

NAVAJO NATION CODE ANNOTATED

**Title 13**

**Health and Welfare**

**Cross References**

Division of Health, see 2 N.N.C. § 1601 *et seq.*

Water development and improvement generally, see 22 N.N.C. § 1 *et seq.*

**United States Code**

Contracts for medical attention for Indians, see 25 U.S.C. §§ 452-454.

Construction of health facilities, financial assistance by Surgeon General, see 42 U.S.C. § 2005 *et seq.*

Indians afflicted with contagious or infectious diseases, see 25 U.S.C. § 198.

**Code of Federal Regulations**

Indian health services, see 42 CFR § 136.1 *et seq.*

Native American housing assistance, see 24 CFR § 1000.1 *et seq.*

**Chapter 1. Food Service Sanitation Code**

**History**

CMY-28-86, May 2, 1986.

ACMA-37-60, March 9, 1960.

**Note.** Appendix referenced in the Code and the rationale for certain sections are not included. See source resolution.

**Subchapter 1. General Provisions**

**§ 1. Purpose**

This Code shall be liberally construed and applied to promote and protect the public health.

**History**

CMY-28-86, May 2, 1986.

**§ 2. Definitions**

A. "Accessible" means easily or readily exposed for cleaning or inspection with or without the use of simple tools such as a screwdriver, pliers or an open-end wrench. Readily accessible means exposed or capable of being exposed for cleaning and inspection without the use of any tools.

B. "Act" means the Federal Food, Drug and Cosmetic Act of June 25, 1938,<sup>1</sup> as amended.

C. "Adulterated" means a condition of a food that (1) bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; (2) bears or contains any poisonous or deleterious substances for which no safe tolerance has been established bylaw, or is in excess of such tolerance if one has been established; (3) consists in whole or in part of any filthy, putrid, or decomposed substance or otherwise is unfit for human consumption; (4) has been processed, prepared, packed, or held under any insanitary conditions whereby there is a reasonable probability that it might have become contaminated with filth or rendered injurious to health; (5) is in whole or in part the product of a diseased animal or an animal which has died otherwise than by slaughter; or (6) its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.

D. "Approved/Approved Source" means acceptable to the health advisor based on their determination as to conformance with appropriate standards and good public health practice.

E. "Closed" means fitted together snugly, leaving no openings large enough to permit the entrance of vermin, insects, and rodents.

F. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged or stored including any service center or base of operations directly from which mobile food units are supplied or serviced.

G. "Cooked Foods" means those foods, either single or combined food ingredients, which through the application of heat, microwave energy, or other acceptable methods have been prepared by an approved method and are ready for human consumption.

H. "Corrosion-Resistant Materials" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal use, and then discarded.

I. "Display Case" means any case, cabinet, or other facility, used for displaying food.

J. "Easily Cleanable" means that surfaces are readily accessible and made of such materials and/or finish and so fabricated that residue may be effectively removed by normal cleaning methods.

K. "Employee" means individuals having supervisory or management duties and any other person working in a food service establishment.

L. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and similar items other than utensils, used in the operation of a food service establishment.

M. "Food" means any raw, cooked, or processed edible substance, or beverage, or ingredient intended for human consumption and includes ice and water.

N. "Food Additive" means any substance as defined in the Federal Food, Drug, and Cosmetic Act, § 201,<sup>2</sup> meeting the approval of the U.S. Department of Agriculture, U.S. Environmental Protection Agency and the U.S. Department of Commerce.

O. "Food Contact Surface" means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash back on to surfaces normally in contact with food.

P. "Food Processing Establishment" means a commercial establishment in which food is manufactured or packaged for human consumption.

Q. "Food Service Establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term also includes delicatessen-type operations that offer prepared foods intended for individual portion service, and includes commissaries. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.

R. "Frozen Food" means any article used for food or drink which has been processed, packaged, or preserved by accepted commercial practices and is in a frozen state.

S. "Health Advisor" shall mean the Director, Navajo Area Indian Health Service or an authorized agent.

T. "Hermetically Sealed Container" means a container designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its content after processing.

U. "Internal Product Temperature" means the internal temperature of a food.

V. "Kitchenware" means all multi-use utensils other than tableware.

W. "Mobile Food Unit" means a vehicle-mounted food service establishment designed to be readily moveable.

X. "Packaged" means bottled, canned, cartoned, or securely wrapped.

Y. "Person" means any individual, partnership, corporation, association, or other legal entity.

Z. "Person in Charge" means an individual present in a food service establishment who has management or supervisory responsibilities and has authority to allow food service inspections and receive any notifications pertaining to violations.

AA. "Potentially Hazardous Food" means any food that consists in whole or part of milk or milk products, eggs, meat, poultry, fish shellfish, edible crustacea, whipped butter or whipped margarine or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. Rice, fried rice, refried beans and baked potatoes will also be considered potentially hazardous food. The term does not include foods which have pH level of 4.6 or below or a water activity value of 0.85 or less.

BB. "Reconstituted" means dehydrated food products recombined with potable water or other safe liquids.

CC. "Regulatory Authority" shall mean the Navajo Division of Health or its successor.

DD. "Safe Materials" means articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials used are food additives or color additives as defined by the Act they are "safe" only if they are used in conformity with this Act. Other materials are "safe" only if, as used, they are not food additives or color additives as defined by the Act.

EE. "Sanitation Permit" means a written permit issued by the Commerce Department of the Navajo Nation or its successor upon the recommendation of the Health Advisor reflecting the food establishment's compliance with the provisions of this Chapter.

FF. "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on clean utensils and equipment.

GG. "Sealed" means free of spaces or other openings that permit the entry or passage of moisture.

HH. "Solid Wastes" means any discarded organic matter, garbage, trash, and other waste materials resulting from the operation of a food service establishment.

II. "Tableware" means multi-use eating and drinking utensils.

JJ. "Temporary Food Service Establishment" means a food service establishment that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration.

KK. "Toxic" means any substance which may have an adverse physiological

effect on a person or persons.

LL. "Uniform Plumbing Code" shall mean the International Association of Plumbing and Mechanical Officials, Uniform Plumbing Code, 1982.

MM. "Utensil" means any implement used in the storage, preparation, transportation, or service of food.

NN. "Vehicle" means any van, truck, trailer, cab, bus, cycle, automobile, push cart, wagon, or any means of conveying food.

OO. "Wastewater" means sewage or water carried wastes, and shall include but is not limited to, the discharges from all plumbing fixtures or facilities.

PP. "Warewashing/Dishwashing" means the cleaning and sanitization of food-contact surfaces of all tableware and utensils.

QQ. "Wholesome" shall mean in sound condition, clean, free from adulteration, and otherwise suitable for use as human food.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 3. Captions**

Sections and other captions are made a part of this Act.

#### **History**

CMY-28-86, May 2, 1986.

## **Subchapter 2. Food Care**

### **§ 31. Food supplies—General**

Food shall be free from adulteration, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all the Act relating to food and food labeling. Food in hermetically sealed containers which are free from major defects must be prepared in an approved food processing establishment. Home canned and home prepared foods are prohibited.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 32. Special Requirements**

A. Fluid milk and fluid milk products used or served shall be pasteurized and meet the Grade A quality standards as specified in the latest edition of the U.S. Food and Drug Administration's Grade A Pasteurized Milk Ordinance, Public Health Service/Food and Drug Administration Publication No. 229, U.S.

Government Printing Office. Dry milk and dry milk products shall be made from pasteurized milk and milk products. Raw milk and raw milk products shall not be served.

B. Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in non-returnable packages identified with the name and address of the original shell processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they are received until they are used. Each container of unshucked shell stock (oysters, clams, or mussels) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quality of shell stock, and an interstate certification number issued by the state or foreign shellfish control agency.

C. Only "Grade B" clean, whole eggs or better meeting U.S. Department of Agriculture grade standards, or pasteurized liquid, frozen, or dry eggs or pasteurized dry egg products shall be used, except that hard-boiled, peeled eggs, commercially prepared and packaged, may be used.

D. All imported foods shall bear an English language label. Foods that do not bear such label shall be detained until the source is determined. Procedures for condemnation of such foods shall be taken if an approved source cannot be found.

E. All meat products used in food preparation shall be U.S. Department of Agriculture inspected and approved or be inspected and meet the approval of a state inspection program which has been certified by the U.S. Department of Agriculture. Meat which is state inspected shall only be sold in the state that the product was inspected.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 33. Food protection—General**

At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs, and sneezes, flooding, drainage, and overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food shall be 45°F or below or 140°F or above at all times, except as otherwise provided in these regulations.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 34. Emergency occurrences**

In the event of a fire, flood, power outage, sewage flooding or similar event that might result in the contamination of food, or that might prevent

potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the Health Advisor, who shall take whatever reasonable action is necessary to protect the public health.

### **History**

CMY-28-86, May 2, 1986.

### **§ 35. Food Storage—General**

A. Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean, covered container except during necessary period of preparation or service. If the food is potentially hazardous, the container must be sanitized, and covers shall be impervious and non-absorbent, except that clean laundered linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.

B. Containers of food shall be stored a minimum of six inches above the floor in a manner that protects the food from splash or other contamination, and permits easy cleaning of the storage area except:

1. Metal pressurized beverage containers and cased food packaged in cans, glass or other waterproof containers need not be elevated when the food container is not exposed to floor moisture; or

2. Containers may be stored on dollies, racks or pallets, provided such equipment is easily movable.

C. Food and containers of food shall not be stored under open stair wells or under unprotected sewer lines, or where water lines are leaking or condensate is present. The storage of food in the toilet rooms or vestibules is prohibited.

D. Food not subject to further washing or cooking before serving shall be stored in a manner that protects it against cross-contamination from food requiring washing or cooking.

E. Packaged food shall not be stored in contact with water or undrained ice. Wrapped sandwiches shall not be stored in direct contact with ice.

F. Bulk food such as cooking oil, syrup, salt, sugar or flour not stored in the product container or package in which it was obtained, shall be stored in an approved container identifying the food by common name. The labeling shall be on the container body or a non-detachable lid.

G. Store rooms should be properly ventilated and have adequate space. Store room temperatures should not exceed 70°F.

H. Food products in storage shall not be stored against the wall. Storage shall be at least six inches from any wall surface and be accessible

for inspection.

### **History**

CMY-28-86, May 2, 1986.

### **§ 36. Refrigerated storage**

A. Sufficient conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to 3°F located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers, accurate to 3°F, may be used in lieu of indicating thermometers. A zone type thermometer without calibrations is not acceptable.

B. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 45°F or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled, utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food container so that the cooling period shall not exceed four hours. Potentially hazardous food to be transported shall be pre-chilled and held at a temperature of 45°F or below unless maintained in accordance with § 37 of these regulations.

C. Refried beans, rice, and baked potatoes intended for use and/or re-use shall be rapidly cooled to an internal temperature of 45°F or below. Large volumes of these products shall be rapidly cooled using similar methods to those listed in § 36(B). These products being transported shall be pre-chilled at temperatures of 45°F or below, unless maintained in accordance with § 37 of these regulations.

D. Frozen food shall be kept frozen and should be stored at a temperature of 0°F or below.

E. Ice intended for human consumption shall not be used as a medium for cooking stored food, food containers or food utensils, except that such ice may be used for cooking tubes conveying beverages or beverage ingredients to a dispenser head. Ice used for cooking stored food and food containers shall not be used for human consumption.

### **History**

CMY-28-86, May 2, 1986.

### **§ 37. Hot storage**

A. Sufficient hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to 3°F located to measure



the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to 3°F may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bain-maries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.

B. The internal temperature of potentially hazardous foods including refried beans, rice and baked potatoes requiring hot storage shall be 140°F or above except during necessary period of preparation. Potentially hazardous food to be transported shall be held at a temperature of 140°F or above unless maintained in accordance with § 36(B) of these regulations.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 38. Food preparation—General**

Food shall be prepared with the least possible manual contact, with suitable utensils and on surfaces that prior to use have been cleaned, rinsed and sanitized to prevent cross-contamination.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 39. Raw fruits and raw vegetables**

Raw fruits and raw vegetables shall be thoroughly washed with potable water before cooking or serving. Any sink used to wash, prepare, store or soak food shall be indirectly connected to the sewer, through an air-break.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 40. Cooking potentially hazardous foods**

Potentially hazardous foods being processed within the retail food store by cooking shall be cooked to heat all parts of the food to a temperature of at least 140°F (60°C), except that:

A. Poultry, poultry stuffings, stuffed meats, and stuffings containing meat, shall be cooked to heat all parts of the food to at least 165°F (74°C), with no interruption of the cooking process.

B. Pork and pork products shall be cooked to heat all parts of the food to at least 150°F (66°C), or, if cooked in a microwave oven, to at least 170°F (77°C).

C. When beef roasts under 10 pounds [5 kilograms (kg)] in weight are cooked in a still dry heat oven, the oven shall be preheated to and held at an

air temperature of at least 350°F (177°C) throughout the process. If cooked in a convection oven, the oven shall be preheated to and held at an air temperature of at least 325°F (163°C) throughout the process.

D. When beef roasts of 10 pounds [5 kilograms (kg) ] in weight are cooked in a still dry heat oven, the oven shall be preheated to and held at an air temperature of a least 350°F (177°C) throughout the process. If cooked in a convection oven, the oven shall be preheated to and held at an air temperature of a least 325°F (163°C) throughout the process.

E. Further, in order to meet public health requirements for the processes cited above, the following table lists the minimum internal temperature of the beef roast for the minimum time the roast needs to be held at such temperature. [See note below.]

#### **History**

CMY-28-86, May 2, 1986.

**Note.** § 40(E): Consult CMY-28-86 for table listing the minimum holding times for beef, roasts at various internal temperatures.

#### **§ 41. Dry milk and dry milk products**

Reconstituted pasteurized dry milk and pasteurized dry milk products may be used in instant desserts and whipped products, and for cooking and baking purposes.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 42. Liquid, frozen, dry eggs and egg products**

Liquid, frozen, dry eggs products shall be pasteurized products used only for cooking and baking purposes.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 43. Reheating**

Potentially hazardous foods including refried beans and rice that have been cooked and then refrigerated shall be reheated rapidly to 165°F or higher throughout before being served or before being placed in a hot food storage facility. Steam tables, bain-maries, warmers, and similar hot food holding facilities are prohibited for the rapid reheating of potentially hazardous foods.

#### **History**

CMY-28-86, May 2, 1986.

**§ 44. Nondairy products**

Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when stored in sanitized, covered containers not exceeding one gallon capacity and cooled to 45°F or below within four hours after preparation.

**History**

CMY-28-86, May 2, 1986.

**§ 45. Product thermometers**

Non-corrosive metal stem-type numerically scaled indicating thermometers accurate to 3°F shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding or refrigeration temperatures of all potentially hazardous foods. Glass or liquid filled thermometers shall not be used.

**History**

CMY-28-86, May 2, 1986.

**§ 46. Thawing potentially hazardous foods**

Potentially hazardous foods shall be thawed:

A. In refrigerated units at a temperature not to exceed 45°F; or

B. Under potable running water of a temperature of 70°F or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or

C. In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

D. As part of the conventional cooking process.

**History**

CMY-28-86, May 2, 1986.

**§ 47. Chilis and peppers**

Chilis and peppers shall be added to foods and cooked as part of the cooking process.

**History**

CMY-28-86, May 2, 1986.

**§ 48. Food display and service—Potentially hazardous foods**

Potentially hazardous food including refried beans, rice and baked potatoes shall be kept at an internal temperature of 45°F or below or at an internal temperature of 140°F or above during display and service, except that rare roast beef shall be held for service at a temperature of at least 130°F.

**History**

CMY-28-86, May 2, 1986.

**§ 49. Milk and cream dispensing**

A. Milk and milk products for drinking purposes should be provided to the consumer in an unopened, commercially filled package not exceeding one pint (16 oz.) in capacity, or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. The outlet dispenser tubes for these bulk milk dispensers shall be trimmed to a length not exceeding two inches and cut to an angle of approximately 45 degrees to facilitate drainage. Where a bulk dispenser for milk and milk products is not available and portions of less than 1/2 pint are required for mixed drinks, cereal, dessert service, or in a glass for drinking, milk and milk products may be poured from a commercially filled container of not more than 1/2 gallon capacity.

B. Cream or half-and-half shall be provided in an individual service container, a protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service. When pour-type dispensers are emptied, they shall be washed and sanitized before re-use.

C. When canned evaporated or condensed milk is used, the tops of cans will be thoroughly cleaned and punctured with an instrument. Open canned milk will be refrigerated at 45°F or below between use or serving periods and at no time remain out of refrigeration more than two hours total time.

**History**

CMY-28-86, May 2, 1986.

**§ 50. Nondairy product dispensing**

These items shall be provided in an individual service container, a protected pour-type dispenser, or drawn from a refrigerated dispenser designed for such service. When pour-type dispensers are emptied, they shall be washed and sanitized before re-use.

**History**

CMY-28-86, May 2, 1986.

**§ 51. Condiment dispensing**

A. Condiments, seasoning and dressing for self-service use shall be

provided in individual packages, from dispensers, or from containers protected in accordance with § 55 of these regulations.

B. Condiments provided for table or counter service shall be individually portioned except that catsup and other sauces may be served in the original container or pour-type dispenser. Sugar, jams, jellies, honey or syrup for consumer use shall be provided in individual portions or a pour-type dispenser. The use of a spoon in a container containing the product is prohibited for table service.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 52. Ice dispensing**

Ice for consumer use shall be dispensed only by employees with scoops, tongs, or other ice dispensing utensils or through automatic self-service, ice-dispensing equipment. Scooping of ice with a cup or glass or similar container is prohibited. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing handle extending out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination. Ice storage bins shall be drained through an air break as defined in the latest edition of the Uniform Plumbing Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 53. Dispensing utensils**

To avoid unnecessary manual contact with food, suitable dispensing utensils shall be used by employees or provided to consumers who serve themselves. Between uses during service, dispensing utensils shall be:

A. Stored in the food with the dispensing utensil handle extended out of the food; or

B. Stored clean and dry; or

C. Stored in running water; or

D. Stored either in a running water dipper well, or clean and dry in the case of dispensing utensils and malt collars used in preparing frozen desserts.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 54. Re-service**

Once served to a consumer, portions of leftover food shall not be served again except that packaged food other than potentially hazardous food, that is still packaged and is still in sound condition may be re-served.

### **History**

CMY-28-86, May 2, 1986.

### **§ 55. Display equipment**

Food on display shall be protected from consumer contamination by the use of packaging or by the use of easily cleanable counter, serving line, or salad bar protector devices, display cases, or by other effective means. Enough hot or cold food facilities shall be available to maintain the required temperature of potentially hazardous food on display.

### **History**

CMY-28-86, May 2, 1986.

### **§ 56. Re-use of tableware**

Re-use of soiled tableware by self-service customers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt from this requirement.

### **History**

CMY-28-86, May 2, 1986.

### **§ 57. Food transportation—General**

During transportation, food and food utensils shall be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be overwrapped or covered if the original package has not been torn or broken or otherwise damaged. During transportation, including transportation to another location for service or catering operation, food shall meet the requirements of these regulations relating to food protection and food storage.

### **History**

CMY-28-86, May 2, 1986.

## **Subchapter 3. Personnel**

### **§ 81. Employee health—General**

A. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such disease or while afflicted with a boil, an infected wound, or an acute respiratory infection shall work in a food service establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

B. The manager or person in charge of the establishment shall notify the Health Advisor when any employee of a food service establishment is known or suspected of having a disease in communicable form. It is the responsibility of the employee to advise the employer of the occurrence of the above disease, symptoms or conditions, and every employee shall be advised of this responsibility upon his employment.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 82. Personal cleanliness—General**

Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, or using the toilet. Employees shall keep their fingernails clean and trimmed.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 83. Clothing—General**

A. The outer clothing of all employees shall be clean, and where uniforms are not provided, clean aprons should be worn over street clothes.

B. Employees shall use effective hair restraints to prevent the contamination of food or food-contact surfaces. All employees directly involved in food preparation or utensil washing or storing operations are required to wear hats, caps, or hairnets that cover the hair. The use of hair sprays will not be accepted as a suitable substitute for hats, caps, hairnets or other approved hair coverings. Other employees shall keep hair under control at all times.

C. Food service employees wearing beards must keep them neatly trimmed, and clean at all times while working.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 84. Employee practices—General**

A. Employees shall consume food only in designated dining areas. An employee dining area shall not be so designated if consuming food there may result in contamination of other food, equipment, utensils or other items needing protection.

B. Employees shall not use tobacco in any form while engaged in food preparation or service, nor while in areas used for equipment or utensil washing or for food preparation. Employees shall use tobacco only in designated areas. An employee tobacco-use area shall not be designated for that purpose if the use of tobacco there may result in contamination of food,

equipment, utensils, or other items needing protection.

C. Employees shall handle soiled tableware in a way that minimizes contamination of their hands.

D. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food service establishment. Jewelry shall not be worn on the hands of those individuals involved in handling of food and cleaning and sanitizing of kitchen ware, utensils, etc.

E. All employees, managers, and owners working in a food service establishment shall have a valid food handlers training certificate issued by the Health Advisor. Records of such training shall be available for inspection at each establishment.

#### **History**

CMY-28-86, May 2, 1986.

### **Subchapter 4. Equipment and Utensils**

#### **§ 111. Materials—General**

Multi-use equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion resistant and nonabsorbent and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, or taste, or contribute to the contamination of food.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 112. Solder**

If solder is used, it shall be composed of safe materials and be corrosion resistant.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 113. Wood**

Hard maple or equivalently nonabsorbent material that meets the general requirements set forth in § 111 of these regulations may be used for cutting blocks, cutting boards, salad bowls, and baker's tables. Wood may be used for single-service articles, such as chopsticks, stirrers, or ice cream spoons. The use of wood, canvas, or other porous materials as a food-contact surface under other circumstances is prohibited.



#### **History**

CMY-28-86, May 2, 1986.

#### **§ 114. Plastics**

Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping or distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing/warewashing methods, and which meet the general requirements set forth in § 111 of these regulations, are permitted for repeated use.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 115. Mollusk and crustacea shells**

Mollusk and crustacea shells may be used only once as a serving container. Further reuse of such shells for food service is prohibited.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 116. Single-service**

Reuse of single-service articles is prohibited.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 117. Design and fabrication—General**

A. All equipment and utensils or tableware, including plastic-ware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, crazing and shall meet the National Sanitation Foundation requirements or be of equivalent construction.

B. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is smooth and heated, such as in grills, griddle tops, and skillets. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited as food-contact surfaces, except that in equipment such as ice makers or hot oil cooking equipment and hot oil filtering systems, such threads shall be minimized.

C. Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or

be forced into food onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces. These lubricating materials shall meet 21 CFR 178.3570.

D. Tubing conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice; provided, that such tubing is fabricated from safe materials, is grommeted at entry and exit points to prevent moisture (condensation) from entering the ice machine or the ice storage bin, and is kept clean. Drainage tubes from dispensing units shall not pass through the ice machine or the ice storage bin.

E. Sinks and drain boards shall be self-draining.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 118. Accessibility**

Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

- A. Without being disassembled; or
- B. By disassembling without the use of tools; or
- C. By easy disassembling with the use of only simple tools such as a mallet, a screwdriver, or an open-end wrench kept available near the equipment.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 119. In-place cleaning**

Equipment intended for in-place cleaning shall be so designed and fabricated that:

- A. Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and
- B. Cleaning and sanitizing solutions will contact all interior food contact surfaces; and
- C. The system is self-draining or capable of being completely evacuated.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 120. Pressure spray cleaning**

Fixed equipment designed and fabricated to be cleaned and sanitized by

pressure spray methods shall have sealed electrical wiring, switches, and connections.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 121. Thermometers**

Indicating thermometers required for immersion into food or cooking media shall be of non-corrosive metal, stem type construction, numerically scaled, and accurate to 3°F.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 122. Non-food-contact surfaces**

Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 123. Ventilation hoods**

Ventilation hoods and devices shall be designed to prevent grease or condensation from collecting on walls and ceiling, and from dripping into food or onto food-contact surfaces. Filters or other grease extracting equipment shall be readily removable for cleaning and replacement if not designed to be cleaned in place. These hoods shall be constructed and maintained in accordance with the latest edition of the National Fire Codes, National Fire Protection Association, Volume 9, 1983.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 124. Existing equipment**

Equipment that was installed in a food service establishment prior to the effective date of these regulations and that does not fully meet all of the design and fabrication requirements of these regulations shall be deemed acceptable in that establishment if it is in good repair, capable of being in a sanitary condition, and the food-contact surfaces are nontoxic. Replacement equipment and new equipment acquired after the effective date of these regulations shall meet the requirements of these regulations.

### **History**

CMY-28-86, May 2, 1986.

### **§ 125. Equipment installation and location—General**

Equipment, including ice makers and ice storage equipment, shall not be located under open stairwells or under exposed or unprotected sewer lines, or where water lines are leaking or condensate is present, or other source of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by law.

### **History**

CMY-28-86, May 2, 1986.

### **§ 126. Table-mounted equipment**

A. Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a four-inch clearance between the table or counter and equipment and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

B. Equipment is portable within the meaning of these regulations if:

1. It is small and light enough to be moved easily by one person; and

2. It has no utility connection, or has a utility connection that disconnects quickly, or has flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

### **History**

CMY-28-86, May 2, 1986.

### **§ 127. Floor-mounted equipment**

A. Floor-mounted equipment, unless readily movable, shall be:

1. Sealed to the floor; or

2. Installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearances; or

3. Elevated on legs to provide at least a six-inch clearance between the floor and equipment, except that vertically mounted floor mixers may be elevated to provide at least a four-inch clearance between the floor and equipment if no part of the floor under the mixer is more than six inches from cleaning access.

B. Equipment is easily movable if.

1. It is mounted on wheels or casters; and

2. It has no utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

C. Unless sufficient space is provided for easy cleaning between, behind and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceiling shall be not more than 1/32 inch; or if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls or ceilings.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 128. Aisles and working spaces**

Aisles and working spaces between units of equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as pallets, racks, and dollies shall be positioned to provide accessibility to working areas.

#### **History**

CMY-28-86, May 2, 1986.

## **Subchapter 5. Cleaning, Sanitization and Storage of Equipment and Utensils**

### **§ 151. Equipment and utensil cleaning and sanitization and storage—Cleaning frequency**

A. Tableware shall be washed, rinsed, and sanitized after each use and when necessary pre-rinsed or pre-soaked to remove gross food particles and soil.

B. To prevent cross-contamination, kitchenware and food-contact, surfaces of equipment shall not be used for both raw and cooked food unless they have been washed, rinsed, and sanitized after each use or following any interruption of operations during which time contamination may have occurred.

C. Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production-line basis, utensils and food-contact surfaces of equipment shall be washed, rinsed, and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particles accumulation.

D. The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at

least once a day, except that this shall not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.

E. Non-food-contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, grease, food particles, and other debris.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 152. Wiping cloths**

A. Cloths used for wiping food spills on tableware, such as plates or bowls being served to the consumer, shall be clean, dry and used for no other purpose.

B. Moist cloths used for wiping food spills on kitchenware and food-contact surfaces of equipment shall be clean and rinsed frequently in one of the sanitizing solutions permitted by the Federal Insecticide, Fungicide and Rodenticide Act of June 25, 1947,<sup>1</sup> as amended and used for no other purpose. These cloths shall be rinsed and then stored in the sanitizing solution between uses.

C. Moist cloths used for cleaning non-food contact surfaces of equipment such as counters, dining table tops and shelves shall be clean and rinsed in one of the sanitizing solutions permitted by the Federal Insecticide, Fungicide and Rodenticide Act,<sup>1</sup> as amended, and used for no other purpose. These cloths shall be rinsed and then stored in the sanitizing solution between uses.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 153. Manual cleaning and sanitizing**

A. For manual washing, rinsing and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall be provided and used. Sink compartments shall be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods.

B. Drain boards or easily movable dish tables or carts of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and shall be located so as not to interfere with the proper use of the dishwashing facilities.

C. Equipment and utensils shall be pre-flushed or pre-scraped, and when necessary, pre-soaked to remove gross food particles and soil.

D. Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing and sanitizing shall be conducted in the following sequence:

1. Sinks shall be thoroughly cleaned prior to each use;
2. Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean; and
3. Equipment and utensils shall be rinsed free of detergent and abrasive with clean water in the second compartment.

E. Equipment and utensils shall be sanitized in the their compartment as follows:

1. Immersion for a least one-half (1/2) minute in clean, hot water at a temperature of at least 170°; or
2. Immersion for at least one minute in a clean solution containing at least 50 parts per million of available iodine and at a temperature of at least 75°F; or
3. Immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75°F; or
4. Immersion in a clean solution containing any approved sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available iodine and at a temperature of a least 75°F for one minute; or
5. Treatment with steam free from unapproved materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or
6. Rinsing or spraying or swabbing with an approved chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution in the case of equipment too large to sanitize by immersion.

F. When hot water is used for sanitizing, the following facilities shall be provided and used;

1. An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F; and
2. A numerically scaled indicating thermometer, accurate to 3°F, convenient to the sink for frequent checks of water temperatures; and
3. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

G. When chemicals are used for sanitization, they shall meet the requirements of the U.S. Environmental Protection Agency as a sanitizer for food equipment and not have concentrations higher than the maximum permitted by the manufacturer of the approved product and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

### **History**

CMY-28-86, May 2, 1986.

### **§ 154. Mechanical cleaning and sanitizing**

A. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it can be demonstrated to the Health Advisor that it thoroughly cleans and sanitizes equipment and utensils. These machines and device shall be properly installed and maintained in good repair. Machine and device shall be operated in accordance with manufacturers' instructions, and utensils and equipment placed in the machine shall be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors, if any, shall be an approved device properly installed and maintained.

B. The pressure of final rinse water supplied to spray-type dishwashing machines shall not be less than 15 nor more than 25 pounds per square inch measured in the water line immediately adjacent to the final rinse control valve. A 1/4-inch IPS (Iron Pipe Size) valve shall be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.

C. Machine or water line mounted numerically scaled indicating thermometers, accurate to 3°F, shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

D. Rinse water tanks shall be protected by baffles, curtains, or other effective means to minimize the entry of wash water into the rinse water. Conveyors in dishwashing/warewashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications attached to the machines.

E. Drain boards shall be provided, be self-draining, and be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables or carts for the storage of clean utensils following sanitization.

F. Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove food particles and soil prior to being washed in a dishwashing/warewashing machine unless a pre-wash cycle is a part of the dishwashing/warewashing machine operation. Equipment and utensils shall be



placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

G. Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemical for sanitization may be used; provided, that:

1. The temperature of the wash water shall not be less than 120°F.
2. The wash water shall be kept clean.
3. Chemicals added for sanitization purposes shall be automatically dispensed.
4. Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with manufacturers' specifications for time and concentration.
5. The chemical sanitizing rinse water temperature shall be not less than 75°F nor less than the temperature specified by the machine's manufacturer.
6. Approved chemical sanitizer shall be used.
7. A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.

H. Machines using hot water for sanitization may be used provided that wash water and pumped rinse water shall be kept clean and water shall be maintained at not less than the temperatures as indicated below:

1. Single-tank stationary-rack, dual-temperature machine:  
Wash temperature.....150°F  
Final rinse temperature.....180°F
2. Single-tank, stationary-rack, single-temperature machine:  
Wash temperature.....165°F  
Final rinse temperature.....165°F
3. Single-tank, conveyer machine:  
Wash temperature.....160°F  
Final rinse temperature.....180°F
4. Multi-tank, conveyer machine:  
Wash temperature.....150°F

Pumped rinse temperature.....160°F

Final rinse temperature.....180°F

5. Single-tank, pot, pan, and utensil washer (either stationary or moving-rack):

Wash temperature.....140°F

Final Rinse temperature.....180°F

I. All dishwashing/warewashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

**History**

CMY-28-86, May 2, 1986.

**§ 155. Drying**

After sanitization, all equipment and utensils shall be air dried.

**History**

CMY-28-86, May 2, 1986.

**§ 156. Equipment and utensils—Handling**

Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, bowls, plates and similar items shall be handled without contact with inside surfaces or surfaces that contact the user's mouth.

**History**

CW-28-86, May 2, 1986.

**§ 157. Equipment and utensils—Storage**

A. Cleaned and sanitized utensils and equipment shall be stored at least six inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust and other means. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under open stairwells or under exposed sewer fine or water lines which are leaking or on which condensate is present, except for automatic fire protection sprinkler heads that may be required by the Fire Protection Authority having jurisdiction.

B. Utensils shall be air dried before being stored or shall be stored in a self-draining position.

C. Glasses and cups shall be stored inverted. Direct storage on toweling or paper is prohibited. Other stored utensils shall be covered or inverted whenever practical. Facilities for the storage of knives, forks, and spoons shall be designed and used to present the handle to the employee or consumer. Unless tableware is pre-wrapped, holders for knives, forks, and spoons at self-service locations shall protect these articles from contamination and present the handle of the utensil to the consumer. All unused pre-set tableware will be collected for washing and sanitizing immediately after customer meal period.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 158. Single-service articles**

A. Single-service articles shall be stored at least six inches above the floor in closed cartons or containers which protect them from contamination and shall not be placed under open stairwells, under unprotected sewer lines or water lines that are leaking or on which condensate is present, except for automatic fire protection sprinkler heads that may be required by the Fire Protection Authority having jurisdiction.

B. Single-service articles shall be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.

C. Single-service knives, forks, and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed his hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks and spoon are pre-wrapped or prepackaged, holders shall be provided to protect these items from contamination and present the handle of the utensils to the consumer.

D. To protect against health hazards related to the conduct of the food service establishment in the case of dishwashing equipment breakdown or other operational failure, the Health Advisor may impose the requirement to provide only single-service articles for use by the consumer.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 159. Prohibited storage area**

The storage of food, equipment, utensils or single-service articles in toilet rooms or vestibules is prohibited.

#### **History**

CMY-28-86, May 2, 1986.

## **Subchapter 6. Sanitary Facilities and Controls**

### **§ 181. Water supply—General**

Enough potable water for the needs of the food service establishment shall be provided from a source constructed and operated according to the Safe Drinking Water Act, Public Law 93-523.<sup>1</sup>

#### **History**

CMY-28-86, May 2, 1986.

### **§ 182. Transportation**

All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed-water system. Both of these systems shall be both constructed and operated to meet the approval of the Health Advisor.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 183. Bottled water**

Bottled and packaged potable water shall be obtained from a source that complies with all laws and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 184. Water under pressure**

Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 185. Steam**

Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 CFR 173.310.

#### **History**

CMY-28-86, May 2, 1986.

**§ 186. Sewage—General**

All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed and operated to meet the approval of the Health Advisor. Non-water-carried sewage disposal facilities are prohibited, except as permitted by §§ 291-298 of this ordinance (pertaining to temporary food service establishments) or as permitted by the regulatory authority in remote areas or because of special situations.

**History**

CMY-28-86, May 2, 1986.

