration of foreign limited liabilities; and to regulate such entities so as to promote economic growth and further exercise Navajo Nation sovereignty in the governance of its territory, and citizens.

B. This Act is based upon general principles of limited liability companies. The interpretation of this Act shall be based on Navajo Nation court interpretation and such interpretation that shall give the utmost respect in



deciding the meaning and purpose of this Act to the unique traditions and customs of the Navajo People. General decisional law interpreting similar provisions of other limited liability company laws in other jurisdictions may be used as guidance.

C. Unless as otherwise expressly stated by law, the sovereign immunity of the Navajo Nation shall not extend to corporate entities organized under this Act, nor shall such entities be considered a subdivision, entity, or enterprises of the Navajo Nation, nor shall the Navajo Nation be liable for the debts or obligations of any kind of such entities.

D. The Division of Economic Development through its Business Regulatory Department shall administer the provisions of the Act. The Business Regulatory Department shall promulgate rules and regulations to implement this Act. All proposed rules and regulations shall be published for public comments at least 90 days prior to submission to the Economic Development Committee of the Navajo Nation Council for final review and approval. The Division of Economic Development is directed to prepare an appropriate supplemental budget for carrying out its responsibilities under this Act.

### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection C corrected to replace "or any kind" with "of any kind".

### **§ 3601. Definitions**

In this Chapter, unless the context otherwise requires:

A. "Articles of organization" means initial, amended, and restated articles of organization and articles of merger. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed in the Department or other official having custody of company records in the State, Indian Nation or country under whose law it is organized.

B. "At-will company" means a limited liability company other than a term company.

C. "Business" includes every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit.

D. "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state, or foreign law governing insolvency.

E. "Department" means the Business Regulatory Department within the Division of Economic Development or its designate successor.

F. "Distribution" means a transfer of money, property, or other benefit from a limited liability company to a member in the member's capacity as a

member or to a transferee of the member's distributional interest.

G. Distributional Interest means all of a member's interest in distributions by the limited liability company.

H. "Entity" means a person other than an individual.

I. "Foreign limited liability company" means an unincorporated entity organized under laws other than the laws of the Navajo Nation which afford limited liability to its owners comparable to the liability under Section 3642 and is not required to obtain a certificate of authority to transact business under any law of the Navajo Nation other than this Act.

J. "Limited liability company" means a limited liability company organized and existing under this Act.

K. "Manager" means a person, whether or not a member of a manager-managed company, who is vested with authority under Section 3640.

L. "Manager-managed company" means a limited liability company which is so designated in its articles of organization.

M. "Member-managed company" means a limited liability company other than a manager-managed company.

N. "Navajo Nation" means:

1. When referring to the body politic, the Navajo Nation government, including its Council and applicable standing committees and boards;

2. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

- a. All land within the exterior boundaries of the Navajo Indian Reservation, including the Navajo Partitioned Land, or of the Eastern Navajo portion of the Navajo Nation, including Alamo, Canoncito, and Ramah, or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;

- b. All lands held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indian as such; and

- c. All other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

O. "Operating agreement" means any written under Section 3603 concerning the relations among the members, managers, and limited liability company. The term includes amendments to the agreement.

P. "Person" includes any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, government subdivision, government agency, or instrumentality, or any other legal or commercial entity.

Q. "Principal office" means the office, whether or not in the Navajo Nation, where the principal executive office of a domestic or foreign limited liability company is located.

R. "Record" means information that is inscribed on a tangible medium or that it stored in an electronic or other medium and is retrievable in perceived form.

S. "Sign" means to identify a record by means of a signature, mark, or other symbol, with intent to authenticate it.

T. "State" means a state of the United States, a federally-recognized Indian Tribe, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

U. "Term company" means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of incorporation.

V. "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, and gift.

### **History**

CJY-17-08, July 22, 2008.

**Note.** For purposes of statutory consistency, the term "agreement" inserted after the term "written" within Subsection O.

### **§ 3602. Knowledge and notice**

A. A person knows a fact if the person has actual knowledge of it.

B. A person has notice if the person:

1. Knows the fact;

2. Has received a notification of the fact; or

3. Has reason to know the fact exists from all of the facts known to the person at the time in question.

C. A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

D. A person receives a notification when the notification:

1. Comes to the person's attention; or
2. Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communication.

E. An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence. An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routine. Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3603. Effect of operating agreement; nonwaivable provisions**

A. Except as otherwise provided in Subsection (B), all members of a limited liability company may enter into an operating agreement, which shall be in writing, to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this Act governs relations among the members, managers, and company.

B. The operating agreement may not:

1. Unreasonably restrict a right to information or access to records under Section 3657.

2. Eliminate the duty of loyalty under Section 3658(B) or 3682(B) (3), but the agreement may:

- a. Identity specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

- b. Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

3. Unreasonably reduce the duty of care under Section 3658(C) or 3682(B) (3);

4. Eliminate the obligation of good faith and fair dealing under Section 3658(D), but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the

standards are not manifestly unreasonable;

5. Vary the right to expel a member in an event specified in Section 3680(6);

6. Vary the requirement to wind up the limited liability company's business in a case specified in Section 3700(A)(3) or (A)(4); or

7. Restrict rights of a person, other than a manager, member, and transferee of a member's distributional interest, under this Act.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical errors at Subsection B(1) corrected to change the word "restricts" to "restrict"; and at Subsection B(2) to correct the citation from section 3683(B)(3) to 3682(B)(2).

#### **§ 3604. Supplemental principles of law**

A. Unless displaced by particular provisions of this Act, the principles of law and equity supplement this Act.

B. If an obligation to pay interest arises under this Act and the rate is not specified, the rate that is specified is ten percent (10%) per annum, unless a different rate is contracted for in writing, in which event any rate of interest may be agreed to.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Inserted the numeric form of "10%" following the words "ten percent" for codification.

#### **§ 3605. Name**

The name of a limited liability company as set forth in its articles of organization shall:

A. Contain the words "limited liability company" or "limited company" or the abbreviations "L.L.C.," "LLC," "L.C.," or "LC". Limited may be abbreviated as "Ltd.," and "company" may be abbreviated as "Co.".

B. Not contain the words "association," "corporation" or "incorporated" or an abbreviation of these words.

C. Not be the same as, or deceptively similar to, the name of a limited liability company, limited partnership or corporation existing under the laws of the Navajo Nation or a foreign limited liability company, limited partnership or corporation authorized to transact business in the Navajo Nation, or a name the exclusive right to which is, at the time, reserved in the manner provided under the laws of the Navajo Nation or a registered trade name.

This paragraph does not apply if the applicant files with the Department one of the following:

1. The written consent of the holder of the name to use the same or a deceptively similar name and one or more words are added or deleted to make the name distinguishable from the other name;

2. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to use the name in the Navajo Nation; or

3. Documents showing the other company is organized or authorized to transact business in the Navajo Nation and the company proposing to use the name has:

a. Merged with the other company;

b. Been formed by reorganization with the other company; or

c. Acquired substantially all of the assets, including the name, of the other company.

D. Not contain the words "Navajo Nation" or "Navajo Tribe," nor in anyway imply that it is associated with the Navajo Nation government or a Navajo Nation entity, unless the Navajo Nation government or a Navajo Nation entity is the manager of a manager-managed company.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3606. Reserved name**

A. A person may reserve the exclusive use of the name of a limited liability company, including a fictitious name for a foreign company whose name is not available, by delivering an application to the Department for filing. The application must set forth the name and street and mailing address of the applicant and the name proposed to be reserved. If the Department finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a nonrenewable 120-day period.

B. The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the Department a signed notice of the transfer which states the name and street and mailing address of the transferee.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3607. Registered name**

A. A foreign limited liability company may register its name subject to the requirements of Section 3734, if the name is distinguishable upon the

records of the Department from names that are not available under Section 3606(B).

B. A foreign limited liability company registers its name, or its name with any additions required by Section 3734, by delivering to the Department for filing an application:

1. Setting forth its name, or its name with any addition required by Section 3734, the State or country and date of its organization, and a brief description of the nature of the business in which it is engaged; and

2. Accompanied by a certificate of existence, or record of similar import, from the State, Indian Nation or country of organization.

C. A foreign limited liability company whose registration is effective may renew it for successive years by delivering for filing in Department a renewal application complying with Subsection (B) between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

D. A foreign limited liability company whose registration is effective may qualify as a foreign company under its name or consent in writing to the use of its name by a limited liability company later organized under this Act or by another foreign company later authorized to transact business in the Navajo Nation. The registered name terminates when the limited liability company is organized or the foreign company qualifies or consent to the qualification of another foreign company under the registered name.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3608. Designated office and agent for service of process**

A. A limited liability company and a foreign limited liability company authorized to do business in the Navajo Nation shall designate and continuously maintain in the Navajo Nation:

1. An office, which need not be a place of its business in the Navajo Nation; and

2. An agent, street and mailing address, phone number of the agent for service of process on the company.

B. An agent must be an individual resident of the Navajo Nation, a domestic corporation, another limited liability company, or a foreign corporation or foreign company authorized to do business in the Navajo Nation.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3609. Change of registered office, statutory agent or statutory agent's**

### **contact information**

A limited liability company may change its designated office or agent for service of process by delivering to the Department for filing a statement of change which sets forth:

1. The name of the company;
2. The street and mailing address of its current designated office;
3. The current phone number to its principle office;
4. If the current designated office is to be changed, the street and mailing address of the new designated office;
5. The name and street and mailing address of its current agent for service of process; and
6. If the current agent for service of process or street and mailing address of that agent is to be changed, the new street and mailing address or the name and street and mailing address of the new agent for service of process.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3610. Resignation of agent for service of process**

A. An agent for service of process of a limited liability company may resign by delivering to the Department for filing a record of the statement of resignation.

B. After filing a statement of resignation, the Department shall mail a copy to the designated office and another copy to the limited liability company at its principal office.

C. An agent is terminated on the 31st day after the statement is filed in the Department.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3611. Service of process**

A. An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company.

B. If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in the Navajo Nation or the agent for service of process cannot with reasonable diligence be



found at the agent's street and mailing address, the Department is an agent of the company upon whom process, notice, or demand may be served.

C. Service of any process, notice, or demand on the Department may be made by delivering to and leaving with the Department, duplicate copies of the process, notice, or demand. If the process, notice, or demand is served on the Department, the Department shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its designated office. Service is effected under this Subsection at the earliest of:

1. The date the company receives the process, notice, or demand;
2. The date shown on the return receipt, if signed on behalf of the company; or
3. Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

D. The Department shall keep a record of all processes, notices, and demands served pursuant to this Section and record the time of and the action taken regarding the service.

E. This Section does not affect the right to serve process, notice, or demand in any manner otherwise provided by law.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3612. Nature of business and powers**

A. A limited liability company may be organized under this chapter and may conduct or promote business and other activities for any lawful purpose, subject to any law of the Navajo Nation governing or regulating businesses.

B. Unless its articles of organization provide otherwise, a limited liability company has the same power as an individual to do all things necessary or convenient to carry on its business or affairs, including the power to:

1. Sue and be sued, and defend in its name;
2. Purchase, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real property or personal property, or any legal or equitable interest in property, wherever located;
3. Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
4. Purchase, receive, subscribe for or otherwise acquire, own, hold, vote, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in

or obligations of any other entity;

5. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;

6. Lend money, invest and reinvest its funds, and receive and hold real property and personal property as security for repayment;

7. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

8. Conduct its business, locate offices, and exercise the powers granted by this Act within or without the Navajo Nation;

9. Elect managers or appoint officers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;

10. Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefits or incentive plans for any or all of its current or former members, managers, employees, officers, employees and agents;

11. Make donations for the public welfare or for charitable, scientific or educational purposes;

12. Indemnify a member, manager, employee, officer or agent or any other person; and

13. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 2. Organization**

#### **§ 3620. Limited liability company as legal entity**

A limited liability company is a legal entity distinct from its members.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3621. Organization**

A. One or more persons may organize a limited liability company,

consisting of one or more members, by delivering articles of organization to the Department for filing.

B. Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

C. The filing of the articles of organization by the Department is conclusive proof that the organizers satisfied all conditions precedent to the creation of a limited liability company.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3622. Articles of organization**

A. Articles of organization of a limited liability company shall set forth:

1. The name of the limited liability company;
2. The street and mailing address and phone number of the initial designated office;
3. The name and street and mailing address of the initial agent for service of process;
4. The name and street and mailing address of each organizer;
5. Whether the company is to be a term company and, if so, the term specified;
6. Whether the company is to be manager-managed and, if so, the name, street and mailing address and phone number of each initial manager;
7. Whether one or more of the members of the company are to be liable for its debts and obligations under Section 3642(C).
8. A provision stating that the company will agree to abide by all applicable criminal, civil and regulatory laws of the Navajo Nation.

B. The articles of organization may set forth:

1. Provisions permitted to be set forth in an operating agreement;  
or
2. Other matters not inconsistent with law.

C. Articles of organization of a limited liability company may not vary the nonwaivable provision of Section 3603(B). As to all other matters, if any provision of an operating agreement is inconsistent with articles of organization:

1. The operating agreement controls as to managers, members, and members' transferees; and

2. The articles of organization controls as to persons, other than managers, members and their transferees, who reasonably rely on the articles to their detriment.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3623. Amendment or restatement of articles of organization**

A. Articles of organization of a limited liability company may be amended at any time by delivering articles of amendment to the Department for filing. The articles of amendment must set forth the:

1. Name of the limited liability company;
2. Date of filing of articles of organization; and
3. Amendment to the articles.

B. A limited liability company may restate its articles of organization at any time. Restated articles of organization must be signed and filed in the same manner as articles of amendment. Restated articles of organization must be designated as such in the heading and state in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its initial articles of organization.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3624. Signing of records**

A. Except as otherwise provided in this Act, a record to be filed by or on behalf of a limited liability company in the Department shall be signed in the name of the company by a:

1. Manager of a manager-managed company;
2. Member of a member-managed company;
3. Person organizing the company, if the company has not been formed; or
4. Fiduciary, if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary.