**§ 187. Plumbing—General**

Plumbing shall be sized, installed, and maintained according to the latest edition of the Uniform Plumbing Code. There shall be no cross connection between the potable water supply and any nonpotable or questionable water supply nor any source of pollution through which the potable water supply might become contaminated.

**History**

CMY-28-86, May 2, 1986.

**§ 188. Nonpotable water system**

A nonpotable water system is permitted only for purposes such as air-conditioning and fire protection and only if the system is installed to meet the approval of the Health Advisor and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

**History**

CMY-28-86, May 2, 1986.

**§ 189. Backflow**

The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where an air gap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

**History**

CMY-28-86, May 2, 1986.

**§ 190. Grease traps**

If used, grease traps shall be located to be easily accessible for cleaning and shall be located outside the building.

**History**

CMY-28-86, May 2, 1986.

**§ 191. Garbage grinders**

If used, garbage grinders shall be installed and maintained to meet the approval of the Health Advisor.

**History**

CMY-28-86, May 2, 1986.

**§ 192. Drains**

There shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a dishwashing machine is located within five feet of a trapped floor drain, the dishwasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap if meeting the approval of the Health Advisor.

**History**

CMY-28-86, May 2, 1986.

**§ 193. Toilet facilities—Toilet installation**

A. Toilet facilities shall be installed for the public and employees according to the latest edition of the Uniform Plumbing Code, shall be conveniently located, and shall be accessible to employees at all times.

B. Bathroom facilities shall accommodate handicapped individuals. These facilities shall be constructed according to American National Standard Specification A1171-1976 (R1971).

**History**

CMY-28-86, May 2, 1986.

**§ 194. Toilet design**

Toilets and urinals shall be designed to be easily cleanable.

**History**

CMY-28-86, May 2, 1986.

**§ 195. Toilet rooms**

Toilet rooms shall be completely enclosed and shall have tight-fitting,

self-closing, solid doors, which shall be closed except during cleaning or maintenance.

**History**

CMY-28-86, May 2, 1986.

**§ 196. Toilet fixtures**

Toilet fixtures shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

**History**

CMY-28-86, May 2, 1986.

**§ 197. Lavatory facilities—Lavatory installation**

A. Lavatories shall be at least the number required by the latest edition of the Uniform Plumbing Code, shall be installed according to this Code, and shall be located to permit convenient use by all employees in food preparation areas and utensil-washing areas.

B. Lavatories shall be accessible to employees at all times.

C. Lavatories shall also be located in or immediately adjacent to toilet rooms or vestibules. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing.

**History**

CMY-28-86, May 2, 1986.

**§ 198. Lavatory faucets**

Each lavatory shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet used shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam-mixing valves are prohibited.

**History**

CMY-28-86, May 2, 1986.

**§ 199. Lavatory supplies**

A supply of hand-cleansing soap or detergent shall be available at each lavatory. A supply of sanitary towels or a hand-drying device, providing heated air shall be conveniently located near each lavatory. Common towels are prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.

### **History**

CMY-28-86, May 2, 1986.

### **§ 200. Lavatory maintenance**

Lavatories, soap dispensers, hand-drying devices and all related fixtures shall be kept clean and in good repair.

### **History**

CMY-28-86, May 2, 1986.

### **§ 201. Garbage and refuse—Containers**

A. Garbage and refuse shall be kept in durable, easily cleanable, insect-proof and rodent-proof containers that do not leak and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and they may be used for storage inside the food service establishment.

B. Containers used in food preparation and utensil washing areas shall be kept covered after they are filled.

C. Containers stored outside the establishment, and dumpsters, compactors and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

D. There shall be a number of containers to hold all the garbage and refuse that accumulates.

E. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, including hot water and detergent or steam, shall be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

### **History**

CMY-28-86, May 2, 1986.

### **§ 202. Storage**

A. Garbage and refuse on the premises shall be stored in a manner to make them inaccessible to insects and rodents. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food waste need not be stored in covered containers.



B. Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, non-absorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof and shall be large enough to store the garbage and refuse containers that accumulate.

C. Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers, dumpsters and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent materials such as concrete or machine-laid asphalt that is kept clean and maintained in good repair.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 203. Disposal**

A. Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

B. Where garbage or refuse is burned on the premises, it shall be done by controlled incineration that prevents the escape of particulate matter meeting the approval of the Health Advisor. Areas around incineration facilities shall be clean and orderly.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 204. Insect and rodent control—General**

Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 205. Openings**

Openings to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than 16 mesh to the inch.

#### **History**

CMY-28-86, May 2, 1986.

## **Subchapter 7. Construction and Maintenance Of Physical Facilities**

### **§ 221. Floor construction**

Floors and floor coverings of all food preparation, food storage, and utensil-washing areas, and the floors of all walk-in refrigerating units, dressing rooms, locker rooms, toilet rooms and vestibules shall be constructed of smooth durable material such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair. Nothing in this Section shall prohibit the use of antislip floor covering in areas where necessary for safety reasons.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 222. Floor carpeting**

Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is prohibited in food preparation, equipment washing and utensil-washing areas where it would be exposed to large amounts of grease and water, in food storage areas, and toilet room areas where urinals or toilet fixtures are located.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 223. Prohibited floor covering**

The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is prohibited.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 224. Floor drains**

Properly installed, trapped floor drains shall be provided in floors that are water-flushed for cleaning or that receive discharges of water or other fluid waste from equipment, or in areas where equipment, or in areas where pressure spray methods for cleaning equipment are used. Such floors shall be constructed only of sealed concrete, terrazzo, ceramic tile or similar materials, and shall be graded to drain.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 225. Mats and duckboards**

Mats and duckboards shall be of nonabsorbent, grease resistant materials and of such size, design, and construction as to facilitate their being easily cleaned. Duckboards shall not be used as storage racks.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 226. Floor junctures**

In all new or extensively remodeled establishments utilizing concrete, terrazzo, ceramic tile or similar flooring materials, and where water-flush cleaning methods are used, the junctures between walls and floors shall be covered and sealed. In all other cases, the juncture between walls and floors shall not present an open seam of more than 1/32 inch.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 227. Utility line installation**

Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines and pipes on the floor is prohibited.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 228. Walls and ceilings—Maintenance**

Walls and ceilings, including doors, windows, skylights, and similar closures shall be maintained in good repair.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 229. Construction**

The walls, including non-supporting partitions, wall coverings, and ceilings of walk-in refrigerating units, food preparation areas, equipment-washing and utensil-washing areas, toilet rooms and vestibules shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide an easily cleanable surface.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 230. Exposed construction**

Studs, joists, and rafters shall not be exposed in walk-in refrigerating units, food preparation areas, equipment-washing and utensil-washing areas, toilet rooms and vestibules. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.

**History**

CMY-28-86, May 2, 1986.

**§ 231. Utility line installation**

Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in walk-in refrigerating units, food preparation areas equipment-washing and utensil-washing areas, toilet rooms and vestibules.

**History**

CMY-28-86, May 2, 1986.

**§ 232. Attachments**

Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

**History**

CMY-28-86, May 2, 1986.

**§ 233. Covering material installation**

Wall and ceiling covering materials shall be attached and scaled so as to be easily cleanable.

**History**

CMY-28-86, May 2, 1986.

**§ 234. Cleaning physical facilities—General**

Cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with brooms.

**History**

CMY-28-86, May 2, 1986.

### **§ 235. Utility facility**

In new or extensively remodeled establishments at least one utility sink or curbed cleaning facility with floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of lavatories, utensil-washing or equipment-washing, or food preparation sinks for this purpose is prohibited.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 236. Lighting-General**

A. Permanently fixed artificial light sources shall be installed to provide at least 20 foot candles of light on all food preparation surfaces and at equipment or utensil-washing work levels.

B. Permanently fixed artificial light sources shall be installed to provide, at distance of 30 inches from the floor:

1. At least 20 foot candles of light in utensil and equipment storage areas and in lavatory and toilet areas; and

2. At least 10 foot candles of light in walk-in refrigerating units, dry food storage areas, and in all other areas. This shall also include dining areas during cleaning operations.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 237. Protective shielding**

A. Shielding to protect against broken glass falling onto food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service, and display facilities, and facilities where utensils and equipment are cleaned and stored.

B. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 238. Ventilation-General**

All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. Ventilation systems shall be installed and operated according to the approval of the Health Advisor.

### **History**

CMY-28-86, May 2, 1986.

### **§ 239. Special ventilation**

A. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.

B. In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors or fumes originate shall be mechanically vented to the outside.

### **History**

CMY-28-86, May 2, 1986.

### **§ 240. Dressing rooms and areas**

If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, storage or service, or for utensil washing or storage.

### **History**

CMY-28-86, May 2, 1986.

### **§ 241. Locker areas**

Enough lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may be located only in the designated dressing rooms or in food storage rooms or areas containing only completely packaged food or packaged single-service articles.

### **History**

CMY-28-86, May 2, 1986.

### **§ 242. Poisonous or toxic materials—Materials permitted**

There shall be present in food service establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and equipment and utensils, and controlling insects and rodents.

### **History**

CMY-28-86, May 2, 1986.

### **§ 243. Labeling of materials**

Containers of poisonous or toxic materials shall be prominently and distinctly labeled according to U.S. Environmental Protection Agency's

requirements for easy identification of contents.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 244. Storage of materials**

A. Poisonous or toxic materials consist of the following categories:

1. Insecticides and rodenticides;
2. Detergents, sanitizers, and related cleaning or drying agents;
3. Caustics, acids, polishes, and other chemicals.

B. Each of the three categories set forth in Subsection A of this Section shall be stored and physically located separate from each other. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose. To preclude contamination poisonous or toxic materials shall not be stored above food, food equipment, utensils or single-service articles, except that this requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or dishwashing stations.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 245. Use of materials**

A. Bactericides, cleaning compounds or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to employees or other persons.

B. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way that constitutes a hazard to employees or other persons, nor in a way other than in full compliance with the manufacturer's labeling.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 246. Personal medications**

Personal medications shall not be stored in food storage, preparation or service areas.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 247. First-aid supplies**

First-aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 248. Premises and building—General**

A. Food service establishments and all parts of property used in connection with their operations shall be kept free of litter.

B. The walking and driving surfaces of all exterior areas of food service establishments shall be surfaces with concrete or asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to prevent pooling and shall be kept free of litter.

C. Only articles necessary for operation and maintenance of the food service establishment shall be stored on the premises.

D. The premises and building shall be accessible to handicapped individuals. It shall meet the requirements as specified in the American National Standards Specification A1171-1976 (R1971).

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 249. Living areas**

No operation of a food service establishment shall be conducted in any room used as living or sleeping quarters. Food service operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 250. Laundry facilities**

A. Laundry facilities in a food service establishment shall be restricted to the washing and drying of linens, cloths, uniforms and aprons necessary to the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.

B. Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

#### **History**



CMY-28-86, May 2, 1986.

**§ 251. Linens and clothes storage**

A. Clean clothes and linens shall be stored in a clean place and protected from contamination until used.

B. Soiled cloths and linens shall be stored in nonabsorbent containers or washable laundry bags until removed for laundering.

**History**

CMY-28-86, May 2, 1986.

**§ 252. Cleaning equipment storage**

Maintenance and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner for the cleaning of that storage location.

**History**

CMY-28-86, May 2, 1986.

**§ 253. Animals**

Live animals, including birds and turtles, shall be excluded from within the food service operational premises and from adjacent areas under the control of the permit holder. This exclusion does not apply to edible fish, crustacea, shellfish, or to fish in aquariums. Patrol dogs accompanying security or police officers, or guide dogs accompanying blind persons, shall be permitted in dining areas.

**History**

CMY-28-86, May 2, 1986.

**§ 254. Fire and electrical safety**

Premises and buildings shall comply with the most recent edition of the National Fire Protection Association and the Navajo Nation Fire Protection Codes.

**History**

CMY-28-86, May 2, 1986.

**Subchapter 8. Mobile Food Units**

**§ 271. Mobile food service—General**

Mobile food units shall comply with the requirements of this Chapter,

except as otherwise provided in this Section and in § 272 of these regulations. The Health Advisor may impose additional requirements to protect against health hazards related to the conduct of food service establishments as a mobile operations, may prohibit the sale of some of all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this Chapter relating to physical facilities except those requirements of §§ 274-278 of these regulations.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 272. Restricted operation**

Mobile food units serving food prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of these regulations, or beverages that are not potentially hazardous and are dispensed from covered urns, or other protected equipment, need not comply with requirements of these regulations pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at the commissary.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 273. Single-service articles**

Mobile food units shall provide only single-service articles for use by the consumer.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 274. Water system**

A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and handwashing, in accordance with the requirements of these regulations. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of these regulations.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 275. Waste retention**

If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that is of at least fifteen percent (15%) larger capacity than the water supply tank and in any case of sufficient capacity to contain all anticipated waste water loading. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable waster system.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 276. Commissary—Base of operations**

A. Mobile food units shall operate from a commissary or other fixed food service establishment and shall report at least daily to such location for all supplies and for all cleaning and servicing operations.

B. The commissary or other fixed food service establishment used as a base of operations for mobile food units shall be constructed and operated in compliance with the requirements of these regulations.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 277. Servicing area and operations—Servicing area**

A. A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food unit or where mobile food unit do not contain waste retention tanks.

B. The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

C. The construction of the walls and ceilings of the servicing area is exempted from the provisions of § 228-233 of these regulations.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 278. Servicing operations**

A. Potable water servicing equipment shall be installed to meet the

Health Advisor's approval and shall be stored and handled in a way that protects the water and equipment from contamination.

B. The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewerage disposal system in accordance with § 186 of these regulations.

#### **History**

CMY-28-86, May 2, 1986.

### **Subchapter 9. Temporary Food Service**

#### **§ 291. Temporary food service establishments—General**

A temporary food service establishment shall comply with the requirements of this Chapter, except as otherwise provided in this Subchapter. The Health Advisor may impose additional reasonable requirements to protect against health hazards related to the conduct of temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of Subchapter 9 of this Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 292. Restricted operations**

A. These provisions are applicable whenever a temporary food service establishment is permitted, under the provisions of § 291 of these regulations, to operate without complying with all the requirements of this Subchapter.

B. Only those potentially hazardous foods requiring limited preparation, such as hamburgers, frankfurters, refried beans, mutton and lamb stew that only require seasoning and cooking, shall be prepared or served. The preparation or sandwiches containing meat, poultry eggs or fish is prohibited. This prohibition does not apply to any potentially hazardous foods that have been prepared and packaged under conditions meeting the requirements of these regulations, is obtained in individual servings, is stored at a temperature of 45°F or below or at a temperature of 140°F or above in facilities meeting the requirements of these regulations, and is served directly in the unopened contain or in which it was packaged.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 293. Ice**

Ice that is consumed or that contacts food shall be made under conditions meeting the approval of the Health Advisor. The ice shall be obtained only in

chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.

**History**

CMY-28-86, May 2, 1986.

**§ 294. Equipment**

A. Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.

B. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination.

**History**

CMY-28-86, May 2, 1986.

**§ 295. Single-service articles**

All temporary food service establishments without effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.

**History**

CMY-28-86, May 2, 1986.

**§ 296. Water**

Sufficient potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.

**History**

CMY-28-86, May 2, 1986.

**§ 297. Wet storage**

Storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches shall not be stored in direct contact with ice.

**History**

CMY-28-86, May 2, 1986.

**§ 298. Wastewater**

All wastewater including liquid wastes shall be disposed of at a public sewer or other approved wastewater disposal systems.

**History**

CMY-28-86, May 2, 1986.

**Note.** Slightly reworded for purposes of statutory clarity.

**§ 299. Handwashing**

A convenient handwashing facility shall be available for employee handwashing. This facility shall consist of water, soap and single-service towels.

**History**

CMY-28-86, May 2, 1986.

**§ 300. Floors**

Floors shall be effectively treated to control dust.

**History**

CMY-28-86, May 2, 1986.

**§ 301. Walls and ceilings of food preparation areas**

A. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Walls and ceilings of food preparation areas shall be constructed in a way which minimizes the entrance of insects and other sources of contamination. Doors to food preparation areas shall be self-closing. Screening material used for walls, doors, or windows shall be at least 16 mesh to the inch.

B. Counter-service openings shall not be larger than necessary for the particular operation conducted.

**History**

CMY-28-86, May 2, 1986.

**Note.** § 301 (A) slightly reworded for purposes of statutory clarity.

**Subchapter 10. Compliance Procedures**

**§ 331. Permits, licenses, or certificates—General**

No person shall operate a food service establishment who does not have a valid sanitation permit issued to him by the regulatory authority. Only a person who complies with the requirements of this Code shall be entitled to receive or retain such a sanitation permit. Sanitation permits are not

transferable. A valid permit shall be posted in every food service establishment. Food processing operations, i.e., canneries, must have a valid sanitation permit issued by the Regulatory Authority and meet the requirements of the Health Advisor.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 332. Certifications**

Each employee working in a food service establishment, including mobile and temporary food establishments, must have a valid food service training certificate from the Health Advisor. Each food service establishment must have on duty at least one individual who is currently certified as a food service manager by the Health Advisor.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 333. Issuance of sanitation permit**

A. Any person desiring to operate a food service establishment shall make written application for a sanitation permit on forms provided by the Regulatory Authority. Such application shall include the name and address of each applicant, the location and type of the proposed food service establishment, and the signature of each applicant.

B. Prior to approval of an application for a sanitation permit, the Health Advisor shall inspect the proposed food service establishment to determine compliance with the requirements of this Code.

C. The Regulatory Authority based on the recommendation of the Health Advisor shall issue a sanitation permit to the applicant if its inspection reveals that the proposed food service establishment complies with the requirements of this Code.

D. Certain waivers of these regulations may be granted if, in the opinion of the Health Advisor, this does not constitute a health hazard.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 334. Suspension of permit, license, or certificate**

A. The Regulatory Authority or Health Advisor may, without warning, notice, or hearing suspend any sanitation permit to operate a food service establishment if the holder of the permit does not comply with the requirements of this Code, or if the operation of the food service establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by § 334(B) of this Code. When a sanitation permit is suspended, food service operations shall immediately

cease. Whenever a permit, license, or certificate is suspended, the holder of the permit, license, or certificate shall be afforded an opportunity for hearing within 10 days of receipt of a request for hearing.

B. Whenever a sanitation permit is suspended, the holder of the permit, or the person in charge shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for hearing will be provided if a written request for hearing is filed with the Regulatory Authority by the holder of the permit, within 10 days of receipt of the request. All notification of violations and permit suspensions must include a written description of reasons for suspension, with clear specification of violations. If no written request for hearing is filed within 10 days, the suspension is sustained. The Regulatory Authority may end the suspension at any time if reasons for suspension no longer exist.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 335. Revocation of sanitation permit**

A. The Regulatory Authority may, after providing opportunity for hearing, revoke a sanitation permit, for serious or repeated violations of any of the requirements of this Code or for interference with the Health Advisor in the performance of duty.

B. Prior to revocation, the Regulatory Authority shall notify, in writing, the holder of the sanitation permit, or the person in charge, of the specific reason(s) for which the permit is to be revoked and that the permit shall be revoked at the end of the 10 days following service of such notice unless a written request for hearing is filed with the Regulatory Authority by the holder of the permit within such 10-day period. If no request for hearing is filed within the 10-day period, the revocation of the permit becomes final.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 336. Service of notice**

A notice provided for in this Code is properly served when it is delivered to the holder of the permit, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the Regulatory Authority.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 337. Hearings**

The hearings provided for in this Code shall be conducted by the Regulatory Authority at a time and place designated by it. Any oral testimony



given at the hearing shall be recorded verbatim, and the presiding officer shall make provision for sufficient copies of the transcript. The Regulatory Authority shall make a final finding based upon the complete hearing records and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the sanitation permit, by the Regulatory Authority, within 10 days after the hearing.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 338. Application after revocation**

Whenever a revocation of a sanitation permit has become final, the holder of the revoked permit may make a written application for a new permit.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 339. Inspections—Inspection frequency**

An inspection of a food service establishment shall be performed at least once every 12 months. Additional inspections of the food service establishment shall be performed as often as necessary for the enforcement of this Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 340. Access**

Representatives of the Health Advisor, after proper identification, shall be permitted to enter any food service establishment at any reasonable time for the purpose of making inspections to determine compliance with this Code. The representatives shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 341. Report of inspections**

Whenever an inspection of a food service establishment or commissary is made, the findings shall be recorded on the inspection report form set out in § 343 of this Code. The inspection report form shall summarize the requirements of this ordinance and shall set forth a weighted point value for each requirement. Inspectional remarks shall be written to reference, by Section number, the Section violated and shall state the correction to be made. The rating score of the establishment shall be the total of the weighted point values for all violations, subtracted from 100. A copy of the completed

inspection report form is a public document that shall be made available for public disclosure to any person who requests it.

### **History**

CMY-28-86, May 2, 1986.

### **§ 342. Correction of violations**

A. The completed inspection report form shall specify a reasonable period of time for the correction of the violations found; and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

1. If an imminent health hazard exists, such as complete lack of refrigeration or sewage backup onto the establishment, the establishment shall immediately cease food service operations. Operations shall not be resumed until authorized by the Health Advisor.

2. All violations of 4 or 5 point weighted items as described in the inspection report form shall be corrected as soon as possible, but in any event, within 10 days following inspection. Within 15 days after the inspection, the holder of the sanitation permit shall submit a written report to the Health Advisor stating that the 4 or 5 point weighted violations have been corrected. A follow-up inspection shall be conducted to confirm correction.

3. All 1 or 2 point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

4. When the rating score of the establishment is less than 60, the establishment shall initiate corrective action on all identified violations within 48 hours. One or more reinspections will be conducted at reasonable time intervals to assure correction.

5. In the case of temporary food service establishment, all violations shall be corrected within 24 hours. If violations are not corrected within 24 hours, the establishment shall immediately cease food service operations until authorized to resume by the Health Advisor.

B. The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of food service operations. An opportunity for hearing on the inspection findings or the time limitations or both will be provided if a written request is filed with the Regulatory Authority within 90 days following cessation of operations. If a request for hearing is received, a hearing shall be held within 20 days of receipt of the request.

C. Whenever a food service establishment is required under the provisions of § 342 to cease operations, it shall not resume operations until it has shown on reinspection that conditions responsible for the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 343. Inspection report Form 300.3 [See note below]**

#### **History**

**Note.** See Appendix B, CMY-28-86, May 2, 1986.

#### **§ 344. Examination and condemnation of food—General**

Food may be examined or sampled by the Health Advisor as often as necessary for enforcement of this Code. The Health Advisor may, upon written notice to the owner or person in charge, specifying with particularity the reasons therefore, place a hold order on any food which it believes is in violation of §§ 31, 32, or any other Section of this Code. The Health Advisor shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, or moved from the establishment. The Health Advisor shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for hearing may be filed within 10 days and that if no hearing is requested the food shall be destroyed. If a request for hearing is received, the hearing shall be held within 10 days after receipt of the request. On the basis of evidence produced at that hearing, the hold order may be vacated, or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 345. Review of plans—Submission of plans**

Whenever a food service establishment is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the Health Advisor for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The Health Advisor shall approve the plans and specifications if they meet the requirements of this Code. No food service establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the Health Advisor.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 346. Pre-operational inspection**

Whenever plans and specifications are required by § 345 of this Code to be submitted to the Health Advisor, the Regulatory Authority shall inspect the food service establishment prior to the start of operations, to determine compliance with the approved plans and specifications and with the requirements of this Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 347. Procedure when infection is suspected—General**

When the Health Advisor has reasonable cause to suspect possible disease transmission by an employee of a food service establishment, it may secure a morbidity history of the suspected employee or make any other investigation as indicated and shall take appropriate action. All investigations shall be conducted in compliance with the provisions of the Privacy Act, and information collected will only be used for epidemiological purposes. The Health Advisor may require any or all of the following measures:

A. The immediate exclusion of the employee from employment in food service establishments;

B. The immediate closing of the food service establishment concerned until, in the opinion of the Health Advisor, no further danger of disease outbreak exists;

C. Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and/or

D. Adequate medical and laboratory examination of the employee and of other employees and of his/her and their body discharges.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 348. Remedies—Penalties**

A. The Regulatory Authority shall execute and enforce the provisions of this Act and in that enforcement is vested with all powers relating to inspecting, sampling, condemnation and embargoing of hazardous substances granted to it with respect to this Code.

B. If any person shall violate directly or indirectly, through his officers or employees, any of the provisions of this Act, or regulations promulgated thereunder, the Regulatory Authority may order the correction of the violation within such reasonable period of time as the commissioner may prescribe. Such order shall be complied within the time specified.

C. Any person violating any of the provisions of this Act or orders of regulations promulgated thereunder shall be liable to a penalty of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars

(\$250.00), and for the second and each succeeding violation, double that of the proceeding infraction, to be collected in a civil action by the Regulatory Authority and deposited in the Navajo Nation General Funds account. Where the violation is of a continuing nature, each day during which it continues, after the date given by which the violation must be eliminated in the order by the Regulatory Authority, shall constitute an additional, separate and distinct offense, except during the time an appeal from said order may be taken or is pending.

D. The Regulatory Authority is hereby authorized and empowered to compromise and settle any claim for a penalty under the Section in such amount in the discretion of the Regulatory Authority as may appear appropriate and equitable under all of the circumstances.

E. Payment of a penalty for any violation of this Act or regulations promulgated thereunder either or after the institution of proceedings for the collection thereof shall be deemed equivalent to a concession of the violation for which such penalty was claimed.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 349. Injunctions**

The Health Advisor may seek to enjoin violations of this Code.

#### **History**

CMY-28-86, May 2, 1986.

### **Chapter 2. Civil Tobacco Liability Enforcement and Recovery Act**

#### **§ 401. Short title**

This Act shall be known and designated as the "Civil Tobacco Liability Enforcement and Recovery Act."

#### **History**

CJY-80-99, July 23, 1999.

#### **§ 402. Findings and purpose**

A. Tobacco use leads to disease and death and has created an epidemic of tragic proportions. More than 400,000 deaths per year in the United States are tobacco-related. Tobacco causes more deaths than AIDS, homicide, suicide, automotive accidents, and alcohol and drug use combined.

B. According to the United States Surgeon General, Native Americans have "substantially higher" smoking rates than any other group in the general United States population. Data compiled by the National Center for Health Statistics shows that the overall prevalence of cigarette smoking among American Indians

and Alaska Natives was forty-eight and two-tenths percent (48.2%) in 1978 and thirty-nine and two-tenths percent (39.2%) in 1994-5.

C. Smoking rates of Native American minors are significantly higher than the smoking rates of all other groups of minors in the United States. According to the United States Surgeon General, the prevalence of previous-month cigarette smoking during 1990-94 was thirty-nine and four-tenths percent (39.4%) among American Indian and Alaska Native females and forty-one and one-tenth percent (41.1%) among males. A 1992 survey of Navajo and Pueblo school children found that thirty and six-tenths percent (30.6%) of fifth graders and sixty and four-tenths percent (60.4%) of seventh graders had tried smoking. Approximately seventy percent (70%) of all adult smokers start smoking before the age of 18.

D. The use of tobacco is unique among all consumer products sold in the Navajo Nation. It is the only product which, when used as the manufacturer intends, will lead to disease and/or death.

E. Tobacco use in the Navajo Nation has resulted in a health care crisis. In conjunction with the United States government, the Navajo Nation provides medical assistance to tribal members. In responding to the health care crisis resulting from tobacco use, the Navajo Nation has paid millions of dollars each year, including payments funded by the Indian Health Care Improvement Act, 25 U.S.C. § 1601, *et seq.*, to treat the tobacco-related illnesses of tribal members.

F. In addition to the health care costs arising from tobacco-related illnesses, tobacco use imposes incalculable additional costs on the Navajo Nation. These costs include, but are not limited to, the income that would be generated by those tribal members who suffer debilitating illness or death at the hands of tobacco and the costs of caring for dependents or such tribal members.

G. It is a policy of the Navajo Nation, as well as that of the United States pursuant to the Indian Health Care Improvement Act,<sup>1</sup> to raise the health status of tribal members to the highest possible level and to reduce the prevalence and incidence of preventable illnesses among, and unnecessary and premature deaths of, tribal members.

H. It is the intent of the Navajo Nation and the Indian Health Care Improvement Act<sup>1</sup> that the Navajo Nation recover the costs of providing health care services from third parties held liable for such costs. It is intended that the Navajo Nation shall recover from a liable tobacco manufacturer the costs of treating the tobacco-related illnesses of tribal members.

I. In order to protect the health of tribal members, it is also a policy of the Navajo Nation to prevent restraints of trade, and unfair, deceptive, fraudulent and unconscionable acts or practices committed in the sale of tobacco products.

J. This Act shall be liberally construed so that its beneficial purposes may be served.

### **History**

CJY-80-99, July 23, 1999.

**§ 403. Definitions**

A. "Tribal member" means any member of the Navajo Nation.

B. "Tobacco" means any tobacco product, including but not limited to loose tobacco suitable for smoking, snuff flour, cavendish, plug and twist tobacco, fine cut and other kinds and forms of tobacco suitable for chewing and smoking, including cigars and cigarettes.

C. "Tobacco manufacturer" means any person engaged in the process of designing, fabricating, assembling, producing, constructing or otherwise preparing a product containing tobacco, including any packaging or labeling or repacking or relabeling of such product, with the intention of selling the product for gain or profit. "Tobacco manufacturer" does not include persons whose activity is limited to growing natural leaf tobacco or to selling tobacco products at wholesale or retail to consumers; provided that this term shall not be interpreted to mean any person that engages in the defined activities in furtherance of a religious practice, e.g. Navajo Mountain tobacco.

D. "Liable tobacco manufacturer" means a tobacco manufacturer having an obligation under this Act, or otherwise by law, to pay all or any portion of the medical expense incurred by the Navajo Nation to treat the tobacco-related illnesses of tribal members. The obligation is not discharged by virtue of being undiscovered or undeveloped at the time assistance is provided. Liability includes a finding of legal liability by a court of law.

E. A "restraint of trade" means a contract, combination, or conspiracy between two or more persons in restraint of trade or commerce. It is a restraint of trade hereunder to agree not to research, develop, manufacture or sell less harmful tobacco products, or to advertise tobacco based on comparative health claims.

F. An "unfair" act or practice is one which:

1. Offends public policy as defined by statute or common law;
2. Is immoral, unethical, oppressive or unscrupulous;
3. Causes substantial injury to consumers; or
4. A reasonable person would conclude was designed to encourage or does encourage persons under the age of 18 to use tobacco products.

G. A "deceptive" act or practice is one which has the tendency or capacity to deceive concerning a material fact which a person could be expected to consider in determining whether to commence or continue using tobacco products or a particular brand or type of tobacco product, whether or not any person has in fact been misled, deceived or damaged thereby. It includes the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact. Actual reliance by a person is not required. Nor is it necessary to

prove intent to deceive. In evaluating representations and omissions hereunder, the test is whether the act or practice has the tendency or capacity to deceive or mislead the least sophisticated consumer. The technical correctness of a representation is irrelevant if the capacity to deceive or mislead is found.

H. "Unconscionable acts or practices" include, without limitation:

1. Withholding, suppressing or altering information concerning the deleterious health effects of tobacco products in any manner which deprives consumers or governmental authorities of such information;

2. Making insupportable, bad-faith claims of attorney client privilege or work product protection in order to suppress information about the adverse health effects of tobacco;

3. Deliberately enhancing the addictive qualities of tobacco products through such means as increasing the bioavailability of nicotine in tobacco smoke and breeding or selecting strains of tobacco plants that have unusually high nicotine content;

4. Designing ventilation holes and other technology to provide the smoker with higher levels of "tar" and nicotine than those documented in F.T.C. tests; and

5. Not informing "low tar" or "light" smokers of the proper manner in which to smoke those products in order to obtain the lower "tar" and nicotine levels advertised by the tobacco manufacturers.

I. "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations and partnerships, and governmental entities.

J. "Caused" as used in § 404(B)(3) of this Act means that the tobacco product was a material element and a substantial factor in bringing about the health conditions and includes both direct and indirect effects.

K. "Unit" as used in this Act means a pack of cigarettes or a package of smokeless tobacco.

#### **History**

CJY-80-99, July 23, 1999.

#### **§ 404. Liability for tobacco-related illnesses**

A. After the Navajo Nation has provided medical assistance to tribal members for tobacco-related illness under any program, it may recover from tobacco manufacturers the amount paid or likely to be paid for medical assistance to such persons, plus civil penalties, costs, reasonable attorneys' fees and other appropriate relief.

B. In order to recover under Subsection (A) of this Section, the Navajo Nation shall prove:



1. That a tobacco manufacturer, in the research, design, manufacture, distribution, marketing or sale of a tobacco product, did one or more of the following:

- a. Conspired to restrain trade or engage in restraints of trade;
- b. Committed an unfair or deceptive act or practice;
- c. Committed an unconscionable act or practice;
- d. Was negligent or produced a defective product unreasonably dangerous to the user or consumer who received or will receive medical assistance; or
- e. Violated any other duties owed under the law of the Navajo Nation.

2. That the tobacco manufacturer's perpetration of any such act as enumerated in Subsection (B)(1) was a factor in tribal members' use of unreasonably unsafe tobacco products.

3. That the tobacco products caused the health conditions for which the Nation seeks reimbursement; and

4. The amount of compensatory damages and the appropriateness of any other relief sought.

#### **History**

CJY-80-99, July 23, 1999.

#### **§ 405. Independent, non-exclusive remedy; Preservation of causes of action**

A. The right of the Navajo Nation to a cause of action against a tobacco manufacturer hereunder shall be independent of and not construed to affect any rights or causes of action by an individual tribal member to recover damages or other relief as a result of tobacco-related illness. In the event that recovery of health care expenditures had been achieved hereunder, and the individual tribal member thereafter recovers damages from a tobacco manufacturer, then the tobacco manufacturer shall be entitled to a setoff for the amount of any such recovery which represents the expenditure on behalf of the individual tribal member.

B. Existing common law and statutory actions available to recover health care expenditures from a tobacco manufacturer, including direct action, are expressly preserved. An action brought pursuant to this Act may be brought in addition to any existing common law or statutory action, or both, and shall not preempt, limit or extinguish those actions.

#### **History**

CJY-80-99, July 23, 1999.

**§ 406. Abrogation of certain defenses**

A. Principles of common law and equity as to assignment, lien, subrogation, comparative negligence, assumption of risk, and all other affirmative defenses normally available to a tobacco manufacturer are to be abrogated to allow full recovery from tobacco manufacturers. Such principles shall not act to reduce the recovery of the Navajo Nation pursuant to this Act. Common law theories of recovery shall be liberally construed to accomplish this intent.

B. The defenses of statute of repose and statute of limitations shall not apply to any action brought under this Act.

**History**

CJY-80-99, July 23, 1999.