B. A record signed under Subsection (A) must state adjacent to the signature the name and capacity of the signer.

C. Any person may sign a record to be filed under Subsection (A) by an attorney-in-fact. Powers of attorney relating to the signing of records to be filed under Subsection (A) by an attorney-in-fact need not be filed in the office of the Department as evidence of authority by the person filing but must be retained by the company.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3625. Filing with the Department**

A. Articles of organization or any other record authorized to be filed under this Act must be in a medium permitted by the Department and must be delivered to the Department. Unless the Department determines that a record fails to comply as to form with filing requirements of this Act, and if all filing fees have been paid, the Department shall file the record and send a receipt for the record and the fees to the limited liability company or its representative.

B. Upon request and payment of a fee, the Department shall send to the requester a certified copy of the requested record.

C. Except as otherwise provided in Subsection (D) and Section 3626(C), a record accepted for filing by the Department is effective:

1. At the time of filing on the date it is filed, as evidenced by the Department's date and time endorsement on the original record; or

2. At the time specified in the record as its effective time on the date it is filed.

D. A record may specify a delayed effective time and date, and if it does so the record becomes effective at the time and date specified. If a delayed effective date but no time is specified, the record is effective at the close of the business on that date. If a delayed effective date is later than the 90th day after the record is filed, the record is effective on the 90th day.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3626. Correcting filed record**

A. A limited liability company or foreign limited liability company may correct a record filed by the Department if the record contains a false or erroneous statement or was defectively signed.

B. A record is corrected:

1. By preparing articles of correction that:

a. Describe the record, including its filing date, or attach a copy of it to the articles of correction;

b. Specify the incorrect statement and the reason it is incorrect or the manner in which the signing was defective; and

c. Correct the incorrect statement or defective signing; and

2. By delivering the corrected record to the Department for filing.

C. Articles of correction are effective retroactively on the effective date of the record they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3627. Certificate of existence or authorization**

A. A person may request the Department to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

B. A certificate of existence for a limited liability company must set forth:

1. The company's name;

2. That it is duly organized under the laws of the Navajo Nation, the date of organization, whether its duration is at-will or for a specified term, and, if the latter, the period specified;

3. If payment is reflected in the records of the Department and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to the Navajo Nation have been paid;

4. Whether its most recent annual report required by Section 3630 has been filed with the Department;

5. That articles of termination have not been filed; and

6. Other facts of record in the Department which may be requested by the applicant.

C. A certificate of authorization for a foreign limited liability company must set forth:

1. The company's name used in the Navajo Nation;

2. That it is authorized to transact business in the Navajo Nation;

3. If payment is reflected in the records of the Department and if nonpayment affects the authorization of the company, that all fees, taxes, and penalties owed to the Navajo Nation have been paid;

4. Whether its most recent annual report required by Section 3630 has been filed with the Department;

5. That a certificate of cancellation has not been filed; and

6. Other facts of record in the Department which may be requested by the applicant.

D. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Department may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in the Navajo Nation.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3628. Liability for false statement in filed record**

If a record authorized or required to be filed under this Act contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from a person who signed the record or caused another to sign it on the person's behalf and knew the statement to be false at the time the record was signed.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3629. Filing by judicial act**

If a person required by Section 3624 to sign any record fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Navajo Nation District Court to direct the signing of the record. If the court finds that it is proper for the record to be signed and that a person so designated has failed or refused to sign the record, it shall order the Department to sign and file an appropriate record.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3630. Annual report for Department**

A. A limited liability company, and a foreign limited liability company authorized to transact business in the Navajo Nation, shall deliver to the Department for filing an annual report that sets forth:

1. The name of the company and the state or country under whose law it is organized;

2. The street and mailing address and phone number of its designated office and the name, street and mailing address, and phone

numbers of its agent for service of process in the Navajo Nation;

3. The street and mailing address and phone number of its principal office; and

4. The names, business addresses and phone numbers of any managers.

B. Information in an annual report must be current as of the date the annual report is signed on behalf of the limited liability company.

C. The first annual report must be delivered to the Department after the first year of the company's operating year in which a limited liability company was organized or a foreign company was authorized to transact business. Subsequent annual reports must be delivered to the Department on every anniversary year in which a limited liability company was organized or a foreign company was authorized to transact business.

D. If an annual report does not contain the information required in Subsection (A), the Department shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in Subsection (A) and delivered to the Department within 90 days after the effective date of the notice, it is timely filed.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 3. Relations of Members and Managers to Persons Dealing with Limited Liability Company**

#### **§ 3640. Agency of members and managers**

A. Subject to Subsections (B) and (C), in a member-managed company:

1. Each member is an agent of the limited liability company for the purpose of its business, and an act of a member, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

2. An act of a member which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized by the other members.

B. Subject to Subsection (C), in a manager-managed company:

1. A member is not an agent of the company for the purpose of its business solely by reason of being a member. Each manager is an agent of the company for the purpose of its business, and an act of a manager,



including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the manager had no authority to act for the company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.

2. An act of a manager which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized under Section 3653.

C. Unless the articles of organization limit their authority, any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Article 3 heading corrected to insert the word "of" between "Relations" and "Members".

#### **§ 3641. Limited liability company liable for member's or manager's actionable conduct**

A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a member or manager acting in the ordinary course of business of the company or with authority of the company.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3642. Liability of members and managers**

A. Except as otherwise provided in Subsection (C), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

B. The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

C. All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or

liabilities of the company if.

1. A provision to that effect is contained in the articles of organization; and

2. A member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 4. Relations of Members to Each Other and to Limited Liability Company**

#### **§ 3650. Form of contribution**

A contribution of a member of a limited liability company may consist of tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, or other agreements to contribute cash or property, or contracts for services to be performed.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3651. Member's liability for contributions**

A. A member's obligation to contribute money, property, or other benefit to, or to perform services for, a limited liability company is not excused by the member's death, disability, or other inability to perform personally. If a member does not make the required contribution of property or services, the member is obligated at the option of the company to contribute money equal to the value of that portion of the stated contribution which has not been made.

B. A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in Subsection (A), and without notice of any compromise under Section 3653(C)(5), may enforce the original obligation.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3652. Member's and manager's rights to payment and reimbursement**

A. A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of its business or property.

B. A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution the member agreed to make.

C. A payment or advance made by a member which gives rise to an obligation of a limited liability company under Subsection (A) or (B) constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

D. A member is not entitled to remuneration for services performed for a limited liability company, except for reasonable compensation for services rendered in winding up the business of the company.

### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection C corrected to replace reference to "Subsection (C) or (B)" with "Subsection (A) or (B)".

### **§ 3653. Management of limited liability company**

A. In a member-managed company:

1. Each member has equal rights in the management and conduct of the company's business; and

2. Except as otherwise provided in Subsection (C), any matter relating to the business of the company may be decided by a majority of the members.

B. In a manager-managed company:

1. Each manager has equal rights in the management and conduct of the company's business;

2. Except as otherwise provided in Subsection (C), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

3. A manager:

a. Must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

b. Holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

C. The only matters of a member or manager-managed company's business requiring the consent of all of the members are:

1. The amendment of the operating agreement under Section 3603;

2. The authorization or ratification of acts or transactions under Section 3603(B) (2) (b) which would otherwise violate the duty of loyalty;

3. An amendment to the articles of organization under Section 3623;
4. The compromise of an obligation to make a contribution under Section 3651(B);
5. The compromise, as among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this Act;
6. The making of interim distributions under Section 3654(A), including the redemption of an interest;
7. The admissions of a new member;
8. The use of the company's property to redeem an interest subject to a charging order;
9. The consent to dissolve the company under Section 3700(A)(2);
10. A waiver of the rights to have the company's business wound up and the company terminated under Section 3701(B);
11. The consent of members to merge with another entity under Section 3723(C)(1); and
12. The sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without goodwill.

D. Action requiring the consent of members or managers under this Act may be taken without a meeting.

E. A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection C(9) corrected to replace citation to Section 3700(B)(2) with 3700(A)(2).

#### **§ 3654. Sharing of and rights to distributions**

A. Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares.

B. A member has no right to receive, and may not be required to accept, a distribution in kind.

C. If a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

## History

CJY-17-08, July 22, 2008.

### § 3655. Limitations on distributions

A. A distribution may not be made if:

1. The limited liability company would not be able to pay its debts as they become due in the ordinary course of business; or

2. The company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those receiving the distribution.

B. A limited liability company may base a determination that a distribution is not prohibited under Subsection (A) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

C. Except as otherwise provided in Subsection (E), the effect of a distribution under Subsection (A) is measured:

1. In the case of distribution by purchase, redemption, or other acquisition of a distributional interest in a limited liability company, as of the date money or other property is transferred or debt incurred by the company; and

2. In all other cases, as of the date the:

a. Distribution is authorized if the payment occurs within 120 days after the date of authorization; or

b. Payment is made if it occurs more than 120 days after the date of authorization.

D. A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this Section is at parity with the company's indebtedness to its general, unsecured creditors.

E. Indebtedness of a limited liability company, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under Subsection (A) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to members could then be made under this Section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

## History

CJY-17-08, July 22, 2008.

### § 3656. Liability for unlawful distributions

A. A member of a member-managed company or a member or manager of a manager-managed company who votes for or assents to a distribution made in violation of Section 3655, the articles of organization, or the operating agreement is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without violating Section 3655, the articles of organization, or the operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with Section 3658.

B. A member of a manager-managed company who knew a distribution was made in violation of Section 3655, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by the member exceeded the amount that could have been properly paid under Section 3655.

C. A member or manager against whom an action is brought under this Section may implead in the action all:

1. Other members or managers who voted for or assented to the distribution in violation of Subsection (A) and may compel contribution from them; and

2. Members who received a distribution in violation of Subsection (B) and may compel contribution from the member in the amount received in violation of Subsection (B).

D. A proceeding under this Section is barred unless it is commenced within two years after the distribution.

## History

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection A corrected to replace "of it is established" with "if it is established".

### § 3657. Member's right to information

A. A limited liability company shall provide members and their agents and attorneys access to its records, if any, at the company's principal office or other reasonable locations specified in the operating agreement. The company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

B. A limited liability company shall furnish to a member, and to the

legal representative of a deceased member or member under legal disability:

1. Without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this Act; and

2. On demand, other information concerning the company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

C. A member has the right upon written demand given to the limited liability company to obtain at the company's expense a copy of any written operating agreement.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3658. General standards of member's and manager's conduct**

A. The only fiduciary duties a member owes to a member-managed company and its other members are the duty of loyalty and the duty of care imposed by Subsections (B) and (C).

B. A member's duty of loyalty to a member-managed company and its other members is limited to the following:

1. To account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;

2. To refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

3. To refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

C. A member's duty of care to a member-managed company and its other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

D. A member shall discharge the duties to a member-managed company and its other members under this Act or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

E. A member of a member-managed company does not violate a duty or obligation under this Act or under the operating agreement merely because the member's conduct furthers the member's own interest.

F. A member of a member-managed company may lend money to and transact other business with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

G. This Section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member as if the person were a member.

H. In a manager-managed company:

1. A member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;

2. A manager is held to the same standards of conduct prescribed for members in Subsections (B) through (F).

3. A member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct in Subsections (B) through (F) to the extent that the member exercises the managerial authority vested in a manager by this Act; and

4. A manager is relieved of liability imposed by law for violation of the standards prescribed by Subsections (B) through (F) to the extent of the managerial authority delegated to the members by the operating agreement.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3659. Actions by members**

A. A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

1. The member's rights under the operating agreement;

2. The member's rights under this Act; and

3. The rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

B. The accrual, and any time limited for the assertion, of a right of action for a remedy under this Section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

#### **History**

CJY-17-08, July 22, 2008.



**§ 3660. Continuation of term company after expiration of specified term**

A. If a company is continued after the expiration of the specified term, the rights and duties of the members and managers remain the same as they were at the expiration of the term except to the extent inconsistent with rights and duties of members and managers of an at-will company.

B. If the members in a member-managed company or the managers in a manager-managed company continue the business without any winding up of the business of the company, it continues as an at-will company.

**History**

CJY-17-08, July 22, 2008.

**Article 5. Transferees and Creditors of Members**

**§ 3670. Member's distributional interest**

A. A member is not a co-owner of, and has no transferable interest in, property of a limited liability company.

B. A distributional interest in a limited liability company is personal property and, subject to Sections 3671 and 3672, may be transferred in whole or in part.

C. An operating agreement may provide that a distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to Section 3672, may also provide for the transfer of any interest represented by the certificate.

**History**

CJY-17-08, July 22, 2008.

**§ 3671. Transfer of distributional interest**

A transfer of a distributional interest does not entitle the transferee to become or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.

**History**

CJY-17-08, July 22, 2008.

**§ 3672. Rights of transferee**

A. A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in the operating agreement or all other members consent.

B. A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and this Act. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under Section 3651 and for obligations under Section 3656 to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the time the transferee becomes a member.

C. Whether or not a transferee of a distributional interest becomes a member under Subsection (A), the transferor is not released from liability to the limited liability company under the operating agreement or this Act.

D. A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, require access to information concerning the company's transactions, or inspect or copy any of the company's records.

E. A transferee who does not become a member is entitled to:

1. Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

2. Receive, upon dissolution and winding up of the limited liability company's business:

a. In accordance with the transfer, the net amount otherwise distributable to the transferor;

b. A statement of account only from the date of the latest statement of account agreed to by all the members;

3. Seek under Section 3700(A)(5) a judicial determination that it is equitable to dissolve and wind up the company's business.

F. A limited liability company need not give effect to a transfer until it has notice of the transfer.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3673. Rights of creditor**

A. On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order.

B. A charging order constitutes a lien on the judgment debtor's

distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser at the foreclosure sale has the rights of a transferee.

C. At any time before foreclosure, a distributional interest in a limited liability company which is charged may be redeemed:

1. By the judgment debtor;
2. With property other than the company's property, by one or more of the other members; or
3. With the company's property, but only if permitted by the operating agreement.

D. This Act does not affect a member's right under exemption laws with respect to the member's distributional interest in a limited liability company.