**§ 407. Joint and several liability; Market share recovery**

A. The concept of joint and several liability applies to any judgment on behalf of the Navajo Nation under this Act.

B. In any action brought pursuant to this Act, the Navajo Nation shall be allowed to proceed under a market share theory, provided that the products involved are substantially interchangeable among brands, and that substantially similar factual and legal issues would be involved in seeking recovery against each tobacco manufacturer individually. In the event the Navajo Nation elects to proceed under such a market share theory, the concept of joint and several liability shall not apply.

**History**

CJY-80-99, July 23, 1999.

**§ 408. Recovery in a single action; Use of statistics**

A. In the event that medical assistance has been provided by the Navajo Nation to more than one tribal member, and the Nation elects to seek recovery hereunder due to actions by tobacco manufacturers or circumstances which involve common issues of fact or law, the Nation may bring an action to recover sums paid on behalf of all such tribal members in one proceeding.

B. In any action brought under this Act wherein the number of tribal members is so large as to cause it to be impracticable to join or identify each claim, the Nation shall not be required to identify the individual for which payment has been made, but rather can proceed to seek recovery based upon payments made on behalf of all tribal members as a group.

C. The evidence code shall be liberally construed regarding issues of causation and of aggregate damages, and causation and damages in any such action may be proven by use of statistical analysis.

**History**

CJY-80-99, July 23, 1999.

**§ 409. Civil penalties**

Because the actual costs of tobacco use to the Navajo Nation are far greater than the amounts which may be recovered under § 404(A) of this Act, and in order to more fully remediate the deleterious effects of tobacco on the health and welfare of the Navajo Nation, any tobacco manufacturer who violates this Act by committing any of the actions set out in § 404(B)(1) of this Act, shall pay civil penalties in the amount of:

A. Not more than three times the cost per unit of tobacco sold; or

B. No more than five thousand dollars (\$5,000) per advertisement where such advertisement violates this Act; or

C. Not more than one hundred thousand dollars (\$100,000) per unfair act or practice as provided in Sections 404(B)(1)(b) and 403(F) of this Act.

**History**

CJY-80-99, July 23, 1999.

**§ 410. Amount of awardable attorneys' fees**

The Nation may recover attorneys' fees and costs if it prevails on any claims against any or all of the defendants. The attorneys' fees recoverable under this Act shall be in an amount representing a reasonable hourly rate per hour of work expended plus a multiplier. The multiplier shall have a benchmark of twenty percent (20%) of all amounts recovered hereunder, including damages and civil penalties but not costs. Deviation from the benchmark shall be permitted only if a manifest injustice would occur.

**History**

CJY-80-99, July 23, 1999.

**§ 411. Effective date**

This Act, being deemed of immediate importance, takes effect upon enactment, although recovery may be had hereunder for acts occurring prior to the effective date.

**History**

CJY-80-99, July 23, 1999.

**§ 412. Severability**

In the event that any provision of this Act is ruled to be void or unenforceable for any reason, the courts shall give full effect to all other provisions of this Act.

## History

CJY-80-99, July 23, 1999.

### Chapter 3. Slaughterhouses and Meat Processing Establishments

#### Subchapter 1. Generally

##### § 501. Definitions

For the purposes of these regulations, the following definitions shall apply:

- A. "Animal" shall mean cattle, sheep, swine, or goat.
- B. "Area Director" shall mean the Navajo Agency Area Director or his designated representative.
- C. "Carcass" shall mean all parts, including viscera, of a slaughtered animal that are capable of being used for human food.
- D. "Employee" shall mean any individual who is employed in any establishment used as a slaughterhouse or meat processing establishment.
- E. "Establishment" shall mean any building, room, or other location occupied or used for slaughtering meat animals or preparing meat food products for human consumption, including meat-canning, curing, smoking, salting, packing, rendering, sausage manufacture, or where any other similar operation is conducted, and shall include all detached buildings or rooms under the control of the operator of the establishment and used in any capacity in connection with its operation.
- F. "Health Advisor" shall mean the United States Public Indian Health Service, Window Rock Field Office, Medical Officer in Charge, or his designated representative.
- G. "Health and Social Services Committee" shall mean the Health and Social Services Committee of the Navajo Nation Council.
- H. "Meat" shall mean the edible part of the muscle of cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing.
- I. "Meat Food Product" shall mean any article of food, or any article intended for or capable of being used as human food which is derived or prepared, in whole or in substantial and definite part, from any portion of any cattle, sheep, swine, or goat.
- J. "Person" shall mean any individual, firm, corporation, partnership, corporate group or association.

K. "President" shall mean the President of the Navajo Nation or his designated representative.

L. "Sanitation Permit" shall mean a written permit issued by the Health and Social Services Committee upon the recommendation of the Health Advisor, reflecting a slaughterhouse or meat processing operator's compliance with these regulations.

M. "Transportation Vehicle" shall mean any vehicle used in the transportation of meat, or meat products, outside of an establishment.

#### **History**

ACJA-13-63, January 17, 1963. ACJA-13-63 adopted regulations, attached thereto, defining and regulating sanitation at slaughterhouses and meat-processing establishments; establishing the minimum requirements governing the construction, maintenance, and operation; fixing the responsibilities and duties of owners and operators; authorizing inspection and providing penalties for violations.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454(B) (3) and (4).

#### **§ 502. Alterations or new construction; approval of plans**

Whenever any alteration, modification, or new construction of a slaughterhouse or meat-processing establishment is contemplated by the operator or prospective operator, three sets of plans and specifications shall be submitted to the Health Advisor for review of such plans, and he shall recommend approval or such modifications necessary for approval to the President.

#### **History**

ACJA-13-63, January 17, 1963.

#### **§ 503. Employees**

A. No person who is affected with any disease in a contagious or infectious form, or who is a carrier of such diseases, or any person who has an open sore or lesion, shall work in any establishment, and no establishment shall employ any such person or persons.

B. All employees shall wear clean, washable outer garments and shall keep their hands clean at all times while engaged in handling meat, meat products, utensils or equipment.

C. Employees shall not expectorate or use tobacco in any form, in any room where meat or meat food products are handled, prepared, or stored.

D. The use of caps or hair nets is required of all employees working in processing rooms.

### **History**

ACJA-13-63, January 17, 1963.

### **Cross References**

Handwashing facilities, see 13 N.N.C. § 610.

### **§ 504. Inspections; authority; number; report**

A. The President, Health Advisor, and Area Director shall have the power to enter at reasonable times, the property and buildings for the purpose of inspecting and investigating conditions relating to the enforcement of this Chapter.

B. The President, Health Advisor, and Area Director are empowered and authorized to make inspections of slaughterhouses and meat-processing establishments and obtain samples of water and sewage for laboratory analysis to determine the condition of the water and sewer systems.

C. It shall be the duty of owner or person in charge of the slaughterhouse or meat-processing establishment to give the President, Health Advisor, or Area Director, free access to such premises at reasonable times for the purpose of inspections.

D. Inspections of slaughterhouse or meat-processing establishments shall be made at least once every 12 months or more often if the President, Health Advisor, or Area Director deems it necessary for the protection of the health of the people.

E. When the inspection is made by the Health Advisor, he will leave with the management, or person in charge of the slaughterhouse or meat-processing establishment, a copy of the completed inspection report which indicates the sanitary conditions of the slaughterhouse or meat-processing establishment. The report shall be displayed in a prominent place on the premises, and one copy forwarded to the President with the recommendations as to necessary action. Also, one copy shall be forwarded to the appropriate person in the Bureau of Indian Affairs interested in such matters. A copy of the inspection report shall also be filed in the records of the Health Advisor.

### **History**

ACJA-13-63, January 17, 1963.

**Note.** Insertion of word "President", see CD-68-89, December 15, 1989, resolve § 9.

## **Subchapter 3. Sanitation Permits**

### **§ 551. Requirement**

A. No person shall operate a slaughterhouse or meat-processing

establishment on the lands of the Navajo Nation who does not possess a valid sanitation permit issued to him by the Health and Social Services Committee.

B. The failure to obtain or maintain a sanitation permit may be cause for termination of a slaughterhouse or meat-processing establishment lease granted by the Health and Social Services Committee.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454 (B) (2).

#### **§ 552. Application; form and contents**

Application for sanitation permits shall be in writing signed by the applicant and shall include the following:

A. The name and address of the applicant; and

B. The location and legal land description of the slaughterhouse or meat-processing establishment.

#### **History**

ACJA-13-63, January 17, 1963.

#### **§ 553. Inspection**

Before a permit is issued, the Health Advisor shall inspect the slaughterhouse or meat-processing establishment for which an application for permit has been filed to determine its compliance with the provisions of this Chapter.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Inspections generally, see 13 N.N.C. § 504.

#### **§ 554. Issuance**

Upon certification of the Health Advisor that a slaughterhouse or meat-processing establishment for which an application for a permit has been filed meets the requirements of this Chapter, the President shall issue a sanitation permit.

#### **History**

ACJA-13-63, § 2.5, January 17, 1963.

**Note.** Insertion of word "President", see CD-68-89, Resolve #9, December 15, 1989.

#### **Cross References**

Permit requirement, see 13 N.N.C. § 551.

#### **§ 555. Hearing on denial of application**

Any person whose application for a permit has been denied may request and shall be granted a hearing before the Health and Social Services Committee under the procedure provided by 13 N.N.C. § 682.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(2).

#### **§ 556. Display**

A sanitation permit shall be displayed in a prominent place within the premises.

#### **History**

ACJA-13-63, January 17, 1963.

#### **§ 557. Transfer**

A sanitation permit shall not be transferable.

#### **History**

ACJA-13-63, January 17, 1963.

#### **§ 558. New ownership or control-Notice**

Every person who succeeds to the ownership or control of a slaughterhouse or meat-processing establishment shall give notice in writing to the President of the Navajo Nation within 10 days after having purchased, received by transfer, or gift, or otherwise acquired interest in or control of any slaughterhouse or meat-processing establishment. Such notice shall include the name and address of the previous owner of the slaughterhouse or meat-processing establishment.

#### **History**

ACJA-13-63, January 17, 1963.

**Note.** Insertion of word "President", see CD-68-89, Resolve #9, December 15,



1989.

#### **§ 559. Application for permit**

Each person who succeeds to the ownership or control of a slaughterhouse or meat-processing establishment shall within 10 days file an application for a sanitation permit to be issued to him in the manner provided in this Subchapter. Failure to file such application within the 10-day period shall result in suspension of the privilege to operate such slaughterhouse or meat-processing establishment until compliance with this provision.

#### **History**

ACJA-13-63, § 2.3, January 17, 1963.

#### **§ 560. Suspension or revocation**

A. Whenever upon inspection of any slaughterhouse or meat processing establishment which holds a permit, conditions or practices are found to exist which are in violation of any provisions of this Subchapter, the President shall give notice in writing to the person to whom the permit was issued of such conditions or practices that unless such conditions and practices are corrected within a reasonable period of time, as recommended by the Health Advisor, the permit shall be suspended.

B. At the end of such period, the Health Advisor shall reinspect such slaughterhouse or meat-processing establishment and if such conditions or practices have not been corrected he shall so advise the President, who will give notice in writing to the permittee that the permit has been suspended. Upon receipt of notice of suspension, such person shall cease operation of such establishment at once.

C. Any person whose permit has been suspended, or has received notice from the President that his permit will be suspended unless certain conditions or practices at the slaughterhouse or meat-processing establishment are corrected, may request and will be granted a hearing on the matter before the Health and Social Services Committee as provided by 13 N.N.C. § 682. When no petition for such hearing shall have been filed within 10 days following the day when such permit was suspended, such permit shall be deemed to have been automatically revoked.

#### **History**

ACJA-13-63, January 17, 1963.

**Note.** Insertion of word "President", see CD-68-89, Resolve #9, December 15, 1989.

### **Subchapter 5. Sanitation Requirements**

#### **§ 601. Premises for establishments**

A. No establishment shall be located in barns, sheds, or other buildings

not designed or suitable for the slaughtering of animals or for processing of meat and/or meat products; nor shall any slaughtering be done in a manner wherein the carcasses are exposed to dust, dirt, fowls, flies, insects, rodents, cats, dogs, or any other possible source of contamination.

B. The premises of every establishment, including the docks and areas where cars and vehicles are loaded and unloaded, driveways, approaches, yards, pens, and alleys, shall be paved or properly graded and drained, and kept clean.

#### **History**

ACJA-13-63, January 17, 1963.

#### **§ 602. Floors**

A. The floors in all rooms of the establishment shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.

B. The floors of killing rooms and refrigerated rooms shall be constructed of impervious material such as dense concrete, or vitrified floor brick of good quality laid on a concrete base, and shall be sloped to permit easy drainage. Killing floors shall be provided with floor drains.

C. The floors in all other rooms of the establishment shall be constructed of dense concrete, vitrified floor brick of good quality laid on a concrete base, tile, terrazzo, tight wood, or other impervious material. Wood floors containing wide cracks, holes, or loose fitting planks are prohibited.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Cleaning floors, see 13 N.N.C. § 614.

Drainage of floors, see 13 N.N.C. § 607.

Washing floors, see 13 N.N.C. § 612.

#### **§ 603. Walls, ceilings, partitions and posts**

Walls, ceilings, partitions, and posts of all workrooms shall be well plastered or finished with wood, tile, metal, or other impervious material, and shall be suitably finished so as to be washable, and shall be kept clean and in good repair.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Washing walls, see 13 N.N.C. § 612.

**§ 604. Doors, windows and other openings**

A. Doors, windows and other openings to the outside of the establishment shall be fitted with self-closing screen doors and window screens of not coarser than 16 gauge mesh wire or 18 gauge plastic screen during the fly season, unless other effective means are provided to prevent the entrance of flies.

B. Fans of sufficient power to prevent entrance of flies and other insects shall be provided at all otherwise ineffectively protected openings.

**History**

ACJA-13-63, January 17, 1963.

**Cross References**

Exclusion of insects generally, see 13 N.N.C. § 618.

**§ 605. Lighting**

There shall be adequate lighting in all workrooms of the establishment. Sufficient artificial lighting shall be provided at places where, or at times when, natural lighting is not available. At least 20 foot candles in all areas should be provided except meat inspection and work surfaces which shall have 40 foot candles.

**History**

ACJA-13-63, January 17, 1963.

**§ 606. Ventilation**

All workrooms shall be well ventilated and shall be free from disagreeable odors, condensation, vapor and smoke. Exhaust fans or ventilating hoods shall be provided wherever necessary. The walls, ceilings, and overhead structures of rooms and compartments in which any product is prepared, handled, or stored shall be kept reasonably free from moisture.

**History**

ACJN-13-63, January 17, 1963.

**§ 607. Drainage**

Floors which require flushing during operations must have a sufficient number of floor drains, properly spaced, to adequately carry off the floor drainage. Each floor drain must be equipped with a deep-seal trap; the drainage lines shall be properly vented to the outside in accordance with the National Plumbing Code, as stated in 13 N.N.C. § 616. In no case shall a drain line be less than four inches in diameter and should be larger where required.

## **History**

ACJA-13-63, January 17, 1963.

### **§ 608. Water supply**

A. The water supply shall be ample, of safe and sanitary quality, and with adequate facilities for its distribution in the plant and its protection against contamination and pollution. Every establishment shall make known and whenever required, shall afford opportunity for inspection of the source of its water supply, the storage facilities, and the distribution system. Equipment using potable water shall be so installed as to prevent back-siphonage into the potable water system.

B. Nonpotable water is permitted only in those parts of establishments where no edible product is handled or prepared, and then only for limited purposes such as on ammonia condensers not connected with the potable water supply, in vapor lines serving inedible product-rendering tanks. Nonpotable water is not permitted for washing floors, areas, or equipment involved in trucking materials to and from edible products departments, nor is it permitted in hog-scalding vats, dehairing machines, or vapor lines serving edible products rendering equipment, or for cleanup of shackling pens, bleeding areas, or runways within the slaughtering department. In all cases, nonpotable water lines shall be clearly identified (painted yellow) and shall not be cross-connected with the potable water supply.

C. Running hot and cold water, under pressure, shall be easily accessible in all rooms in which meat or meat food products are prepared, and utensils are washed. Outlets and connections to fixtures and equipment shall be so installed as to prevent backflow into the water distribution system, or shall be equipped with backflow preventers.

## **History**

ACJA-13-63, January 17, 1963.

### **§ 609. Toilet and dressing room facilities**

A. Every establishment shall have convenient flush-type toilets, separate and apart from rooms where processing; manufacturing, packing, canning, storing or selling of any meat or meat food product is conducted. All toilet room doors shall be provided with springs or checks to make them self-closing. The toilet room or rooms shall be well lighted and ventilated and shall be maintained in a sanitary condition, free from flies. An approved handwashing sign shall be posted in a conspicuous place in all toilet rooms.

B. A supply of toilet tissues shall be provided in toilet rooms at all times.

C. Adequate lockers, or facilities in dressing rooms, shall be provided in, or shall be convenient to, meat-processing establishments for the storage of employees' clothing. Such locker or dressing rooms shall be kept in a clean and orderly condition and shall be separate and apart from any room or rooms

where the process of production, processing, manufacturing, packing, canning, storing, selling, or distribution of any meat or meat food product is conducted. Hampers for soiled clothes shall be located in locker or dressing rooms and shall not be located in processing rooms.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Handwashing facilities generally, see 13 N.N.C. § 610.

#### **§ 610. Handwashing facilities**

A. Adequate handwashing facilities, including hot and cold running water, soap and sanitary towels, shall be provided in or adjacent to all toilet rooms and in any other locations in the establishment where the nature of the work requires frequent use of such facilities. The use of a common towel is prohibited. No employee shall begin work after visiting the toilet room or handling any disease contaminated product, or before resuming work after having been absent from the work area for any reason, without first thoroughly washing his hands and arms with clean water and soap.

B. Each lavatory shall be supplied with a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl to facilitate washing arms as well as hands. Lavatories in work areas in new establishments, or those areas undergoing major alterations or additions, shall be supplied with foot, elbow, or knee controls.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Toilet and dressing room facilities generally, see 13 N.N.C. § 609.

#### **§ 611. Equipment—Generally**

A. All equipment used in an establishment which comes in contact with meat or meat products, except workbenches and tables, shall be constructed of metal or other impervious materials, and shall be free of crevices, seams, and joints, and shall be kept clean and in good repair.

B. Workbenches and tables shall be constructed of metal, tight-fitting removable hardwood planks or both, or of other impervious materials.

C. Handtrucks used in establishments for the transportation of unpackaged meat shall be of smooth metal construction. Trucks and receptacles used for inedible material shall be of similar construction and shall bear some conspicuous and distinctive mark, and shall not be used for handling edible products.

D. Metal containers used for storage or transportation of meat shall be so constructed as to be easily cleanable and shall be kept clean and in good repair. Such containers shall not be painted on the inner surfaces.

E. Utensils containing or plated with cadmium, lead, or other poisonous substances shall not be used.

F. All containers other than those of metal construction which are used for transportation or storage of unwrapped meat or meat food products shall be kept clean and in good repair and shall be lined with new clean paper material of a type which does not tear easily or disintegrate during use but remains intact when moistened by the product. The use of newspapers or soiled wrappings is prohibited. Burlap shall not be used as a wrapping for meat or meat products unless the product is first wrapped with a good grade of paper or cloth which will prevent contamination with lint or other foreign matter.

G. Scabbards for knives or similar devices for temporary retention of knives, steels, etc., shall be constructed of rust-resisting metal and shall be so constructed that they can be readily cleaned and shall be kept clean.

H. Racks, receptacles or other equipment used for retaining such parts as the head, tongue, tail, thymus glands, viscera, and other usable meats shall be constructed of metal and shall be constructed so as to prevent contact of said meats with the floor.

I. Mechanized equipment, such as meat choppers and agitators, shall be protected so that contamination of the product with grease or metal particles is avoided.

J. Broken window glass or broken light bulbs in all rooms where meat or meat food products are handled shall be immediately replaced.

### **History**

ACJA-13-63, January 17, 1963.

### **Cross References**

Calf, sheep and goat equipment, see 13 N.N.C. § 620.

Cattle equipment, see 13 N.N.C. § 619.

Hog equipment, see 13 N.N.C. § 621.

Washing equipment, see 13 N.N.C. § 612.

### **§ 612. Washing equipment, floors and walls**

A. An ample supply of steam or hot water shall be easily accessible to workrooms and adequate facilities for washing and cleaning equipment shall be provided.

B. Equipment washing sinks shall be provided with running hot and cold water and shall drain into open-trap drains connected directly to the sewerage

system.

C. Adequate hose connections shall be provided for hot and cold water under sufficient pressure to be used for cleaning and washing floors, walls, and stationary equipment.

D. Adequate brushes, detergents, and other similar materials shall be provided for cleaning and washing equipment. Wire brushes or steel wool shall not be used for cleaning equipment coming in contact with the product. A separate wash area shall be provided for the washing of movable equipment.

E. Cleaning shall be accomplished by the use of warm water (100°F to 120°F) containing an adequate amount of detergent to remove grease. The wash water shall be changed at sufficient intervals to keep it reasonably clean and free from precipitated grease.

F. Equipment and utensils used for processing meat and meat products shall be thoroughly cleaned at the end of each day's operations and at such other times as shall be necessary in order to prevent contamination of meat and meat food products. Such cleaning shall remove grease and other soils, and shall leave no visible surface film or deposit.

G. After cleaning, all utensils shall be sanitized by one of the following methods: (1) after rinsing, complete immersion in a warm chlorine bath for at least two minutes with at least 100 parts per million of chlorine; or (2) complete immersion in 180°F water bath for a period of not less than two minutes.

#### **History**

ACJA-13-63, January 17, 1963.

#### **§ 613. Rails**

All overhead rails for the movement of carcasses shall be kept clean and free from rust. Rails shall be placed in such a way as to prevent carcasses or parts of carcasses from touching the floors or walls.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Equipment generally, see 13 N.N.C. § 611.

#### **§ 614. Operation generally**

A. Meats and meat food products shall be prevented from falling on the floor or coming in contact with any unclean or disease-producing materials.

B. Carcasses, after slaughter and evisceration, shall be moved from the killing floor to the chilling room without delay.

C. Slaughtering and processing shall not be conducted in the same room at the same time.

D. Water supplied to wash beef carcasses or for scraping hog carcasses shall be under pressure at all times. The use of cloths or rags to wash or wipe carcasses is prohibited.

E. During operations, the floors in killing and processing rooms and areas shall be kept reasonably free from processing wastes, including blood, paunch contents, manure, scraps, grease, dirt, water, and litter. Where processing is conducted at short, irregular intervals, wastes shall be removed from the floors and properly disposed of immediately following each period of processing. Floors shall be thoroughly cleaned at the end of each day's operations. Those sections of walls, partitions, posts, ceilings and exposed overhead structures in killing rooms or areas, in other processing rooms, and in refuse rooms which become soiled during meat processing shall be thoroughly cleaned after each day's operations.

F. Sawdust used on floors of meat-cutting rooms and refrigerated rooms must be changed frequently enough to keep it fresh and clean.

G. Such practices as spitting on whetstones, spitting on the floor, or placing skewers, tags, or knives in the mouth are prohibited.

H. Care shall be taken to prevent the contamination of products with perspiration, hair, cosmetics, medicaments and the like. Rooms and compartments used for edible products shall be separate and distinct from those used for inedible products.

I. Processing and storage rooms of establishments used for inedible materials shall be maintained in an acceptably clean condition. The rooms and compartments in which any meat or meat food products are prepared or handled shall be free from dust and from odors from dressing and toilet rooms, catch basins, hide cellars, casing rooms, inedible tank, fertilizer rooms and livestock pens.

J. Hides and pelts shall be promptly removed from the slaughter room. The room where hides are kept shall be completely separate from other rooms in the establishment.

K. Calves dressed with the skin or hide on shall be thoroughly cleaned and washed before being placed in rooms where other meat or meat food products are kept.

L. Animals awaiting slaughter shall not be kept on the killing floor. If it is necessary to keep them in the main building, pens shall be provided in a section partitioned from the killing floor and processing rooms. The floors in the pens shall be of concrete or other nonabsorbent material and provided with suitable drains. All manure and other excrement from the pens shall be removed daily.

M. Equipment, utensils, packaging materials and meat food product ingredients shall be stored in a suitable location and protected from



contamination. Single-service containers and all wrapping or lining material shall be packaged and shall be transported and stored under sanitary conditions.

N. Vehicles and cars in which any meat or meat food products are transported inside an establishment shall be kept in a clean and sanitary condition.

O. It is prohibited to skin, butcher, cut-up or dress any animal, or the meat or other parts of any animal, that died from natural causes, disease, or accident and was therefore not slaughtered and bled out properly in any room of an establishment where animals are slaughtered, dressed and prepared for human food, or in any room in an establishment where meats or meat food products are prepared or handled for human food.

P. No portion of any building used in connection with the processing of meat or meat food products shall be used for domestic purposes.

Q. No eating shall be allowed in the slaughtering or meat processing rooms.

### **History**

ACJA-13-63, January 17, 1963.

### **Cross References**

Floors generally, see 13 N.N.C. § 602.

Transportation vehicles, see 13 N.N.C. § 625.

### **§ 615. Refrigeration**

A. The refrigeration provided in the chilling rooms shall be capable of reducing the internal temperature of carcasses to 36°F within twenty-four (24) hours.

B. Carcasses which have been chilled to 36°F shall be held at 40°F, or below until shipped from the establishment unless further cut up prior to such shipment.

C. Immediately after being cut up, the meat shall be replaced in refrigerated rooms maintained at temperatures of 40°F, or below.

D. Frozen meat or meat products shall be stored at a temperature of 0°F, or lower.

E. Sufficient refrigeration space shall be available for the refrigeration of each carcass immediately after completion of the dressing operation. There shall be sufficient room in the chilling rooms to permit free circulation of air between the carcasses.

F. A chill cooler and separate holding coolers may be provided, or both

may be combined in one room. The chill cooler must have floors of concrete properly sloped to a drain. Wells must be smooth-finished Portland cement plaster or glazed tile. The room must be sealed. Floors of other coolers must be of concrete; walls of smooth finished Portland cement plaster or glazed tile and the room sealed. The door between the slaughtering department and the chill cooler must be clad with rust-resistant metal.

G. Rails should be spaced at least two feet from walls, columns, refrigerating equipment, or other fixed equipment to prevent contact of the carcasses. If overhead refrigerating facilities are provided, insulated drip pans must be installed beneath them, and the pipes properly connected to the drainage system. If wall-coil systems are used, the drip pans must be installed beneath the coils.

H. When edible offal is chilled or stored in a cooler other than a separate offal cooler, that area must be separately drained.

### **History**

ACJA-13-63, January 17, 1963.

### **Cross References**

Transportation vehicles, see 13 N.N.C. § 625.

### **§ 616. Disposal of wastes**

A. All waste shall be properly disposed of and all inedible products and trash shall be kept in suitable receptacles in such a manner as not to become a nuisance.

B. Containers used for the collection and holding of solid wastes shall be kept covered or otherwise protected at all times so that the wastes shall not be accessible to flies, rodents, or other vermin.

C. The sewerage system in establishments shall be of sufficient size to handle the sewage at peak production. The drainage pipes shall be of cast or wrought iron and shall be provided with clean-out fixtures, screens and water-seal traps where the sewage enters the disposal system.

D. Liquid wastes from sinks, drains, toilets, and similar fixtures shall empty into a municipal sewer, if available. In the absence of a municipal sewer, sewage disposal shall be accomplished by a method approved by the Health Advisor. Open ditch drainage or open sewerage systems are prohibited.

E. Where grease catch basins are used, they shall be situated on the outside of the establishment, in the open, and the area around the catch basins shall be paved and properly drained. The material which is collected in the catch basins shall be removed as frequently as is necessary. Toilet soil lines shall be separated from the establishment drainage lines to a point outside of the building so as to bypass the grease catch basins.

F. Water-wasting equipment, such as meat-cooking vats, curing vats, and meat-soaking vats, shall drain into the sewerage system by means of a "broker

connection" or into an open-trapped drain to avoid continuity of the equipment handling edible products with the drainage system, so that if there is a stoppage in the drainage lines, the wastes cannot back up into and contaminate the equipment and the product contained in it.

G. All overhead drain lines and piping shall be so located and installed, or protected, that leakage and condensation therefrom cannot drip upon meat or meat food products, stored edible products, processing equipment or utensils, facilities for the cleaning of utensils and portable equipment, working or trucking floor areas.

H. All plumbing shall comply with the latest edition of the National Plumbing Code, which shall be on file at the Central Records Room of the Navajo Nation, and shall be so designed as to prevent contamination of the potable water supply through cross-connections or back-siphonage from fixtures.

I. Suitable receptacles shall be provided for blood, offal, and similar materials and such materials shall be placed into an offal tank, or where such tank is not available they shall be removed from the premises daily. In no case shall they be permitted to accumulate in or around the establishment. Receptacles and vehicles used for storing and transporting such materials shall be kept clean. Stomach and intestinal contents and other refuse shall not be allowed to accumulate on the floor of the slaughter room, and shall not be stored on the premises in any place or in such a manner as to render the establishment insanitary.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Blood disposal, see 13 N.N.C. § 617.

Drainage generally, see 13 N.N.C. § 607.

#### **§ 617. Disposal of blood**

When blood is not permitted to drain into the sewerage system, it may be collected in a properly constructed metal blow tank and removed from the premises or blown to the blood dryer in such a manner as to create no insanitary conditions.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Waste disposal generally, see 13 N.N.C. § 616.

#### **§ 618. Exclusion of insects, rodents, fowl, dogs and cats**

A. Every practicable precaution shall be taken to exclude flies, fowl,

rats, mice and other vermin from establishments. All outer walls and rooms shall be effectively protected against the entrance and harborage of rodents and insects, and interior walls, partitions, posts, ceilings, and overhead structures shall be free from such harborage.

B. Rodenticide, insecticides, and other toxic materials used in establishments where meat or meat products are processed, stored, or otherwise handled shall be identified, stored, and used in such a manner as to preclude the contamination of meat and meat products or the creation of other health hazards. So-called "rat viruses" shall not be used in any part of an establishment. Residual insecticides shall not be used in meat processing or storage rooms where meat or meat products may be exposed.

C. Dogs and cats shall be excluded from the inside of the establishment and shall not be allowed any access to offal or refuse awaiting removal on the outside of the establishment.

### **History**

ACJA-13-63, January 17, 1963.

### **§ 619. Cattle**

A. A metal knocking box or concrete box with metal door shall be provided for cattle. Provisions also should be made for bringing in cripples.

B. There shall be a dry-landing area at least five feet wide in front of the knocking box. This area should be separately drained.

C. The curbed-in bleeding area shall be at least eight feet wide and seven feet long, so located that blood will not splash upon stunned animals lying in the dry-landing area or upon carcasses being skinned on the siding bed. Curbing shall be at least six inches high and six inches wide.

D. There shall be a distance of at least five feet from the curbed-in bleeding area to the siding bed. This area should be separately drained.

E. There shall be a distance of at least 14 feet from the vertical of the drop-off to the vertical of the hoist where carcasses are eviscerated. For multiple bed plants, this distance should be increased to 16 feet.

F. There shall be a distance of at least 14 feet between the vertical of the hoist where carcasses are eviscerated and the header rail leading to the cooler. This distance may be somewhat shortened where a single rail handoff is used.

G. There shall be a distance of at least three feet from the header rail to the adjacent wall.

H. There shall be a bleeding rail with its top at least 16 feet above the floor or a traveling hoist on a 1" beam which will provide an equivalent distance of the carcass from the floor.

I. Suitable facilities and adequate floor space for the washing, flushing, and inspection of heads shall be provided.

J. When hides are dropped to a room below, a properly constructed hide chute near the point where hides are removed from the carcasses shall be provided. The chute must have a vented hood with a self-closing, push-in door. The vent should be approximately ten inches in diameter and extend to a point above the roof. Other chutes for inedible and condemned materials must also be of appropriate size and conveniently located and vented.

K. A two-level viscera inspection truck for evisceration except when a moving-top viscera inspection table is used shall be provided.

L. An area for washing and shrouding carcasses shall be provided. This area should be curbed and sloped to a separate drain within the area, or it may have a slope of approximately one-half inch to the foot leading to a separate drain.

M. Dressing rails and cooler rails shall be not less than 11 feet in height.

### **History**

ACJA-13-63, January 17, 1963.

### **Cross References**

Equipment generally, see 13 N.N.C. § 611.

### **§ 620. Calves, sheep and goats**

A. Bleeding rail with its top approximately 11 feet from the floor shall be provided for calves, sheep and goats. The floor of the bleeding area must be curbed and separately drained.

B. Dressing and cooler rails of such height as to assure a clearance of at least eight inches from the carcasses to the floor shall be provided. Calves which are of such size that there is not a clearance of at least eight inches above the floor, or whose viscera cannot be transferred manually and unaided to the inspection stand, must be skinned and eviscerated as cattle.

C. Proper facilities shall be provided for washing hides of calves before any incision is made (except the sticking wound) when carcasses are dressed hide-on.

D. Suitable facilities for flushing, washing, and inspecting heads, including head-flushing cabinet and head-inspection rack with removable loops shall be provided.

E. Facilities shall be provided for the inspection of the viscera. A hopped metal stand must be provided which accommodates two removable inspection pans. One inspection pan is for the thoracic viscera, while the other is for the abdominal viscera. The pans should have perforated bottoms and handles or hand holds for convenient removal. A sterilizing receptacle

should be provided at a convenient location for sterilization of the pans when necessary.

F. Suitable facilities shall be provided for washing sheep carcasses after the removal of the pelt. Calves and sheep must be washed again after they have been eviscerated.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Equipment generally, see 13 N.N.C. § 611.

#### **§ 621. Hogs**

A. Facilities shall be provided for bleeding hogs in a hanging position over a separately drained, curbed-in bleeding area.

B. A scalding vat and gambreling table, including the platforms, of metal construction shall be provided.

C. A shaving rail of sufficient length to assure that carcasses are properly cleaned shall be provided.

D. A hopped metal stand for the inspection of viscera shall be provided. A sterilizing receptacle should be provided at a convenient location for the sterilization of the pans, when necessary.

E. Dressing and cooler rails at least nine feet high or of such height as to provide a clearance of at least eight inches between the lowest point of the carcass, or head if left attached, and the floor shall be provided.

#### **History**

ACJA-13-63, January 17, 1963.

#### **Cross References**

Equipment generally, see 13 N.N.C. § 611.

#### **§ 622. Hide room**

The floor of the hide room, if provided, must be of concrete and properly drained. Walls must be smooth and impervious to at least the highest point of the hide pile. The hide room must not connect with the slaughtering department except for one opening, equipped with a tight-fitting, self-closing door. The hide room must not connect with any other room in which edible products are stored, processed, or handled.

#### **History**

ACJA-13-63, January 17, 1963.

### **Cross References**

Floors and walls generally, see 13 N.N.C. §§ 602, 603.

### **§ 623. Inedible products department**

An inedible products department, completely separate and apart from edible products departments, must be provided. Walls must be of smooth-finish Portland cement plaster, glazed tile, or other approved impervious material.

### **History**

ACJA-13-63, January 17, 1963.

### **Cross References**

Walls generally, see 13 N.N.C. § 603.

### **§ 624. Pens**

A. A holding pen must be surfaced with an impervious material sloped to drain. A curb must be installed around the outside of the pen to prevent the wash from escaping. An ample supply of water under pressure must be available for washing out the pens. Feeding pens should be located at least 100 feet from the plant. Pens should not be located in front of the plant.

B. Holding and shackling pens should be located outside of, or effectively separated from, the slaughtering department.

### **History**

ACJA-13-63, January 17, 1963.

### **§ 625. Transportation vehicles**

A. The name and address of any person transporting meat or meat products outside of an establishment shall be legibly and conspicuously painted or be permanently affixed letters of at least three inches high on each side of all transportation vehicles. All transportation vehicles shall have completely and permanently enclosed areas for meat or meat food product carrying.

B. Meat products being transported in vehicles must be maintained at a temperature of not more than 45°F, during transit. Frozen meats consigned to retail outlets shall be delivered at a temperature not to exceed 20°F.

C. Vehicles used to transport meat and meat products shall be kept in a clean and sanitary condition and shall not be used to transport objectionable materials, such as oil, kerosene, manure, etc. All vehicles and containers must be constructed and all wrappings applied, so as to protect all meat and meat products from dirt, dust, vermin, or any other substance unwholesome or detrimental to public health.

D. Loading and unloading of meat and meat products shall be conducted in a sanitary manner.

#### **History**

ACJA-13-63, January 17, 1963.

### **Subchapter 7. Violation of Provisions**

#### **§ 681. Notice**

A. When the Health Advisor recommends action pursuant to violation of any of the provisions of this Chapter, the President shall give notice to the person or persons responsible for such violation.

B. Such notice shall be in writing, include a statement of the reasons for its issuance, allow a reasonable time for the performance of any action required, be served upon the owner or his agent, and contain an outline of remedial action, which if taken will effect compliance with the provisions of this Chapter.

C. Such notice or order shall be deemed to have been properly served upon the owner or agent when a copy thereof has been sent by registered mail to his last known address or when he has been served by any other method authorized by the Health and Social Services Committee.

#### **History**

ACJA-13-63, January 17, 1963.

**Note.** Insertion of word "President", see CD-68-89, Resolve #9, December 15, 1989.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(3).

#### **§ 682. Hearing**

A. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this Chapter may request and shall be granted a hearing on the matter before the Health and Social Services Committee; provided, that such person shall file in the office of the President a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten (10) days after the day notice was served. Upon receipt of such petition, the President shall set a time and place for such hearing before the Health and Social Services Committee and shall give the petitioner written notice thereof.

B. The hearing shall be commenced within a reasonable time, but not later than the next regularly scheduled session of the Health and Social Services Committee following the day on which the petition was filed.



C. At the hearing the petitioners shall be given an opportunity to be heard, and to show cause why such notice should be modified or withdrawn.

D. Any notice served pursuant to 13 N.N.C. § 681 shall automatically become an order if a written petition for a hearing shall not have been filed in the office of the President within ten (10) days after such notice was served.

#### **History**

ACJA-13-63, §§ 4.2, 4.3, January 17, 1963.

**Note.** Insertion of word "President", see CD-68-89, Resolve #9, December 15, 1989.

#### **Cross References**

Rules and Regulations, see 2 N.N.C. § 454(B)(5).

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(3).

#### **§ 683. Determination**

A. After such hearing, the Health and Social Services Committee, with the consultation of the Health Advisor or Area Director shall sustain, modify, or withdraw the notice, depending on the findings as to the compliance or noncompliance with the provisions of this Chapter. If the Health and Social Services Committee shall sustain or modify such notice, it shall be deemed to be an order.

B. After a hearing in the case of any notice suspending any permit required by the provisions of this Chapter, when such notice shall have been sustained by the Health and Social Services Committee, the permit shall be deemed to have been revoked; provided, however, that the Health and Social Services Committee may grant a further opportunity to comply with the provisions of this Chapter.

#### **History**

ACJA-13-63, January 17, 1963.

#### **§ 684. Record of proceedings**

The proceedings at such hearings including any findings and decisions of the Health and Social Services Committee shall be reduced to writing and entered as a matter of Navajo Nation record. Such record shall include every notice or order issued in connection with the matter.

#### **History**

ACJA-13-63, January 17, 1963.

#### **§ 685. Emergency action**

Whenever the President, upon the advice of the Health Advisor or Area Director, finds that an emergency matter exists which requires immediate action to protect public health, the President may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as is deemed necessary to meet the emergency. Notwithstanding any other provision of this Chapter, such order shall be effective immediately, but upon petition to the Health and Social Services Committee, the petitioner will be afforded a hearing as soon as possible. After such hearing, depending upon the findings as to compliance or noncompliance with the provisions of this Chapter, the Health and Social Services Committee may continue the order in effect, modify it, or revoke it.

#### **History**

ACJA-13-63, January 17, 1963.

**Note.** Insertion of word "President", see CD-68-89, December 15, 1989, resolve § 9.

#### **§ 686. Forfeiture of right to do business**

The right of any person, found in violation of the provisions of this Chapter and who remains in violation after exhausting remedies provided in 13 N.N.C. § 682, to do business within the Navajo Nation may be forfeited pursuant to the terms contained in the particular slaughterhouse and meat-processing establishment lease.

#### **History**

ACJA-13-63, January 17, 1963.

### **Chapter 5. Retail Food Store Sanitation Code**

#### **History**

CMY-28-86, May 2, 1986.

ACMA-55-60, March 9, 1960.

**Note.** Appendix referenced in this Code and the rationale for certain Sections are not included. See CMY-28-86, May 2, 1986.

#### **Subchapter 1. General Provisions**

##### **§ 901. Purpose**

This code shall be liberally construed and applied to promote its underlying purpose of protecting the public health.

#### **History**

CMY-28-86, May 2, 1986.

## § 902. Definitions

For the purpose of this Code:

A. "Bulk food" means unpackaged or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn. For the purpose of this interpretation, the term does not include fresh fruits, fresh vegetables, nuts in the shell, salad bars<sup>1</sup> and potentially hazardous foods.<sup>2</sup>

B. "Corrosion-resistant materials" means those materials that maintain acceptable sanitary surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

C. "Display area" means a location or locations, including physical facilities and equipment, where bulk food is offered for customer self-service.

D. "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue can be effectively removed by normal cleaning methods.

E. "Employee" means that permit holder, individual having supervisory or management duties, person on the payroll, family members, volunteer, person performing work under contractual agreement, or any other person working in a food store.

F. "Equipment" means items other than utensils used in the storage, preparation, display, and transportation of food such as stoves, ovens, hoods, slicers, grinders, mixers, scales, meat blocks, tables, food shelving, reach-in refrigerators and freezers, sinks, ice makers, and similar items used in the operation of a retail food store. This item does not include fork lift trucks or dollies.

G. "Food" means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

H. "Food contact surfaces" means those surfaces of equipment and utensils with which food normally comes into contact, and those surfaces from which food may drain, drip, or splash back onto surfaces, normally in contact with food.

I. "Food service establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for food. The term includes delicatessen type operations that offer prepared food intended for individual portions services. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.

J. "Health Advisor" shall mean the Director, Navajo Area Indian Health Service or an authorized agent.

K. "Hermetically sealed container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

L. "Law" includes applicable federal, state, and local statutes, ordinances, and regulations.

M. "Packaged" means bottled, canned, cartoned, bagged, or securely wrapped.

N. "Permit" means the document issued by the regulatory authority which authorizes a person to operate a retail food store.

O. "Person" includes any individual, partnership, corporation, association, or other legal entity.

P. "Person in charge" means individual present in a retail food store who is the supervisor of the retail food store at the time of inspection.

Q. "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, and which is in the form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. Potentially hazardous foods include rice, fried rice, refried beans and baked potatoes. The term does not include: clean, whole, encroached, odor free shell eggs; foods that have a PH level of 4.6 or below or a water activity (a) value of 0.85 or less under standard conditions; food products in hermetically sealed containers processed to prevent spoilage.

R. "Product module" means a food-contact container (multi-use or single-service) designed for customer self-service of bulk food by either direct or indirect means.

S. "Regulatory authority" shall mean the Navajo Division of Health or its successor.

T. "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in packaged bulk quantities only. The term does not include establishments which handle only prepackaged, non-potentially hazardous foods; roadside markets that offer only fresh fruits and fresh vegetable for sale; food service establishments; or food and beverage vending machines.

U. "Safe materials" means articles manufactured from or composed of materials that may not reasonable be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials are food additives or color additives as defined in § 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act as used they are "safe" only if they are used in conformity with regulations established pursuant to § 409 or § 706 of that Act. Other materials are "safe" only if, as used, they are not food additives or color additives as defined in § 201 (s) or (t) of the Federal Food, Drug, and

Cosmetic Act <sup>3</sup> and are used in conformity with all applicable regulations of the Food and Drug Administration.

V. "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on cleaned food-contact surfaces of utensils and equipment.

W. "Salvage operations" means operations in which food products which have been subject to possible damage due to accidents, fire, flood, adverse weather or any other similar cause or which may have been rendered unsafe or unsuitable for human consumption or use.

X. "Sanitation permit" means a written permit issued by the Commerce Department of the Navajo Nation or its successor upon the recommendation of the Health Advisor reflecting the retail food stores compliance with the provisions of this Chapter.

Y. "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

Z. "Servicing area" means a designated location or locations equipped for cleaning, sanitizing, drying or refilling product modules or for preparing bulk food.

AA. "Single-service articles" means items used by the retailer of consumer such as cups, containers, lids, and packaging materials, including bags and similar articles, intended for contact with food, and designed for one-time use. The term does not include "single use" articles such as number 10 cans, aluminum pie pans, bread wrappers and similar articles into which food has been packaged by the manufacturer.

BB. "Transportation" (transported) means movement of food within the retail food store or delivery of food from that retail food store to another place while under the control of the person in charge.

CC. "Uniform Plumbing Code" shall mean the International Association of Plumbing and Mechanical Officials, Uniform Plumbing Code, 1982.

DD. "Utensil" means any food-contact implement used in the storage, preparation, transportation, or dispensing of food.

EE. "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

FF. "Wholesale food" means food processed, packaged, canned, manufactured, stored and sold of resale purposes. This definition will include food storage warehouses.

### **History**

CMY-28-86, May 2, 1986.

## **Subchapter 2. Food**

### **§ 911. Food supplies—General**

A. Food shall be in sound condition and safe for human consumption. Food shall be obtained from sources that comply with the applicable laws relating to food safety. Food prepared in a home shall not be used or offered for sale.

B. Bulk food product modules shall be labeled with either:

1. The manufacturer's or processor's bulk container labeling plainly in view; or

2. A counter card, sign or other appropriate device bearing prominently and conspicuously the common name of the product, a list of ingredients in proper order of predominance and declaration of artificial color or flavor and chemical preservatives if contained in the product.

### **History**

CMY-28-86, May 2, 1986.

### **§ 912. Special requirements**

A. Fluid milk and fluid milk products used or offered for sale shall comply with the Grade "A" standards as specified in the latest edition of the U.S. Food and Drug Administration's Grade A Pasteurized Milk Ordinance, Public Health Service/Food and Drug Administration's Publication No. 229, U.S. Government Printing Office. Dry milk and milk products used or offered for sale shall be made from pasteurized milk and milk products. Raw milk and raw milk products shall be not sold.

B. Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be received, and/or repacked in non-returnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the state certification number issued according to the law. Shucked shellfish should be kept in the container in which they were received until used or sold.

C. Each original container of unshucked shellfish (oysters, clams, or mussels) shall be identified by an attached tag, to be retained for a period of 90 days, that states the name and address of the original shellfish processor, the kind and quantity of shellfish and the certification number issued by the state or foreign shellfish control agency, where applicable.

D. Only clean shell eggs meeting only "Grade B" standards or better of the U.S. Department of Agriculture or a state program which has been certified by the U.S. Department of Agriculture, or pasteurized liquid, frozen or dry eggs, or pasteurized dry egg products shall be used or offered for sale.

E. Only ice which has been manufactured from potable water and handled in a sanitary manner shall be used or offered for sale. Ice offered for sale shall be packaged.

F. All meat products offered for sale shall be U.S. Department of Agriculture inspected and meet the approval of a state inspection program which has been certified by the U.S. Department of Agriculture. Meat which is state inspected shall only be sold in the state that the product was inspected in.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 913. Food protection—General**

A. At all times, including while being stored, prepared, displayed, dispensed, packaged, or transported, food shall be protected from cross-contamination between foods and from potential contamination by insects, insecticides, rodents, rodenticides, probe-type price or probe-type identification tags, unclean equipment and utensils, unnecessary handling; flooding, draining, and overhead leakage or condensation, or other agents of public health significance. The temperature of potentially hazardous foods shall be 45°F (7°C) or below or 140°F (60°C) or above, at all times, except as otherwise provided in this Code. Hermetically sealed packages shall be handled so as to maintain produce and container integrity. Food items that are spoiled or that are in damaged containers that may affect the product and those food items that have returned to, or are being detained by, the retail food store because of spoilage, container damage or other public health considerations shall be segregated and held in designated areas pending proper disposition unless disposed of under the supervision of the Health Advisor.

B. Bulk foods and product modules shall be protected from contamination during display, customer self-service, refilling and storage.

C. Containers of bulk pet foods and bulk non-food items shall be separated by a barrier or open space from product modules.

D. Bulk food returned to the store by the customer shall not be offered for resale.

E. Only containers provided by the store in the display area shall be filled with bulk foods.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 914. Emergency occurrences**

The person in charge of a retail food store that is affected by a fire, flood, extended power outage, or a similar significant occurrence that creates a reasonable probability that food in the retail food store may have been contaminated or that the temperature level of food which is in a potentially hazardous form may have caused that food to have become hazardous to health, shall take such action as is necessary to protect the public health and shall promptly notify the Health Advisor of the emergency.

## History

CMY-28-86, May 2, 1986.

### § 915. Food storage—General

A. Food packaged in an immediate closed container, once the container is opened in the retail food store prior to use or retail sale, shall be kept covered. Food, whether raw or prepared, if removed from the immediate closed container in which it was originally packaged prior to use or retail sale, shall be stored in a clean, covered container, except during necessary periods of preparation. Whole and unprocessed fresh raw vegetables and fresh raw fruits shall be exempted from this requirement. Container covers shall be impervious and nonabsorbent. During periods of storage, subprimal cuts of meat shall be covered with single-service wrapping materials. Primal cuts, quarters or sides of meat, or processed meats such as country hams, slab bacon, and smoked or cured sausages, may be hung uncovered on clean sanitized hooks or placed on clean, metal racks in such a manner as to preclude contamination of any food products in storage.

B. Containers of food shall be stored in minimum of six inches [152 millimeters (mm)] above the floor or stored on dollies, skids, racks, or open-ended pallets, provided such equipment is easily movable, either by hand or with the use of pallet-moving equipment that is on the premises and used. Such storage areas shall be kept clean. Cased food packaged in cans, glass, or other waterproof containers need not be elevated when the case of food is not exposed to floor moisture and the storage area is kept clean. Food products in storage shall not be stored against the wall. Storage shall be at least six inches from any wall surface and be accessible for inspection.

C. Food and containers of food shall not be stored under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water has accumulated.

D. Packaged foods shall not be stored in contact with water or undrained ice.

E. A food ingredient, such as flour, sugar, salt, baking powder, cooking oil or vinegar, that is not stored in the original package and is not readily identifiable on sight, shall be stored in a container identifying it by common name.

F. Toilet rooms and their vestibules, and garbage or mechanical room shall not be used for the storage of food.

G. Labels or marking pens shall be available to customers to identify their take-home containers with the common name of the product unless the product is readily identifiable on sight.

## History

CMY-28-86, May 2, 1986.



## **§ 916. Refrigerated/frozen storage**

A. Refrigeration units or effectively insulated units shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated unit storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer accurate to 3°F (1°C). The sensing element shall be located to measure the air temperature in the unit at a location that is representative of the air temperature of the unit. The thermometer scale shall be located to be easily readable. Recording thermometers, accurate to 3°F (1°C) may be used in lieu of indicating thermometers.

B. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 45°F (7°C) or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling, or water circulation external to the food container so that the cooling period shall not exceed four (4) hours. Potentially hazardous food to be transported shall be pre-chilled and held at a temperature of 45°F (7°C) or below unless maintained in accordance with the hot storage requirements of this Code.

C. Potentially hazardous frozen foods shall be kept frozen and should be stored at an air temperature of 0°F (18°C) or below except for defrost cycles and brief periods of loading or unloading.

D. Ice used as a cooling medium for food storage shall not be used or sold for human consumption.

### **History**

CMY-28-86, May 2, 1986.

## **§ 917. Hot food storage**

A. Hot food storage units shall be provided in such number and such capacity to assure the maintenance of potentially hazardous food at the required temperature during storage. Each hot food storage unit storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to 3°F (1°C). The sensing element shall be located to measure the air temperature in the unit at a location that is representative of the temperature in the unit. The thermometer scale shall be located to be easily readable. Recording thermometers accurate to 3°F (1°C) may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as heat lamps, calrod units or insulated food transport carriers, a food product thermometer shall be available and used to check internal food temperature.

B. The internal temperature of potentially hazardous foods requiring hot storage shall be 140°F (60°C) or above, except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of 140°F (60°C) or above unless maintained in accordance with the

refrigerated storage requirements of this Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 918. Food preparation—General**

A. Food shall be prepared with a minimum of manual contact. Food shall be prepared on food-contact surfaces and with utensils which are clean and have been sanitized.

B. Each time there is a change in processing between raw beef, raw pork, raw poultry or raw seafood, or a change in processing from raw to ready-to-eat foods, each new operation shall begin with food-contact surfaces and utensils which are clean and have been sanitized. Salads and other ready-to-eat foods shall be prepared in separate rooms or in areas that are separated by a barrier or open space from areas used for processing potentially hazardous raw products.

C. Potentially hazardous foods that are in a form to be consumed without further cooking such as salads, sandwiches, and filled pastry products shall be prepared from chilled products.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 919. Raw fruits and raw vegetables**

Raw fruits and raw vegetables that will be cut or combined with other ingredients or will be otherwise processed into food products by the retail food store shall be thoroughly cleaned with potable water before being used.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 920. Cooking potentially hazardous foods**

Potentially hazardous foods being processed within the retail food store by cooking shall be cooked to heat all parts of the food to a temperature of at least 140°F (60°C), except that:

A. Poultry, poultry stuffings, stuffed meats, and stuffings containing meat, shall be cooked to heat all parts of the food to at least 165°F (74°C) with no interruption of the cooking process.

B. Pork and pork products shall be cooked to heat all parts of the food to at least 150°F (66°C), or, if cooked in a microwave oven, to at least 170°F (77°C).

C. When beef roasts under 10 pounds [5 kilograms (kg)] in weight are

cooked in a still dry heat oven, the oven shall be preheated to and held at an air temperature of a least 350°F (177°C) throughout the process. If cooked in a convection oven, the oven shall be preheated to and held at an air temperature of at least 325°F (163°C) throughout the process.

1. When beef roasts of 10 pounds [5 kilograms (kg)] or over in weight are cooked in a dry heat oven, the oven shall be preheated to and held at an air temperature of at least 250°F (122°C) throughout the process.

2. Further, in order to meet public health requirements for the processes cited above, the following table lists the minimum internal temperature of the beef roast for the minimum time the roast needs to be held at such temperature.

MINIMUM HOLDING TIMES FOR BEEF ROASTS

AT VARIOUS INTERNAL TEMPERATURES

MINIMUM INTERNAL TEMPERATURE		MINIMUM HOLDING TIME	MINIMUM INTERNAL TEMPERATURE		MINIMUM HOLDING TIME
°F	°C	MINUTES	°F	°C	MINUTES
130	54.4	121	138	58.9	19
131	55.0	97	139	59.5	15
132	55.6	77	140	60.0	12
133	56.1	62	141	60.6	10
134	56.7	47	142	61.1	8
135	57.2	37	143	61.7	6
136	57.8	32	144	62.2	5
137	58.4	24			

D. Beef roasts, if cooked in a microwave oven, shall be cooked to an internal temperature of at least 145°F (63°C).

**History**

CMY-28-86, May 2, 1986.

**§ 921. Bakery product fillings**

A. Custards, cream fillings, and similar products, including synthetic fillings, shall meet the temperature requirement in § 916(B) of this Code following preparation and be maintained at that temperature during storage, transportation, and display. Products with synthetic fillings may be excluded from this requirement if

1. The food, including the interface between the backer product and its filling, has a pH level of 4.6 or below or a water activity ( $a_w$ ) value of 0.85 or less under standard conditions; or

2. It is handled in such a manner as to preclude contamination with and the growth of pathogenic microorganisms after heat processing; or

3. Other scientific evidence is on file with the Health Advisor demonstrating that the specific product will not support with growth of pathogenic microorganisms.

B. Bakery products with synthetic fillings, which meet the above criteria, may be labeled to state that refrigeration is not required.

**History**

CMY-28-86, May 2, 1986.

**§ 922. Reheating**

Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to an internal temperature of 165°F (74°C) or higher before being placed in hot food storage holding units. Food warmers and other hot food holding units shall not be used for the reheating of potentially hazardous foods.

**History**

CMY-28-86, May 2, 1986.

**§ 923. Food product thermometers**

Metal stem-type numerically scaled indicating thermometers, accurate to 2°F (1°C) shall be provided and used to assure attainment and maintenance of proper temperatures during preparation of all potentially hazardous foods.

**History**

CMY-28-86, May 2, 1986.

**§ 924. Thawing potentially hazardous foods**

Potentially hazardous food shall be thawed:

A. In refrigerated units at a temperature not to exceed 45°F (7°C); or

B. Under potable running water at temperature of 70°F (21°C) or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period not to exceed that reasonably required to thaw the food; or

C. In a microwave oven only when the food will be immediately transferred to conventional cooking units as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

D. As part of the conventional cooking process.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 925. Potentially hazardous foods**

Potentially hazardous foods shall be held at an internal temperature of 45°F (7°C) or below or at an internal temperature of 140°F (60°C) or higher during display, except that rare roast beef which is offered for sale hot shall be held at a temperature of at least 130°F (55°C).

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 926. Frozen foods**

Foods intended for sale in a frozen state should be displayed at an air temperature of 0°F (-18°C) or below, except for defrost cycles and brief periods of loading and unloading. Frozen foods should be displayed below or behind product food lines according to cabinet manufacturers' specifications.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 927. Food display**

A. Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by being packaged, by display cases, by covered containers for self-service, or by similar protective equipment. All food shall be displayed above the floor in a manner that will protect the food from contamination. Hot or cold food units shall be provided to assure the maintenance of potentially hazardous food at the required temperature during display. Potentially hazardous foods shall not be provided for consumer self-service.

B. Bulk foods shall be dispensed only from product modules which are protected by close fitting, individual covers. If opened by the customer, the covers shall be self-closing and shall remain closed when not in use.

C. Customer access to bulk food in product modules shall be limited and controlled to avoid the introduction of contaminants. Means considered suitable include, but are not limited to:

1. Providing a product module depth of no more than 18 inches [457 millimeters (mm)]; and

2. Either locating product modules with access from the top so that there is at least 30 inches (762 mm) between the access point and the floor; or, if the product module access point is less than 30 inches (762 mm) off the floor, providing access from the side or at an angle provided that when the product module is open, the cover extends across the surface of the product and provides overhead protection.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 928. Dispensing utensils**

A. To avoid unnecessary manual contact with the food, suitable dispensing utensils and single-service articles shall be used by employees. Consumers who serve themselves bulk food shall be provided suitable dispensing utensils. Dispensing utensils shall be:

1. Stored in the food with the dispensing utensil handle extended out of the food; or

2. Stored clean and dry, or

3. Stored in running potable water.

B. When food sample demonstrations and food promotions are authorized in the retail food store, the person in charge shall ensure that such activities comply with the applicable sanitation provisions of this Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 929. Food transportation by the retail food store—General**

Food, other than hanging primal cuts, quarters, or sides of meat, and raw fruits and raw vegetables, shall be protected from contamination by use of packaging or covered containers while being transported. All food being transported shall meet the applicable requirements of this Code relating to food protection and food storage. Foods packaged in immediate closed containers do not need to be overwrapped or covered if the immediate closed containers have not been opened, torn, or broken.

#### **History**

CMY-28-86, May 2, 1986.

### **Subchapter 3. Personnel**

#### **§ 951. Employee health—General**

No employee, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause a disease or while affected with a boil, an infected wound, or an acute respiratory infection, shall work in a retail food store in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 952. Personal cleanliness—General**

Employees engaged in food preparation and warewashing operations shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work; after smoking, eating or using the toilet; before and after handling raw meat, or raw poultry, or raw seafood; and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 953. Clothing—General**

A. Employees shall wear clean clothing.

B. Employees shall use effective hair restraints where necessary to prevent the contamination of food or food-contact surfaces.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 954. Employee practices—General**

A. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods.

B. Employees shall consume food or use tobacco only in designated areas. Such designated areas must be located so that the eating or tobacco use of an employee does not result in contamination of food, equipment, or utensils.

C. All employees working in retail food stores shall have a certificate that they have received training on the prevention of foodborne disease issued by the Health Advisor.

D. Jewelry shall not be worn on hands by employees involved in the handling of food items or warewashing activities.

**History**

CMY-28-86, May 2, 1986.

**Subchapter 4. Equipment and Utensils**

**§ 981. Materials—General**

A. Multi-use equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors colors, taste, nor contribute to the contamination of food.

B. Product modules and utensils shall be constructed of safe materials; and shall be corrosion resistant, nonabsorbent, smooth, easily cleanable and durable under conditions of normal use.

**History**

CMY-28-86, May 2, 1986.

**§ 982. Solder**

If solder is used, it shall be composed of safe materials and be corrosion resistant.

**History**

CMY-28-86, May 2, 1986.

**§ 983. Wood**

A. Hard maple or equivalent nonabsorbent wood that meets the general requirements sets forth in § 981 of this Code may be used for cutting blocks, cutting boards, and bakers' tables. Wood shall not be used as a food contact surface under other circumstances, except for contact with raw fruits, raw vegetables, and nuts in the shell.

B. Wood shall not be used as a food contact surface.

**History**

CMY-28-86, May 2, 1986.

**§ 984. Plastics and rubber materials**

Safe plastic or safe rubber or safe rubber-like materials that are



resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods, and which meet the general requirements set forth in § 981 of this Code, are permitted for repeated use.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 985. Cutting surfaces**

Cutting surfaces subject to scratching and scoring must be resurfaced so as to be easily cleaned, or be discarded when these surfaces can no longer be effectively cleaned and sanitized.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 986. Single-service articles**

Single-service articles shall not be reused.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 987. Design and fabrication—General**

A. As a general principle, the specifications for design and fabrication of equipment should maintain uniformity with equipment design criteria found in food codes and national equipment standards. Organizations involved with food equipment standards include American Society of Mechanical Engineers (ASME/SNSI), Baking Industry Sanitary Standards Committee (BISSC) and National Sanitation Foundation (NSF).

B. All equipment and utensils, including plastic-ware shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing.

C. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is used for cooking. Threads shall be designed to facilitate cleaning; ordinary "V" type threads are prohibited in food-contact surfaces, except that in equipment such as ice makers, not oil cooking equipment, or hot oil filtering systems, such threads shall be minimized.

D. Equipment containing bearings and gears requiring lubricants not made of safe materials shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Equipment designed to receive lubrication of bearings and gears on or within

food-contact surfaces shall be lubricated with materials meeting the requirements of 21 CFR 178.3570.

E. Sinks and drain boards shall be sloped to drain and be self-draining.

F. Food-contact surfaces-Product modules, lids, dispensing units and utensils shall be designed and fabricated to meet the requirements for food-contact surfaces.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 988. Accessibility**

A. Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

1. Without being disassembled; or
2. By disassembling without the use of tools; or
3. By easy disassembling with the use of only simple tools, such as mallets, screwdrivers, or open-end wrenches which are kept near the equipment.

B. Individual product modules shall be designed to be easily removable from the display unit for servicing unless the modules are so designed and fabricated that they can be effectively cleaned (and sanitized when necessary) through a manual in-place cleaning procedure that will not contaminate or otherwise adversely affect bulk food or equipment in the adjoining display area.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 989. Cleaned in place (CIP)**

Equipment designed and constructed for CIP shall meet requirements equivalent to those contained in § 119 of the Navajo Nation Health Code Title 13, Chapter 1, Food Service Sanitation Ordinance.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 990. Food product thermometers**

Indicating thermometers required for immersion into food or cooking media shall be metal stem-type construction, numerically scaled, and accurate to 2°F (1°C).

### **History**

CMY-28-86, May 2, 1986.

#### **§ 991. Non-food-contact surface**

A. Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

B. Surfaces of product module display units, tethers, and all display equipment not intended for food-contact, but which are exposed to splash, food debris or other soiling, shall be designed and fabricated to be smooth, cleanable, durable under conditions of normal use and free of unnecessary ledges, projections or crevices.

C. Tethers shall be designed to be easily removable from the product module for cleaning.

D. The materials for non-food-contact surfaces shall be nonabsorbent or made nonabsorbent by being finished and sealed with a cleanable coating.

### **History**

CMY-28-86, May 2, 1986.

#### **§ 992. Ventilation hoods**

Ventilation hoods and devices, where installed, shall be designed to prevent grease or condensation from collecting on walls and ceilings, and from dripping into food or onto food-contact surfaces. Filters or other grease extracting equipment shall be readily removable for cleaning and replacement, if not designed to be cleaned in place. These hoods shall be constructed and maintained in accordance with the latest edition of the National Fire Codes, National Fire Protection Association, Volume 9, 1983.

### **History**

CMY-28-86, May 2, 1986.

#### **§ 993. Maintenance of equipment and utensils**

All equipment and utensils shall be maintained in good repair to comply with the requirements of this Code.

### **History**

CMY-28-86, May 2, 1986.

#### **§ 994. Equipment installation and location—General**

Equipment, including ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines, water lines that are leaking or on which condensed water has accumulated, open stairwells, or other sources of contamination.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 995. Table-mounted equipment**

A. Table-mounted equipment shall be installed to facilitate the cleaning of the equipment and the adjacent areas.

B. Equipment that is mounted on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a three-inch (102 mm) clearance between the table or counter, except that if no part of the table under the equipment is more than 18 inches (457 mm) from cleaning access, the clearance space shall be three inches (76 mm) or more; or if no part of the table under the equipment is more than three inches (76 mm) from cleaning access, the clearance space shall be two inches (51 mm) or more.

C. Equipment is portable within the meaning of § 995(B) of this Code if:

1. It is small and light enough to be moved easily by one person; and

2. It has no utility connection, has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning; and

3. It is table-mounted, such as powered mixers, grinders, slicers, tenderizers, and similar equipment; and does not exceed 80 pounds [36 kilograms (kg)], or is equipped with a mechanical means of safety tilting the unit for cleaning.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 996. Floor-mounted equipment**

A. Floor-mounted equipment, unless easily movable, shall be:

1. Sealed to the floor; or

2. Elevated on legs to provide at least a six-inch (152 mm) clearance between the floor and equipment, except that equipment may be elevated to provide at least a four-inch (102 mm) clearance between the floor and equipment if no part of the floor under the equipment is more than six inches (152 mm) from cleaning access.

3. Display shelving units, display refrigeration units, and display

freezer units are exempt from the provisions of § 996(A)(1) and (2) of this Code if they are installed so that the floor beneath the units can be cleaned.

B. Equipment is easily movable if:

1. It is mounted on wheels or casters; and

2. It has no utility connection, has a utility connection that disconnects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.

C. Unless sufficient space is provided for easy cleaning between, behind, and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall be not more than 1/32 inch (0.8 mm) and, if exposed to seepage, the space shall be sealed.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 997. Aisles and working spaces**

Aisles and working spaces between units of equipment and between equipment and walls, shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as dollies, skids, racks, and open-ended pallets shall be positioned to provide accessibility to working areas.

#### **History**

CMY-28-86, May 2, 1986.

### **Subchapter 5. Cleaning, Sanitization and Storage of Equipment and Utensils**

#### **§ 1031. Equipment and utensil cleaning and sanitization—Cleaning frequency**

A. Utensils and food-contact surfaces of equipment shall be cleaned and sanitized:

1. Each time there is a change in processing between raw beef, raw pork, raw poultry or raw seafood, or a change in processing from raw to ready-to-eat foods;

2. After an interruption of operations during which time contamination may have occurred; and

3. After final use each working day.

B. Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils

and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule based on food temperature type of food, and amount of food particle accumulation.

C. The food-contact surfaces of cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once each day of use, except that this shall not apply for hot oil cooking equipment and hot oil filtering system. The food-contact surfaces of all baking equipment and pans shall be kept free of encrusted grease deposits and other accumulated soil.

D. Non-food-contact surfaces of equipment, including transport vehicles, shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

E. Tongs, scoops, ladles, spatulas, other appropriate utensils and tethers used by customers shall be cleaned and sanitized at least daily or at more frequent intervals based on the type of food and amount of food particle accumulation or soiling.

F. Product modules, lids and other equipment shall be cleaned prior to restocking, when soiled or at intervals on a schedule based on the type of food and amount of food particle accumulation.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1032. Wiping cloths**

A. Cloths or sponges used for wiping food spills on food-contact surfaces of equipment shall be clean and rinsed frequently in one of the sanitizing solutions permitted in § 1033(H) of this Code and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

B. Cloths and sponges used for cleaning non-food-contact surfaces of equipment shall be clean and rinsed as specified in § 1032(A) of this Code and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

C. Single-service disposable towels are permitted in lieu of wiping cloths or sponges if they are discarded after each use.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1033. Manual cleaning and sanitizing**

A. For manual rinsing and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall be provided and used. Sink compartments shall be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too

large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods.

B. Drain boards or easily movable utensil tables of adequate size shall be provided for proper storage and handling of soiled utensils prior to cleaning and for cleaned utensils following sanitizing and shall be located so as not to interfere with proper use of the warewashing facilities.

C. Equipment and utensils shall be pre-flushed or pre-scraped and, when necessary, pre-soaked to remove food particles and soil.

D. The sinks shall be cleaned before use.

E. When a three-compartment sink is utilized for warewashing, the operation shall be conducted in the following sequence:

1. Equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label; and

2. Equipment and utensils shall be rinsed free of detergent and abrasive with clean water in the second compartment; and

3. Equipment and utensils shall be sanitized in the third compartment according to one of the methods included in § 1033 (H) (Items 1-5) of this Code.

F. When a two-compartment sink is utilized for warewashing, one of the following two methods shall be used:

1. Equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label; and shall be sanitized in hot water in the second compartment in accordance with § 1033(H) (1) of this Code; or

2. Equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent sanitizer solution that is kept clean and at a concentration indicated on the manufacturer's label; and shall be sanitized in the second compartment in hot water in accordance with § 1033(H) (1) of this Code.