E. This Section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 6. Member's Dissociation**

#### **§ 3680. Events causing member's dissociation**

A member is dissociated from a limited liability company upon the occurrence of any of the following events:

1. The company's having notice of the member's express will to withdraw upon the date of notice or on a later date specified by the member;
2. An event agreed to in the operating agreement as causing the member's dissociation;
3. Upon transfer of all of a member's distributional interest, other than a transfer for security purposes or a court order charging the member's distributional interest which has not been foreclosed;
4. The member's expulsion pursuant to the operating agreement;
5. The member's expulsion by unanimous vote of the other members if:
  - a. It is unlawful to carry on the company's business with the member;
  - b. There has been a transfer of substantially all of the

member's distributional interest, other than a transfer for security purposes or a court order charging the member's distributional interest which has not been foreclosed;

c. Within 90 days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

d. A partnership or a limited liability company that is a member has been dissolved and its business is being wound up;

6. On application by the company or another member, the member's expulsion by judicial determination because the member:

a. Engaged in wrongful conduct that adversely and materially affected the company's business;

b. Willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 3658; or

c. Engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member;

7. The member's:

a. Becoming a debtor in bankruptcy;

b. Executing an assignment for the benefit of creditors;

c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property; or

d. Failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

8. In the case of a member who is an individual:

a. The member's death;

b. The appointment of a guardian or general conservator for the member; or

c. A judicial determination that the member has otherwise become incapable of performing the member's duties under the operating

agreement;

9. In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, but not merely by reason of the substitution of a successor trustee;

10. In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

11. Termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3681. Member's power to dissociate; wrongful dissociation**

A. Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, by express will pursuant to Section 3680.

B. If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:

1. It is in breach of an express provision of the agreement; or
2. Before the expiration of the specified term of a term company:
  - a. The member withdraws by express will;
  - b. The member is expelled by judicial determination under Section 3680(6);
  - c. The member is dissociated by becoming a debtor in bankruptcy; or
  - d. In the case of a member who is not an individual, trust other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

C. A member who wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

D. If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under Subsection (B),

damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3682. Effect of member's dissociation**

A. Upon a member's dissociation:

1. In an at-will company, the company must cause the dissociated member's distributional interest to be purchased under Article 7; and

2. In a term company:

a. If the company dissolves and winds up its business on or before the expiration of its specified term, Article 8 applies to determine the dissociated member's rights to distributions; and

b. If the company does not dissolve and wind up its business on or before the expiration of its specified term, the company must cause the dissociated member's distributional interest to be purchased under Article 7 on the date of the expiration of the term specified at the time of the member's dissociation.

B. Upon a member's dissociation from a limited liability company:

1. The member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in Section 3702, and the member ceases to be a member and is treated the same as a transferee of a member;

2. The member's duty of loyalty under Section 3658(B)(3) terminates; and

3. The member's duty of loyalty under Section 3658(B)(1) and (2) and duty of care under Section 3658(C) continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to Section 3702.

#### **History**

CJY-17-08, July 22, 2008.

#### **Article 7. Member's Dissociation When Business Not Wound Up**

#### **§ 3690. Company purchase of distributional interest**

A. A limited liability company shall purchase a distributional interest of a:

1. Member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under Section 3700; or

2. Member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under Section 3700.

B. A limited liability company must deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than 30 days after the date determined under Subsection (A). The purchase offer must be accompanied by:

1. A statement of the company's assets and liabilities as of the date determined under Subsection (A);

2. The latest available balance sheet and income statement, if any; and

3. An explanation of how the estimated amount of the payment was calculated.

C. If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under Section 3700(A)(4)(d).

D. If an agreement to purchase the distributional interest is not made within 120 days after the date determined under Subsection (A), the dissociated member, within another 120 days, may commence a proceeding against the limited liability company to enforce the purchase. The company at its expense shall notify in writing all of the remaining members, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this Subsection is plenary and exclusive.

E. The court shall determine the fair value of the distributional interest in accordance with the standards set forth in Section 3691 together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

F. Damages for wrongful dissociation under Section 3681(B), and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability company, must be offset against the purchase price.

#### **History**

CJY-17-08, July 22, 2008.

**§ 3691. Court action to determine fair value of distributional interest**

A. In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

1. Determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any other purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

2. Specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on a dissociated member; and

3. Require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

B. After the dissociated member delivers the assignment, the dissociated member has no further claim against the company, its members, officers, or managers, if any, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the company or the remaining members that is not terminated by the court.

C. If the purchase is not completed in accordance with the specified terms, the company is to be dissolved upon application under Section 3700(A)(4)(d). If a limited liability company is so dissolved, the dissociated member has the same rights and priorities in the company's assets as if the sale had not been ordered.

D. If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good faith, it may award one or more other parties their reasonable expenses, including attorney's fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with Section 3690(B).

E. Interest must be paid on the amount awarded from the date determined under Section 3690(A) to the date of payment.

**History**

CJY-17-08, July 22, 2008.

**Note.** Typographical errors at Subsection C corrected to replace citation to Section 3700(B)(5)(d) with Section 3700(A)(4)(d); and Subsection E corrected to replace citation to Section 701(A) with Section 3690(A).

**§ 3692. Dissociated member's power to bind limited liability company**

For two years after a member dissociates without the dissociation



resulting in a dissolution and winding up of a limited liability company's business, the company, including a surviving company under Article 9, is bound by an act of the dissociated member which would have bound the company under Section 3640 before dissociation only if at the time of entering into the transaction the other party:

1. Reasonably believed that the dissociated member was then a member;
2. Did not have notice of the member's dissociation; and
3. Is not deemed to have had notice under Section 3693.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3693. Statement of dissociation**

A. A dissociated member or a limited liability company may file in the Department a statement of dissociation stating the name of the company and that the member is dissociated from the company.

B. For the purposes of Sections 3690 and 3692, a person not a member is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection B corrected to replace citation to Sections 3640 and 3692 with Sections 3690 and 3692.

### **Article 8. Winding Up Company's Business**

#### **§ 3700. Events causing dissolution and winding up of company's business**

A. A limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following events:

1. An event specified in the operating agreement;
2. Consent of the number or percentage of members specified in the operating agreement;
3. An event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within 90 days after notice to the company of the event is effective retroactively to the date of the event for purposes of this Section;
4. On application by a member or a dissociated member, upon entry of a judicial decree that:

a. The economic purpose of the company is likely to be unreasonably frustrated;

b. Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;

c. It is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

d. The company failed to purchase the petitioner's distributional interest as required by Section 3690;

e. The managers or members in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner; or

5. On application by a transferee of a member's interest, a judicial determination that it is equitable to wind up the company's business:

a. After the expiration of the specified term, if the company was for a specified term at the time the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

b. At any time, if the company was at will at the time the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer.

B. A limited liability company may be dissolved involuntarily by a judgment of a Navajo Nation Court in an action filed against it by the Attorney General of the Navajo Nation, and the company's business must be wound up, when any of the following is established:

1. The company has failed to comply with the provisions of this Act or regulations promulgated thereunder;

2. The company procured its formation through fraudulent misrepresentation or concealment of material facts;

3. The company violated the laws of the Navajo Nation; or

4. The company has continued to persist over a period of time to conduct its business in a fraudulent or otherwise illegal manner.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical errors at Subsection (A) (3) corrected to replace "In event" with "An event"; and Subsection (B) (2) corrected to replace "misrepresentative" with "misrepresentation".

**§ 3701. Limited liability company continues after dissolution**

A. Subject to Subsection (B), a limited liability company continues after dissolution only for the purpose of winding up its business.

B. At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

1. The limited liability company resumes carrying on its business as if dissolution had never occurred and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

2. The rights of a third party accruing under Section 3703(A) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

**History**

CJY-17-08, July 22, 2008.

**§ 3702. Right to wind up limited liability company's business**

A. After dissolution, a member who has not wrongfully dissociated may participate in winding up a limited liability company's business, but on application of any member, member's legal representative, or transferee, the Navajo Nation Courts, for good cause shown, may order judicial supervision of the winding up.

B. A legal representative of the last surviving member may wind up a limited liability company's business.

C. A person winding up a limited liability company's business may preserve the company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to Section 3705, settle disputes by mediation or arbitration, and perform other necessary acts.

**History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection C corrected to replace citation to Section 806 with Section 3705.

**§ 3703. Member's or manager's power and liability as agent after dissolution**

A. A limited liability company is bound by a member's or manager's act after dissolution that:

1. Is appropriate for winding up the company's business; or

2. Would have bound the company under Section 3640 before dissolution, if the other party to the transaction did not have notice of the dissolution.

B. A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for winding up the company's business is liable to the company for any damage caused to the company arising from the liability.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3704. Articles of termination**

A. At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the Department articles of termination stating:

1. The name of the company;

2. The date of the dissolution; and

3. That the company's business has been wound up and the legal existence of the company has been terminated.

B. The existence of a limited liability company is terminated upon the filing of the articles of termination, or upon a later effective date, if specified in the articles of termination.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3705. Distribution of assets in winding up limited liability company's business**

A. In winding up a limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members who are creditors. Any surplus must be applied to pay in money the net amount distributable to members in accordance with their right to distributions under Subsection (B).

B. Each member is entitled to a distribution upon the winding up of the limited liability company's business consisting of a return of all contributions which have not previously been returned and a distribution of any remainder in equal shares.

#### **History**

CJY-17-08, July 22, 2008.

**§ 3706. Known claims against dissolved limited liability company**

A. A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

B. A dissolved limited liability company shall notify its known claimants in writing of the dissolution. The notice must:

1. Specify the information required to be included in a claim;
2. Provide a street and mailing address where the claim is to be sent;
3. State the deadline for receipt of the claim, which may not be less than 120 days after the date the written notice is received by the claimant; and
4. State that the claim will be barred if not received by the deadline.

C. A claim against a dissolved limited liability company is barred if the requirements of Subsection (B) are met, and:

1. The claim is not received by the specified deadline; or
2. In the case of a claim that is timely received but rejected by the dissolved company, the claimant does not commence a proceeding to enforce the claim within 90 days after the receipt of the notice of the rejection.

D. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

**History**

CJY-17-08, July 22, 2008.

**§ 3707. Other claims against dissolved limited liability company**

A. A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

B. The notice must:

1. Be published at least once in a newspaper of general circulation in the area in which the dissolved limited liability company's principal office is located or, if none in the Navajo Nation, in which its designated office is or was last located;

2. Describe the information required to be contained in a claim and provide a street and mailing address where the claim is to be sent; and

3. State that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

C. If a dissolved limited liability company publishes a notice in accordance with Subsection (B), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved company within five years after the publication date of the notice:

1. A claimant who did not receive written notice under Section 3706;

2. A claimant whose claim was timely sent to the dissolved company but not acted on; and

3. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

D. A claim not barred under this Section may be enforced:

1. Against the dissolved limited liability company, to the extent of its undistributed assets; or

2. If the assets have been distributed in liquidation, against a member of the dissolved company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this Section may not exceed the total amount of assets distributed to the member.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3708. Grounds for administrative dissolution**

The Department may commence a proceeding to dissolve a limited liability company administratively if the company does not:

1. Pay any fees, taxes, or penalties imposed by this Act or other law within 60 days after they are due; or

2. Deliver its annual report to the Department within 90 days after it is due.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3709. Procedure for and effect of administrative dissolution**

A. If the Department determines that a ground exists for administratively dissolving a limited liability company, the Department shall enter a record of the determination and serve the company with a copy of the record.

B. If the company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Department that each ground determined by the Department does not exist within 60 days after service of the notice, the Department shall administratively dissolve the company by signing a certification of the dissolution that recites the ground for dissolution and its effective date. The Department shall file the original of the certificate and serve the company with a copy of the certificate.

C. A company administratively dissolved continues its existence but may carry on only business necessary to wind up and liquidate its business and affairs under Section 3701 and to notify claimants under Sections 3706 and 3707.

D. The administrative dissolution of a company does not terminate the authority of its agent for service of process.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3710. Reinstatement following administrative dissolution**

A. A limited liability company administratively dissolved may apply to the Department for reinstatement within two years after the effective date of dissolution. The application must:

1. Recite the name of the company and the effective date of its administrative dissolution;
2. State that the ground for dissolution either did not exist or have been eliminated;
3. State that the company's name satisfies the requirements of Section 3605; and
4. Contain a certificate from the Office of Navajo Tax Commission reciting that all taxes owed by the company have been paid.

B. If the Department determines that the application contains the information required by Subsection (A) and that the information is correct, the Department shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

C. When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the company may resume its business as if the administrative dissolution had never occurred.

## History

CJY-17-08, July 22, 2008.

### § 3711. Appeal from denial of reinstatement

A. If the Department denies a limited liability company's application for reinstatement following administrative dissolution, the Department shall serve the company with a record that explains the reason or reasons for denial.

B. The company may appeal the denial of reinstatement to the Department by filing a notice of appeal within thirty (30) days after service of the notice of denial is perfected.

C. The notice of appeal shall be in writing and shall:

1. Identify the company being denied reinstatement, and contain a short statement of facts indicating the nature and circumstances of the denial;

2. Specify the legal basis for the appeal; and

3. Contain a statement of facts upon which the company relies in support of the appeal and such argument as the company may care to make in support of the appeal.

D. Within five (5) days after receiving a notice of appeal, the Department shall refer the appeal to the Navajo Office of Hearing and Appeals for assignment to a qualified and impartial hearing officer.

E. The hearing officer shall hear the appeal within thirty (30) days of receipt of the notice of appeal by the Department. Upon request or agreement of the company, a delay of not more than fifteen (15) days may be granted.

F. Notice shall be afforded to the parties at least ten (10) days in advance of the date set for hearing. Each party at the hearing may be represented by counsel and shall have the opportunity to subpoena witnesses, present evidence, and examine witnesses.

G. After the hearing, each party shall have ten (10) days to submit in writing proposed findings of fact and conclusions of law. The hearing officer may uphold or reverse the decision of the Department or any part thereof, but may not grant any other relief.

H. The hearing officer shall issue written findings of fact and conclusions of law that shall state the decision and grounds thereof.

I. The decision of the hearing officer shall be final and may be appealed by any party to the Navajo Nation Supreme Court in accordance with the Navajo Nation Rules of Civil Appellate Procedure. The court shall review the decision of the hearing officer of the administrative record only. The decision shall not be subject to de novo review on appeal. The court may substitute its judgment on those questions of law within its special competence but shall otherwise uphold the decision of the hearing officer where reasonable.



## **History**

CJY-17-08, July 22, 2008.

### **Article 9. Conversions and Mergers**

#### **§ 3720. Definitions**

In this Article:

1. "Corporation" means a corporation under Navajo Nation Corporation Code, a predecessor law, or comparable law of another jurisdiction.

2. "General partner" means a partner in a partnership and a general partner in a limited partnership.