G. When pressure spray methods are utilized for cleaning and sanitizing, the equipment and utensils shall be thoroughly flushed with a detergent-sanitizer solution until the article is free of visible food particles and soil. The detergent-sanitizer solution shall be used in accordance with the manufacturer's instructions and shall be of the type that does not require a potable water rinse when used according to those instructions.

H. The food-contact surfaces of all equipment and utensils shall be sanitized by:

1. Immersion for at least 1/2 minute in clean, hot water of a

temperature of at least 170°F (77°C); or

2. Immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and having a temperature of at least 75°F (24°C); or

3. Immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine, having a pH range which the manufacturer has demonstrated to be effective and at a temperature of at least 75°F (24°C); or

4. Immersion for at least one minute in a clean solution containing 200 parts per million of a quaternary ammonium compound and having a temperature of at least 75°F (24°C). The quaternary ammonium compound used shall have been compounded by the manufacturer to assure effectiveness in waters up to 500 parts per million hardness at use concentration; or

5. Immersion in a clean solution containing any other chemical sanitizing agency allowed under 21 CFR 178.1010 that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at temperature of at least 75°F (24°C) for one minute; or

6. Treatment with steam from materials or additives other than those specified in 21 CFR 173.310 in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

7. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under § 1033(H) (2), (3) and (5) of this Code in the case of equipment too large to sanitize by immersion.

I. When hot water is used for sanitizing, the following equipment shall be provided and used:

1. An integral heating device or fixture installed in, on or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F (77°C); and

2. A numerically scaled indicating thermometer, accurate to 3°F (1°C) convenient to the sink for frequent checks of water temperature; and

3. Utensil racks or baskets of such size and design to permit complete immersion of utensils and equipment in the hot water.

J. When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under 21 CFR 178.1010 and a test kit or other device that measures the parts per million concentration of the solution shall be provided and used.

K. Facilities and/or equipment shall be available, either in a servicing



area or in place, to provide for proper cleaning and sanitizing of all food-contact surfaces including product modules, lids and dispensing utensils.

**History**

CMY-28-86, May 2, 1986.

**§ 1034. Mechanical cleaning and sanitizing**

A. Mechanical cleaning and sanitizing equipment and practices shall conform to the provisions contained in 13 N.N.C. § 154 of Navajo Nation Health Code, Food Service Sanitation Ordinance.

B. Facilities and/or equipment shall be available, either in a servicing area or in place, to provide for proper cleaning and sanitizing of all food-contact surfaces including product modules, lids and dispensing utensils.

**History**

CMY-28-86, May 2, 1986.

**§ 1035. Drying**

Unless used immediately after sanitization, all equipment and utensils shall be air dried. Towel drying shall not be permitted.

**History**

CMY-28-86, May 2, 1986.

**§ 1036. Retail food stores without equipment and utensil cleaning facilities**

Retail food stores that do not have facilities for proper cleaning and sanitizing of utensils and equipment shall not prepare or package food or dispense unpackaged food other than raw fruits and raw vegetables.

**History**

CMY-28-86, May 2, 1986.

**§ 1037. Equipment and utensil handling and storage—Handling**

Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination.

**History**

CMY-28-86, May 2, 1986.

**§ 1038. Storage**

A. Cleaned and sanitized utensils and equipment shall be stored at least six inches (152 mm) above the floor in a clean, dry location in a way that protects them from splash, dust, and other means of contamination. The

food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water had accumulated.

B. Utensils shall be air dried before being stored or shall be stored in a self-draining position.

C. Stored utensils shall be covered or inverted wherever practical.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1039. Single-service articles**

A. Single-service articles shall be stored in closed cartons or containers at least six inches (152 mm) above the floor or on easily movable dollies, skids, racks, or open-ended pallets. Such storage shall protect the articles from contamination and shall not be located under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water had accumulated.

B. Single-serve articles shall be handled in a manner that prevents contamination of surfaces that may come in contact with food.

C. Take-home containers (bags, cups, lids, etc.) provided in the display area for customer use shall be stored and dispensed in a sanitary manner.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1040. Prohibited storage areas**

Food equipment, utensils, or single-service articles shall not be stored in locker rooms, toilet rooms or their vestibules, garbage rooms, or mechanical rooms.

#### **History**

CMY-28-86, May 2, 1986.

### **Subchapter 6. Sanitary Facilities and Controls**

#### **§ 1071. Water supply—General**

Sufficient potable water for the needs of the retail food store shall be provided from a source constructed, maintained, and operated according to the Safe Drinking Water Act, Public Law 93-523.<sup>1</sup>

#### **History**

CMY-28-86, May 2, 1986.

**§ 1072. Water delivery**

All potable water not provided to the retail food store directly from the source by pipe shall be delivered in a bulk water transport system and shall be transferred to a closed water system. Both of these systems shall be constructed, maintained, and operated meeting the approval of the Health Advisor.

**History**

CMY-28-86, May 2, 1986.

**§ 1073. Water under pressure**

Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water.

**History**

CMY-28-86, May 2, 1986.

**§ 1074. Steam**

Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 CFR 173.310.

**History**

CMY-28-86, May 2, 1986.

**§ 1075. Sewage—General**

All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated meeting the approval of the Health Advisor. Non-water carried sewage disposal facilities are prohibited, except as permitted by the Health Advisor.

**History**

CMY-28-86, May 2, 1986.

**§ 1076. Plumbing—General**

Plumbing shall be sized, installed, and maintained according to the latest edition of Uniform Plumbing Code. There shall be no cross-connect between the potable water supply and any other system containing:

- A. Water of unknown or questionable origin; or
- B. Contaminating or polluting substances.

**History**

CMY-28-86, May 2, 1986.

**§ 1077. Nonpotable water system**

A nonpotable water system is permitted for air conditioning, equipment cooling, and fire protection, and shall be installed meeting the approval of the Health Advisor. Nonpotable water shall not directly or indirectly contact food or equipment or utensils that contact food. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

**History**

CMY-28-86, May 2, 1986.

**§ 1078. Backflow**

The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where an air gap at least twice the diameter of the water system inlet is not provided between the water supply inlet and the fixture's flood level rim. No hose shall be attached to a faucet that is not equipped with a backflow prevention device.

**History**

CMY-28-86, May 2, 1986.

**§ 1079. Grease traps**

Grease traps, if used, shall be located to be easily accessible for cleaning and shall be placed outside the building.

**History**

CMY-28-86, May 2, 1986.

**§ 1080. Garbage grinders**

Garbage grinders, if used, shall be installed and maintained meeting the approval of the Health Advisor.

**History**

CMY-28-86, May 2, 1986.

**§ 1081. Drains**

There shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a warewashing machine is located within five feet [152 centimeters (cm)] of a trapped floor drain, the warewasher waste outlet may be connected directly on the inlet side of a properly vented floor drain

trap if approved by the Health Advisor.

**History**

CMY-28-86, May 2, 1986.

**§ 1082. Toilet facilities---Toilet installation**

A. Toilet facilities shall be installed according to the latest edition of the Uniform Plumbing Code, shall be at least one and no less than the number required, shall be conveniently located, and shall be accessible to employees at all times.

B. Toilet and lavatory facilities shall be provided for the public, as required by Navajo Nation Resolution ACAP-48-82, and shall accommodate handicapped individuals and meet those handicapped standards of the American National Standard Specification A1171-1976 (R1971).

**History**

CMY-28-86, May 2, 1986.

**§ 1083. Toilet design**

Toilets and urinals shall be designed to be easily cleanable.

**History**

CMY-28-86, May 2, 1986.

**§ 1084. Toilet rooms**

Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing solid doors, except for louvers that may be necessary for ventilation system.

**History**

CMY-28-86, May 2, 1986.

**§ 1085. Toilet facility maintenance**

Toilet facilities, including toilet fixtures and any related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

**History**

CMY-28-86, May 2, 1986.

**§ 1086. Handwashing facilities--Handwashing facility installation**

A. Handwashing facilities shall be according to the latest edition of the Uniform Plumbing Code, shall be a least one, and not less than as specified by the Health Advisor, and shall be conveniently located to permit use by all employees in food preparation and warewashing areas. Handwashing facilities shall be accessible to employees at all times. Handwashing facilities shall also be located in or immediately adjacent to toilet rooms or their vestibules. Sinks used for food preparation or for warewashing shall not be used for washing of hands or for any other purpose.

B. When handwashing facilities are not available at the bulk food display area, customers, upon request, are permitted access to handwashing facilities located in employee restroom(s).

C. When sanitary paper towels or disposable towelettes are provided, easily cleanable waste receptacle(s) shall be conveniently provided in the display area.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1087. Handwashing facility faucets**

Each handwashing facility shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet used shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam mixing valves are prohibited at handwashing facilities.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1088. Handwashing supplies**

A supply of hand-cleaning soap or detergent shall be available at each handwashing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each handwashing facility. Common towels are prohibited. If disposal towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1089. Handwashing facility maintenance**

Handwashing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1090. Garbage and refuse—Containers**

A. Garbage and refuse shall be held in durable, easily cleanable, insect-resistant, and rodent-resistant containers that do not leak and do not absorb liquids. Plastic bags and wet strength paper bags may be used to line these containers. Such bags and durable plastic garbage and refuse containers may be used for storage inside the retail food store.

B. Containers used in food preparation and utensil washing areas shall be kept covered during non-working hours after they are filled.

C. Containers stored outside the establishment, including dumpsters, compactors, and compactor systems, shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

D. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

E. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, detergent, and hot water or steam, shall be provided and used for cleaning containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1091. Storage**

A. Garbage and refuse on the premises shall be stored in a manner to make them inaccessible to insects, rodents and other animals. Outside storage of non-rodent-resistant plastic containers, unprotected plastic bags, wet strength paper bags, or baled units which contain garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

B. Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect and rodent resistant, and shall be large enough to store all the garbage and refuse containers necessitated by disposal pick-up frequency.

C. Outside storage areas or enclosures, if used, shall be kept clean and be large enough to store all the garbage and refuse containers necessitated by disposal pick-up frequency. Garbage and refuse containers, dumpsters, and compactors systems located outside, shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

#### **History**

CMY-28-86, May 2, 1986.

**§ 1092. Disposal**

A. Garbage and refuse shall be disposed of often enough to prevent the development of objectionable odors and the attraction of insects and rodents.

B. Where garbage or refuse is burned on the premises, it shall be done by controlled incineration and meet the approval of the health advisor. Areas around incineration units shall be kept clean and orderly.

**History**

CMY-28-86, May 2, 1986.

**§ 1093. Insect and rodent control—General**

Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents, flies, cockroaches, or other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

**History**

CMY-28-86, May 2, 1986.

**§ 1094. Openings**

Openings to the outside shall be effectively protected against the entry of rodents. Outside openings shall, be protected against the entry of insects by tight-fitting, self-closing doors; closed windows; screening; controlled air currents; or other means. Screen doors shall be self-closing, and screens for windows, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall. be tight-fitting and free of breaks. Screening material shall be not less than 16 mesh to the inch.

**History**

CMY-28-86, May 2, 1986.

**Subchapter 7. Construction and Maintenance Of Physical Facilities**

**§ 1131. Floors—Floor construction**

A. Except as specified in § 1132 of this Code, floors and floor coverings of all food preparation, food storage, and warewashing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, toilet rooms and vestibules, shall be constructed of smooth durable material such as sealed concrete, terrazzo, quarry tile, ceramic tile, durable grades of vinyl asbestos or plastic tile, or tight-fitting wood impregnated with plastic, and shall be maintained in good repair. Nothing in this Section shall prohibit the use of antislip floor covering in areas where necessary for safety reasons.



B. Floors which are water flushed or which receive discharges of water or other fluid wastes or are in areas where pressure spray methods for cleaning are used, shall be provided with properly installed trapped drains. Such floors shall be constructed only of sealed concrete, terrazzo, quarry tile, ceramic tile, or similar materials and shall be graded to drain.

C. In all establishments utilizing concrete, terrazzo, quarry tile, ceramic tile, or similar flooring materials, or where water flush cleaning methods are used, the junctures between walls and floors shall be covered and sealed. In all other cases, the juncture between walls and floors shall be covered so as not to present an open seam of more than 1/32 inch (0.8 mm).

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1132. Floor carpeting**

Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting shall not be used in food preparation and warewashing areas, in food storage areas, or in toilet room areas where urinals or fixtures are located.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1133. Prohibited floor covering**

Sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials shall not be used as floor coverings. However, these materials may be used in amounts necessary for immediate spot clean-up of spills or drippage on floors.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1134. Mats and duckboards**

Mats and duckboards shall be of nonabsorbent, grease resistant materials, and of such size, design, and construction to facilitate cleaning and shall be maintained in good repair.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1135. Utility line installation**

Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively

remodeled establishments, installation of exposed horizontal utility service lines and pipes on the floor is prohibited.

**History**

CMY-28-86, May 2, 1986.

**§ 1136. Walls and ceilings—Maintenance**

Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

**History**

CMY-28-86, May 2, 1986.

**§ 1137. Construction**

The walls, wall coverings, and ceilings of walk-in refrigeration units, food preparation areas, warewashing areas, and toilet rooms and their vestibules shall be smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks and bricks used for interior wall construction in these locations shall be finished and sealed to provide a smooth easily cleanable surface.

**History**

CMY-28-86, May 2, 1986.

**§ 1138. Exposed construction**

Studs, joists, and rafters shall not be exposed in those areas listed in § 1137 of this Code. If exposed in other rooms or areas, they shall be finished to provide a cleanable surface.

**History**

CMY-28-86, May 2, 1986.

**§ 1139. Utility line installation**

Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in those areas listed in § 1137 of this Code. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings.

**History**

CMY-28-86, May 2, 1986.

**§ 1140. Attachments**

Light fixtures, vent covers, wall mounted fans, decorative materials, and similar attachments to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1141. Covering materials installation**

Wall and ceiling covering materials shall be attached and sealed in a manner to be easily cleanable.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1142. Cleaning physical facilities—General**

Cleaning of floors, walls, and ceilings shall be done as often as necessary, but preferably during periods when the least amount of food is exposed, such as after closing. Only dustless methods of cleaning floors, walls, and ceilings shall be used, such as vacuum cleaning, wet cleaning, treated-dust mops, or the use of dust-arresting, sweeping compounds with brooms. Floors, mats, duckboards, walls, ceilings, and attachments (e.g., light fixtures, vent covers, wall mounted fans, and similar equipment), and decorative materials (e.g., signs and advertising materials) shall be kept clean.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1143. Service sinks**

At least one service sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. Handwashing or warewashing facilities, or food preparation sinks shall not be used for this purpose.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1144. Lighting—General**

A. Permanently fixed artificial light sources shall be installed to provide at least 20 foot candles (215 lux) of light on all food preparation surfaces and at warewashing work levels.

B. Permanently fixed artificial light sources shall be installed to provide, at a distance of 30 inches (762 mm) from the floor;

1. At least 20 foot candles (215 lux) of light in sales areas, utensil and equipment storage areas, and in handwashing and toilet areas; and

2. At least 10 foot candles (108 lux) of light in walk-in refrigeration units, dry food storage areas, and in all other areas.

**History**

CMY-28-86, May 2, 1986.

**§ 1145. Protective shielding**

A. Lamps located over or within food storage, food preparation, and food display facilities, and facilities where utensils and equipment are cleaned and stored shall be shielded, coated or otherwise shatter resistant.

B. Infrared or other heat lamps shall be protected against breakage by shields surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

**History**

CMY-28-86, May 2, 1986.

**§ 1146. Ventilation—General**

All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. Ventilation systems shall be installed and operated according to provisions established by the Health Advisor, and when vented to the outside, shall not create a harmful or unlawful discharge. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.

**History**

CMY-28-86, May 2, 1986.

**§ 1147. Dressing rooms and locker areas—Dressing rooms and areas**

If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, food storage, food display, warewashing, or storage of utensils and equipment.

**History**

CMY-28-86, May 2, 1986.

**§ 1148. Locker areas**

Lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may only be located in the designated dressing rooms or areas or, in food storage rooms or areas containing only completely packaged food or packaged single-service articles.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1149. Poisonous or toxic materials—Materials permitted**

Only those poisonous or toxic materials necessary and intended for the maintenance of the establishment, including the cleaning and sanitization of equipment and utensils, and the control of insects and rodents, shall be present in retail food stores, except those items being stored or display for retail sale as described in § 1153 of this Code.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1150. Labeling of materials**

Containers of poisonous or toxic materials necessary for operational maintenance of the establishment shall be prominently and distinctly labeled. Small working containers of bulk cleaning agents shall be individually labeled for easy identification of contents. Poisonous and toxic products being sold shall be prominently and distinctly labeled. Included on the label of the product being sold shall be the basic first aid recommendations in the event of ingestion, inhalation, etc. Poisonous or toxic products transferred from bulk containers to smaller containers for sale to the public shall meet labeling requirements of this Section and should not be transferred into containers similar to those used for food. If food-like containers are used, they must meet labeling requirements of this Section, plus the containers shall have child-proof safety lids/caps.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1151. Storage of materials**

A. Poisonous or toxic materials necessary for the maintenance of the establishment consist of the following two categories:

1. Insecticides and rodenticides;
2. Detergents, sanitizers, related cleaning or drying agents, and caustics, acids, polishes, and other chemicals.

B. Materials in each of these two categories shall be stored and located to be physically separated from each other; shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose; and, to preclude potential contamination, shall not be stored above or intermingled with food, food equipment, utensils, or single-service articles, except that this latter requirement does not prohibit the convenient availability of detergent sanitizer, or sanitizer at warewashing facilities.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1152. Use of materials**

A. Sanitizers, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, nor in a way that constitutes a hazard to employees or other persons.

B. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way other than in full compliance with the manufacturer's labeling.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1153. Storage and display of materials for retail sale**

Poisonous or toxic materials stored or displayed for retail sale shall be separated from food and single-service articles by spacing, partitioning, or dividers. These materials shall not be stored or displayed above food or single-service articles.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1154. First-aid supplies and personal medications**

Retail food store employee first-aid supplies and personal medications shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1155. Premises—General**

A. Retail food stores and all parts of the property used in connection with operations of the establishment shall be reasonably free of litter and articles not essential to the operations or maintenance of the establishment.

B. The walking and driving surfaces of all exterior areas of retail food stores shall be surfaced with concrete, asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to facilitate drainage.

### **History**

CMY-28-86, May 2, 1986.

**§ 1156. Living areas**

No operation of a retail food store shall be conducted in any room used as living or sleeping quarters. Retail food store operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

**History**

CMY-28-86, May 2, 1986.

**§ 1157. Laundry facilities**

A. If provided, laundry facilities in a retail food store shall be restricted to the washing and drying of linens and work clothes used in the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.

B. Separate rooms shall be provided for laundry facilities, except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

**History**

CMY-28-86, May 2, 1986.

**§ 1158. Linens and work clothes storage**

A. Clean work clothes and linens, including articles such as wiping cloths, shall be stored in a clean place and protected from contamination until used.

B. Soiled work clothes and linens, including articles such as wiping cloths, shall be kept in nonabsorbent containers or washable laundry bags until removed from laundering and shall be stored to prevent contamination of food, food equipment and utensils.

**History**

CMY-28-86, May 2, 1986.

**§ 1159. Cleaning equipment storage**

Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained in good repair and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner to facilitate the cleaning of that storage location.

**History**

CMY-28-86, May 2, 1986.

**§ 1160. Animals**

A. Live animals shall be excluded from within the retail food store operational areas and from immediately adjacent areas inside the store under the control of the permit holder. This exclusion does not apply to edible fish, crustacea, shellfish, or fish in aquariums.

B. Live or dead fish bait shall be stored separately from food or food products.

C. Patrol dogs accompanying security or police officers shall be permitted in offices, storage areas and outside store premises. Sentry dogs may be permitted to run loose in outside fenced areas for security reasons. Guide dogs accompanying blind persons shall be permitted in sales areas.

D. While on duty, persons employed in the food operational areas of an establishment shall not care for or handle any pets, or patrol/sentry dogs.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1161. Building and premises**

Premises and buildings shall be accessible to handicapped individuals. It shall meet the requirements as specified in the American National Standards Specifications A1171-1976 (R1971).

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1162. Fire and electrical safety**

Premises and buildings shall comply with the most recent edition of the National Fire Protection Codes.

#### **History**

CMY-28-86, May 2, 1986.

### **Subchapter 8. Compliance Procedures**

#### **§ 1191. Permit to operate—General**

No person shall operate a retail food store without a valid sanitation permit to operate such retail food store issued to such person by the Regulatory Authority. Such permit shall not be transferable. A valid sanitation permit shall be posted in every retail food store.

#### **History**

CMY-28-86, May 2, 1986.



### **§ 1192. Certification**

Each employee working in a retail establishment must have a valid food service training certificate from the Health Advisor. Each retail establishment must have on duty at least one individual who is currently certified as a food service manager by the Health Advisor.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 1193. Issuance of permit**

A. Any person desiring to operate a retail food store shall make written application for a sanitation permit to operate such retail food store on forms provided by the Regulatory Authority. Such application shall include the name and address of each applicant, the location and type of the proposed retail food store, and the signature of each applicant.

B. Before approving an application for a sanitation permit to operate a retail food store, the Health Advisor and the Regulatory Authority shall inspect the proposed retail food store to determine compliance with the provisions of this Code.

C. The Regulatory Authority shall promptly issue a sanitation permit upon the recommendation of the Health Advisor to operate a retail food store if its inspection reveals that the proposed retail food store is designed, constructed, and equipped to be operated in a manner that protects the public health.

D. Certain waivers on equipment covered by these regulations may be granted if, in the opinion of the Health Advisor, this does not create a health hazard.

#### **History**

CMY-28-86, May 2, 1986.

### **§ 1194. Suspension of permit**

A. The Regulatory Authority or Health Advisor may, upon written notice, without prior warning, notice, or hearing, suspend any sanitation permit to operate a retail food store if the operation of the retail food store constitutes an imminent hazard to the public health, such as an extended loss of water supply, an extended power outage, or sewage back-up into the establishment. When such sanitation permit is suspended, retail food store operations shall be suspended immediately.

B. Whenever a sanitation permit to operate a retail food store is suspended, the holder of the permit to operate the retail food store, or the person in charge, shall be notified in writing that the permit to operate the retail food store is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the Regulatory Authority by the holder of the permit

within 10 days. If a written request is filed within 10 days, an opportunity for a hearing with the Regulatory Authority shall be afforded within 10 days of receipt of the request. If no written request for a hearing is filed within 10 days, the suspension is sustained. The Regulatory Authority shall end the suspension if the reasons for the suspension no longer exist.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1195. Revocation of permit**

A. The Regulatory Authority may, after providing opportunity for a hearing, revoke a permit for:

1. Serious violations of this Code; or
2. Repeated violations of this Code, found in consecutive inspections; or
3. Interference with the Health Advisor or Regulatory Authority in the performance of his duty.

B. Before revocation, the Regulatory Authority shall notify the holder of the permit to operate the retail food store, or the person in charge, in writing, of the reasons for which such permit is subject to revocation. The permit to operate the retail food store shall be revoked at the end of the 10 days following service of such notice unless a written request for a hearing is filed with the Regulatory Authority by the holder of the permit within such 10 day period. If no request for hearing is filed within the 10 day period, the revocation of the permit to operate the retail food store becomes final.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1196. Service of notice**

A notice provided for in this Code is properly served when it is delivered to the holder of the sanitation permit to operate the retail food store, or to the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of such permit to operate a retail food store. A copy of the notice shall be filed in the records of the Regulatory Authority, Health Advisor, and the Bureau of Indian Affairs.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1197. Hearings**

The hearings provided for in this Code shall be conducted by the Regulatory Authority at a time and place it designates. Any oral testimony

given at a hearing shall be recorded verbatim, and the presiding officer shall make provision for sufficient copies of the transcript. The Regulatory Authority shall make a final finding based upon the complete hearing record and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision, including the reasons(s) for such decision, shall be furnished to the holder of the permit to operate the retail food store, or to the person in charge, by the Regulatory Authority within 10 days after the hearing.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1198. Application after revocation**

Whenever a revocation of a sanitation permit to operate a retail food store has become final, the holder of such revoked permit may make written application for a new permit to operate a retail food store as provided in § 1193 of this Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1199. Inspections—Inspection frequency**

An inspection of a retail food store shall be performed at least once a year. Additional inspections shall be performed as often as necessary for the efficient and effective enforcement of this Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1200. Access**

Representatives of the Health Advisor and Regulatory Authority, after proper identification, shall be permitted to enter any retail food store at any reasonable time for the purpose of making inspections to determine compliance with this Code. The representatives shall, upon written notice, be permitted to examine records maintained in the retail food store (or other location) to obtain information pertaining to the source of food and supplies in the establishment when deemed necessary for the enforcement of this Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1201. Report of inspections**

Whenever an inspection is made of a retail food store, the findings shall be recorded on the inspection report form set out in § 1203 of this Code. The inspection report form shall summarize the requirements of this Code and shall set forth a weighted point value for each requirement. Inspectional remarks

shall be written to reference, by Section number, the Section violated and shall state the correction to be made. The rating score of the establishment shall be the total of the weighted point values for all violations, subtracted from 100. A copy of the completed inspection report form shall be given to the person in charge of the establishment at the conclusion of the inspection. The completed inspection report form constitutes an official notice of inspectional findings. It is a public document that shall be made available for public disclosure to any person who requests. Request for such information must be made in writing to the Regulatory Authority, stating the reasons for such requests.

### **History**

CMY-28-86, May 2, 1986.

### **§ 1202. Correction of violations**

A. The completed inspection report form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations shall be accompanied within the period specified, in accordance with the following provisions:

1. If an imminent health hazard exists, such as may be created by an extended loss of water supply, an extended power outage, or a sewage back-up into the establishment, the establishment shall immediately cease affected retail food store operations. Such operations shall not be resumed until authorized by the Health Advisor.

2. All violations of 4 or 5 point weighted items as described in the inspection report form shall be corrected within the period of time specified by the Health Advisor, but in any event, not to exceed 10 days following inspection. Within 15 days after the inspection, the holder of the permit to operate the retail food store shall submit a written report to the Regulatory Authority stating the action taken to correct the 4 or 5 point weighted violations. Purchase orders or work contracts with a work completion date satisfactory to the Regulatory Authority may be accepted as interim corrective action. A follow-up inspection shall be conducted to confirm correction(s).

3. All 1 or 2 point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

4. When the rating score of the establishment is less than 60, the establishment shall initiate corrective action on all identified violations within 48 hours. One or more reinspections will be conducted at reasonable time intervals to assure correction.

B. Failure to comply with § 1202(A)(2), (3), and/or (4) may result in revocation of the permit to operate the retail food store.

C. Whenever a retail food store is required under the provisions of § 1194 (A) of this Code to suspend operations, it shall not resume operations until it is shown on reinspection that conditions responsible for the order to suspend operations no longer exist. Opportunity for inspection shall be

offered within a reasonable time. An opportunity for a hearing by the Regulatory Authority will be provided if a written request for a hearing is filed by the holder of the permit to operate the suspension of operations. If such a written request for hearing is received, a hearing shall be held within 10 days of receipt of the request. All hearings shall be conducted in accordance with the procedures as described in § 1197 of this Code. If no written request for a hearing is filed within 10 days, the suspension is sustained. The Regulatory Authority shall end the suspension if the reasons for the suspension no longer exists.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1203. Inspection report form**

#### **History**

CMY-23-86, May 2, 1986. See Appendix A for form.

#### **§ 1204. Examination and condemnation of food—General**

A. Food may be examined or sampled by the Health Advisor for the purpose of determining compliance with this Code. The Regulatory Authority may place a hold order on any food which it has reason to believe is in violation of any Section of this Code and may pose a health hazard to the public, provided:

1. A written notice is issued to the holder of the sanitation permit to operate the retail food store, or to the person in charge; and
2. The notice specifies in detail the reasons(s) for the hold order.

B. The Health Advisor shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, sold, moved from the establishment, or destroyed without permission from the Health Advisor.

C. The Health Advisor shall permit storage of food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished.

D. The hold order shall state that a request for hearing may be filed with the Regulatory Authority within 10 days, and that if no hearing is requested, the food shall be destroyed. If a request for a hearing is received, the hearing shall be held within 20 days after receipt of the request. On the basis of evidence produced at that hearing, the hold order may be vacated or the holder of the permit to operate the retail food store, or the person in charge, may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this Code. If food is to be denatured or destroyed, such action shall be taken under the supervision of the Health Advisor.

### **History**

CMY-28-86, May 2, 1986.

#### **§ 1205. Review of plans—Submission of plans**

A. Before the construction or major remodeling of a retail food store, and whenever an existing structure is converted to use as a retail food store, properly prepared plans and specifications for such construction, major remodeling, or conversion shall be submitted to the Regulatory Authority and the Health Advisor for review and approval. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The health advisor shall treat such plans and specifications as confidential or trade secret information in accordance with law and shall approve the plans and specifications if they meet the requirements of this Code. No retail food store shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the Health Advisor.

B. Alteration of a retail food store to accommodate self-service of bulk food will constitute major remodeling. This will require submission of plans and specifications for approval.

### **History**

CMY-28-86, May 2, 1986.

#### **§ 1206. Review of plans—Preoperational inspection**

Whenever plans and specifications are required by § 1205 of this Code, the health advisor or Regulatory Authority shall inspect the retail food store prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of this Code.

### **History**

CMY-28-86, May 2, 1986.

#### **§ 1207. Procedure when infection suspected—General**

A.<sup>1</sup> When the Health Advisor has reasonable cause to suspect possible disease transmission from any retail food store employee, it may secure a morbidity history of the suspected employee, or make any other investigation as indicated and shall take appropriate action. All investigations shall be conducted in compliance with the provisions of the Privacy Act, and information collected will only be used for epidemiological purposes. The Health Advisor may require any or all of the following measures:

1. The immediate exclusion of the employee from employment in retail food stores;

2. The immediate closing of the retail food store concerned until, in the opinion of the Health Advisor, no further danger of disease

outbreak exists;

3. Restriction of the employee's services to some area of the establishment where there could be no danger of transmitting disease;

4. Adequate medical and laboratory examination of the employee, of other employees, and of the body discharges of such employees.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1208. Remedies--Penalties**

A. The Regulatory Authority shall execute and enforce the provisions of this Act and in that enforcement is vested with all powers relating to inspection, sampling, condemnation and embargoing of hazardous substances granted to it with respect to this Code.

B. If any person shall violate directly or indirectly, through his officers or employees, any of the provisions of this Act, or regulations promulgated thereunder, the Regulatory Authority may order the correction of the violation within such reasonable period of time as the commissioner may prescribe. Such order shall be complied with in the time specified.

C. Any person violating any of the provisions of this Act or orders or regulations promulgated thereunder shall be liable to a penalty of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250.00), and for the second and each succeeding violation, double that of the proceeding infraction, to be collected in a civil action by the Regulatory Authority and deposited in the Navajo Nation general funds account. Where the violation is of a continuing nature, each day during which it continues, after the date given by which the violation must be eliminated in the order by the Regulatory Authority, shall constitute an additional, separate and distinct offense, except during the time an appeal from said order may be taken or is pending.

D. The Regulatory Authority is authorized and empowered to compromise and settle any claim for a penalty under this Section in such amount in the discretion of the Regulatory Authority as may appear appropriate and equitable under all of the circumstances.

E. Payment of a penalty for any violation of this Act or regulations promulgated thereunder either before or after the institution of proceedings for the collection thereof shall be deemed equivalent to a concession of the violation for which such penalty was claimed.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1209. Injunctions**

The regulatory authority or Health Advisor may seek to enjoin violators

of this Code.

#### **History**

CMY-28-86, May 2, 1986.

### **Subchapter 9. Enactment Provisions**

#### **§ 1241. Captions**

Sections and other captions are part of this Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1242. Exceptions**

A. Building facilities and equipment in use before the effective date of this Code which do not meet fully all of the design and fabrication requirements of this Code, shall be acceptable if they are in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces (if any) are in compliance with § 902(R) of this Code.

B. New building facilities and new equipment for which contractual obligations are incurred before the effective date of this Code, and which do not fully meet all the design and fabrication requirements of this Code, shall be acceptable if they are capable of being maintained in a sanitary condition and the food-contact surfaces (if any) are in compliance with § 902(F) of this Code.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1243. Repealer**

Twelve months after the date of adoption and publication of this Code in accordance with law, all codes and parts of codes that conflict with this Code are repealed.

#### **History**

CMY-28-86, May 2, 1986.

#### **§ 1244. Separability**

If any provision or application of any provision of this Code is held invalid, that invalidity shall not affect other provisions or applications of this Code.

#### **History**



CMY-28-86, May 2, 1986.

**§ 1245. Effective Date**

This code is effective 12 months after its adoption and publication in accordance with law.

**History**

CMY-28-86, May 2, 1986.

**Subchapter 10. Wholesale and Salvage Food Operations**

**§ 1261. Whole food operations**

Any wholesale food operation including food storage warehouses on the Navajo Nation shall meet the provisions of the Food, Drug and Cosmetic Act <sup>1</sup> along with its amendments, and shall meet the approval of the Health Advisor.

**History**

CMY-28-86, May 2, 1986.

**§ 1262. Permits**

Any wholesale food operation shall be required to obtain a sanitation permit from the Regulatory Authority.

**History**

CMY-28-86, May 2, 1986.

**§ 1263. Salvage operations**

Salvage operations shall not be permitted.

**History**

CMY-28-86, May 2, 1986.

**Chapter 6. Food and Beverage Machine Vending Sanitation Code**

**History**

CMY-28-86, May 2, 1986.

**Note.** Appendix referenced in this Code is not included; see CMY-28-86.

**Subchapter 1. General Provisions**

**§ 1301. Purpose**

This code shall be liberally construed and applied to promote its

underlying purpose of protecting the public health.

### **History**

ACMY-28-86, May 2, 1986.

### **§ 1302. Definitions**

For the purpose of this ordinance:

A. "Bulk food" means a food which when dispensed to the customer is not package, wrapped or otherwise enclosed.

B. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers or supplies are kept, handled, prepared, packaged, or stored for use in vending machines. The term shall not apply to an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.

C. "Condiment" means any food such as salt, pepper, mustard and ketchup that is used to enhance the flavor of other food.

D. "Controlled location vending machine (limited service vending machine)" means a vending machine which:

1. Dispenses only non-potentially hazardous food; and
2. Is of such design that it can be filled and maintained in a sanitary manner by untrained persons at the location; and
3. Is intended for and used at locations in which protection is assured against environmental contamination.

E. "Corrosion-resistant materials" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other conditions of the use environment.

F. "Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residues may be effectively removed by normal cleaning methods.

G. "Employee" means that permit holder, individual having supervisory or management duties and any other person who handles any food to be dispensed through vending machines, or who comes into contact with food-contact surfaces of containers, equipment, utensils, or packaging materials, used in connection with vending machine operations, or who otherwise services or maintains one or more such machines.

H. "Equipment" means vending machines, ovens, tables, counters, sinks, and similar items, other than utensils used in vending operations.

I. "Food" means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part

for human consumption.

J. "Food-contact surfaces" means those surfaces with which food normally comes into contact, and those surfaces from which food may drain, drip or splash back onto surfaces normally in contact with food.

K. "Health Advisor" shall mean the Director, Navajo Area Indian Health Service or an authorized agent.

L. "Hermetically sealed container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its content after processing.

M. "Law" includes federal, state and local statutes, codes and regulations, and ordinances.

N. "Machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated.

O. "Operator" means any person, who by contract, agreement, or ownerships, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more vending machines.

P. "Packaged" means bottled, canned, cartoned, or securely wrapped.

Q. "Person" includes an individual, partnership, corporation, association, or other legal entity.

R. "Potentially hazardous food" means any food that consists in whole or in part of milk, milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients including synthetic ingredients, which is in form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. Potentially hazardous foods will include rice, fried rice, refried beans and baked potatoes. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less under standard conditions.

S. "Readily accessible" means exposed or capable of being exposed for cleaning and inspection without the use of tools.

T. "Regulatory Authority" shall mean the Navajo Division of Health or its successor.

U. "Safe materials" means articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials are food additives or color additives as defined in § 201 (s) or (t) of the Federal Food, Drug, and Cosmetic Act <sup>1</sup> as used, they are "safe" only if they are used in conformity with regulations established pursuant to § 409 <sup>2</sup> or § 706 <sup>3</sup> of the Act. Other materials are "safe" only if they are not food additives or color additives as defined in § 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act, and are used in conformity with regulations issued under the Act.<sup>4</sup>

V. "Safe temperatures" for potentially hazardous food means temperatures of 45°F (7.2°C) or below or 140°F (60°C) or above.

W. "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemical for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

X. "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

Y. "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles designed for one time/one person use, and then discarded.

Z. "Utensil" means any implement used in the storage, preparation, transportation or service of food.

AA. "Vending machine" means any self-service device which, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food, either in bulk or in packages, without the necessity of replenishing the device between each vending operation. It shall also include self-service dispensers equipment for coin, paper currency, token, card or key operation and optional manual operation. Unless otherwise stated, vending machine includes controlled location vending machines.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1303. Captions**

Sections and other captions are part of this Code.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1304. Repealer**

This code shall be in full force and effect three months after its adoption and publication in accordance with law. At that time, all code and parts of code that conflict with this Code are repealed.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1305. Separability**

If any provision or application of any provision of this Code is held invalid, that invalidity shall not affect other provisions or applications of

this Code.

#### **History**

ACMY-28-86, May 2, 1986.

### **Subchapter 2. Food Care**

#### **§ 1311. Food supplies—General**

Food exposed for sale, offered for sale, sold through vending machines and offered to patrons of vending machines shall be sound and free from spoilage, filth, or other contamination and shall be safe for human consumption. The food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1312. Food protection—General**

A. At all times, including while being prepared, stored, loaded, displayed, or transported, food intended for sale through vending machines shall be protected from contamination by all agents, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs, sneezes, flooding, draining, and overhead leakage or condensation.

B. The temperature of potentially hazardous foods shall be 45°F (7.2°C) or below or 140°F (60°C) or above at all times, except as otherwise provided in § 1313 (G).

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1313. Special requirements**

A. Milk and fluid milk products offered for sale through vending machines shall be pasteurized, shall meet the Grade A quality standards as established by law, and shall be dispensed only in individual original containers. Raw milk and raw milk products shall not be sold.

B. Milk and fluid milk products and fluid non-dairy products (creaming agents) shall not be dispensed in vending machines as additional ingredients in hot liquid beverages or other foods.

C. When condiments are provided in conjunction with food dispensed by a vending machine, they shall be:

1. Packaged in individual portions in single-service containers;

and

2. Dispensed from sanitary dispensers which are cleaned, rinsed and sanitized and filled at the commissary or at the machine location if sanitary facilities are provided; or

3. Made available from condiment self-service dispensing equipment at those locations having an on-duty attendant.

D. Fresh fruits which may be eaten without peeling shall be thoroughly washed in potable water at the packing plant by the processor, or at the commissary before being placed in the vending machines for dispensing. The washed fruit shall be protected from contamination after the washing process.

E. All food, other than fresh fruit, shall be stored or packaged in clean protective containers, and all food shall be handled and vended in a sanitary manner.

F. Potentially hazardous food offered for sale through vending machines shall be dispensed to the consumer in the individual, original container or package into which it was placed at the commissary or at the manufacturer's or processor's plant. Potentially hazardous food shall not be dispensed from bulk food machines.

G. Potentially hazardous food shall be maintained at safe temperatures except as follows:

1. During necessary periods of preparation and packaging; and

2. During the actual time required to load or otherwise service the machine and for a maximum machine ambient temperature recovery period of 30 minutes following completion of loading or servicing operation.

H. Vending machines dispensing potentially hazardous food shall be provided with adequate refrigerating or heating units and thermostatic controls which insure the maintenance of sale temperatures at all times. Such vending machines shall also have automatic controls which prevent the machine from vending potentially hazardous food until serviced by the operator in the event of power failure, mechanical failure or other condition which results in noncompliance with temperature requirements in the food storage compartment.

I. Potentially hazardous food that has failed to conform to the time-temperature requirements of this Code shall be removed from the vending machine, and be denatured or otherwise rendered unusable for human consumption.

J. Vending machine dispensing potentially hazardous food shall be provided with one or more thermometers which, to an accuracy of 3°F, indicate the air temperature of the warmest part of the refrigerated food storage compartment, or the coldest part of the heated food storage compartment, whichever is applicable.

#### **History**

ACMY-28-86, May 2, 1986.

### **Subchapter 3. Personnel**

#### **§ 1321. Employee health—General**

No person, while infected with a communicable disease that can be transmitted by foods or who is a carrier of organisms that cause such a disease, or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in any area of a commissary or vending operation except as specified in § 1394.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1322. Personal cleanliness—General**

A. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices while engaged in handling foods or food-contact surfaces of utensils or equipment.

B. Employees shall thoroughly wash their hands with soap and warm water immediately prior to engaging in any vending machine servicing operation which may bring them into contact with food, or with food-contact surfaces of utensils, containers, or equipment. While engaged in such servicing operations, employees shall wear clean outer garments, shall not use tobacco in any form, wear hair restraints, and shall keep their fingernails clean and trimmed.

C. Jewelry shall not be worn on the hands of employees involved in the handling of foods or by those employees involved in equipment and utensil washing and sanitizing activities.

D. All employees working in the commissary shall have a valid certificate that they have received training on the prevention of foodborne disease issued by the Health Advisor.

#### **History**

ACMY-28-86, May 2, 1986.

### **Subchapter 4. Equipment and Utensils**

#### **§ 1341. Interior construction and maintenance—General**

A. The non-food-contact surfaces of the interior of vending machines shall be designed and constructed to permit easy cleaning and to facilitate maintenance operations and shall be kept clean and in good repair. Inaccessible surfaces and areas shall be minimized.

B. All food-contact surfaces of vending machines shall be smooth, in good repair, and free of breaks, corrosion, open seams, cracks, and chipped places.

The design of such surfaces shall preclude routine contact between food and "V" type threaded surfaces except that in equipment where such contact is unavoidable, such as ice makers, such thread shall be minimized. All joints and welds in food-contact surfaces shall be smooth, and all internal angles and corners of such surfaces shall be rounded to facilitate cleaning.

C. If solder or other sealer is used on food-contact surfaces, it shall be composed of safe materials and be corrosion resistant.

D. All food-contact surfaces of vending machines, including containers, pipes, valves, and fittings, shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion-resistant, non-absorbent, easily cleanable and durable under conditions of normal use; and shall be cleaned, rinsed, and sanitized at a frequency established by the Health Advisor based upon the type of product being dispensed.

E. All food-contact surfaces unless designed for in-place cleaning, shall be accessible for manual cleaning, rinsing, sanitizing and inspection:

1. Without being disassembled; or
2. By disassembly without the use of tools; or
3. By easy disassembling with the use of only simple tools such as a screwdriver or an open-end wrench.

F. All food-contact parts or surfaces not designed for in-place cleaning (§ 1341 (G)) shall be cleaned, rinsed and sanitized in clean, portable containers or in utensil washing sinks at the location or at the commissary. Cleaning shall consist of washing in warm water containing a suitable detergent and brushing or wiping, as appropriate. Rinsing shall consist of immersion or wiping with clean clear rinse water. Sanitizing shall be accomplished by.

1. Immersion or rinsing in water of at least 170°F (76.7°C) for 30 seconds; or
2. Immersion for one minute in a chemical sanitizing solution containing at least 50 parts per million (p.p.m.) of available chlorine, or 12.5 p.p.m. of available iodine, or 200 p.p.m. of quaternary ammonium sanitizer.

G. In machines designed so that food-contact surfaces are not readily removable, all such surfaces intended for in-place cleaning shall be designed and fabricated that:

1. Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and
2. Cleaning and sanitizing solutions will contact all food contact surfaces; and
3. The system is self-draining or capable of being completely evacuated; and



4. The procedures utilized result in thorough cleaning of the equipment.

H. The openings into all nonpressurized containers used for the storage of vendible food, including water, shall be provided with covers which prevent contamination from reaching the interior of the containers. Such covers shall be designed to provide a flange which overlaps the opening, and shall be sloped to provide drainage from the cover wherever the collection of condensation, moisture, or splash is possible. Concave covers are prohibited. Any port opening through the cover shall be flanged upward at least three-sixteenths of an inch, and shall be provided with an overlapping over flanged downward. Condensation, drip, or dust deflecting aprons shall be provided on all piping, thermometers, equipment, rotary shafts, and other functional parts extending into the food containers unless a watertight joint is provided. Such aprons shall be considered as satisfactory covers for those openings which are in continuous use. Gaskets, if used, shall be of safe materials, relatively stable, and relatively non-absorbent, and shall have a smooth surface. All gasket retaining grooves shall be easily cleanable.

I. The delivery tube or chute and orifice of all bulk food vending machines shall be protected from normal manual contact, dust, insects, rodents, and other contamination. The design shall divert condensation or moisture from the normal filling position of the container receiving the food. The ending stage of such machines shall be provided with a tight-fitting, self-closing door or cover which is kept closed except when food is being removed. The cup filling area or platform of controlled location vending machines shall not require a door or cover if there is no opening into the cabinet interior at that point other than for dispensing tube(s) or trapped waste tubing. The dispensing compartment of prepackaged candy and similar product vending machines shall be equipped with a self-closing lid at vending locations where insect or rodent entry into the machine may occur.

J. The food storage compartment and other compartments in refrigerated vending machines which are subject to condensation or cooling water retention shall be self draining or equipped with a drain outlet which permits complete draining. In vending machines designed to store cartoned beverages, diversion devices and retention pans or drains for leakage shall be provided. All such drains, devices, and retention pans shall be easily cleanable.

K. Can and bottle openers which come into contact with the food or the food-contact surfaces of the containers shall be constructed of corrosion-resistant, non-absorbent, and safe materials and shall be kept clean. Cutting or piercing parts of multiuse openers which come into contact with the food or food-contact surfaces of the containers shall be constructed of corrosion-resistant, nonabsorbent, and safe materials and shall be kept clean. Cutting or piercing parts of multiuse openers which come into contact with the food or food-contact surface of containers shall be reasonably protected from manual contact, dust, insects, rodents, and other contamination; and such parts shall be readily removable for cleaning.

#### **History**

ACMY-28-86, May 2, 1986.

**§ 1342. Exterior construction and maintenance—General**

A. The vending machine shall be of sturdy construction and the exterior shall be designed, fabricated, finished and maintained to facilitate its being kept clean, and to minimize the entrance of insects and rodents. The exterior of the machine shall be kept clean. The vending machine shall not constitute a safety hazard.

B. Door and panel access openings to the food and container storage spaces of the machine shall be tight fitting, and if necessary, gasketed to prevent the entrance of dust, moisture, insects, and rodents.

C. All ventilation louvers or openings into vending machines shall be effectively screened. Screening material for openings into food and container storage spaces of the machine shall be not less than 16 mesh to the inch or equivalent. Screening materials for openings into condenser units which are separated from food and container storage spaces shall be not less than 8 mesh to the inch or equivalent.

D. In all vending machines in which the condenser unit is an integral part of the machine, such unit when located below the food and container storage space, shall be separated from such space by a dust proof barrier, and when located above, shall be sealed from such space.

E. In order to prevent seepage underneath the machine and to promote cleaning, free standing vending machines shall have one or more of these elevation or movability features:

1. Be light enough to be manually moved with ease by one person; or
2. Be elevated on legs or extended sidewalls to afford, with or without kickplates, an unobstructed vertical space of at least six inches (15.24 cm) under the machine; or
3. Mounted on rollers or casters which permit easy movement; or
4. Be sealed to the floor.

F. Where used, kickplates shall be easily removable or be capable of being rotated. These kickplates shall be designed and installed to make the area under the machine easily accessible for routine cleaning without unlocking the cabinet door.

G. Counter type machines shall be:

1. Sealed to the counter; or
2. Mounted on four-inch (10.16 cm) legs or the equivalent; or
3. Easily moved for cleaning with service connections in place.

H. All service connections through an exterior wall of the machine

including water, gas, electrical, and refrigeration connections, shall be grommeted, or closed with no opening over 1/32 inch (0.79 mm) to prevent the entrance of insects and rodents. All service connections to machines vending potentially hazardous food shall be such as to discourage their unauthorized or unintentional disconnection.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1343. Equipment location—General**

A. Vending machines, ovens, and other equipment shall be located in a room, area or space which can be maintained in a clean condition and which is protected from overhead leakage or condensation from water, waste or sewer piping. The immediate area in which the equipment is located shall be well lighted and ventilated. Each vending machine shall be located so that the space around and under the machine can be easily cleaned and maintained, and so that insect and rodent harborage is not created.

B. The floor area where vending machines are located shall be reasonably smooth, of cleanable construction, and be capable of withstanding repeated washing and scrubbing. This space and the immediate surroundings of each vending machine shall be maintained in a clean condition.

C. Adequate handwashing facilities, including hot or cold or tempered running water, soap and individual towels, shall be convenient to the machine location and shall be available for use by employees servicing or loading bulk food machines.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1344. Special requirements—Single-service articles**

Single-service articles shall be purchased in sanitary packages which protect the articles from contamination, shall be stored in a clean, dry place until used, and shall be handled in a sanitary manner. Such articles shall be furnished to the customer in the original individual wrapper or from a sanitary single-service dispenser. All single-service articles shall be protected from manual contact, dust, insects, rodents, and other contamination.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1345. Other equipment**

A. All other equipment at the vending location must be kept clean. Food-contact surfaces, if any, must be cleaned, rinsed and sanitized at a frequency established by the Health Advisor based upon the type of product being dispensed.

B. The cavities and door edges of microwave ovens must be cleaned at least once a day with non-abrasive cleaners and shall be kept free of encrusted grease deposits and other accumulated soil. All doors, seals, hinges, and latch fasteners (screws and related hardware) shall be kept tight and adjusted in accordance with manufacturer's procedures. Microwave ovens shall be in compliance with applicable safety standards of the U.S. Food and Drug Administration's Center for Devices and Radiological Health.

C. Food-contact surfaces of all equipment and utensils must be protected from contamination at all times including while being transported from the commissary to the vending location.

### **History**

ACMY-28-86, May 2, 1986.

## **Subchapter 5. Sanitary Facilities and Controls**

### **§ 1361. Water supply—General**

A. All water used in vending machines shall be of a safe and sanitary quality and from a source constructed and operated according to the Safe Drinking Water Act, Public Law 93-523.<sup>1</sup> Water used as a food ingredient shall be piped to the vending machines under pressure, except that in controlled location vending machines, water may be obtained from a safe source and carried to the machines in containers that are clean and of good sanitary construction.

1. External water fill ports or drawers of controlled location vending machines shall be designed so that covers and drawers are secured to the machine.

2. All plumbing connections and fittings shall be installed and maintained according to the 1982 Uniform Plumbing Code.

B. If used, water filters or other water conditioning devices shall be of a type which may be disassembled for periodic cleaning or replacement of the active element. Replacement elements shall be handled in a sanitary manner.

C. To prevent leaching of toxic materials caused by possible interaction of carbonated water, piping and contact surfaces, post-mix soft drink vending machines manufactured after January 1, 1975, which are designed with an incoming water supply air gap shall have no copper tubing or other potentially toxic water system tubing between the air gap and the downstream, carbonated water dispensing nozzle.

D. To prevent leaching of toxic materials caused by possible interaction of carbonated water, piping and contact surfaces, post-mix soft drink vending machines which are directly connected to the external water supply system shall be equipped with a double (or two single) spring-loaded check valves or other devices which will provide positive protection against the entrance of carbon dioxide or carbonated water into the water supply system. Backflow preventive devices shall be located to facilitate servicing and maintenance. No copper tubing or other potentially toxic tubing or contact surfaces shall be permitted

in or downstream from the check valves or backflow devices. These check valves or device shall be inspected and cleaned or replaced annually.

E. Where spring-loaded check valves are used to prevent the backflow of carbon dioxide into accessible upstream copper or other potentially toxic piping or tubing, a screen of not less than 100 mesh to the inch shall be installed in the water line immediately upstream from the check valves in a location which permits servicing or replacement.

F. In all vending machines in which carbon dioxide is used as a propellant, all food-contact surfaces from the check valves or other protective devices, including the valves or devices, shall be of such material as to preclude the production of toxic substances which might result from interaction with carbon dioxide or carbonated water.

### **History**

ACMY-28-86, May 2, 1986.

### **§ 1362. Waste disposal—General**

A. All trash and other solid or liquid waste shall be removed from the machine location as frequently as may be necessary to prevent nuisance and unsightliness, and shall be disposed of in a manner meeting the approval of the health advisor.

B. Self-closing, leak-proof, easily cleanable, insect-proof and rodent-proof waste receptacles shall be provided in the vicinity of each machine or machines to receive used cups, cartons, wrappers, straws, closures, and other items. Plastic bags and wet-strength paper bags may be used to line the receptacles. Soiled waste receptacles shall be cleaned at a frequency to prevent insect and rodent attraction.

C. Waste receptacles shall not be located within the vending machines with the exception of those machines dispensing only packaged food with crown closures; in which case, the closure receptacles may be located within the machine. Waste receptacles shall not be located under counters or otherwise enclosed in a manner that will create a nuisance or prevent space around and under the counter or enclosure from being easily cleaned and maintained. Suitable racks or cases shall be provided for multiuse containers or bottles.

D. Containers shall be provided within all machines dispensing liquid food in bulk for the collection of drip, spillage, overflow, or other internal wastes. Such machines shall be equipped with an automatic shut-off device at the waste pail or other devices or valves which will place the machine out of operation before the waste pail overflows. Such devices shall prevent water or liquid product from continuously running in the event of the failure of any single control, high level control, or other flow control device in the liquid product or water system.

E. Controlled location vending machines not connected to a water supply system, and which generate no internal liquid wastes, may be equipped with easily removable drip pans at the dispensing platform in lieu of internal waste containers and automatic shut-off devices.

F. Controlled location vending machines that are connected to a water supply and have no internal waste containers, shall be equipped with at least two independently operated controls to prevent the continued flow of water in event of failure of any single flow control device.

G. Containers or surfaces on which such wastes may accumulate shall be readily removable for cleaning, shall be easily cleanable, and shall be corrosion-resistant. If liquid wastes from drip, spillage, or overflow, which originate within the machine are discharged into a sewerage system, the connection to the sewer shall be through an air gap.

#### **History**

ACMY-28-86, May 2, 1986.

### **Subchapter 6. Compliance Procedures**

#### **§ 1381. Permits—General**

A. No person shall operate one or more vending machines, other than controlled location vending machines, without a valid permit issued by the Regulatory Authority. Persons who do not comply with the requirements of this Code shall not be entitled to receive or retain such a permit. Permits are not transferrable.

B. The operator's company name and service telephone number shall be displayed on each vending machine or conspicuously adjacent to the vending machine bank.

C. All operators of vending machines shall:

1. Comply with the requirements of this Code;

2. Maintain at the operator's headquarters or at some other designated location within the jurisdiction of the Health Advisor and Regulatory Authority a list of all vending machines operated by such operator within the jurisdiction and the complete address of each machine location and of all commissaries or other establishments from which this machines are serviced. This information shall be available to the Health Advisor upon request, and shall be kept current;

3. Notify the Health Advisor and Regulatory Authority of each new vending machine location at which potentially hazardous food or hot or cold cup beverage vending machines have been placed in operation; and

4. Notify the Health Advisor and Regulatory Authority of any change in operations involving new types of vending machines or conversions of existing machines to dispense products other than those for which the machines were built.

#### **History**

ACMY-28-86, May 2, 1986.

**§ 1382. Issuance of permits**

A. Any person desiring to operate one or more vending machines, other than controlled location vending machines, shall make written application for a permit on forms provided by the Regulatory Authority.

B. Upon receipt of such application, the Health Advisor shall make an inspection of the commissary, supply storage, servicing, cleaning and sanitizing facilities, and transport facilities, and representative equipment and machine locations to determine compliance with the provisions of this Code. A numbered operator's permit shall be issued to the applicant by the Regulatory Authority after compliance by the operator with the applicable provisions of this Code.

**History**

ACMY-28-86, May 2, 1986.

**§ 1383. Suspension of permits**

A. The Health Advisor or Regulatory Authority may, without prior warning, notice, or hearing, suspend any permit to engage in a vending operation if the operation constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by § 1383(B). When a permit is suspended, vending operations shall immediately cease. Whenever a permit is suspended, the permit holder shall be afforded an opportunity for a hearing with the Regulatory Authority within 10 days of receipt of a request for a hearing.

B. Whenever a permit is suspended, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, immediately suspended, the reasons why, including clear specification of violations, and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the Regulatory Authority by the permit holder within 10 days. If no request for hearing is filed within 10 days of receipt of the request, the suspension is sustained. Prior to the hearing, the Regulatory Authority may end the suspension if reasons for suspension no longer exists.

C. A sustained suspension may be rescinded by the Regulatory Authority based on the recommendation of the Health Advisor after confirming by inspection that the requirements of this Code have been satisfied.

D. The Regulatory Authority, in lieu of suspending a permit, may suspend applicability of the permit to a particular vending machine, machines, commissary or specific products.

**History**

ACMY-28-86, May 2, 1986.

**§ 1384. Revocation of permits**

Prior revocation, the Regulatory Authority shall notify in writing the permit holder or operator of the reasons for which the permit is subject to revocation. A permit may be revoked for serious or repeated violations of any of the items of this Code as delineated in the inspection report form or for interference with the Health Advisor in the performance of his duties. The permits shall be revoked at the end of 10 days following service of a revocation notice unless a request for a hearing is filed with the regulatory authority by the permit holder within such a 10 day period. If no request for a hearing is filed within the 10 day period, the revocation of the permit becomes final.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1385. Service of notices**

A notice provided for in this Code is properly served when it is delivered to the permit holder or operator or when it is sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of any notice shall be filed in the records of the Regulatory Authority.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1386. Hearings**

The hearings provided for in this Code shall be conducted by the Regulatory Authority at a time and place designated by it. Based upon the recorded evidence of such hearing, the Regulatory Authority shall make a final finding, and shall sustain, modify, or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the Regulatory Authority within 10 days of the hearing.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1387. Reallocation**

Whenever a permit has been revoked, the holder may make a written application for a new permit as provided in § 1382.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1388. Permit exemption**

All controlled location vending machines and vending machines which dispense exclusively: bottled or canned soft drinks; prepackaged ice; prepackaged candy, cookies, crackers, or similar prepackaged, non-potentially



hazardous snacks; or, ballgum, nuts, and panned candies are exempt from the requirements of § 1381(A) and § 1381(C), but shall meet all other applicable requirements of this Code.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1389. Inspections--Inspection frequency**

The Health Advisor shall select vending locations for inspection by a method which assures the inspection of representative machines and locations serviced by each of the operator's routemen and supervisor. The frequency of inspection and selection of locations shall assure the widest coverage of each operator's locations over the time span deemed available by the Regulatory Authority but, in any case, shall not be less than at least one inspection every six months, except that vending machines as set forth in § 1388 of this Code may be inspected by the Regulatory Authority when there is reason to believe that unsanitary conditions exist. Commissaries shall be inspected at least once every six months.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1390. Access for inspection**

The Health Advisory and Regulatory Authority, after proper identification, shall be permitted to enter at any reasonable time, upon any private or public property where vending machines or commissaries are operated, or from which such machines are otherwise serviced, for the purpose of determining compliance with the provisions of this Code. The operator shall make provision for the Health Advisor to have access, either in company with an employee or otherwise, to the interior of all food vending machines operated by him.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1391. Notification of inspection findings**

A. Whenever an inspection of food vending machines is made, a copy of the completed inspection form set out in § 1392 shall be furnished to the operator.

B. Whenever the Health Advisor discovers a violation of any provision of this Code, it shall notify the Regulatory Authority and the operator concerned either by the inspection report form set out in § 1392 or by other written notice. Such form or notice, which is a public document shall:

1. Describe the condition found;

2. Provide a specific and reasonable period of time for the correction of the condition; and

3. State that an opportunity for a hearing on inspection findings will be provided if a written request for such hearing is filed with the Regulatory Authority within 10 days of receipt of the notice. The Regulatory Authority may also advise the operator in writing that unless the violations are corrected within the specified period of time, any permit issued under the provisions of this Code may be suspended or revoked in accordance with the provisions of Subchapter 6, or court action may be initiated.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1392. Inspection report 307 [See note below]**

#### **History**

ACMY-28-86, May 2, 1986.

#### **Cross References**

See Appendix B, CMY-28-86, May 2, 1986 for report form 307.

#### **§ 1393. Examination and condemnation of food-General**

Food may be examined or sampled by the Health Advisor as often as necessary for enforcement of this Code. The Health Advisor may, upon written notice to the permit holder or operator specifying with particularity the reasons therefore, place a hold order on any food which he believes is in violation of this Code. The Health Advisor shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, sold, or moved to facilities not under control of the permit holder. The Health Advisor shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for hearing may be filed within 10 days and that if no hearing is requested the food shall be destroyed. A hearing shall be held if so requested, and on the basis of evidence produced at that hearing, the hold order may be vacated, or the permit holder or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this Code.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1394. Procedure when infection suspected-General**

When the Health Advisor has reasonable cause to suspect the possibility of disease transmission from any employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. All investigations shall be conducted in

compliance with the provisions of the Privacy Act, and morbidity information collected will only be used for epidemiological purposes. The Health Advisor may require any or all of the following measures:

A. The immediate exclusion of the employee from the commissary or vending operation;

B. The immediate closing of the commissary and vending operations concerned until, in the opinion of the Health Advisor, no further danger of disease outbreak exists;

C. Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and/or

D. Adequate medical and laboratory examinations of the employee, of other employees and of his or her and their body discharges. The permit handler shall be responsible for all costs incurred.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1395. Commissaries, outside jurisdiction of the regulatory authority—General**

Food from commissaries outside the jurisdiction of the Regulatory Authority may be sold within the jurisdiction if such commissaries conform to substantially equivalent food service sanitation standards. To determine the extent of compliance with such provisions, the Regulatory Authority may accept reports from the responsible authorities in the jurisdictions where the commissaries are located.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1396. Remedies—Penalties**

A. The Regulatory Authority shall execute and enforce the provisions of this Act and in that enforcement is vested with all powers relating to inspection, sampling, condemnation and embargoing of hazardous substances granted to it with respect to this Code.

B. If any person shall violate directly or indirectly, through his officers or employees, any of the provisions of this Act, or regulations promulgated thereunder, the Regulatory Authority may order the correction of the violation within such reasonable period of time as the commissioner may prescribe. Such order shall be complied with in the time specified.

C. Any person violating any of the provisions of this Act or orders or regulations promulgated thereunder shall be liable to a penalty of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250.00), and for the second and each succeeding violation, double that of the proceeding infraction, to be collected in a civil action by the Regulatory Authority and deposited in the Navajo Nation general funds account. Where the

violation is of a continuing nature, each day during which it continues, after the date given by which the violation must be eliminated in the order by the Regulatory Authority, shall constitute an additional, separate and distinct offense, except during the time an appeal from said order may be taken or is pending.

D. The Regulatory Authority is authorized and empowered to compromise and settle any claim for a penalty under this Section in such amount in the discretion of the Regulatory Authority as may appear appropriate and equitable under all of the circumstances.

E. Payment of a penalty for any violation of this Act or regulations promulgated thereunder either before or after the institution of proceedings for the collection thereof shall be deemed equivalent to a concession of the violation for which such penalty was claimed.

#### **History**

ACMY-28-86, May 2, 1986.

#### **§ 1397. Injunctions**

The Regulatory Authority or Health Advisor may seek to enjoin violations of this Code.

#### **History**

ACMY-28-86, May 2, 1986.

### **Chapter 7. Navajo Nation Mobile Home Park Code**

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961

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

#### **§ 1401. Title**

This act shall be known and cited as the Mobile Home Park Code.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1402. Purpose**

The purpose of this Act is to protect the health, safety and welfare of the Navajo Nation by regulating and monitoring all mobile home park operations

and activities. All mobile home park operators shall comply with the provisions of this Act. It is the intent of this Act that all provisions herein be liberally construed and implemented to accomplish and fulfill said purpose.

### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

### **§ 1403. Definitions**

As used in this Code:

A. "Building Code" means the current model uniform code for mobile homes recommended by the International Conference of Building Officials and subsequent revisions.

B. "Dependent Mobile Home" means a mobile home which does not have a toilet, bathtub or shower.

C. "Electrical Code" means the current model uniform code for Mobile Home Parks recommended by the National Fire Protection Association, and subsequent revisions.

D. "Employee" means any individual who is employed in any establishment used as a mobile home park.

E. "Fire Authority" means the Fire Chief of the Navajo Nation Fire Services or the Fire Chief's authorized agent.

F. "Gas Code" means that current model uniform code recommended by the National Fire Protection Association, for fuel gas Pipe System and National Fire Protection Association, No. 58, 1983, and subsequent revisions, storage and handling of fuel gases.

G. "Health Advisor" means the Director, Navajo Area Indian Health Service, or the Director's authorized agent.

H. "Health and Social Services Committee" means the oversight Committee of the Navajo Nation Council empowered to recommend various Navajo Nation legislation to the Navajo Nation Council.

I. "Housing and Urban Development Standards" means the standards adopted by the United States Department of Housing and Urban Development (DHUD) under its Manufactured Housing Standard Program, pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974,<sup>1</sup> Public Law 93-383 and its amendments.

J. "Independent Mobile Home" means a mobile home that has a toilet and a bathtub or shower.

H. "Installation Code" means the current model uniform code for mobile

homes recommended by National Fire Protection Association and subsequent revisions.

L. "Installation Permit" means a permit issued by the Licensing Permitting Authority to the owner/operator of the mobile home park defining the installation code requirements so that each mobile home is installed in a safe and sanitary manner.

M. "Licensing/Permitting Authority" means Commerce Department, Division of Economic Development or its successor.

N. "Mobile Home" means any vehicle used, or so constructed as to permit being used as a conveyance upon the public streets or highways, and constructed in such a manner as will permit occupancy thereof, as a dwelling or sleeping place for one or more persons. It shall be more than 20' in length and greater than or equal to 100 square feet of gross area and remain in place on site for more than 30 days.

O. "Mobile Home Park" means any plot of ground upon which two or more mobile homes occupied for dwelling or sleeping purposes are parked and where rent is collected and/or are located in place for more than 30 days.

P. "Mobile Home Space" means a plot of ground within a mobile home park designated for the accommodation of one mobile home.

Q. "Navajo Nation Environmental Protection Branch" means the official Navajo Nation department established to develop, initiate and enact policy to protect the natural resources of the Navajo Nation.

R. "Navajo Nation Council" means the official legislative body of the Navajo Nation empowered to adopt, enact and enforce policy and laws on the Navajo Nation's behalf.

S. "Operator" means any person employed by the owner who oversees the daily operations of the mobile home park.

T. "Owner" means any person in possession of the business site lease agreement with the Navajo Nation.

U. "Person" means any individual, firm, corporation, partnership, corporate group, association, business site lessee(s) and governmental agencies.

V. "Plumbing Code" means the current model uniform code recommended by the International Association of Plumbing and Mechanical Officials, and subsequent revisions.

W. "Recreational Vehicle" means a vehicle less than 300 square feet in gross area on site and in place less than 30 days.

X. "Regulatory Authority" means the Navajo Division of Health (DH), its authorized agent or successor.

Y. "Sanitation Permit" means a written permit issued by the Regulatory

Authority upon the recommendation of the Health Advisor, reflecting a mobile home park operator's compliance with the provisions of this Act.

Z. "Service Building" means a Building which houses separate toilet facilities for men and women, and with separate bath or shower accommodations.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1404. Conformity with requirements**

The person to whom a sanitation permit for a mobile home park is issued shall at all times operate the park in compliance with provisions of this Act and the regulations issued thereunder, and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a safe and sanitary condition at all times.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-6 1, December 21, 1961.

#### **§ 1405. Register of mobile home and occupants**

Every mobile home park owner/operator shall maintain a register containing a record of all mobile homes and occupants using the mobile home park. Such register shall be available to any authorized person inspecting the park and shall be preserved for five years unless some other period is required by the Government Services Committee. Such register shall contain the names and addresses of all mobile home residents staying in the park, the make, model, and state license number of the mobile home, the dates of arrival and departure of each mobile home, and whether or not each mobile home is dependent or independent. This register shall also include the name of the person or company that installed the mobile home.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

**Note.** Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454(B) (4).

Transportation and Community Development Committee powers, see 2 N.N.C. § 423(B) (2) and 423(F) (1).

#### **§ 1406. Inspection authority**

A. The Health Advisor and Regulatory Authority shall have the power to enter at reasonable times the property and building of the mobile home park for the purpose of inspecting and investigating conditions.

B. The Regulatory Authority and Health Advisor are empowered and authorized to make inspections and obtain samples of water and sewage for laboratory analysis to determine the condition of the water and sewer system.

C. It shall be the duty of the owner/operator of the mobile home park to give the Regulatory Authority or Health Advisor free access to such premises at reasonable times for the purpose of investigations and/or inspections.

D. Inspection of mobile home parks shall be made at least once every 24 months or more often if the Regulatory Authority or Health Advisor deems it necessary for the protection of the health safety and welfare of the public.

E. An inspection report containing violations of this Act found by the Health Advisor or Regulatory Authority shall be forwarded to the owner or operator of the mobile home park. This report shall be made available by the Regulatory Authority to any prospective tenant or authorized officials upon request.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1407. Rules and regulations authority**

The Division of Health will have the authority to promulgate rules and regulations necessary to implement and clarify the provisions of this Chapter. Where necessary, the Division of Health will solicit the advise of the Health Advisor, Commerce Department and the Fire Department All rules and regulations promulgated according to this Chapter must be approved by resolution by the Health and Social Services Committee of the Navajo Nation Council.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **Cross References**

Transportation and Community Development Committee powers, see 2 N.N.C. § 423(B) (2) and 423(F) (1).