3. "Limited partner" means a limited partner in a limited partnership.

4. "Limited partnership" means a limited partnership created under Navajo Nation Limited Partnership Act, a predecessor law, or comparable law of another jurisdiction.

5. "Partner" includes a general partner and a limited partner.

6. "Partnership" means a general partnership under the Navajo Nation Uniform Partnership Act, a predecessor law, or comparable law of another jurisdiction.

7. "Partnership agreement" means an agreement among the partners concerning the partnership or limited partnership.

8. "Shareholder" means a shareholder in a corporation.

## **History**

CJY-17-08, July 22, 2008.

#### **§ 3721. Conversion of partnership or limited partnership to limited liability company**

A. A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

B. The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

C. An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited

partnership, as the case may be, into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination thereof.

D. After a conversion is approved under Subsection (B), the partnership or limited partnership shall file articles of organization in the Department which satisfy the requirements of Section 3622 and contain:

1. A statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership, as the case may be;

2. Its former name;

3. A statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under Subsection (B); and

4. In the case of a limited partnership, a statement that the certificate of limited partnership is to be canceled as of the date the conversion took effect.

E. In the case of a limited partnership, the filing of articles of organization under Subsection (D) cancels its certificate of limited partnership as of the date the conversion took effect.

F. A conversion takes effect when the articles of organization are filed in the Department or at any later date specified in the articles of organization.

G. A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

H. A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error corrected to delete Subsection I, without any text.

#### **§ 3722. Effect of conversion; entity unchanged**

A. A partnership or limited partnership that has been converted pursuant to this Article is for all purposes the same entity that existed before the

conversion.

B. When a conversion takes effect:

1. All property owned by the converting partnership or limited partnership vests in the limited liability company;

2. All debts, liabilities, and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

3. An action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

4. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership vest in the limited liability company; and

5. Except as otherwise provided in the agreement of conversion under Section 3721(C), all of the partners of the converting partnership continue as members of the limited liability company.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3723. Merger of entities**

A. Pursuant to a plan of merger approved under Subsection (C), a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities.

B. A plan of merger must set forth:

1. The name of each entity that is a party to the merger;

2. The name of the surviving entity into which the other entities will merge;

3. The type of organization of the surviving entity;

4. The terms and conditions of the merger;

5. The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part; and

6. The street and mailing address of the surviving entity's principal place of business.

C. A plan of merger must be approved:

1. In the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;

2. In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the foreign limited liability company is organized;

3. In the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under Section 3721(B); and

4. In the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of the Navajo Nation or of the state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.

D. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

E. The merger is effective upon the filing of the articles of merger with the Department, or at such later date as the articles may provide.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3724. Articles of merger**

A. After approval of the plan of merger under Section 3723(C), unless the merger is abandoned under Section 3723(D), articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the Department for filing. The articles must set forth:

1. The name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

2. For each limited liability company that is to merge, the date its articles of organization were filed with the Department;

3. That a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

4. The name, street and mailing address, and phone numbers of the surviving limited liability company or other surviving entity;

5. The effective date of the merger;

6. If a limited liability company is the surviving entity, such changes in its articles of organization as are necessary by reason of the merger;

7. If a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the Department or, if an application has not been filed, a statement to that effect; and

8. If the surviving entity is not a limited liability company, an agreement that the surviving entity may be served with process in the Navajo Nation and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in the Navajo Nation which is to merge, and for the enforcement, as provided in this Act, of the right of members of any limited liability company to receive payment for their interest against the surviving entity.

B. If a foreign limited liability company is the surviving entity of a merger, it may not do business in the Navajo Nation until an application for that authority is filed with the Department.

C. The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is to merge.

D. Articles of merger operate as an amendment to the limited liability company's articles of organization.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3725. Effect of merger**

A. When a merger takes effect:

1. The separate existence of each limited liability company and other entity that is a party to the merger, other than the surviving entity, terminates;

2. All property owned by each of the limited liability companies and other entities that are party to the merger vests in the surviving entity;

3. All debts, liabilities, and other obligations of each limited liability company and other entity that is party to the merger become the obligations of the surviving entity;

4. An action or proceeding pending by or against a limited liability company or other party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a

party to the action or proceeding; and

5. Except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that is a party to a merger vest in the surviving entity.

B. The Department is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in the Navajo Nation or the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the Department shall send a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the street and mailing address set forth in the articles of merger. Service is effected under this Subsection at the earliest of:

1. The date the company receives the process, notice, or demand;
2. The date shown on the return receipt, if signed on behalf of the company; or
3. Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

C. A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

D. Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this Act or pay its liabilities and distribute its assets pursuant to this Act.

E. Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3726. Article not exclusive**

This Article does not preclude an entity from being converted or merged under other law.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 10. Foreign Limited Liability Companies**

#### **§ 3730. Law governing foreign limited liability companies**

A. The laws of the Navajo Nation or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members, and their transferees.

B. A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws of another jurisdiction under which the foreign company is organized and the laws of the Navajo Nation.

C. A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in the Navajo Nation.

### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection C corrected to replace "authorized" with "authorize".

### **§ 3731. Application for certification of authority**

A. A foreign limited liability company may apply for a certificate of authority to transact business in the Navajo Nation by delivering an application to the Department for filing. The application must set forth:

1. The name of the foreign company or, if its name is unavailable for use in the Navajo Nation, a name that satisfies the requirements of Section 3734;

2. The name of the state or country under whose law it is organized;

3. The street and mailing address and phone number of its principal office;

4. The street and mailing address and phone number of its initial designated office in the Navajo Nation;

5. The name, street and mailing address and phone number of its initial agent for service of process in the Navajo Nation;

6. Whether the duration of the company is for a specified term and, if so, the period specified;

7. Whether the company is manager-managed, and, if so, the name, street and mailing address and phone number of each initial manager; and

8. Whether the members of the company are to be liable for its debts and obligations under a provision similar to Section 3642(C).

B. A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the secretary of state or other official having custody of

company records in the State or country under whose law it is organized.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3732. Activities not constituting transacting business**

A. Activities of a foreign limited liability company that do not constitute transacting business in the Navajo Nation within the meaning of this Article include:

1. Maintaining, defending, or settling an action or proceeding;
2. Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign company's own securities or maintaining trustees or depositories with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Navajo Nation before they become contracts;
7. Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
8. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
9. Conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of a like manner; and
10. Transacting business in interstate commerce.

B. For purposes of this Article, the ownership in the Navajo Nation of income-producing real property or tangible personal property, other than property excluded under Subsection (A), constitutes transacting business in the Navajo Nation.

C. This Section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under any other law of the Navajo Nation.

#### **History**

CJY-17-08, July 22, 2008.



**§ 3733. Issuance of certificate of authority**

Unless the Department determines that an application for a certificate of authority fails to comply as to form with the filing requirements of this Act, the Department, upon payment of all filing fees, shall file the application and send a receipt for it and the fees to the limited liability company or its representative.

**History**

CJY-17-08, July 22, 2008.

**§ 3734. Name of foreign limited liability company**

A. If the name of a foreign limited liability company does not satisfy the requirements of Section 3605, the company, to obtain or maintain a certificate of authority to transact business in the Navajo Nation, must use a fictitious name to transact business in the Navajo Nation if its real name is unavailable and it delivers to the Department for filing a copy of the resolution of its managers, in the case of a manager-managed company, adopting the fictitious name.

B. Except as authorized by Subsections (C) and (D), the name, including a fictitious name to be used to transact business in the Navajo Nation, of a foreign limited liability company must be distinguishable upon the records of the Department from:

1. The name of any corporation, limited partnership, or company incorporated, organized, or authorized to transact business in the Navajo Nation;
2. A name reserved or registered under Section 3606 or 3607; and
3. The fictitious name of another foreign limited liability company authorized to transact business in the Navajo Nation.

C. A foreign limited liability company may apply to the Navajo Nation for authority to use in the Navajo Nation a name that is not distinguishable upon the records of the Department from a name described in Subsection (B). The Department shall authorize use of the name applied for if:

1. The present user, registrant, or owner of a reserved name consents to the use in a record and submits an undertaking in form satisfactory to the Department to change its name to a name that is distinguishable upon the records of the Department from the name of the foreign applying limited liability company; or
2. The applicant delivers to the Navajo Nation a certified copy of a final judgment of a court establishing the applicant's right to use the name applied for in the Navajo Nation.

D. A foreign limited liability company may use in the Navajo Nation the name, including the fictitious name, of another domestic or foreign entity that

is used in the Navajo Nation if the other entity is incorporated, organized, or authorized to transact business in the Navajo Nation and the foreign limited liability company:

1. Has merged with the other entity;
2. Has been formed by reorganization of the other entity; or
3. Has acquired all or substantially all of the assets, including the name, of the other entity.

E. If a foreign limited liability company authorized to transact business in the Navajo Nation changes its name to one that does not satisfy the requirements of Section 3605, it may not transact business in the Navajo Nation under the name as changed until it adopts a name satisfying the requirements of Section 3605 and obtains an amended certificate of authority.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3735. Revocation of certificate of authority**

A. A certificate of authority of a foreign limited liability company to transact business in the Navajo Nation may be revoked by the Department in the manner provided in Subsection (B) if;

1. The company fails to:
  - a. Pay any fees, taxes, and penalties owed to the Navajo Nation;
  - b. Deliver its annual report required under Section 3630 to the Department within 90 days after it is due;
  - c. Appoint and maintain an agent for service of process as required by this Article; or
  - d. File a statement of a change in the name or business address of the agent as required by this Article; or
2. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this Article.

B. The Department may not revoke a certificate of authority of a foreign limited liability company unless the Department sends the company notice of the revocation, at least 60 days before its effective date, by a record addressed to its agent for service of process in the Navajo Nation, or if the company fails to appoint and maintain a proper agent in the Navajo Nation, addressed to the office required to be maintained by Section 3608. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in the Navajo Nation ceases on the effective date of the revocation unless the foreign limited liability company cures the

failure before that date.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3736. Cancellation of authority**

A foreign limited liability company may cancel its authority to transact business in the Navajo Nation by filing in the Department a certificate of cancellation. Cancellation does not terminate the authority of the Department to accept service of process on the company for claims for relief arising out of the transactions of business in the Navajo Nation.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3737. Effect of failure to obtain certificate of authority**

A. A foreign limited liability company transacting business in the Navajo Nation may not maintain an action or proceeding in the Navajo Nation unless it has a certificate of authority to transact business in the Navajo Nation.

B. The failure of a foreign limited liability company to have a certificate of authority to transact business in the Navajo Nation does not impair the validity of a contract or act of the company or prevent the foreign limited liability company from defending an action or proceeding in the Navajo Nation.

C. Limitations on personal liability of managers, members, and their transferees are not waived solely by transacting business in the Navajo Nation without a certificate of authority.

D. If a foreign limited liability company transacts business in the Navajo Nation without a certificate of authority, it appoints the Department as its agent for service of process for claims for relief arising out of the transaction of business in the Navajo Nation.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3738. Action by Attorney General**

The Attorney General of the Navajo Nation may maintain an action to restrain a foreign limited liability company from transacting business in the Navajo Nation in violation of this Article.

#### **History**

CJY-17-08, July 22, 2008.

## **Article 11. Derivative Actions**

### **§ 3740. Right of action**

A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error corrected to change third use of the word "actions" to "action".

### **§ 3741. Proper plaintiff**

In a derivative action for a limited liability company, the plaintiff must be member of the company when the action is commenced; and

1. Must have been a member at the time of the transaction of which the plaintiff complains; or

2. The plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 3742. Pleading**

In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 3743. Expenses**

If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

#### **History**

CJY-17-08, July 22, 2008.

## **Article 12. Miscellaneous Provisions**

### **§ 3750. Uniformity of application and construction**

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among the governments enacting it.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error corrected to replace "effectuate it" with "effectuate its".

### **§ 3751. Short title**

This Act may be cited as the Navajo Nation Limited Liability Company Act.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 3752. Severability clause**

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provision of this Act are severable.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error corrected to replace "to end" with "to this end".

### **§ 3753. Effective date**

This Act shall become effective 30 days after approval by the Navajo Nation Council.

#### **History**

CJY-17-08, July 22, 2008. Approved by the Navajo Nation Council on July 22, 2008. Signed into law by the Navajo Nation President on August 8, 2008.

### **§ 3754. Saving clause**

Notwithstanding Section 3755, this Act does not affect an action or proceeding commenced or right accrued before the effective date of this Act.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3755. Jurisdiction of Navajo Nation courts**

The Navajo Nation District Court shall have original jurisdiction over any action against, or by, any domestic or foreign limited liability company, or for actions arising under this Act including actions by an aggrieved party contesting acts or omissions by the Department, under this Act.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3756. Consent to the jurisdiction of Navajo Nation**

A. Any limited liability company created pursuant to this Act or any member or other parties mentioned therein or thereafter its formation shall be deemed to have consented to legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the company within the Navajo Nation.

B. The Navajo Nation courts shall have original jurisdiction over any action against, or by, any domestic or foreign limited liability company, or for actions arising under this Act including actions by an aggrieved party contesting acts or omissions by the Department, under this Act.

C. Nothing contained in the articles of organization and other applicable organizational documents shall be construed to reduce or impair this section.

D. Nothing in this Section shall be construed as an exception to or repeal of the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, as may be amended from time to time.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3757. Taxation**

A limited liability company established under this Act or a foreign limited liability company transacting business in the Navajo Nation pursuant to this Act shall pay applicable taxes that are imposed by the laws of the Navajo Nation on domestic and foreign limited liability companies on an identical basis.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3758. Department; duties and functions; rules and regulations**

A. The Department shall be charged with the administration and enforcement of this Act. The Department is authorized to employ such personnel as maybe necessary for the administration of this Act.

B. The Department is authorized to promulgate rules and regulations from time to time as may be necessary to carry out the provisions and policies of this Act. Such rules and regulations shall include:

1. Regulations governing the determination of fees and charges for the proper and efficient administration of this Act.

2. Regulations governing administration of this Act by the Department.

C. The effectiveness and enforceability of the provisions of the Act shall not be dependent upon the adoption of regulations pursuant to Subsection (B) of this Section.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3759. Non-payment of fees; sanctions**

A. The Department shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any limited liability company organized under the provisions of this Act until all fees and charges provided to be paid in connection therewith shall have been paid to it or while the corporation is in default in the payment of any fees, charges, or sanctions herein provided to be paid by or assessed against it. Nothing in this Section shall prevent the filing, without the payment of all such fees, charges, and sanctions, of a written notice of resignation by a registered agent of a corporation.