### **Subchapter 3. Permits**



#### **§ 1451. Requirement**

A. No person shall operate a mobile home park within the jurisdiction of the Navajo Nation who does not possess a valid sanitation permit issued by the Regulatory Authority.

B. The failure to obtain or maintain a sanitation permit shall be just cause for termination of a business site lease for a mobile home park.

C. No owner/operator shall install a mobile home in a mobile home park within the jurisdiction limits of the Navajo Nation without first obtaining an Installation Permit from the Licensing/Permitting authority. Each installation shall require a separate permit.

D. The mobile home park owner/operator shall not allow any mobile homeowner to park a vacant mobile home on the leased premises for any purpose, other than its purpose, without a valid Installation Permit.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **Cross References**

Leases, permits, and licenses, see 2 N.N.C. § 724(B).

#### **§ 1452. Application for permits**

A. Application for Sanitation Permits shall be in writing, signed by the owner/operator and shall include the name and address of the applicant, the location and legal description of the mobile home park.

B. Application for Installation Permits shall be in writing signed by the mobile home park owner/operator, providing information on the location and date of installation.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1453. Inspection**

Before a Sanitation Permit and/or Installation Permit is issued, the Health Advisor shall inspect the mobile home park for which a permit application has been filed to determine its compliance with the provisions of this Chapter.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

**§ 1454. Issuance**

Upon recommendation of the Health Advisor that a mobile home park for which an application for a permit has been filed meets the requirements of this Chapter, the Regulatory Authority shall issue a sanitation permit and/or installation permit.

**History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

**§ 1455. Hearing on denial of application**

Any person whose application for a sanitation permit or installation permit has been denied may request and shall be granted a hearing before the Health and Social Services Committee under the procedure provided by 13 N.N.C. § 1552 upon request.

**History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

**§ 1456. Display**

A sanitation permit shall be displayed in a prominent place within the premises.

**History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

**§ 1457. Transfer**

A sanitation permit shall not be transferable.

**History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

**§ 1458. New ownership or control-Notice**

A. A mobile home park can only be leased, subleased, assigned or sold if it has a valid sanitation permit. Owners planning to lease, sublease, assign

or sell must give a 10 day prior notice to the Health Advisor and the Regulatory Authority. Prospective transferees/buyers shall be provided with copies of the most recent sanitation and safety inspection reports. The deficiencies must be corrected within a time frame established by the Regulatory Authority before a sanitation permit can be issued.

B. Every person who succeeds to ownership or control of a mobile home park shall give notice in writing to the Regulatory Authority within 10 days after having purchased, received by transfer or gift or otherwise acquired interest in or control of any mobile home park.

C. Each person who succeeds to ownership or control of a mobile home park shall within 10 days file application for a Sanitation Permit to be issued to such person in the manner provided in this Subchapter. Failure to file such application within 10 day period shall be pursuant to § 1557 of this Code.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **Cross References**

Lease transfers, assignments, etc., see 2 N.N.C. § 724(B)(2).

#### **§ 1459. Suspension or revocation of sanitation permit**

A. Whenever upon inspection of any mobile home park, which holds a permit, conditions or practices exist which are in violation of any provisions of this Chapter, the Regulatory Authority shall give notice of the violations in writing to the person to whom the sanitation permit was issued, and said notice shall state that unless such conditions or practices are corrected within a reasonable period of time, as recommended by the Health Advisory, the sanitation permit shall be suspended.

B. At the end of such period, the Health Advisor shall reinspect such mobile home park and if such conditions or practices have not been corrected, the Health Advisor will inform the Regulatory Authority that provisions of this Chapter are still being violated. The Regulatory Authority will thereupon issue a notice in writing to the owner/operator of the mobile home park that said mobile home park owner/operator is in continued violation of this Chapter and that subject sanitation permit has been suspended. The Regulatory Authority will advise the Health and Social Services Committee of the Navajo Nation Council, of the failure to comply with the provisions of this Chapter. Upon receipt of the notice, the owner and/or operator shall comply with the notice.

C. Any person whose sanitation permit has been suspended or has received notice from the Health and Social Services Committee that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected may request and shall be granted a hearing on the matter before the Health and Social Services Committee as provided by 13 N.N.C. § 1552. When no petition for such hearing has been filed within 10 days following the day when

such sanitation permit was suspended, such permit shall be deemed to have been automatically revoked.

### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

## **Subchapter 5. Safety and Sanitation Requirements**

### **§ 1501. Location, space and general layout**

A. Conditions of soil, ground water level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, dust, noise, odors or other adverse influences, and no portion subject to sudden flooding or erosion shall be used for any purpose which would expose persons or property to hazards.

B. Mobile home supports shall not occupy an area in excess of one-third of the respective lot area. The accumulated occupied area of the mobile home, and its accessory structures on a mobile home lot shall not exceed two-thirds of the respective lot area.

C. Each independent mobile home space shall contain a minimum of 2500 square feet, and shall be at least 40 feet wide. Each dependent mobile home space shall contain not less than 1000 square feet and shall be at least 25 feet wide.

D. All mobile homes shall be located at least 25 feet from the property boundary line abutting upon a public street or highway and at least 10 feet from other boundary lines of the development.

E. There shall be a minimum distance of 10 feet between the mobile home support and the abutting street.

F. All mobile home park developments located adjacent to industrial or commercial land uses shall be provided with screening such as fences or natural growth along the property boundary line separating the development and such adjacent nonresidential uses.

G. Independent mobile home spaces in existence on the effective date of this Chapter, which have illumination, width or area less than the minimum prescribed in §§ 1501 and 1507(D) and (E), respectively, may continue to operate provided the Health Advisor determines that the criteria would not cause serious threat to the health and safety of the people.

H. Any mobile home installed in a mobile home park will be installed in accordance with the Installation Code.

I. It shall be unlawful for an independent mobile home to be located on a dependent mobile home space.

J. All mobile home developments shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. Such access shall be provided by streets, driveways, or other means.

K. Entrances to mobile home developments shall have direct connections to a public street and shall be designed to allow free movement of traffic on such adjacent public streets. No parking shall be permitted on the entrance street for a distance of 50 feet from its point of beginning.

L. The street system should provide convenient circulation by means of minor streets and properly located collector streets. Dead-end streets shall be limited in length to 1000 feet and their closed end shall be provided with an adequate turn-around contingent upon the approval of the Health Advisor and Fire Authority.

M. Streets shall be of adequate widths to accommodate contemplated parking and traffic load in accordance with the type of street with 10 feet minimum moving lanes for collector streets, 9 feet minimum moving lanes for minor streets, 7 feet lanes for parallel parking, and in all cases shall meet the following minimum requirements as determined by the Health Authority and Fire Authority:

1. Collector streets with guest parking shall be a minimum width of 34 feet;
2. Collector streets and all other streets except minor streets without parking allowances of 24 feet;
3. Minor streets serving less than 40 lots (no parking) 14 feet; and
4. One-way minor streets serving less than 20 lots (no-parking) 14 feet.

N. Grades of all streets shall be sufficient to insure adequate surface drainage, but should not be more than eight percent (8%). Short runs with a maximum grade of twelve percent (12%) may be permitted, provided traffic safety is assured.

O. Street intersections should generally be at right angles. Offsets at intersections and intersections of more than two streets at one point, shall be avoided.

P. All streets shall be provided with a smooth, hard and dense surface which shall be durable and well drained under normal use and weather conditions. The surface shall be maintained free of cracks and holes and its edge shall be protected by suitable means to prevent traveling and shifting of the base.

Q. The design criteria for automobile parking shall be based upon two parking spaces for each mobile home lot. Parking may be in tandem.

## History

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

### § 1502. Service buildings and permanent buildings

A. Each mobile home park, if it permits dependent mobile homes, must be provided with at least one service building, adequately equipped with flush-type toilet fixtures and other sanitary facilities as required in this Section. No service building shall contain less than one toilet for females, one toilet for males, one lavatory and shower or bathtub for each sex, equipped with self-closing doors. All sanitary facilities required by this Section shall be located in a service building. All structures, buildings and sanitary facilities must meet the requirements for the handicapped as determined by the Health Advisor.

B. All portions of the structure shall be properly protected from damage by ordinary use and by decay, corrosion, termites and other destructive elements. Exterior portions shall be of such material and be so constructed and protected as to prevent entrance or penetration of moisture and weather.

C. All rooms containing sanitary or laundry facilities shall:

1. Have sound resistant walls extending to the ceiling between the male and female sanitary facilities. Walls and partitions around showers, bathtubs, lavatories and other plumbing fixtures shall be constructed of dense, nonabsorbent, waterproof material or covered with moisture resistant material;

2. Have at least one window of skylight facing directly to the outdoors. The minimum aggregate gross area of window for each required room shall be not less than ten percent (10%) of the floor area served by them;

3. Must have a mechanical exhaust ventilation system device which will provide the room with at least 10 air changes per hour;

4. Toilets shall be located in separate compartments equipped with self-closing doors. Shower stalls shall be of the individual type;

5. The rooms shall be screened to prevent direct view of the interior when the exterior doors are open; and

6. Provide separate compartments for each bathtub or shower and water closet, and a sound resistant wall to separate male and female toilet facilities.

D. Illumination levels shall be maintained as follows:

1. General seeing tasks-5 footcandles;

2. Laundry room work area-40 footcandles; and

3. Toilet room-in front of mirrors-40 footcandles.

E. Hot and cold water shall be furnished to every sink, bathtub and shower. Cold water shall be furnished to every watercloset and urinal. Mobile home parks, with more than 10 dependent mobile homes, shall be provided with the following for every additional 15 dependent mobile homes or fraction thereof, one watercloset for females for every additional 10 dependent mobile homes or fraction thereof, one watercloset for males for every 15 dependent mobile home or fraction thereof; provided that urinals may be substituted for not more than one-third of the additional waterclosets required for males under this Paragraph.

F. Service building shall have adequate heating facilities to maintain a temperature of 70 degrees during cold water, and to supply adequate hot water during time of peak demands.

G. All sanitary facilities within this services building must be properly cleaned and disinfected at least once per day or more often as necessary.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1503. Water supply**

A. An accessible, adequate, safe, and potable supply of water shall be provided in each mobile home park, capable of furnishing a minimum of 200 gallons per mobile home. The development of an independent water supply to serve the mobile home park shall be made only after written approval has been granted by the Health Advisor. Where a public supply of water of such quality is available, connection shall be made thereto and its supply shall be used exclusively.

B. Where an independent or nonpublic water system is used to serve the mobile home park with water obtained from wells, the wells shall have been approved by the Health Advisor. All water supplies shall comply with the Safe Drinking Water Act.<sup>1</sup> (P.L. 93-523 and its amendments.)

C. All water piping shall be constructed and maintained in good working order and be in compliance with the Uniform Plumbing Code. The water piping system shall not be connected with nonpotable or questionable water supplies and shall be protected against the hazards of backflow or backsiphonage. All plumbing alterations and repairs shall be in accordance with the Uniform Plumbing Code.

D. No well-casing, pumping machinery or suction pipe shall be placed in any pit, room or space extending below ground level nor in any room or space above ground which is walled-in or otherwise enclosed, unless such rooms, whether above or below ground have free drainage by gravity to the surface of the ground.

E. The treatment of a private water supply shall meet the approval of the Health Advisor.

F. Drinking fountains may be provided by swimming pools, recreation buildings, and other areas where it is considered necessary to meet the anticipated needs of the mobile home development. If provided, drinking fountains shall be properly located and constructed of impervious material and shall have an angle jet with nozzle above the overflow rim of the bowl. The nozzle shall be protected by a nonoxidizing mouth guard. The bowl shall be of easily cleanable design, without corners, and the bowl opening shall have a strainer. The drain from a fountain shall have no direct physical connection with a waste pipe, unless the drain is trapped. Drinking fountains shall have a flow pressure of at least 15 pounds per square inch.

G. All water storage reservoirs shall be covered, watertight and constructed of impervious material. Overflows and vents of such reservoirs shall be effectively screened. Manholes shall be constructed with overlapping covers, so as to prevent the entrance of contaminated material. Reservoir overflow pipes shall discharge through an acceptable air gap.

H. All water piping fixtures and other equipment shall be constructed, maintained, located and of a type which meets the approval of the Health Advisor.

I. Fire hydrants, if provided, shall be located within 300 feet of any mobile home, service building or other structure in the development. Hydrants shall provide a flow of 500 gallons per minutes. It is highly recommended that at a minimum pressure of 20 pounds per square inch shall be provided at a flow of 250 gallons per minute. The minimum size fire hydrant outlet nozzle shall be 2 1/2 inches. Hose connections shall be compatible to hoses used by the Fire Authority.

J. Water mains and waterlines, installed parallel to or crossing sewer lines, shall meet the approval of the Health Advisor.

K. All water riser pipes and connections shall comply with the Uniform Plumbing Code. Water riser pipes shall extend at least four inches above ground elevation. The water outlet shall be capped when a mobile home does not occupy the lot.

L. Adequate provisions shall be made to prevent freezing of service lines, valves and riser pipes and to protect risers from heating and thawing actions of ground during freezing weather. Surface drainage shall be diverted from the location of the riser pipe.

M. Underground stop and waste valves shall not be installed on any water service.

N. Every well shall be located and constructed in such a manner that neither underground nor surface contaminated will reach the water supply from any source. A minimum distance of 150 feet shall be maintained between the water supply and any sewage disposal system. A minimum distance of 100 feet shall be maintained between the water supply and any other possible source of contamination except that sewers or pipes through which sewage may back up



shall be located at least 50 feet from any well or water-suction pipeline. Where such sewers or pipes are especially constructed to provide adequate safe guards, and when specifically authorized by the Health Advisor, such sewers or pipes through which sewage may back up may be closer than 50 feet, but not less than 30 feet from the wall.

### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

### **§ 1504. Sewage disposal**

A. All plumbing used for sewage disposal shall be operated and maintained in good working order and shall comply with the Uniform Plumbing Code.

B. Sewer lines shall be constructed in accordance with the Uniform Plumbing Code and meet the approval of the Health Advisor.

C. Where the sewer lines of a mobile home park are not connected to a public sewer, a method of sewage disposal approved by the Health Advisor shall be provided. The design of such sewage treatment facilities shall be based on the maximum capacity of the mobile home park. Effluents from sewage treatment facilities shall not be discharged except with prior approval of the Health Advisor and the Navajo Nation Environmental Protection Branch or its successor. The disposal facilities shall be located where they will not create a nuisance or health hazard to the mobile home park or the owner or occupants of any adjacent property. The approval of the Health Advisor shall be obtained on the type of treatment proposed and on the design of the disposal plan prior to construction.

D. The mobile home park operator shall keep as-built maps on all sewer and waterline and shall include information on valves, manholes, grades or sewer water lines, connections and other information important to the operation and maintenance of the sewer and water systems.

E. All sewer connections and manholes shall be so constructed that they will prevent surface water from entering the sanitary sewers. Proper bedding and backfilling shall be used on all sewer pipes to minimize maintenance problems and prolong the life of the sewage system. A backfill of at least 12 inches of clean earth free from stones, cinder-fill, or large quantities of organic matter shall be provided over all sewer lines.

F. Manholes shall be provided at every change in direction or grade, at the upper end of every main sewer line, at every junction of two or more branch sewers, at intervals of not more than four 400 feet. Cleanouts extending to grade may be used instead of manholes on sewer lines less than eight inches in diameter. They shall be provided where a manhole would otherwise be necessary and at intervals of not more than 100 feet. All cleanouts shall be at least four inches in diameter and shall be capped with cleanout plugs. A clearance of at least 18 inches over cleanouts is necessary for the purpose of rodding.

G. All sewer service connections shall comply with the Uniform Plumbing

Code.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1505. Solid waste disposal**

A. The storage, collection, and disposal of solid waste in the mobile home park shall be so managed so as not to create health hazards, rodent harborage, insect-breeding areas, accidents, or fire hazards.

B. All solid waste shall be stored in flytight, watertight, rodent-proof containers, which shall be located not more than 150 feet from a mobile home space. Containers shall be provided in sufficient number and capacity to properly store all solid waste.

C. Racks or holders shall be provided for all solid waste containers. Such container racks or holders shall be so designed as to prevent containers from being tipped, to minimize spillage and container deterioration, and to facilitate cleaning around them.

D. All solid waste shall be collected at least twice weekly. Where such collection service is not available from municipal or private agencies, the mobile home park owner or operator shall provide this service in a manner approved by the Health Advisor. Solid waste shall be collected and transported in covered vehicles or covered containers. Containers and vehicles used for the storage and transportation of solid waste, shall be maintained in a clean and sanitary manner.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1506. Insect and rodent control; obnoxious weeds and debris; animal control**

A. Insect and rodent-control measures to safeguard public health as required by the Health Advisor shall be applied in the mobile home park.

B. Pesticide control measures may be required by the Health Advisor to control insects, rodents and/or other vermin which cannot be controlled by other measures. Such methods shall meet the approval of the Health Advisor.

C. Dogs and cats owned by the occupants or owner of the park shall not be permitted to run at large. These dogs and cats must be vaccinated against rabies. Such provisions shall be made by the park operator not to permit animals to roam at large, i.e., horses, cattle, sheep, goats, etc.

D. The mobile home park operator shall take suitable measures to control all obnoxious weeds, prevent the accumulation of debris and protect the tenants

and/or public from stray dogs and cats.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1507. Electric supply; exterior lighting**

A. All mobile home parks shall comply with the National Electrical Code.

B. All electrical alterations or repairs in the mobile home park shall be made in accordance with the National Electrical Code.

C. Any wet areas where standing water or conditions or high moisture may exist such as bathrooms, swimming pools, etc., shall have electrical outlets protected with ground-fault circuit-interrupter devices.

D. Potentially hazardous locations such as driveways, and walkways and steps or stepped ramps shall be individually lighted at night with a minimum illumination of at least 0.3 footcandles.

E. Lighting shall be designed to produce a minimum of 0.6 footcandles throughout the street system.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1508. Fuel gas storage; fuel gas piping**

A. All LPG and Natural gas piping and LP gas storage containers shall comply with the National Fuel Gas Code.

B. Any modifications of the fuel gas storage or piping systems (LPG/Natural Gas) shall be done in accordance with the National Fuel Gas Code.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1509. Fire protection**

A. The mobile home park area shall meet the approval of the Health Advisor and Fire Authority and shall be subject to the rules and regulations of the Navajo Nation fire prevention authority.

B. All mobile home parks shall be kept free of litter, rubbish and other flammable materials.

C. Fires shall be made only in stoves, incinerators, and other equipment intended for such purposes. Incinerators, if provided, shall meet the approval of the Health Advisor.

D. Portable fire extinguishers of a type ABC of a minimum of five pounds shall be kept by the operator or owner of the park in the event of an emergency and readily available. Each tenant shall be responsible for having a two and one-half pound portable fire extinguisher and a smoke detector. Fire alarm system shall also be installed in service buildings and at all other locations designated by such Navajo Nation fire prevention authority, and shall be maintained in good operating condition.

E. Where a public water system with a water main of six inches or larger is available to the mobile home park and can provide 250 gpm at a minimum of 20 PSI, standard fire hydrants shall be located not more than 300 feet from any mobile home building.

F. Where the water supply system does not provide at least a six inch water main, there shall be provided a two inch frost protected water riser not more than 300 feet from a mobile home or building.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1510. Nuisances: prohibition**

No obnoxious, troublesome or offensive activity shall be carried on or allowed to exist at a mobile home, or shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. The mobile home park must be maintained in a safe and sanitary manner at all times by the park owner or his agent. It shall be the responsibility of the mobile home park owner to maintain the operation of the park in compliance with Subchapter 3 as part of the lease or rental agreement.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1511. Additions and skirting**

A. Skirting of mobile home is permissible, but areas enclosed by such skirting shall be maintained so as not to provide a harborage for rodents, or create a fire hazard as approved by the management. Skirting when used shall comply with the Uniform Building Code.

B. No permanent additions shall be built onto or become a part of any mobile home unless they are in accordance with requirements, established by the Health Advisor, so as not to cause a health or safety hazard.

C. A landing shall be provided by the occupant of the mobile home that mounts flush to but not less than 2" below the main door of the mobile home. The stairs for this landing shall have railing of sufficient strength (i.e., thick rot-treated wood or metal) to protect occupant from potential fall or serious injury. The structure shall be properly maintained at all times.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1512. Alterations, renovations or construction plans**

Whenever any alterations, modifications, or new construction of a mobile home park is contemplated by the operator or prospective operator, three sets of plans and specifications shall be submitted to the Regulatory Authority, Health Authority (IHS), and the Fire Authority for their review. These plans must meet the approval of the Health Advisor, Fire Authority, and Regulatory Authority. All alterations, modifications or new construction must be in accordance with the approval plans.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

### **Subchapter 7. Violation of Provisions**

#### **§ 1551. Notice**

A. When the Health Advisor recommends action pursuant to violation of any provisions of this Chapter, the Regulatory Authority shall give notice to the owner responsible for such violation.

B. Such notice shall be in writing including a statement of the reasons for its issuance; allow reasonable time for the performance of any action required; be served upon the owner or his agent; and contain an outline of remedial action, which if taken will affect compliance with the provisions of this Chapter.

C. Such notice shall be deemed to have been properly served upon the owner or his agent when a copy thereof has been sent by registered mail to his last known address or when he has been served by any other method authorized by the Regulatory Authority.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

### **§ 1552. Hearing**

A. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this Chapter, within 10 days of notice, may submit a written petition to the Regulatory Authority for a hearing before the Health and Social Services Committee which shall set a time and place for such a hearing and will give the petitioner written notice thereof.

B. The hearing shall be scheduled (commenced) at the next duly called Health and Social Services Committee meeting after the day on which the petition was filed; provided, that upon application of the petitioner, the Health and Social Services Committee may postpone the date of the hearing for a reasonable time period if the petitioner has submitted sufficient reason for such postponement. The petitioner shall have the right to representation and shall be given an opportunity to be heard, and to show cause why such notice should be modified or withdrawn.

C. Any notice served pursuant to 13 N.N.C. § 1551 shall automatically become an order if a written petition for a hearing has not been filed in the office of the Regulatory Authority within 10 days such notice was served.

D. An aggrieved mobile home park owner shall have the right to legal counsel of his choice for representation.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

### **§ 1553. Determination**

A. After such hearing the Health and Social Services Committee with the consultation of the Health Advisor, will sustain, modify, or withdraw the notice, depending on the findings as to the compliance or noncompliance with these regulations. If the Health and Social Services Committee shall sustain or modify such notice, it shall be deemed to be an order.

B. After a hearing in the case of any notice suspending any permit required by these regulations, when such notice shall have been sustained by the Health and Social Services Committee, the permit shall be deemed to have been revoked; provided, however, that the Health and Social Services Committee may grant a further opportunity to comply with these regulations in its sound discretion.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

### **§ 1554. Record of proceedings**

The proceedings at such hearing including the findings and decisions of the Health and Social Services Committee shall be reduced to writing and entered as a matter of public record. Such record shall include every notice or order issued in connection with the matter.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1555. Emergency action**

Whenever the Regulatory Authority or the Health Advisor finds that an emergency matter exists which requires immediate action to protect the public health, the Regulatory Authority or Health Advisor may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as is deemed necessary to meet the emergency. Notwithstanding any other provision of this Chapter, such order shall be effective immediately, but upon petition to the Health and Social Services Committee, petitioner shall be afforded a hearing as soon as possible. After such hearing, depending upon the findings as to compliance or noncompliance with the provisions of the Navajo Mobile Home Park Code, the Health and Social Services Committee may continue the order in affect, modify it or revoke it.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1556. Forfeiture of right to do business**

Any owner of a mobile home park found in violation of the provisions of this Chapter and who remains in violation after exhausting remedies provided in 13 N.N.C. § 1552, may forfeit his right to operate a mobile home park and this business site lease held by an owner shall be terminated and/or revoked upon the recommendation of the Health and Social Services Committee, Economic Development Committee, and the Transportation and Community Development Committee, and upon the final approval of the Government Services Committee or its successor.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1557. Sanction(s)**

Any person who violates any provision of this Code shall be fined not less than three hundred (\$300.00) dollars, and each day's failure to comply shall constitute a separate violation.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1558. Severance clause**

Any Section, Subsection, Sentence, Clause or Phrase in this Code that is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Code.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1559. Effective date**

The effective date of the provisions of this Navajo Nation Mobile Home Parks Code shall be July 20, 1986. Existing and operating mobile home parks will have two years to comply with this Code.

#### **History**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

#### **§ 1560. Prior inconsistent laws**

Upon the effective date of this Navajo Nation Mobile Home Parks Code, 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**

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

### **Chapter 9. Dog and Cat Control**

#### **§ 1701. Definitions**

In this Chapter, the following words and terms shall, unless the context indicates a difference in meaning, have the meaning given herein:

- A. "Animal" means any live dog or cat, domestic or wild.



B. "Animal Owner" means every person in possession of or who harbors any animal or who shall suffer any animal to remain about the premises.

C. "Animal Shelter" means any facility operated by a humane society, or governmental agency, or its authorized agents for the purpose of impounding or caring for animals held under authority of this Chapter or Navajo Nation law.

D. "Commercial Animal Establishment" means any pet shop, grooming shop, auction, zoological park, performing animal exhibition or kennel.

E. "Harboring". The occupant of any premises on which an animal is kept or to which an animal customarily returns for daily food and care, is presumed to be harboring or keeping the animal within the meaning of this Chapter.

F. "Abandonment of Animals". Any owner or owners who leave an animal off the premises without provision for care or control by another person.

G. "Kennel" means any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats; or any premises of any person harboring dogs or cats over three months of age.

H. "Licensing Authority" shall mean the Division of Community Development within the Executive Branch of the Navajo Nation.

I. "Person" means any individual, household, firm, partnership, corporation.

J. "Licensed Veterinarian". A person with a Doctor of Veterinary Medicine Degree licensed to practice within the United States and the Navajo Nation.

K. "Rabies Vaccination" shall mean the inoculation of a dog, cat or other animal with a rabies vaccine approved by the Licensing Authority.

L. "Quarantine". To detain or isolate an animal suspected of being infected with rabies.

M. "Restraint" means securing an animal by a leash or lead, or under control of a responsible person and obedient to that person's commands, or within a fenced area capable of confining the animal.

N. "Running at Large" means to be off the premises of the owner and not under the control of the owner or an authorized person over 12 years of age, either by leash or otherwise, but an animal within the automobile or other vehicle of its owner shall be deemed to be upon the owner's premises.

O. "Dog Pack". Three or more dogs running at large together.

P. "Vicious Animal". Any animal that inflicts unprovoked bites or attacks human beings or other animals either on public or private property, or in a vicious or terrorizing manner, approaches any person in apparent attitude of attack upon the streets, sidewalks or any public grounds or places.

Q. "Bite". A puncture or tear of the skin inflicted by the teeth of an animal.

R. "Health Advisor". A person with specialized training in the identification and control of zoonotic diseases in dogs and cats such as rabies which might infect humans and other animals. This individual may be a representative of the United States Public Health Service, a licensed veterinarian or a designee of the Director of the Community Dog and Cat Control Program.

### **History**

CO-54-84, October 24, 1984.

### **§ 1702. Licensing**

The licensing requirements are as follows:

A. License Required. Any person owning, keeping, harboring, or having custody of any animal three months of age or older within the territorial jurisdiction of the Navajo Nation must obtain a license as herein provided. All licenses shall expire December 31 of each year and the full amount for a required license shall be paid for any fraction of the licensing year. Upon collection of the license fee by the Licensing Authority, a dated receipt shall be issued indicating the name and address of the owner, description of the animal, the appropriate fee, license numbers, year and location of issuing office.

B. License Displayed. The license tag shall be attached to a collar, harness or other device and shall be worn with the rabies tag by the licensed animal at all times, and shall not be removed from any animal by an unauthorized person. The original license receipt and rabies vaccination certificate shall be retained by the owner or harbinger for inspection by any person charged with the enforcement of this Chapter.

C. Rabies Vaccination. No animal shall be licensed without proof of rabies vaccination as provided in the Chapter.

D. Duplicate Tags. In the event of loss or destruction of the original license tag, the owner of the animal shall obtain a duplicate tag from the Licensing Authority.

E. License Fees. Licenses and duplicate tags shall be issued by the Licensing Authority after payment of a fee; fees shall be set by the authority. Public notice of fees shall be made in the Navajo Times and by public display of posters.

F. Failure to Obtain or Display License. Any person who fails to obtain, or to display the license tags as provided by Subsection (B) shall be required to pay a fine set by the Licensing Authority.

G. Transferability. Animal licenses are not transferable. Any person attaching a license or rabies tags to any animal other than the animal for which such tag was originally issued shall be required to pay a fine set by the

Licensing Authority.

### **History**

CO-54-84, October 24, 1984.

### **§ 1703. Permits**

Permit requirements are as follows:

A. Permits Required. No person, partnership or corporation shall operate a commercial animal establishment or animal shelter within the territorial jurisdiction of the Navajo Nation without first obtaining a permit in compliance with this Section and with all other licensing laws of the Navajo Nation. All permits shall expire December 31 of each year and all fees shall be prorated for any fraction of the licensing year. Upon collection of the permit by the Licensing Authority, a dated receipt shall be issued indicating the name and address of the owner of the commercial animal establishment, and the appropriate fee.

B. Change in Ownership. If there is a change in ownership of a commercial establishment, the new owner may have the current permit transferred to his name upon payment of a transfer fee.

C. Permit Fees. Animal permits shall be issued upon payment of the applicable fee to be set by the Licensing Authority pursuant to § 1702 (A) (5).

D. License Option. A person operating a kennel for the breeding of dogs or cats may elect to license animals individually.

E. Failure to Obtain Permit. Any person who fails to obtain a permit before opening any facility covered by this Section shall pay a fine set by the Licensing Authority.

F. All facilities covered by this Section shall be operated in a safe and sanitary manner. Humane treatment of animals covered under this Section is required. Penalty for violation of this Subsection shall be a fine set by the Licensing Authority and/or revocation of permit.

### **History**

CO-54-84, October 24, 1984.

### **§ 1704. Rabies control**

Rabies control provisions are as follows:

A. Vaccinations.

1. Every person owning or harboring a dog and cat three months of age or older for five or more days shall have such animals vaccinated against rabies with an approved vaccine by a licensed veterinarian or by persons authorized by the Director. This vaccine shall be listed as an approved vaccine in the most recent Compendium of Animal Rabies Vaccine

prepared by the National Association of State Public Health Veterinarians, Inc.

2. Dogs whose vaccination expires during the calendar year will be vaccinated during the months of January, February or March prior to their vaccination expiration date. Cats will be vaccinated during the months of January, February and March prior to their vaccination expiration date for the current calendar year; provided, however, that persons acquiring dogs and cats between April 1 and December 31 shall immediately following acquisition have such animals vaccinated.

B. Certificate of Vaccination. Upon vaccination the veterinarian administering the vaccine, or the authorized persons authorizing rabies vaccine, shall execute and furnish to the owner of the animal as evidence thereof a certificate upon a form furnished by the Licensing Authority. The veterinarian or administrator of a rabies vaccine shall retain a duplicate copy and one copy thereof shall be filed with the Licensing Authority. Such certificate shall contain the following information:

1. The name, address and telephone number of the owner or harborer of the inoculated animal;
2. The date of inoculation;
3. The type of vaccine used including the manufacturer and the serial (lot) number;
4. The date the vaccination expires in the dog and cat;
5. The year and serial number of the rabies tag; and
6. The breed, age, color and sex of the inoculated animal.

C. Rabies Tag. Concurrent with the issuance and delivery of the certificate of vaccination referred to in § 1704(B), the owner of the animal shall attach to the collar or harness of the vaccinated animal a metal tag, serially numbered and bearing the year of issuance, The Licensing Authority shall furnish an adequate supply of such tags to each veterinarian or authorized grantee designated to perform such vaccination, with a fee to be set by the Licensing Authority pursuant to § 1702 (E).

D. Duplicate Tags. In the event of loss or destruction of the original tag provided in Subsection (C), the owner of the animal shall obtain a duplicate tag from the Licensing Authority for a fee set by the Licensing Authority pursuant to § 1702 (E).

E. Designation of Qualified Persons. All veterinarians who are duly registered and licensed to practice veterinary medicine in the United States are hereby designated as authorized to vaccinate animals against rabies and to execute certificates of vaccination as provided by law. Also, health advisors, who have received specialized training in vaccinating animals against rabies, are authorized to vaccinate animals.

F. Proof. It shall be unlawful for any person who owns or harbors any

dog, cat or other animal to fail or refuse to exhibit a copy of the certificates of vaccination upon demand to any person charged with the enforcement of this Chapter.

#### **History**

CO-54-84, October 24, 1984.

#### **§ 1705. Notice to Licensing Authority of animal bite**

Requirements when a person is bitten by an animal are as follows:

A. Duty to Report. When any person is bitten by an animal, it shall be the duty of such person or his parent or guardian and the owner or keeper of the animal to immediately notify the Licensing Authority of the incident and the Navajo Nation Police Department.

B. Quarantine of Animals. Any animal which has bitten a person shall be observed for a period of 10 days from the date of the bite. The procedure and place of observation shall be designated by the Licensing Authority. If the animal is not confined on the owner's premises, confinement shall be in an authorized Animal Shelter or at any veterinary hospital of the owner's choice. Stray animals whose owners cannot be located shall be confined in an authorized Animal Shelter. The owner of any animal that has been reported as having inflicted a bite on any person shall on demand produce said animal for quarantine as prescribed in this Section. Refusal to produce said animal constitutes a violation of this Section and each day of such refusal shall constitute a separate and individual violation.

C. Any dog or cat being held in quarantine which develops signs and symptoms which may be indicative of rabies, shall be humanely killed by a Health Advisor and its head/body submitted to a laboratory qualified to conduct rabies analysis.

D. Removal of Animals of Quarantine. No person shall remove from any place of isolation or quarantine any animal which has been isolated or quarantined as authorized without the consent of the Licensing Authority.

#### **History**

CO-54-84, October 24, 1984.

#### **§ 1706. Dogs or cats bitten by rabid animals**

Any dog or cat bitten by an animal known or proved to be rabid shall be killed immediately by its owner or by a person authorized by the Director, provided that any dog or cat which has been vaccinated at least three weeks before being bitten shall be revaccinated against rabies and confined for 90 days. At the end of the confinement period, the dog or cat shall be released if declared free of rabies by a licensed veterinarian. If, as determined by the veterinarian, the dog or cat develops rabies during the period of confinement, the owner or keeper shall have it killed and properly disposed of.

#### **History**

CO-54-84, October 24, 1984.