B. No limited liability company required to pay a fee, charge, or sanction under this Act shall maintain within the Navajo Nation any civil action until all such fees, charges, and sanctions have been paid in full.

C. The Navajo Nation shall have the right to offset any amounts due and owing from a limited liability company under this Act against any payment due from the Navajo Nation to such limited liability company.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Slightly reworded at Subsection A.

### **Chapter 23. Navajo Nation Uniform Partnership Act**

#### **Article 1. General Provisions**

#### **§ 3800. Policy and purpose**

The Navajo Nation Uniform Partnership Act is hereby enacted:

A. The purpose of this Act is to permit the formation of various partnership entities and require registration of foreign partnerships; and to regulate such entities so as to promote economic growth and further exercise Navajo Nation sovereignty in the governance of its territory, and citizens.

B. This Act is based upon the model Uniform Partnership Act (1993) general principles of general partnerships. The interpretation of this Act shall be based on Navajo Nation court interpretation and such interpretation shall give the utmost respect in deciding the meaning and purpose of this Act to the unique traditions and customs of the Navajo People. General decisional law interpreting similar provisions of other general partnership laws in other jurisdictions may be used as guidance.

C. Unless otherwise expressly stated by law, the sovereign immunity of the Navajo Nation shall not extend to partnership entities organized under this Act, nor shall such entities be considered a subdivision, entity, or enterprise of the Navajo Nation, nor shall the Navajo Nation be liable for the debts or obligations of any such entities established as set herein.

D. The Division of Economic Development through its Business Regulatory Department shall administer the provisions of the Act. The Business Regulatory Department shall promulgate rules and regulations to implement this Act. All proposed rules and regulations shall be published for public comments at least 90 days prior to submission to the Economic Development Committee of the Navajo Nation Council for final review and approval. The Division of Economic Development is directed to prepare an appropriate supplemental budget for carrying out its responsibilities under this Act.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3801. Definitions**

In this Act, unless the context otherwise requires:

A. "Business" includes every trade, occupation and profession.

B. "Debtor in bankruptcy" means a person who is the subject of either:

1. An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

2. A comparable order under federal, state or foreign law governing insolvency.

C. "Department" means the Business Regulatory Department within the Division of Economic Development or its designee successor.

D. "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the



partner's transferee.

E. Limited liability partnership means a partnership that has filed a statement of qualification under Section 3890.

F. "Navajo Nation" means:

1. When referring to the body politic, the Navajo Nation government, including its Council and applicable standing committees and boards;

2. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

a. All land within the exterior boundaries of the Navajo Indian Reservation, including the Navajo Partitioned Land, or of the Eastern Navajo portion of the Navajo Nation, including Alamo, Tóhajiilee, and Ramah, or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;

b. All lands held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Nation, any Band of Navajo Indians, or any individual Navajo Indian as such; and

c. All other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

G. "Partnership" means an association of two or more persons to carry on as co-owners of a business for profit created under Section 3811, predecessor law or comparable law of another jurisdiction.

H. "Partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

I. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

J. "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

K. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

L. "Property" means all property, real, personal or mixed, tangible or intangible, or any interest therein.

M. "State" means a state of the United States, a federally-recognized

Indian nation, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

N. "Statement" means a statement of partnership authority under Section 3822, a statement of denial under Section 3823, a statement of dissociation under Section 3863, a statement of dissolution under Section 3874, a statement of merger under Section 3886, or an amendment or cancellation of any of the foregoing.

O. "Transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3802. Knowledge and notice**

A. A person knows a fact if the person has actual knowledge of it.

B. A person has notice of a fact if the person:

1. Knows of it;

2. Has received a notification of it; or

3. Has reason to know it exists from all of the facts known to the person at the time in question.

C. A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

D. A person receives a notification when it:

1. Comes to the person's attention; or

2. Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

E. Except as provided in Subsection (F), a person other than an individual knows, has notice or receives a notification of a fact for purposes of a particular transaction when the individual acting for the person and conducting the transaction knows, has notice or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the

transaction would be materially affected by the information.

F. A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of fraud on the partnership committed by or with the consent of that partner.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3803. Effect of partnership agreement; nonwaivable provisions**

A. Except as otherwise provided in Subsection (B), a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this Act governs relations among the partners and between the partners and the partnership.

B. The partnership agreement may not:

1. Vary the rights and duties under Section 3805 except to eliminate the duty to provide copies of statements to all of the partners;

2. Unreasonably restrict the right of access to books and records under Section 3832(B);

3. Eliminate the duty of loyalty under Section 3833(B) or Section 3852(B) (3):

a. The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

b. All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

4. Unreasonably reduce the duty of care under Section 3833(C), or 3852(B) (3);

5. Eliminate the obligation of good faith and fair dealing under Section 3833(D), but the partnership by agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

6. Vary the power to dissociate as a partner under Section 3851(A), except to require the notice under Section 3850(1) to be in writing;

7. Vary the rights of a court to expel a partner in the events specified in Section 3850(5);

8. Vary the requirement to wind up the partnership business in cases specified in Section 3870(4), (5), or (6); or

9. Restrict rights of third parties under the Act.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical errors at Subsection B(2) corrected to replace the citation to Section 3831(B) with Section 3832(B); Subsection B(3) corrected to replace the citation to Section 3832(B) with Section 3833(B); Subsection B(3)(a) corrected by replacing "do no violate" with "do not violate"; Subsection B(4) corrected to replace the citation to Section 3832(C) with Section 3833(C); and Subsection B(5) corrected to replace the citation to Section 3832(D) with Section 3833(D).

#### **§ 3804. Supplemental principles of law**

Unless displaced by particular provisions of this Act, the principles of law and equity supplement this Act.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3805. Execution, filing and recording of statements**

A. A statement may be filed in the Department. A certified copy of a statement that is filed in an office in another state may be filed in the Department. Either filing has the effect provided in this Act with respect to partnership property located in or transactions that occur in the Navajo Nation.

B. A certified copy of a statement that has been filed in the Department and recorded in an applicable office for recording transfers of real property has the effect provided for recorded statements in this Act. A recorded statement that is not a certified copy of a statement filed in the Department does not have the effect provided for recorded statements in this Act.

C. A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or any other person authorized by this Act. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statements are accurate.

D. A person authorized by this Act to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement and states the substance of the amendment or cancellation.

F. A person who files a statement pursuant to this Section shall promptly send a copy of the statement to every non-filing partner and to any other

person named as a partner in the statement. Failure to send a copy of a statement to a partner or any other person does not limit the effectiveness of the statement as to a person who is not a partner.

G. The Department may collect a fee for filing or providing a certified copy of a statement.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3806. Law governing internal affairs**

A. Except as otherwise provided in Subsection (B). The law of a jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

B. The law of the Navajo Nation governs relations among the partner and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3807. Partnership subject to amendment or repeal**

A partnership governed by this Act is subject to any amendment to or repeal of this Act.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 2. Nature of Partnership**

#### **§ 3810. Partnership as entity**

A. A partnership is an entity distinct from its partners.

B. A limited liability partnership continues to be the same entity that existed before the filing of the statement of qualification under Section 3890.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3811. Formation of partnership**

A. Except as otherwise provided in Subsection (B), the association of two or more persons to carry on as co-owners of a business for profit forms a partnership, whether or not the persons intend to create a partnership.

B. An association created under a statute other than this Act, a

predecessor statute, or a comparable statute of another jurisdiction is not a partnership.

C. In determining whether a partnership is created, the following rules apply:

1. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

2. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

3. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

a. Of a debt by installments or otherwise;

b. For services as an independent contractor or of wages or other compensation to an employee;

c. Of rent;

d. Of an annuity or any other retirement benefit to a beneficiary, representative or designee of a deceased or retired partner;

e. Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds or increase in value derived from the collateral;

f. For the sale of the goodwill of any business or other property by installments or otherwise.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3812. Partnership property**

Property acquired by a partnership is property of the partnership and not of the partners individually.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3813. When property is partnership property**

A. Property is partnership property if acquired in the name of:

1. The partnership; or

2. One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

B. Property is acquired in the name of the partnership by a transfer to:

1. The partnership in its name; or

2. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

C. Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

D. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purpose.

### **History**

CJY-17-08, July 22, 2008.

## **Article 3. Relations of Partners to Persons Dealing With Partnership**

### **§ 3820. Partner agent of partnership**

Subject to the effect of a statement of partnership authority under Section 3822:

1. Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

2. An act of a partner that is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

### **History**

CJY-17-08, July 22, 2008.

**§ 3821. Transfer of partnership property**

A. Partnership property may be transferred as follows:

1. Subject to the effect of a statement of partnership authority under Section 3822, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

2. Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

3. Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

B. A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under Section 3820 and:

1. As to a subsequent transferee who gave value for property transferred under Subsection (A)(1) or (2), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

2. As to a transferee who gave value for property transferred under Subsection (A)(3), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

C. A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under Subsection B, from any earlier transferee of the property.

D. If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

**History**

CJY-17-08, July 22, 2008.



**§ 3822. Statement of partnership authority**

A. A partnership may file a statement of partnership authority that:

1. Must include:

a. The name of the partnership;

b. The street and mailing address and phone number of its chief executive office and of one office in the Navajo Nation, if there is one;

c. The names, street and mailing addresses and phone numbers of all of the partners or of an agent appointed and maintained by the partnership for the purpose of Subsection (B); and

d. The names of the partners authorized to execute an instrument transferring real property interest held in the name of the partnership.

2. May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

B. If a statement of partnership authority names an agent, the agent shall maintain a list of the names, street and mailing addresses and phone numbers of all of the partners and make it available to any person on request for good cause shown.

C. If a filed statement of partnership authority is executed pursuant to Section 3805(C) and states the name of the partnership but does not contain all of the other information required by Subsection (A), the statement nevertheless operates with respect to a person who is not a partner as provided in Subsections (D) and (E).

D. Except as otherwise provided in Subsection (G), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

1. Except for transfers of real property interest, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, as long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

2. A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property interest is conclusive in favor of a person who gives value without knowledge to the contrary, as long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording

transfers of that real property interest. The recording in the office for recording transfers of that real property interest of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

E. A person who is not a partner is deemed to know of a limitation on the authority of a partner to transfer real property interest held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property interest.

F. Except as otherwise provided in Subsections (D) and (E) and Sections 3863 and 3874, a person who is not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

G. Unless earlier cancelled, a filed statement of partnership authority is cancelled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the Department.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3823. Statement of denial**

A partner or any other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to Section 3822(B) may file a statement of denial stating the name of the partnership and the fact that is being denied, including denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in Section 3822 (D) and (E).

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3824. Partnership liable for partner's actionable conduct**

A. A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

B. If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person who is not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3825. Partner's liability**

A. Except as otherwise provided in Subsection (B), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

B. A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

C. An obligation of the partnership incurred while the partnership is a limited liability partnership whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation by reason of being or so acting as a partner. This Subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under Section 3890(B).

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection C corrected to replace "A partners" with "A partner".

#### **§ 3826. Actions by and against partnership and partners**

A. A partnership may sue and be sued in the name of the partnership.

B. Except as otherwise provided in Subsection (F), action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

C. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

D. A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 3825 and:

1. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part; or

2. The partnership is a debtor in bankruptcy;

3. The partner has agreed that the creditor need not exhaust partnership assets;

4. A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to

satisfy the judgment, that exhaustion of partnership assets is excessively burdensome or that the grant of permission is an appropriate exercise of the court's equitable powers; or

5. Liability is imposed on the partner by law or contract independent of the existence of the partnership.

E. This Section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 3827.

F. A partner is not a proper party to an action against a partnership if that partner is not personally liable for the claim under Section 3825.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3827. Liability of purported partner**

A. If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons who are not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies on the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

B. If a person pursuant to Subsection (A) is represented to be a partner in an existing partnership, or with one or more persons who are not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance on the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or partnership obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

C. A person is not a partner in a partnership merely because the person is named by another in a statement of partnership authority.

D. A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

E. Except as otherwise provided in Subsections (A) and (B), persons who are not partners as to each other are not liable as partners to other persons.

### **History**

CJY-17-08, July 22, 2008.

## **Article 4. Relations of Partners to Each Other and to Partnership**

### **§ 3830. Partner's rights and duties**

A. Each partner is deemed to have an account that is:

1. Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

2. Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

B. Each partner is entitled to an equal share of the partnership profits and chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

C. A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

D. A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

E. A payment or advance made by a partner which gives rise to a partnership obligation under Subsection (C) or (D) constitutes a loan to the partnership that accrues interest from the date of the payment or advance.

F. Each partner has equal rights in the management and conduct of the partnership business.

G. A partner may use or possess partnership property only on behalf of the partnership.

H. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

I. A person may become a partner only with the consent of all of the partners.

J. A difference arising as to a matter in the ordinary course of business

of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

K. This Section does not affect the obligations of a partnership to other persons under Section 3820.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3831. Distributions in kind**

A partner has no right to receive, and may not be required to accept, a distribution in kind.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3832. Partner's rights to information**

A. A partnership shall keep its books and records, if any, at its chief executive office.

B. A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

C. Each partner and the partnership shall furnish to a partner, and the legal representative of a deceased partner or partner under legal disability, to the extent just and reasonable, complete and accurate information concerning the partnership.

1. Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this Act; and

2. On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3833. General standards of partner's conduct**

A. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in Subsections (B) and (C).

B. A partner's duty of loyalty to the partnership and the other partners is limited to the following:

1. To account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

2. To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

3. To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

C. A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

D. A partner shall discharge the duties to the partnership and the other partners under this Act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

E. A partner does not violate a duty or obligation under this Act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

F. A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

G. This Section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3834. Actions by partnership and partners**

A. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

B. A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to

partnership business, to:

1. Enforce the partner's rights under the partnership agreement;
2. Enforce the partner's rights under this Act, including:
  - a. The partner's rights under Section 3830, 3832 or 3833;
  - b. The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 3860 or enforce any other right under Articles 6 or 7; or
  - c. The partner's right to compel a dissolution and winding up of the partnership business under Section 3870 or enforce any other right under Article 8; or
3. Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

C. The accrual of, and any time limitation on, a right of action for a remedy under this Section is governed by other law. A right to an accounting on a dissolution and winding up does not revive a claim barred by law.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3835. Continuation of partnership beyond definite term or particular undertaking**

A. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, as far as is consistent with a partnership at will.

B. If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 5. Transferees and Creditors of Partner**

#### **§ 3840. Partner not co-owner of partnership property**

A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred, either voluntarily or involuntarily.



### **History**

CJY-17-08, July 22, 2008.

#### **§ 3841. Partner's transferable interest in partnership**

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

### **History**

CJY-17-08, July 22, 2008.

#### **§ 3842. Transfer of partner's transferable interest**

A. A transfer, in whole or in part, of a partner's transferable interest in the partnership:

1. Is permissible;

2. Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

3. Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions or to inspect or copy the partnership books or records.

B. A transferee of a partner's transferable interest in the partnership has a right:

1. To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

2. To receive on the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

3. Seek under Section 3870(6) a judicial determination that it is equitable to wind up the partnership business.

C. In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

D. On transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

E. A partnership need not give effect to a transferee's rights under this Section until it has notice of the transfer.

F. A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3843. Partner's transferable interest subject to charging order**

A. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and may make all other orders, directions, accounts and inquiries the judgment debtor might have made or that the circumstances of the case may require.

B. A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

C. At any time before foreclosure, an interest charged may be redeemed:

1. By the judgment debtor; or
2. With property other than partnership property, by one or more of the other partners; or
3. With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

D. This Act does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

E. This Section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

#### **History**

CJY-17-08, July 22, 2008.

#### **Article 6. Partner's Dissociation**

#### **§ 3850. Events causing partner's dissociation**

A partner is dissociated from a partnership on the occurrence of any of the following events:

1. The partnership's having notice of the partner's express will to

withdraw as a partner or on a later date specified by the partner;

2. An event agreed to in the partnership agreement as causing the partner's dissociation;

3. The partner's expulsion pursuant to the partnership agreement;

4. The partner's expulsion by the unanimous vote of the other partners if:

a. It is unlawful to carry on the partnership business with that partner;

b. There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, that has not been foreclosed;

c. Within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

d. A partnership or limited partnership that is a partner has been dissolved and its business is being wound up;

5. On application by the partnership or another partner, the partner's expulsion by judicial determination because:

a. The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

b. The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 3833; or

c. The partner engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with the partner;

6. The partner's:

a. Becoming a debtor in bankruptcy;

b. Executing an assignment for the benefit of creditors;

c. Seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of that partner or of all or substantially all of that partner's property; or

d. Failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver or liquidator of

the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or fails within 90 days after the expiration of a stay to have the appointment vacated;

7. In the case of a partner who is an individual:

a. The partner's death;

b. The appointment of a guardian or general conservator for the partner; or

c. A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

8. In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

9. In the case of a partner that is an estate or that is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

10. Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection 5(b) corrected to replace citation to Section 3832 with Section 3833.

#### **§ 3851. Partner's power to dissociate; wrongful dissociation**

A. A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to Section 3850(1).

B. A partner's dissociation is wrongful only if:

1. It is in breach of an express provision of the partnership agreement; or

2. In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

a. The partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under Section 3850(6) through (10) or wrongful dissociation under this Subsection;

b. The partner is expelled by judicial determination under Section 3850(5); or

c. In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

C. A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3852. Effect of partner's dissociation**

A. If a partner's dissociation results in a dissolution and winding up of the partnership business, Article 8 applies; otherwise, Article 7 applies.

B. Upon a partner's dissociation:

1. The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in Section 3872;

2. The partner's duty of loyalty under Section 3833(B)(3) terminates; and

3. The partner's duty of loyalty under Section 3833(B)(1) and (2) and duty of care under Section 3833(C) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to Section 3872.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical errors at Subsection B(2) corrected to replace citation to Section 3832(B)(3) with Section 3833(B)(3); Subsection B(3) corrected to replace citation to Section 3832(B)(1) with Section 3833(B)(1); and Subsection B(3) corrected to replace citation to Section 3832(C) with Section 3833(C).

#### **Article 7. Partner's Dissociation When Business Not Wound Up**

#### **§ 3860. Purchase of dissociated partner's interest**

A. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under Section 3870, the partnership shall cause the dissociated partner's interest in the partnership

to be purchased for a buyout price determined pursuant to Subsection (B).

B. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under Section 3876(B) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the continuing services of any of the partners and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

C. Damages for wrongful dissociation under Section 3851(B), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

D. A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 3861.

E. If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under Subsection (C).

F. If a deferred payment is authorized under Subsection (H), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under Subsection (C), stating the time of payment, the amount and type of security for payment and the other terms and conditions of the obligation.

G. The payment or tender required by Subsection (E) or (F) must be accompanied by the following:

1. A statement of partnership assets and liabilities as of the date of dissociation;

2. The latest available partnership balance sheet and income statement, if any;

3. An explanation of how the estimated amount of the payment was calculated; and

4. Written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under Subsection (C), or other terms of the obligation to purchase.

H. A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or

completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause material hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

I. A dissociated partner may maintain an action against the partnership, pursuant to Section 3834(B)(2)(b), to determine the buyout price of that partner's interest, any offsets under Subsection (C), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership tenders payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under Subsection (C), and accrued interest and enter judgment for any additional payment or refund. If deferred payment is authorized under Subsection (H), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with Subsection (G).

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection I corrected to replace citation to Section 3833(B)(2)(b) with Section 3834(B)(2)(b).

#### **§ 3861. Dissociated partner's power to bind and liability to partnership**

A. For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9, is bound by an act of the dissociated partner that would have bound the partnership under Section 3820 before dissociation only if at the time of entering into the transaction the other party:

1. Reasonably believed that the dissociated partner was then a partner;
2. Did not have notice of the partner's dissociation; and
3. Is not deemed to have had knowledge under Section 3822(E) or notice under Section 3863(C).

B. A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under Subsection (A).

#### **History**

CJY-17-08, July 22, 2008.

**§ 3862. Dissociated partner's liability to other persons**

A. A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in Subsection (B).

B. A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9, within two years after the partner's dissociation, only if at the time of entering into the transaction the other party:

1. Reasonably believes that the dissociated partner was then a partner;
2. Did not have notice of the partner's dissociation; and
3. Is not deemed to have had knowledge under Section 3822(E) or notice under Section 3863(C).

C. By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

D. A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

**History**

CJY-17-08, July 22, 2008.

**§ 3863. Statement of dissociation**

A. A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

B. A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of Section 3822(D) and (E).

C. For the purposes of Section 3861(A) (3) and 3862(B) (3), a person who is not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

**History**

CJY-17-08, July 22, 2008.

**§ 3864. Continued use of partnership name**



Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

### **History**

CJY-17-08, July 22, 2008.

## **Article 8. Winding Up Partnership Business**

### **§ 3870. Events causing dissolution and winding up of partnership business**

A partnership is dissolved, and its business must be wound up, upon the occurrence of any of the following events:

1. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under Section 3850(2) through (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

2. In a partnership for a definite term or particular undertaking:

a. Within 90 days after a partners disassociation by death or other wise under Section 3850(6) through (10) or wrongful dissociation under 3851(B), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful disassociation pursuant to Section 3851(B)(2)(a) constitutes the expression of that partner's will to wind up business:

(1). The express will of all of the partners to wind up the partnership business; or

(2). The expiration of the term or the completion of the undertaking;

3. An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

4. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this Section;

5. On application by a partner, a judicial determination that:

a. The economic purpose of the partnership is likely to be unreasonably frustrated;

b. Another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

c. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

6. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

a. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

b. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3871. Partnership continues after dissolution**

A. Subject to Subsection (B), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

B. At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

1. The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

2. The rights of a third party accruing under Section 3873(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3872. Right to wind up partnership business**

A. After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative or transferee, the Navajo district court, for good cause shown, may order judicial supervision of the winding up.

B. The legal representative of the last surviving partner may wind up a

partnership's business.

C. A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 3876, settle disputes by mediation, arbitration or otherwise and perform other necessary acts.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3873. Partner's power to bind partnership after dissolution**

Subject to Section 3874, a partnership is bound by a partner's act after dissolution that:

1. Is appropriate for winding up the partnership business; or
2. Would have bound the partnership under Section 3820 before dissolution, if the other party to the transaction did not have notice of the dissolution.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3874. Statement of dissolution**

A. After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

B. A statement of dissolution cancels a filed statement of partnership authority for the purposes of Section 3822(D) and is a limitation on authority for the purposes of Section 3822(E).

C. For the purposes of Sections 3820 and 3872, a person who is not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

D. After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority that operates with respect to a person who is not a partner as provided in Section 3822(D) and (E) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

#### **History**

CJY-17-08, July 22, 2008.

**§ 3875. Partner's liability to other partners after dissolution**

A. Except as otherwise provided in Subsection (B) and Section 3825, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 3873.

B. A partner who, with knowledge of the dissolution, incurs a partnership liability under Section 3873(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

**History**

CJY-17-08, July 22, 2008.

**§ 3876. Settlement of accounts and contributions among partners**

A. In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Subsection (B).

B. Each partner is entitled to a settlement of all partnership accounts on winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership must make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under Section 3825.

C. If a partner fails to contribute, all of the other partners shall contribute, in the proportion in which those partners share partnership losses, the additional amount necessary to satisfy any partnership obligations. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under Section 3825.

D. After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations or the amounts of obligations that were not known at the time of the settlement and for which the partner is personally liable under Section 3825.

E. The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

F. An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection B corrected to replace citation to Section 3835 with Section 3825.

### **Article 9. Conversions and Mergers**

#### **§ 3880. Definitions**

In this Article:

A. "General partner" means a partner in a partnership and a general partnership in a limited partnership.

B. "Limited partner" means a limited partner in a limited partnership.

C. "Limited partnership" means a limited partnership created under the Navajo Nation Limited Partnership Act, predecessor law, or comparable law of another jurisdiction.

D. "Partner" includes both a general partner and a limited partner.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3881. Conversion of partnership to limited partnership**

A. A partnership may be converted to a limited partnership pursuant to this Section.

B. The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

C. After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

1. A statement that the partnership was converted to a limited partnership from a partnership;

2. Its former name; and

3. A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the

number or percentage required to approve the conversion under the partnership agreement.

D. The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

E. A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Navajo Nation Limited Partnership Act.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3882. Conversion of limited partnership to partnership**

A. A limited partnership may be converted to a partnership pursuant to this Section.

B. Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

C. After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

D. The conversion takes effect when the certificate of limited partnership is canceled.

E. A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect. Except as otherwise provided in Section 3825, the partner is liable as a general for an obligation of the partnership incurred after the conversion takes effect.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3883. Effect of conversion; entity unchanged**

A. A partnership or limited partnership that has been converted pursuant to this Article is for all purposes the same entity that existed before the conversion.

B. When a conversion takes effect:

1. All property owned by the converting partnership or limited partnership remains vested in the converted entity;

2. All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

3. An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3884. Merger of partnerships**

A. Pursuant to a plan of merger approved as provided in Subsection (C), a partnership may be merged with one or more partnerships, or limited partnerships.

B. The plan of merger must set forth:

1. The name of each partnership or limited partnership that is a party to the merger;

2. The name of the surviving entity into which the other partnerships or limited partnerships will merge;

3. Whether the surviving entity is a partnership, or a limited partnership and the status of each partner;

4. The terms and conditions of the merger;

5. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

6. The street and mailing address and phone number of the surviving entity's chief executive office.

C. The plan of merger must be approved:

1. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

2. In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the Navajo Nation or foreign jurisdiction under which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, in the partnership agreement.

D. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

E. The merger takes effect on the later of:

1. The approval of the plan of merger by all parties to the merger, as provided in Subsection (C).

2. The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

3. Any effective date specified in the plan of merger.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3885. Effect of merger**

A. When a merger takes effect:

1. The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

2. All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

3. All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

4. An action or proceeding pending against a partnership or a limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

B. The Department is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Department of the street and mailing address and phone number of its chief executive office and of any change of address. Upon receipt of process, the Department shall mail a copy of the process to the surviving foreign partnership or limited partnership.

C. A partner of the surviving partnership or limited partnership is liable for:

1. All obligations of a party to the merger for which the partner was personally liable before the merger;

2. All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be



satisfied only out of property of the entity; and

3. All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

D. If the obligations incurred before the merger by a party to the merger are not to be satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 3876 or in the Limited Partnership Act of the jurisdiction in which the party was formed, as if the merged party were dissolved.

E. A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under Section 3860 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under Section 3861 by an act of a general partner dissociated under this Subsection, and the partner is liable under Section 3862 for transactions entered into by the surviving entity after the merger takes effect.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3886. Statement of merger**

A. After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

B. A statement of merger must contain:

1. The name of each partnership or limited partnership that is a party to the merger;

2. The name of the surviving entity into which the other partnerships or limited partnerships were merged;

3. The street and mailing address and phone number of the surviving entity's chief executive office and of an office in the Navajo Nation, if any; and

4. Whether the surviving entity is a partnership or limited partnership.

C. Except as otherwise provided in Subsection (D), for the purposes of Section 3821, property of a surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

D. For the purposes of Section 3821, real property interest of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity on recording a certified copy of the statement of merger in the applicable recording government agency, department, or office in which the real property interest should be recorded.

E. A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to Section 3805(C), stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by Subsection (B), operates with respect to the partnerships or limited partnerships named to the extent provided in Subsections (C) and (D).

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3887. Nonexclusive**

This Article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 10. Limited Liability Partnership**

#### **§ 3890. Statement of qualification**

A. A partnership may become a limited partnership pursuant to this Section.

B. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

C. After the approval required by the Subsection (B), a partnership may become a limited liability partnership by filing the statement of qualification. The statement must contain:

1. The name of the partnership;
2. The street and mailing address and phone number of its chief executive office and of one office in the Navajo Nation, if there is one;
3. If the partnership does not have an office in the Navajo Nation, the name, street and mailing address and phone number of the

partnership's agent for service of process;

4. A statement that the partnership elects to be a limited liability partnership; and a deferred effective date, if any.

D. The agent of a limited liability partnership for service of process must be an individual who is a resident of the Navajo Nation or other person authorized to do business in the Navajo Nation.

E. The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is cancelled pursuant to Section 3805(D) or revoked pursuant to Section 3892.

F. The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under Subsection (C).

G. The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

H. An amendment or cancellation of a statement of qualification is effective when filed or on a deferred effective date specified in the amendment or cancellation.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection E corrected to replace citation to Section 3803(D) with Section 3805(D).

#### **§ 3891. Name**

The name of a limited liability partnership must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP".

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3892. Annual report**

A. A limited liability partnership and a foreign limited liability partnership authorized to transact business in the Navajo Nation, shall file an annual report in the Department which contains:

1. The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

2. The street and mailing address and phone number of its chief executive office and of an office in the Navajo Nation, if there is one;

3. If the partnership does not have an office in the Navajo Nation, the name, street and mailing address and phone number of the partnership's agent for service of process.

B. An annual report must be filed after the first year of the partnership's operating year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in the Navajo Nation.

C. The Department may administratively revoke the statement of qualification of a partnership that fails to file an annual report when due or pay the required filing fee. The Department shall provide the partnership with at least 90 written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

D. The revocation under Subsection (C) only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

E. A partnership whose statement of qualification has been revoked may apply to the Department for reinstatement within two years after the effective date of the revocation. The application must state:

1. The name of the partnership and the effective date of the revocation, and:

2. That the ground for revocation either did not exist or has been corrected.

3. A reinstatement under Subsection (E) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

### **History**

CJY-17-08, July 22, 2008.

## **Article 11. Foreign Limited Liability Partnership**

### **§ 3900. Law governing foreign limited liability partnership**

A. The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the

partnership and the liability of the partners for obligations of the partnership.

B. A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the laws under which the partnership was formed and the laws of the Navajo Nation.

C. A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in the Navajo Nation as a limited liability partnership.

### **History**

CJY-17-08, July 22, 2008.

### **§ 3901. Statement of foreign qualification**

A. Before transacting business in the Navajo Nation, a foreign limited liability partnership must file a statement of foreign qualification. The statement must include:

1. The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";
2. The street and mailing address and phone number of its chief executive office and of an office in the Navajo Nation, if there is one;
3. If the partnership does not have an office in the Navajo Nation, the name, street and mailing address and phone number of the partnership's agent for service of process;
4. The deferred effective date, if any.

B. The agent of a foreign limited liability partnership for service of process must be an individual who is a resident of the Navajo Nation or other person authorized to do business in the Navajo Nation.

C. The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is cancelled pursuant to Section 3805(D) or revoked pursuant to Section 3892.

D. An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection C corrected to replace citation to Section 3803(D) with Section 3805(D).

**§ 3902. Effect of failure to qualify**

A. A foreign limited liability partnership transacting business in the Navajo Nation may not maintain an action or proceeding in the Navajo Nation unless it has in effect a statement of foreign qualification.

B. The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in the Navajo Nation.

C. A limitation on personal liability of a partner is not waived solely by transacting business in the Navajo Nation without a statement of foreign qualification.

D. If a foreign limited liability partnership transacts business in the Navajo Nation without a statement of foreign qualification, the Department is its agent for service of process with respect to a right of action arising out of the transaction of business in the Navajo Nation.

**History**

CJY-17-08, July 22, 2008.

**§ 3903. Activities not constituting transacting business**

A. Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this Article include:

1. Maintaining, defending or settling an action or proceeding;
2. Holding a meeting of its partners or carrying on any other activity concerning its internal affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;
5. Selling through independent contractors;
6. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the Navajo Nation before they become contracts
7. Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
8. Collecting debts or foreclosing mortgages or other security

interests in property securing debts, and holding, protecting and maintaining property so acquired;

9. Conducting an isolated transaction that is completed within 30 days and is not in the course of similar transactions; and

10. Transacting business in interstate commerce.

B. For purposes of this Article, the ownership in the Navajo Nation of income-producing real property or tangible personal property other than the property excluded under Subsection (A). constitutes transacting business in the Navajo Nation.

C. This Section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of the Navajo Nation.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3904. Action by the Attorney General**

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in the Navajo Nation in violation of this Article.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 12. Miscellaneous Provisions**

#### **§ 3910. Jurisdiction of Navajo Nation court**

The Navajo Nation courts shall have original jurisdiction over any action against, or by, any partnership, partner, or other parties mentioned in this Act, for actions arising under this Act including actions by an aggrieved party contesting acts or omissions by the Department, under this Act.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 3911. Consent to jurisdiction**

A. Any partnership created pursuant to this Act or any partner or other parties mentioned therein or thereafter its formation shall be deemed to have consented to legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the partnership within the Navajo Nation.

B. Nothing contained in the partnership agreement and other applicable

partnership documents shall be construed to reduce or impair this Section.

**History**

CJY-17-08, July 22, 2008.

**§ 3912. Sovereign immunity**

Nothing in this Act shall be construed as an exception to or repeal of the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, as may be amended from time to time.

**History**

CJY-17-08, July 22, 2008.

**§ 3913. Uniformity of application and construction**

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among governments enacting it.

**History**

CJY-17-08, July 22, 2008.

**§ 3914. Name of Act**

This Act shall be cited as the "Navajo Nation Uniform Partnership Act."

**History**

CJY-17-08, July 22, 2008.

**§ 3915. Severability**

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provision of this Act are severable.

**History**

CJY-17-08, July 22, 2008.

**§ 3916. Effective date**

This Act takes effect 30 days after approval by the Navajo Nation Council.

**History**

CJY-17-08, July 22, 2008. Approved by the Navajo Nation Council on July 22,



2008. Signed into law by the Navajo Nation President on August 8, 2008.

**§ 3917. Application to existing relationships**

A. Except as provided in Subsection (B), this Act applies to all partnerships in existence on its effective date that were formed prior to its enactment or any predecessor law providing for the formation, operation, and liquidation of partnership.

B. A judgment against a partnership or a partner in an action commenced before the effective date of this Act may be enforced in the same manner as a judgment rendered before the effective date of this Act.

**History**

CJY-17-08, July 22, 2008.

**§ 3918. Saving clause**

The repeal of any statutory provision by this Act does not impair or otherwise affect the organization or continued existence of a partnership existing on the effective date of this Act or any contract existing or rights accrued before the effective date of this Act.

**History**

CJY-17-08, July 22, 2008.

**Chapter 25. Navajo Nation Limited Partnership Act**

**Article 1. General Provisions**

**§ 4100. Policy and purpose**

The Navajo Nation Limited Partnership Act is hereby enacted:

A. The purpose of this Act is to permit the formation of various limited partnership entities and require registration of foreign limited partnerships; and to regulate such entities so as to promote economic growth and further exercise Navajo Nation sovereignty in the governance of its territory, and citizens.

B. This Act is based upon the revised Uniform Limited Partnership (1985) and general principles of limited partnerships. The interpretation of this Act shall be based on Navajo Nation court interpretation and such interpretation that shall give the utmost respect in deciding the meaning and purpose of this Act to the unique traditions and customs of the Navajo People. General decisional law interpreting similar provisions of other limited partnership laws in other jurisdictions may be used as guidance.

C. Unless as otherwise expressly stated by law, the sovereign immunity of the Navajo Nation shall not extend to partnership entities organized under this Act, nor shall such entities be considered a subdivision, entity, or

enterprises of the Navajo Nation, nor shall the Navajo Nation be liable for the debts or obligations or any kind of such entities.

D. The Division of Economic Development through its Business Regulatory Department shall administer the provisions of the Act. The Business Regulatory Department shall promulgate rules and regulations to implement this Act. All proposed rules and regulations shall be published for public comments at least 90 days prior to submission to the Economic Development Committee of the Navajo Nation Council for final review and approval. The Division of Economic Development is directed to prepare an appropriate supplemental budget for carrying out its responsibilities under this Act.

### **History**

CJY-17-08, July 22, 2008.

### **§ 4101. Definitions**

In this Chapter, unless the context otherwise requires:

A. "Certificate of limited partnership" means the certificate referred to in Section 4108, and the certificate as amended or restated.

B. "Department" means the Business Regulatory Department within the Division of Economic Development or its designate successor.

C. "Contribution" means any cash, property, services rendered, or promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

D. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 4123.

E. "Foreign limited partnership" means a partnership formed under the laws of any state or another jurisdiction other than the Navajo Nation and having as partners one or more general partners and one or more limited partners.

F. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

G. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

H. "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of the Navajo Nation and having one or more general partners and one or more limited partners.

I. "Navajo Nation" means:

1. When referring to the body politic, the Navajo Nation government, including its Council and applicable standing committees and

boards;

2. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

a. All land within the exterior boundaries of the Navajo Indian Reservation, including the Navajo Partitioned Land, or of the Eastern Navajo portion of the Navajo Nation, including Alamo, Tóhajiilee, and Ramah, or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;

b. All lands held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Nation, any Band of Navajo Indians, or any individual Navajo Indian as such; and

c. All other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

J. "Partner" means a limited or general partner.

K. "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

L. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

M. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal commercial entity.

N. "State" means a state of the United States, a federally-recognized Indian tribe, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession of the United States subject to the jurisdiction of the United States.

### **History**

CJY-17-08, July 22, 2008.

**Note.** Reorganized Subsection I for consistency.

### **§ 4102. Name**

The name of each limited partnership as set forth in its certificate of limited partnership:

1. Shall contain the words "limited partnership" or the initials "L.P." or "LP", in upper or lower case;

2. May not contain the name of a limited partner unless:

a. It is also the name of a general partner or the corporate name of a corporate general partner; or

b. The business of the limited partnership had been carried on under that name before the admission of that limited partner;

3. May not be the same as, or deceptively similar to, the name of any corporation or limited partnership organized under the laws of the Navajo Nation or licensed or registered as a foreign corporation or limited partnership in the Navajo Nation.

4. Shall not contain the words "Navajo Nation" or "Navajo Tribe," nor in anyway imply that it is associated with the Navajo Nation government or a Navajo Nation entity, unless the Navajo Nation government or a Navajo Nation entity is the general partner.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4103. Reservation of name**

A. The exclusive right to the use of a name may be reserved by:

1. Any person intending to organize a limited partnership under this Act and to adopt that name;

2. Any domestic limited partnership or any foreign limited partnership registered in the Navajo Nation which, in either case, intends to adopt that name;

3. Any foreign limited partnership intending to register in the Navajo Nation and adopt that name; and

4. Any person intending to organize a foreign limited partnership and intending to have it registered in the Navajo Nation and adopt that name.

B. The reservation shall be made by filing with the Department an application, executed by the applicant, to reserve a specified name. If the Department finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may not again reserve the same name until more than 60 days after the expiration of the last 120 day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Department a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name, street and mailing address and phone number of the transferee.

#### **History**

CJY-17-08, July 22, 2008.

**§ 4104. Specified office and agent**

A. Each limited partnership shall continuously maintain in the Navajo Nation:

1. An office, which may but need not be a place of its business in the Navajo Nation, at which shall be kept the records required by Section 4105 to be maintained; and

2. An agent for service of process on the limited partnership.

B. An agent for service of process must be an individual whose residence is in the Navajo Nation, a domestic corporation, or a foreign corporation authorized to do business in the Navajo Nation.

C. If a limited partnership fails to appoint or maintain an agent for service of process in the Navajo Nation or the agent for service of process cannot with reasonable diligence be found at the agent's street and mailing address, the Department is an agent of the limited partnership on whom process, notice or demand may be served.

D. If the Department accepts service of process, notice or demand pursuant to Subsection (C), the Department shall forward by certified mail, the summons and the complaint to the limited partnership at the street and mailing address on file with the Department at the time of service.

E. The Navajo Nation is not liable for any damages incurred by the limited partnership if the limited partnership does not receive the summons and complaint.

**History**

CJY-17-08, July 22, 2008.

**§ 4105. Records to be kept**

A. Each limited partnership shall keep at the office referred to in Section 4104, the following:

1. A current list of the full name and last known business address of each partner, separately identifying in alphabetical order the general partners and the limited partners;

2. A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

3. Copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the three most recent years;

4. Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most

recent years; and

5. Unless contained in a written partnership agreement, a writing setting out:

a. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and that each partner has agreed to contribute;

b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

c. Any right of a partner to receive, or of a general partner to make, distributions to a partner that include a return of all or any of the partner's contribution; and

d. Any events on the happening of which the limited partnership is to be dissolved and its affairs wound up.

B. Records kept under this Section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4106. Nature of business**

A limited partnership may carry on any business that a partnership without limited partners may carry on except banking and insurance.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4107. Business transactions of partner with partnership**

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 2. Formation: Certificate of Limited Partnership**

#### **§ 4110. Certificate of limited partnership**

A. In order to form a limited partnership, a certificate of limited

partnership shall be executed and filed in the Department. The certificate shall set forth:

1. The name of the limited partnership;
2. The street and mailing address of the office and the name, street and mailing address, and phone number of the agent for service of process required to be maintained by Section 4104;
3. The name, business address and phone number of each general partner;
4. The latest date on which the limited partnership is to dissolve; and
5. Any other matters the general partners determine to include therein.

B. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the Department or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4111. Amendment to certificate; restatement**

A. A certificate of limited partnership is amended by filing a certificate of amendment thereto in the Department. The certificate shall set forth:

1. The name of the limited partnership;
2. The date of filing the certificate of limited partnership; and
3. The amendment to the certificate of limited partnership.

B. Within 30 days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

1. The admission of a new general partner;
2. The withdrawal of a general partner; or
3. The continuation of the business under Section 4170 after an event of withdrawal of a general partner.

C. A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

D. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

E. If an amendment to a certificate of limited partnership is filed in compliance with Subsection (B), no person is subject to liability because the amendment was not filed earlier.

F. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection B(3) corrected to replace citation to Section 4144 with Section 4170.

#### **§ 4112. Cancellation of certificate**

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or when there are no limited partners. A certificate of cancellation shall be filed in the Department and set forth:

1. The name of the limited partnership;
2. The date of filing of its certificate of limited partnership;
3. The reason for filing the certificate of cancellation;
4. The effective date of cancellation, which shall be a date certain unless it is effective upon the filing of the certificate; and
5. Any other information the general partners filing the certificate determine.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4113. Execution of certificates**

A. Each certificate required by this Article to be filed in the Department shall be executed in the following manner:

1. An original certificate of limited partnership shall be signed by all general partners;
2. A certificate of amendment shall be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; and
3. A certificate of cancellation shall be signed by all general



partners.

B. Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner shall specifically describe the admission.

C. The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4114. Execution by judicial act**

If a person required by Section 4113 to execute a certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Navajo Nation courts to direct the execution of the certificate. If the Court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the Department to record an appropriate certificate.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4115. Filing in department**

A. Two signed copies with original signatures of the certificate of limited partnership and of any certificates of amendment or cancellation or of any judicial decree of amendment or cancellation shall be delivered to the Department. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Department finds that any certificate does not conform to law, upon receipt of all filing fees required by law, he shall:

1. Endorse on each duplicate original the word "Filed" and the day, month and year of the filing thereof;
2. File one duplicate original or a copy of the original in his office; and
3. Return the other duplicate original to the person who filed it or his representative.

B. Upon the filing of a certificate of amendment or judicial decree of amendment or restated certificate of limited partnership containing an amendment in the Department, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation or a judicial decree thereof, the certificate of limited partnership is canceled.

### **History**

CJY-17-08, July 22, 2008.

### **§ 4116. Liability for false statement in certificate**

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

1. Any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

2. Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for execution of certificate under Section 4114.

### **History**

CJY-17-08, July 22, 2008.

### **§ 4117. Scope of notice**

The fact that a certificate of limited partnership is on file in the Department is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but it is not notice of any other fact.

### **History**

CJY-17-08, July 22, 2008.

### **§ 4118. Delivery of certificates to limited partners**

Upon the return by the Department pursuant to Section 4115 of a certificate marked "Filed", the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error corrected to replace citation to Section 4113 with Section 4115.

## **Article 3. Limited Partners**

**§ 4120. Admission of limited partners**

A. A person becomes a limited partner on the later of:

1. The date the original certificate of limited partnership is filed; or
2. The date stated in the records of the limited partnership as the date that person becomes a limited partner.

B. After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

1. In the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and
2. In the case of an assignee of a partnership interest of a partner who has the power, as provided in Section 4142, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

**History**

CJY-17-08, July 22, 2008.

**§ 4121. Voting**

Subject to Section 4122, the partnership agreement may grant to all or a specified group of the limited partners the right to vote upon any matter on a per capita or other basis.

**History**

CJY-17-08, July 22, 2008.

**§ 4122. Liability to third parties**

A. Except as provided in Subsection (D), a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

B. A limited partner does not participate in the control of the business within the meaning of Subsection (A) of this Section solely by doing one or more of the following:

1. Being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation or other business entity;

2. Consulting with and advising a general partner with respect to the business of the limited partnership;

3. Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

4. Taking any action required or permitted by law to bring or pursue a derivative action in the right of a limited partnership;

5. Requesting or attending a meeting of partners;

6. Proposing, approving or disapproving, by voting or otherwise, one or more of the following matters:

a. The dissolution and winding up of the limited partnership;

b. The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited partnership;

c. The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

d. A change in the nature of the business;

e. The admission or removal of a general partner;

f. The admission or removal of a limited partner;

g. A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

h. An amendment to the partnership agreement or certificate of limited partnership; or

i. Matters related to the business of the limited partnership not otherwise enumerated in this Subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

7. Winding up the limited partnership pursuant to Section 4172; or

8. Exercising any right or power permitted to limited partners under this Act and not specifically enumerated in this Subsection.

C. The enumeration in Subsection (B) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

D. A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by Section 4102(2) is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4123. Person erroneously believing himself limited partner**

A. Except as provided in Subsection (B), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise or exercising any rights of a limited partner if, on ascertaining the mistake, he:

1. Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

2. Withdraws from future equity participation in the enterprise by executing and filing in the Department a certificate declaring withdrawal under this Section.

B. A person who makes a contribution of the kind described in Subsection (A) is liable as a general partner to any third party who transacts business with the enterprise:

1. Before the person withdraws and an appropriate certificate is filed to show withdrawal; or

2. Before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4124. Information**

A limited partner may:

1. Inspect and copy any of the partnership records required to be maintained by Section 4105; and

2. Obtain from the general partners from time to time upon reasonable demand:

- a. True and full information regarding the state of the

business and financial condition of the limited partnership;

b. Promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year; and

c. Other information regarding the affairs of the limited partnership as is just and reasonable.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 4. General Partners**

#### **§ 4130. Admission of additional general partners**

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4131. Events of withdrawal**

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

1. The general partner withdraws from the limited partnership as provided in Section 4151;

2. The general partner ceases to be a member of the limited partnership as provided in Section 4161;

3. The general partner is removed as a general partner in accordance with the partnership agreement;

4. Unless otherwise provided in writing in the partnership agreement, the general partner:

a. Makes an assignment for the benefit of creditors;

b. Files a voluntary petition in bankruptcy;

c. Is adjudicated bankrupt or insolvent;

d. Files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation,

dissolution or similar relief under any statute, law or regulation;

e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

f. Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties;

5. Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within 90 days after the expiration of any such stay, the appointment is not vacated;

6. In the case of a general partner who is a natural person;

a. His death; or

b. The entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

7. In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust but not merely the substitution of a new trustee;

8. In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

9. In the case of a general partner that is a corporation, the filing of articles of dissolution for the corporation or the revocation of its charter; or

10. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical errors at Subsection 1 corrected to replace citation to Section 4152 with Section 4151; and Subsection 4(c) corrected to delete the word "a" previously placed between the words "adjudicated" and "bankrupt".

#### **§ 4132. General powers and liabilities**

A. Except as provided in this Act or in the partnership agreement, a

general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

B. Except as provided in this Act, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this Act or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4133. Contributions by general partner**

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4134. Voting**

The partnership agreement may grant to all or certain identified general partners the right to vote on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 5. Finance**

#### **§ 4140. Form of contribution**

The contribution of a partner may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

#### **History**

CJY-17-08, July 22, 2008.



**§ 4141. Liability for contribution**

A. A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing and signed by the limited partner.

B. Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value as stated in the partnership records required to be kept pursuant to Section 4105 of the stated contribution that has not been made.

C. Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this Chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the original obligation.

**History**

CJY-17-08, July 22, 2008.

**§ 4142. Sharing of profits and losses**

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value as stated in the partnership records required to be kept pursuant to Section 4105 of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

**History**

CJY-17-08, July 22, 2008.

**§ 4143. Sharing of distributions**

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value as stated in the partnership records required to be kept pursuant to Section 4105 of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

**History**

CJY-17-08, July 22, 2008.

## **Article 6. Distributions and Withdrawal**

### **§ 4150. Interim distributions**

Except as provided in this Article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 4151. Withdrawal of general partner**

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 4152. Withdrawal of limited partner**

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his street and mailing address on the books of the limited partnership at its office in the Navajo Nation.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 4153. Distribution upon withdrawal**

Except as provided in this Article and in Subsection (B) of this Section, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

### **History**

CJY-17-08, July 22, 2008.

#### **§ 4154. Distribution in-kind**

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

### **History**

CJY-17-08, July 22, 2008.

#### **§ 4155. Right to distribution**

At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

### **History**

CJY-17-08, July 22, 2008.

#### **§ 4156. Limitations on distribution**

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

### **History**

CJY-17-08, July 22, 2008.

#### **§ 4157. Liability on return of contribution**

A. If a partner has received the return of any part of his contribution without violation of the partnership agreement or this Act, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

B. If a partner has received the return of any part of his contribution in violation of the partnership agreement or this Chapter, he is liable to the limited partnership for a period of five years thereafter for the amount of the contribution wrongfully returned.

C. A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value as set forth in the partnership records required to be kept pursuant to Section 4105 of his contribution which has not been distributed to him.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 7. Assignment of Partnership Interests**

#### **§ 4160. Nature of partnership interest**

A partnership interest is personal property.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4161. Assignment of partnership interest**

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4162. Rights of creditor**

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This Chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4163. Right of assignee to become limited partner**

A. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

1. The assignor gives the assignee that right in accordance with authority described in the partnership agreement; or

2. All other partners consent.

B. An assignee who has become a limited partner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a limited partner under the partnership agreement and this Act. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Articles 5 and 6 of this Chapter. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.

C. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under Sections 4116 and 4141.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4164. Power of estate of deceased or incompetent partner**

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property the partner's executor, administrator guardian, conservator or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 8. Dissolution**

#### **§ 4170. Nonjudicial dissolution**

A limited partnership is dissolved and its affairs shall be wound up upon the first of the following to occur:

1. At the time specified in the certificate of limited partnership;
2. Upon the occurrence of events specified in writing in the partnership agreement;
3. Written consent of all partners;
4. An event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of

the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partnership and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or

5. Entry of a decree of judicial dissolution under Section 4171.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4171. Judicial dissolution**

On application by or for a partner or assignee or any other successor in interest of a partner, the Navajo Nation District Courts may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4172. Winding up**

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners may wind up the limited partnership's affairs, but the Navajo Nation District Courts may wind up the limited partnership's affairs upon application of any partner, his legal representative or assignee.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4173. Distribution of assets**

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

1. To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 4150 or Section 4153;

2. Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 4150 or Section 4153; and

3. Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in

distributions.

#### **History**

CJY-17-08, July 22, 2008.

### **Article 9. Foreign Limited Partnerships**

#### **§ 4180. Law governing**

Subject to the laws of the Navajo Nation:

1. The laws of the foreign jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and

2. A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of the Navajo Nation.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4181. Registration**

Before transacting business in the Navajo Nation, a foreign limited partnership shall register with the Department. In order to register, a foreign limited partnership shall submit to the Department, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

1. The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in the Navajo Nation;

2. The state and date of its formation;

3. The name, street and mailing address and phone number of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint. The agent shall be an individual resident of the Navajo Nation, a domestic corporation or a foreign corporation having a place of business in, and authorized to do business in the Navajo Nation;

4. A statement that the Department is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under paragraph 3 or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

5. The street and mailing address of the office required to be maintained in the Navajo Nation of its organization by the laws of that

state or, if not so required, of the principal office of the foreign limited partnership;

6. The name, business address and phone number of each general partner; and

7. The street and mailing address of the office at which is kept a list of the names, street and mailing addresses and phone numbers of the limited partners and their capital contributions and an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in the Navajo Nation is canceled or withdrawn.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4182. Issuance of registration**

A. If the Department finds that an application for registration conforms to law and all requisite fees have been paid, it shall:

1. Endorse on the application the word "Filed", and the month, day and year of the filing thereof;

2. File in his office a duplicate original of the application; and

3. Issue a certificate of registration to transact business in the Navajo Nation.

B. The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative.

#### **History**

CJY-17-08, July 22, 2008.

**Note.** Typographical error at Subsection A corrected to replace "he shall" with "it shall".

#### **§ 4183. Name**

A foreign limited partnership may register with the Department under any name, whether or not it is the name under which it is registered in its state of organization, that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4184. Changes and amendments**



If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the Department a certificate, signed and sworn to by a general partner, correcting such statement.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4185. Cancellation of registration**

A foreign limited partnership may cancel its registration by filing with the Department a certificate of cancellation signed and sworn by a general partner. A cancellation does not terminate the authority of the Department to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in the Navajo Nation.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4186. Transaction of business without registration**

A. A foreign limited partnership transacting business in the Navajo Nation may not maintain any action, suit or proceeding in any Navajo Nation court until it has registered in the Navajo Nation.

B. The failure of a foreign limited partnership to register in the Navajo Nation does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit or proceeding in any Navajo Nation court.

C. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in the Navajo Nation without registration.

D. By transacting business in the Navajo Nation without registration, a foreign limited partnership appoints the Department as its agent for service of process with respect to causes of action arising out of the transaction of business in the Navajo Nation.

#### **History**

CJY-17-08, July 22, 2008.

#### **§ 4187. Action by Attorney General**

The Attorney General of the Navajo Nation may bring an action to restrain a foreign limited partnership from transacting business in the Navajo Nation in violation of this Act.

#### **History**

CJY-17-08, July 22, 2008.

## **Article 10. Derivative Actions**

### **§ 4190. Right of action**

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 4191. Proper plaintiff**

In a derivative action, the plaintiff shall be a partner at the time of bringing the action and:

1. Shall have been a partner at the time of the transaction of which he complains; or

2. His status as a partner shall have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 4192. Pleading**

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 4193. Expenses**

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

#### **History**

CJY-17-08, July 22, 2008.

## **Article 11. Miscellaneous**

### **§ 4200. Application to existing limited partnership**

This Act shall be so applied and construed to effectuate its general purpose to make uniform law with respect to the subject of this Act among governments enacting it.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 4201. Short title**

This Act may be cited as the Navajo Nation Uniform Limited Partnership Act.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 4202. Severability**

If any provision of this Chapter, or its application to any person or class of person, or to any lands or to any circumstances, is held invalid for any reason by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby and shall remain in full force and effect.

#### **History**

CJY-17-08, July 22, 2008.

### **§ 4203. Effective date**

The effective date of this Act shall be 30 days after approval by the Navajo Nation Council.

#### **History**

CJY-17-08, July 22, 2008. Approved by the Navajo Nation Council on July 22, 2008. Signed into law by the Navajo Nation President on August 8, 2008.

### **§ 4204. Saving clause**

The repeal of any statutory provision by this Act does not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing at the effective date of this Act, nor does the repeal of any existing statutory provision by this Act impair any contract or affect any right accrued before the effective date of this Act.

#### **History**

CJY-17-08, July 22, 2008.

**§ 4205. Jurisdiction of Navajo Nation courts**

The Navajo Nation courts shall have original jurisdiction over any action against, or by, any domestic or foreign limited partnership, or for actions arising under this Act including actions by an aggrieved party contesting acts or omissions by the Department, under this Act.

**History**

CJY-17-08, July 22, 2008.

**§ 4206. Consent to jurisdiction**

A. Any partnership created pursuant to this Act or any partner or other parties mentioned therein or thereafter its formation shall be deemed to have consented to legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the partnership within the Navajo Nation.

B. Nothing contained in the partnership agreement and other applicable partnership documents shall be construed to reduce or impair this Section.

C. Nothing in this Section shall be construed as an exception to or repeal of the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, as may be amended from time to time.

**History**

CJY-17-08, July 22, 2008.

**§ 4207. Rules for cases not provided for in this Act**

In any case not provided for in this Act the provisions of the Model Uniform Limited Partnership Act (1985) govern.

**History**

CJY-17-08, July 22, 2008.