**§ 1707. [Reserved]**

**History**

**Note.** Previous § 1707, "Injury to Livestock", enacted by CO-54-84, October 24, 1984, was deleted by CMY-27-06, May 12, 2006, the Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

**§ 1708. Nuisance**

No animal owner or keeper shall harbor, maintain or permit on any lot, parcel of land or premise under his control, any dog or other animal which by any sound or cry shall disturb the peace and comfort of the inhabitants of the neighborhood or interfere with any person in the reasonable and comfortable enjoyment of life or property.

**History**

CO-54-84, October 24, 1984.

**§ 1709. Restraint of animals**

A. It shall be unlawful for any person owning or having charge of any animal, except a domestic house cat, to permit such animal to run at large, unless such animal is restrained by a leash not to exceed six feet in length and is in charge of a person competent to restrain such animal.

B. Every female dog or cat in heat shall be confined in a building or secure enclosure in such a manner that such animal cannot come into contact with another dog or cat except for planned breeding. Any person permitting a female dog in heat to run at large shall be cited into Navajo Nation Court.

**History**

CO-54-84, October 24, 1984.

**§ 1710. Vicious animals; liability for dog bites**

A. No person shall keep any animal known to be vicious and liable to attack and injure human beings unless such animal is securely kept so as to prevent injury to any person. The owner of such an animal must post a sign on his property warning others to be aware of the animal.

B. The owner of any dog which bites a person when the person is in or on a public place, or on the property of the owner of the dog, shall be liable for damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner's knowledge of its viciousness.

C. A person is lawfully in or on the private property of the owner of a dog within the meaning of this Section when an invitee or guest, or when in the performance of a duty imposed upon him by law or by ordinance.

D. Proof of provocation of the attack by the person injured shall be a defense action for damages.

### **History**

CO-54-84, October 24, 1984.

### **§ 1711. Impounded animals**

Provisions for impounded animals are as follows:

A. Animal Shelter. An Animal Shelter shall be established for the purpose of caring for any animal impounded under the provisions of this Chapter, and such shelter shall be constructed to facilitate cleaning and sanitizing and shall provide adequate heating and water supply. The Animal Shelter shall be operated in a safe and sanitary manner and shall meet Indian Health Services and Navajo Nation standards.

B. Removal of Animals from Animal Shelter. It shall be unlawful for any person to remove any impounded animal from the Animal Shelter without the consent of the Licensing Authority.

C. Removal of Bite Animals from Quarantine. Animals impounded because of bites shall not be removed from the pound until after the 10 days observation period and a release of the Licensing Authority is secured.

D. Disposition of Impounded Licensed Animals. As soon as practicable after impoundment, the Licensing Authority shall notify the owner, provided that a name tag including the owner's name, address and telephone number is attached to the dog or cat collar or harness. Any impounded animal which is licensed may be redeemed by the owner upon payment of the impoundment fee, care and feeding charges, veterinary charges, and such other costs as set by the Licensing Authority. If such animal is not redeemed within eight days, it shall be deemed abandoned and the Licensing Authority may humanely euthanize said animal.

E. Disposition of Impounded Unlicensed Animals. As soon as practicable after impoundment, the Licensing Authority shall notify the owner, provided that a name tag including the owner's name, address and telephone number is attached to the dog or cat collar or harness. Any impounded animal which is not licensed may be redeemed upon payment of the payment of the license fee, impound fee, care and feeding charges, veterinary charges, and presentation of proof of rabies vaccination, and such other costs as set by the Licensing Authority. If such animal which is not wearing its tags as required by this Code is not redeemed within three days, it shall be deemed abandoned and the Licensing Authority may humanely euthanize the animal as such.

F. Impoundment Fee. An owner reclaiming an impounded cat shall pay a fee to be set by the Licensing Authority, pursuant to § 1702 (A) (5).

G. Unwanted Animals. Unwanted and/or wild or untamed dogs and cats can be immediately destroyed or put up for adoption for a fee to be set by the Licensing Authority.

H. Neutered/Spayed. All male dogs and cats shall be neutered prior to adoption. All female dogs and cats shall be spayed prior to adoption. The cost of these services shall be the responsibility of the person/persons adopting the dog and/or cat.

#### **History**

CO-54-84, October 24, 1984.

#### **§ 1712. Safety provisions**

Safety provisions are as follows:

A. Interference with the Licensing Authority or Its Authorized Representatives. No one shall interfere with, molest, hinder, or prevent the Licensing Authority or its authorized representatives in the discharge of their duties as herein prescribed, or to violate the provisions of this Chapter.

B. Penalty for Violation. Unless otherwise provided in this Chapter, any person who violates any of the provisions of this Chapter shall be fined no less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00).

C. Severance Clause. If any Section, Subsection, Sentence, Clause or Phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter.

D. Safety Clause. The Navajo Nation Council hereby finds, determines and declares that this Chapter is necessary for the immediate preservation of the public's peace, health and safety.

#### **History**

CO-54-84, October 24, 1984.

### **Chapter 11. Burials**

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

#### **§ 1901. Navajos**

Any member of the Navajo Nation, regardless of place of residence or place of death, may be buried in a Navajo Nation cemetery.

#### **History**

CF-10-58, February 12, 1958.

#### **§ 1902. ~~Non-Navajos~~—Generally**

Dead persons who were not members of the Navajo Nation may be buried in Navajo Nation cemeteries with the approval of the President of the Navajo Nation, or of the Vice-President if the President is absent from Window Rock



### **History**

CF-10-58, February 12, 1958.

**Note.** Insertion of word "President" pursuant CD-68-89, Resolve #9.

### **§ 1903. Husbands, wives or children**

Where a Navajo Indian is buried in a Navajo cemetery, such Indian's non-Navajo husband or wife, or their children, may be buried in the same cemetery without special approval of the President or Vice-President of the Navajo Nation.

### **History**

CF-10-58, February 12, 1958.

**Note.** Insertion of word "President" pursuant CD-68-89, Resolve #9.

### **§ 1904. Unclaimed bodies**

A. It shall be the duty of the Navajo Nation to provide decent burial in a Navajo cemetery for all unclaimed bodies found on Navajo Nation land. In carrying out this duty under this Section, the Nation may request the assistance of the appropriate branch of the Navajo Nation.

B. The Navajo Nation shall have a lien on the estates of persons buried under Subsection (A) of this Section for funeral expenses, but no charge shall be made for burial privileges, or costs of opening or closing the grave.

### **History**

CF-10-58, February 12, 1958.

### **§ 1905. Removal of bodies**

Bodies buried in Navajo Nation cemeteries may not be moved without the consent of the next of kin of the deceased. In the event the next of kin cannot be determined or located, then such bodies may be moved, upon approval by the Government Services Committee of the Navajo Nation Council.

### **History**

CO-60-73, October 23, 1973.

CF-10-58, February 12, 1958.

### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454.

### **§ 1906. Annual allotment for expenses**

There shall be allotted annually from Navajo Nation funds an amount not to exceed ten thousand dollars (\$10,000) to pay all costs of funeral and/or burial expenses and transportation of bodies of indigent Navajos.

#### **History**

1922-1951 Res. p. 44, November 5, 1947.

### **Subchapter 3. Cemeteries**

#### **§ 1951. Designation of sites**

The Government Services Committee is authorized to designate sites for memorial and general cemeteries on the Navajo Nation not to exceed 30 acres, upon the recommendation of a majority of members of the district delegation to the Navajo Nation Council.

#### **History**

CJA-09-07, January 25, 2007. Increased the maximum acreage from 10 acres to 30 acres.

**Note.** Slightly reworded by deleting the word "of", which came after "Navajo Nation".

CF-10-58, February 12, 1958.

Tribal Council Resolution 1922-1951 Res. p. 43 amended by CF-10-58, § 6.

**Note.** Insertion of words "Government Services" pursuant CD-68-89, Resolve #10.

#### **Cross References**

Committee powers, see 2 N.N.C. § 423(C).

#### **§ 1952. Maintenance**

The Government Services Committee is authorized to provide for improving, safeguarding, and beautifying memorial and general cemeteries as the final resting places for Navajos by adopting such rules and regulations as they see fit.

#### **History**

CF-10-58, February 12, 1958.

**Note.** Insertion of words "Government Services" pursuant CD-68-89, Resolve #10.

#### **§ 1953. Administration; delegation of authority**

The Government Services Committee is authorized to delegate to such officers and departments of the Navajo Nation, as they see fit, the authority to administer memorial and general cemeteries so far as is consistent with the

obligations of the Government Services Committee to the Navajo Nation Council.

#### **History**

CF-10-58, February 12, 1958.

**Note.** Insertion of words "Government Services" pursuant CD-68-89, Resolve #10.

### **Chapter 13. Health Commitment Act of 2006**

#### **§ 2101. Policy**

A. It is the policy of the Navajo Nation that any individual who, due to a physical or mental illness or disorder, is a threat to the health or safety of themselves or others, should receive appropriate treatment in the least restrictive environment.

B. This Act is part of a coordinated community response to care for members of the Navajo Nation, and others to whom the jurisdiction of the Navajo Nation extends, who are suffering from a physical or mental illness or disorder so that the individual and community can be restored to and live in harmony (hózhó).

C. The Navajo principle of k'é (respect, solidarity, compassion and cooperation) shall be applied at all steps of the civil commitment, evaluation, treatment processes, and reintegration of the afflicted person into the community.

#### **History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

**Note.** Previous Chapter 13, "Tuberculosis or Other Contagious Diseases" enacted by CD-59-61, December 4, 1961, was deleted in its entirety by CJA-01-06, January 24, 2006.

#### **§ 2102. Interpretation and application of the Act**

A. The purpose and intent of the Navajo Nation Health Civil Commitment Act of 2006 is to balance the interests of the individual and the community where an individual is suffering from physical or mental illness(es) or disorder(s) and the untreated consequences of the physical or mental illness(es) or disorder(s) presents a reasonable likelihood of serious harm to the health or safety of the afflicted individual or the community, or both.

B. This Act shall be liberally construed to be consistent with the policy of the Navajo Nation expressed in 13 N.N.C. § 2101.

#### **History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

**§ 2103. Responsibilities in coordinating community response**

A. The President of the Navajo Nation, and all divisions, departments, offices, programs, enterprises and entities of the Navajo Nation shall work together to develop a health civil commitment process that meets the needs of the Navajo people through the most effective and efficient use of health care resources available to the Navajo Nation.

B. The Executive Director of the Navajo Division of Health, or his or her designee, shall work with the divisions, departments, offices, programs, enterprises and entities of the Navajo Nation and with external agencies, enterprises and entities, including those of the states and their subdivisions, to ensure that the most urgent needs of the Navajo people are met with the highest quality health care available.

C. The Navajo Nation Rules of Civil Procedure and Rules of Evidence shall apply to all health civil commitment proceedings, unless they are inconsistent with this Act.

**History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

**§ 2104. Definitions**

A. "Least restrictive treatment procedure" means a course of treatment that provides the maximum freedom to the individual while protecting that individual and others, or both, from the individual's behavior, illness or disorder. Treatment in the least restrictive environment does not include detainment in any correctional facility as a result of alleged or adjudicated criminal behavior. An individual shall receive treatment in a facility as close to his or her home as possible.

B. "Least restrictive environment" means that:

1. Each patient committed solely on the ground that there is a reasonable likelihood that he or she will cause harm to himself or herself, or to suffer substantial mental or physical deterioration shall be placed in the most appropriate and therapeutic setting available, that is, a setting in which treatment provides the patient with a reasonable opportunity to improve and which is no more restrictive of his or her physical or social liberties than is believed conducive to the most effective treatment for the patient, and

2. Each patient committed solely or in part on the ground that there is a reasonable likelihood that he or she will cause harm to others shall be placed in a setting in which treatment is available and the risks of physical injury or property damage posed by such placement are warranted by the proposed plan of treatment. Treatment in the least restrictive environment does not include detainment in any correctional

facility as a result of alleged or adjudicated criminal behavior. An individual shall receive treatment in a home or community setting or in a local medical or treatment facility as close to the individual's home as possible.

C. "Likelihood of serious harm" means:

1. A substantial risk of physical harm in the near future to the individual, as manifested by evidence of threats of, or attempts at, suicide or serious physical harm; or

2. A substantial risk of physical harm in the near future to other individuals as manifested by evidence of homicidal or other violent behavior, or evidence that others are placed in reasonable fear of violent behavior and serious harm; or

3. A substantial risk of physical impairment or injury in the near future to the individual as manifested evidence that such individual's judgment is so impaired that he or she is unable to protect himself or herself in the community; or

4. A substantial and serious threat of spread in the near future of an infectious illness which has life-threatening consequences for a significant number of people exposed, which spread can be prevented by reasonable precautions and illness management and where the infected individual either refuses, or is unable to comply with voluntary treatment or confinement procedures, as necessary to protect the public health; or

5. A pregnant woman whose ongoing substance abuse presents a substantial risk to the unborn child.

D. "Individual" or "person" means an adult or minor child under 18 years of age.

E. "Family member" means a blood relative to the third degree or the individual's spouse.

F. "Health care professional" means a health practitioner who has an active State or Navajo Nation license and who works in licensed health care delivery settings or programs, consistent with the training, experience and other requirements identified by their licensing body.

G. "Evaluation" means an assessment consisting of an individual patient's history, corroborating information, presenting signs and symptoms, and physical exam, to include a mental status assessment, as well as necessary laboratory or psychological testing, or both, which results in an opinion on a patient's condition and treatment recommendations by a health care professional.

#### **History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

**Note.** The words "or her" were added following the word "his" at § 2104(B) for

purposes of statutory consistency.

#### **§ 2105. Application for evaluation**

Any adult family member, legal guardian, or employee of a governmental agency suspecting that an individual suffers from an illness or disorder, and as a result presents a reasonable likelihood of serious harm to himself or herself or the community because of an illness or disorder, may apply to the family court for an ex parte order requiring the individual to be held in the least restrictive environment and to undergo an evaluation, as defined in 13 N.N.C. § 2104(G).

A. Evaluation. The evaluation shall be completed within seven working days after the entry of the court order.

B. Application. The application shall contain such information and facts as shown by clear and convincing evidence that the individual's behavior(s), illness(es) or disorder(s) present a reasonable likelihood of serious harm to himself or herself or the community, and warrants an evaluation. Such information and facts shall include, but not be limited to:

1. A statement by the applicant that he or she believes, on the basis of personal observation, that the individual is, as a result of a physical or mental illness or disorder, a danger to himself or herself or the community, and that during the time necessary to complete the requested evaluation, the applicant presents a reasonable likelihood of serious harm; and
2. A statement of the specific nature of the serious harm; and
3. A summary of the observations upon which the statement of serious harm is based; and
4. The signature of the applicant.

C. Scheduled evaluation. The application shall identify one health care professional who will conduct the evaluation, a second health care professional who will concur in the evaluation, and shall include the date and location of the evaluation.

D. Use and protection of health information. Any evaluation conducted pursuant to 13 N.N.C. § 2105 may be used in a health civil commitment hearing held pursuant to 13 N.N.C. § 2106. Evaluation reports shall be maintained in a manner consistent with the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

#### **History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

**Note.** The complete name of the Navajo Nation Privacy and Access to Information Act was provided at § 2105(D).

## § 2106. Petition for treatment

Upon petition by any adult family member, legal guardian, or employee of a governmental agency, and after a hearing on the petition, if the traditional native healing methods are not a viable alternative, the Navajo Nation Family Court may then order an individual to undergo further medical evaluation or a course of treatment, or both.

A. Petition. The petition for treatment of any individual must contain the following information:

1. Name and address of the individual to be treated;
2. Name(s) and address(es) of the person(s) filing the petition;
3. The type of illness or disorder from which the individual suffers;
4. A brief statement of observations describing the individual's communications, behaviors, or actions occurring as a result of the illness or disorder which present a likelihood of serious harm;
5. A statement of the least restrictive treatment procedures available; and
6. A signed evaluation by one health care professional who has conducted the evaluation and a second health care professional who has concurred in the evaluation. In cases where an individual is a danger because of mental illness, one of the two health care professionals shall be a clinical psychologist or a psychiatrist. No liability will attach for any such evaluation statement so long as it is made in good faith and with reasonable professional judgment.

B. Scheduling Order. Upon receipt of the petition that meets the requirements of Subsection A, above, the family court shall schedule a hearing on the merits to be heard on an expedited basis. The family court may immediately order the individual to be held in the least restrictive environment in order to protect the public or individual from him or herself. This temporary holding order may be for a period of up to seven working days, and may be extended, as provided in this Act.

C. Notice to the individual. Upon scheduling of a hearing, and in any event at least 72 hours before the family court conducts the hearing on the petition for court-ordered treatment, the individual shall be served with the following documents:

1. A copy of the petition and evaluation in support thereof; and
2. Notice of the date, time and place of the hearing, which shall be held in the courtroom or other place on the Navajo Nation that the family court may designate to ensure humane treatment with due regard for the comfort and safety of the individual and others; and

3. Advice of individual rights in these proceedings, including, but not limited to:

a. The right to legal counsel, and that, if necessary, the family court will appoint counsel on the same basis as other pro bono appointments; and

b. Adequate time to prepare for the hearing, which time may, however, extend the time of any temporary hold ordered by the family court; and

c. The right to confront the witnesses against him or her; and

d. The right to present the testimony or evaluations of health care professionals on his or her behalf, at his or her own expense; and

e. The right to a fair and impartial hearing into the matter by the family court.

D. Petition hearing.

1. During the petition hearing, the petitioner shall have the burden of proving, through clear and convincing evidence, that the individual suffers from an illness or condition, and as a result presents a reasonable likelihood of serious harm.

2. The individual has the right to counsel during the petition hearing and, if necessary, the family court may appoint counsel on the same basis as other pro bono appointments.

3. The individual shall be present for the petition hearing, shall be afforded all due respect and dignity, and shall be entitled to participate in his or her best interest, unless the family court makes written findings that the individual would be disruptive or has a communicable disease, and no reasonable accommodation is available to facilitate his or her participation. The family court shall require clear and convincing evidence that the individual should not be present at the hearing for such reasons, and, upon making its written findings, may proceed with the hearing in the individual's absence.

4. Hearings on petitions for health treatment shall be closed to the public and court records shall be sealed at the discretion of the court. However, the court may permit the family members of the individual to be present.

E. Independent evaluation. If requested by the individual who is the subject of the petition, the family court may order the petition hearing stayed to allow an independent evaluation of the individual, as defined in 13 N.N.C. § 2104(G), at the individual's expense. The family court shall ensure that the individual is informed of available resources to pay for the independent evaluation. During the stay, the family court may extend its temporary holding



order to protect the individual or others, or both. During the period of the temporary holding order, the individual shall be held in the least restrictive environment.

F. The Navajo Nation Rules of Civil Procedure and Rules of Evidence shall apply to all health commitment proceedings, unless they are inconsistent with this Section.

### **History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

### **§ 2107. Health Commitment Order**

A. After the petition hearing and upon a finding based on clear and convincing evidence that the individual is suffering from an illness or condition which causes the individual to present a reasonable likelihood of serious harm, the family court may order that the individual undergo a course of treatment.

B. The course of treatment ordered shall be the least restrictive treatment procedure available and include traditional native healing methods to the extent advisable. The commitment order shall comply with all certification requirements of the receiving facility or agency that are not inconsistent with the sovereignty of the Navajo Nation.

C. The order shall provide for transportation of the individual and the development of a long-term discharge or other treatment plan, which may include subsequent telephone conferences with the family court.

D. In issuing its order, the family court shall receive information from the Executive Director of the Navajo Division of Health and Executive Director of the Division of Social Services, or his or her designee, regarding available resources for the course of treatment developed by the Navajo Nation, other resources identified by the parties, and other agreements between the Navajo Nation and other governments, if the facility or agency of another government is to be used.

E. The order shall specify when it will be reviewed by the family court, but at a minimum every 120 days. The order shall not be in effect for longer than 120 days without review by the family court.

F. The family court's review must conform to the standards of the original petition hearing, and include a substantive review of treatment and the opinion(s) of the treating health care professional(s). Unless the family court is convinced upon clear and convincing evidence that the individual continues to present a reasonable likelihood of serious harm to himself or herself or others, the individual shall be released, despite the need for further treatment.

G. The individual can be released before the next regularly scheduled family court review upon the determination of the treating health care professional(s) that commitment is no longer necessary, or upon expiration of

the order. Upon such determination, the treating health care professional(s), the individual, or the individual's counsel shall inform the family court that the individual has been released and no further court proceedings are necessary to allow the release.

H. At any time, with or without the concurrence of the individual's guardian or conservator, the individual who is the subject of the health commitment order may petition the family court for release.

#### **History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

#### **§ 2108. Guardianship**

A. The family court may, as part of a health commitment order, appoint an individual, preferably a person acceptable to the individual subject to the order or a willing family member, to serve as a guardian for the individual, or conservator for his or her property, upon a showing, by clear and convincing evidence, that the individual is no longer capable of protecting himself or herself, or his or her property.

B. The guardian or conservator shall act in a fiduciary capacity for the individual or property of the individual he or she has been appointed to serve, and shall take action for the individual's benefit. The family court may make either a general or limited appointment for a specific purpose, but shall limit the guardianship to the specific needs of the individual and require a regular accounting.

C. The family court shall specify a date on which the guardianship or conservatorship will expire. A guardianship or conservatorship ordered under this Section shall not extend beyond the period of commitment ordered under 13 N.N.C. § 2107.

D. The guardian shall be required to be involved in all medical discussions and decisions made for the individual's benefit.

#### **History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

#### **§ 2109. Emergency protective custody**

A. In the event that an individual presents a reasonable likelihood of serious harm outside the regular hours of family court operations, or for emergency care, the individual may be held in protective custody by the Navajo Nation Division of Public Safety for a maximum of 72 hours excluding holidays and weekends, during which an application or petition must be filed and a temporary holding order issued pursuant to Sections 2105 and 2106.

B. Health care professionals may take appropriate actions, as necessary,

to safeguard an individual who comes to the emergency room or treatment room of a health care facility on their own, including actions that are necessary while waiting for appropriate law enforcement personnel to take custody of the individual. To the extent necessary to protect public safety, an individual held in law enforcement custody may be entrusted to appropriate health care professionals to take those actions that are professionally responsible and clinically appropriate.

C. Health care professionals shall not be held personally liable for actions taken when the actions are professionally responsible and clinically appropriate.

D. Emergency Involuntary Mental Health Admissions. A law enforcement officer may detain and transport a individual for emergency mental health evaluation and care in the absence of a family court order, only if:

1. The individual is otherwise subject to lawful arrest; or
2. There are reasonable grounds for the officer to believe that the individual has just attempted suicide; and
3. The officer, based on his or her own observation and investigation, has reasonable grounds to believe that the individual, as a result of a mental disorder, presents a likelihood of serious harm to himself or herself or to others, and requires immediate detention to prevent such harm; and
4. The officer, upon arrival at an evaluation facility is interviewed by the admitting physician or his or her designee, to provide information relative to the need for emergency protective custody; and
5. A health care professional has certified that the individual, as a result of a mental disorder, presents a reasonable likelihood of serious harm to himself or herself or to others, and requires emergency detention to prevent such harm.

#### **History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

#### **§ 2110. Minors**

In all proceedings involving persons under the age of 18 years, the parent(s), guardian, or legal custodian shall be notified and have the right to be present.

#### **History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

#### **§ 2111. Severability**

Should any provision of the Health Commitment Act of 2006 be found invalid by the Courts of the Navajo Nation, the remaining provisions which can be implemented without the invalid provision(s) will be given full force and effect. To this extent, the provisions of the Act are severable.

#### **History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

#### **§ 2112. Periodic review and amendments**

The Health Commitment Act of 2006 may be amended from time to time by the Navajo Nation Council upon the recommendation of the Health and Social Services Committee and the Judiciary Committee of the Navajo Nation Council.

#### **History**

CJA-01-06, January 24, 2006. The Health Commitment Act of 2006.

### **Chapter 15. Child Day Care Centers**

#### **§ 2301. Definitions**

For the purposes of this Chapter the following definitions shall apply:

A. "Child day care center" or "center" shall mean child care agency and includes any person who maintains facilities for the purpose of providing care, supervision or training for five or more children not related to the proprietor under the age of 16 years for periods of more than one hour, but less than 24 hours per day, apart from their parents or guardians for compensation, excepting parochial and private educational institutions which are operated for the sole purpose of providing an education to children in substitution for an education in the public school system.

B. "Director" shall mean the person who is responsible for the operation of the child care agency.

C. "Health Advisor" shall mean the Director, Navajo Area Indian Health Service, or his authorized representative.

D. "Sanitation permit" shall mean a written permit issued by the Navajo Office of Environmental Health upon the recommendation of the Health Advisor, reflecting a day care center's director's compliance with these regulations.

E. "Infant" shall mean a child under 18 months or one who has not yet reached the steady walking stage, or who requires the use of diapers.

#### **History**

ACMY-192-71, May 12, 1971.

#### **§ 2302. ~~Permits-Requirement;~~ display; application; failure to obtain**

No person shall operate a child day care center on the Navajo Nation unless he possesses a valid Sanitation Permit issued to him by the Navajo Office of Environmental Health. Such permit shall be displayed in a prominent place within the premises. Application for permits shall be in writing signed by the applicant and shall include the name and address of the applicant and the location and legal description of the child day care center. Failure to obtain or maintain a Sanitation Permit may be cause for termination of a day care center lease.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Paragraph slightly reworded for purpose of clarity.

#### **§ 2303. Succession to ownership or control of center**

A. No permit shall be transferrable.

B. Every person who succeeds to ownership or control of a child day care center shall give notice in writing to the Navajo Office of Environmental Health within ten days after having purchased, received by transfer, or gift, or otherwise acquired interest in or control of the center. Such notice shall include the name and address of the previous owner of the center. Each person who succeeds to ownership or control of a child day care center shall, within ten days, file application for a Sanitation Permit to be issued to him in the manner provided in this Chapter. Failure to file such application within said ten day period shall result in suspension of the privilege to operate such center until this provision is complied with.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Slightly reworded for purpose of clarity.

#### **§ 2304. Application inspection; issuance of permit; hearing on denial**

A. Before a permit is issued, the Health Advisor shall inspect the child day care center for which an application for permit has been filed to determine its compliance with this Chapter.

B. Upon certification of the Health Advisor that a child day care center for which an application for permit has been filed meets the requirements of this Chapter, the Navajo Office of Environmental Health shall issue a Sanitation Permit.

C. Any person whose application for permit under these regulations has been denied may request and shall be granted a hearing before the Government Services Committee under the procedure provided by 13 N.N.C. § 2324.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Subsection (C) substituted "shall" for "will".

Words "Government Services" inserted pursuant CD-68-89, Resolve #10.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454.

#### **§ 2305. Rules for admission to center**

Each child day care center shall establish rules for admission, which shall include the following:

A. The child shall be enrolled by his parent or other person responsible for his care;

B. Information needed for the child's record shall be secured;

C. Provision shall be made to release children only to a person authorized by parents or guardians; and

D. The admission plan shall include instructions and authorization for the emergency care of the child in case of accident or illness when the parents or persons responsible cannot be contacted.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Slightly reworded opening Paragraph and Subsections (C) and (D) for purpose of clarity.

#### **§ 2306. Staff requirements and attendance**

A. When children are in attendance, the director or a qualified person designated by the director shall be on the premises and in charge of the child day care center. The minimum age for the director and his qualified designate shall be 21 years.

B. Children shall be grouped according to age and maturity for supervision, and all groups of children shall be directly supervised at all times. In groups of mixed age, the maximum number of children per staff member shall be that set for the age bracket the youngest child in the group is in. The maximum number of children in attendance per staff member in child day care centers licensed for more than 10 children shall not exceed:

10 infants or children up to age three;

15 children three to four years old;

20 children four to five years old; and

25 children five years old or more.

C. Any child day care center shall have a minimum of two staff members on duty whenever the number of children on the premises exceeds 10. In any center where 10 or less children are in attendance, only one staff member need be on the premises, providing there is a specific plan in the event of an emergency whereby another staff member is continuously and readily available to relieve the one in charge should an emergency arise.

D. Staff members to be counted in determining the number of staff in proportion to the number of children are the director, teachers, and assistants engaged in care and supervision of children. Other than the director and his designate, the minimum age of staff members shall be 18 years of age; except that persons 16 to 18 years of age may work as staff assistants provided they are under adult supervision at all times. These persons shall be counted as staff when a ratio of one 16 to 18-year-old person to one or more adults is maintained. Domestic and maintenance personnel shall not be included in the count of the number of staff members necessary for child supervision.

E. Sufficient domestic and maintenance personnel shall be employed to insure proper and sanitary food service and preparation, and plant safety and maintenance. No part of the maintenance of the child day care center shall be dependent upon the work of the children under supervision.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Partially reworded for purpose of clarity.

#### **§ 2307. Personnel; hygiene; conduct**

A. Good personal hygiene shall be practiced by all persons working in a child day care center. All personnel shall wear clean outer garments, maintain a high degree of personal cleanliness, wash hands after visiting the toilet room and refrain from using tobacco in any form while engaged in the preparation or service of food or while working directly with the children. Personnel shall not be in the center while ill with a disease in a communicable form, e.g. diarrhea, upper respiratory infections and skin lesions.

B. A member of a child day care center staff, and members of a household if the center is conducted in a private home, shall not be addicted to drugs, a chronic alcoholic, known to have abused children or have been found guilty of immoral conduct involving children.

C. All personnel responsible for supervising children shall refrain from aggressive disciplinary methods which injure or unreasonably frighten children.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Subsections (A) and (B) slightly reworded for purpose of clarity.

#### **§ 2308. Construction of buildings generally—Submission of plans**

A. The minimum standards and requirements of this Chapter shall apply to all existing and new child day care center buildings except where specific exceptions are permitted by this Chapter. Additions to existing child day care buildings, conversion of existing buildings or portions thereof for use as centers, and portions of buildings under going any alteration other than repair, shall meet standards required for new building construction.

B. Preliminary plans and three copies of final work drawings and specifications showing all information adequate to check compliance with this Chapter shall be submitted to the Health Advisor before any construction or alteration is started, before any system of water supply, plumbing, sewage, garbage or refuse disposal is installed or materially altered, and before any structural or functional change substantially altering the original design for human occupancy is made.

C. An agency building in existence at the time of the passage of this Chapter must comply with all requirements immediately, when feasible, and totally within 60 days. Rooms of new agencies used for preschool headquarters, first or second grade pupils shall not be located above the first story above grade except in buildings of concrete or steel construction.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Subsections slightly reworded for purposes of clarity.

#### **§ 2309. Heat; light; use for other purposes; laundry, storage**

A. All rooms used by children shall be adequately heated and cooled. Ventilation shall not subject children to drafts.

B. All parts of all buildings shall be adequately lighted and free of glare. A minimum of 30 sustained foot-candles of illumination shall be maintained at work and play areas, except where higher levels are required by the Health Advisor.

C. No child day care center building shall be located on the same premises or operated in conjunction with a rest home, nursing home, sheltered care home, boarding house, rooming house for adults, or multiple or single dwelling unit where such operations involve the use in common of any facility during hours of child care operation. If a child day care center building is a family residence, the building or portion of building to which children have access shall be used only for child care purposes while it is in operation.

D. Adequate laundry facilities shall be provided unless arrangements are made for a commercial concern with approved facilities to provide services. If laundry is done on the premises, the installation shall comply with applicable codes. Wash water temperature shall be optimum for the material being laundered. Sorting and clean laundry areas must be kept separate and so designated, and the procedure for handling and washing laundry must be approved by the Health Advisor.



E. All agencies shall provide storage space for:

1. Indoor and outdoor play equipment and materials so children can freely use and replace items;
2. Cots and bedding convenient to the napping area, and separate from other storage which would preclude proper sanitation practices; and
3. Each child's clothes and personal belongings.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Slightly reworded for purpose of clarity.

#### **§ 2310. Swimming and wading pools**

Swimming and wading pools may be installed at the option of the owner and must conform to the minimum rules for semipublic and wading pools. All swimming pools shall be enclosed by a solid wall or fence or chain link fence not less than five feet nor more than six feet in height so as to prevent uncontrolled use and uninvited access. Adequate supervision of the pool's use must be provided at all times. Water play is encouraged. When temporary pool equipment is used there shall be full-time supervision and only clean, fresh water shall be used and equipment shall be properly drained, cleaned and stored when not in use.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Last two sentences slightly reworded for purpose of clarity.

#### **§ 2311. Toilet facilities**

A. An adequate number of toilets and lavatories, easily accessible for use and supervision shall be provided in the following ratio:

1. At least one flush toilet and one lavatory for 10 or less children;
2. At least two flush toilets and two lavatories for 11 - 25 children;
3. At least one flush toilet and one lavatory for each additional 20 children; and
4. In computing the number of units required, infants who use diapers need not be included.

B. The facilities shall be child-sized or equipped with stairs or platforms, shall be in a condition that allows for thorough cleaning, and shall not open directly to the kitchen.

C. There shall be facilities for the exclusive use of the children while they are in attendance in a child day care center operated in a family home.

D. It is desirable to provide, for children of elementary school age and above, separate facilities for each sex.

E. Toilet rooms shall be ventilated either by windows that open or by mechanical ventilation.

F. Temperate water, under pressure, soap and individual towels of an approved type shall be provided in the lavatories and within reach of the children.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Slightly reworded Subsections (B) and (C).

#### **§ 2312. Sewage; new plumbing**

All sewage and liquid wastes shall be discharged into a municipal sewage system, or in a manner approved by the Health Advisor. All new plumbing shall comply with applicable codes.

#### **History**

ACMY-192-71, May 12, 1971.

#### **§ 2313. Drinking water**

Drinking water shall be easily accessible to the children on the playground and in playrooms. Drinking fountains shall be of a type approved for schools with angle jet and orifice guard above the rim and regulated pressure. Only an approved water supply shall be used.

#### **History**

ACMY-192-71, May 12, 1971.

#### **§ 2314. Sleeping facilities**

A. A sufficient number of cots or cribs shall be provided with only one child to a crib or cot. Cots and cribs shall be of sound construction and kept clean and repaired. Bedding shall be laundered as needed and always upon change of occupancy.

B. Sufficient staff supervision shall be provided.

C. If used, individual rugs must be clean and comfortable, and shall only be used for rest periods of under five hours. A child shall not be lain in direct contact with the floor.

D. Bunk beds may be used only by child day care centers using them at the time of adoption of this Chapter and only with the approval of the Health Advisor.

E. Where a private home is used as a child day care center, a family bed shall not be used by the children.

### **History**

ACMY-192-71, May 12, 1971.

**Note.** Partially reworded for purpose of clarity.

### **§ 2315. Safety precautions**

#### **A. Combustibles.**

1. Attic space shall not be used for the storage of readily combustible materials nor for any other purpose unless approved by the fire inspector and the Health Advisor. Furnace rooms and rooms where hot water tanks are located shall not be used for storage of combustibles.

2. All flammable liquids, other than one quart maximum quantity used for medical purposes, shall be stored in approved-type metal safety containers.

3. Combustible waste material shall be kept in metal containers with tight-fitting covers and shall not be accumulated in or around the premises. All paper, cotton, cloth batting, vines, leaves, straw and materials used for decorations or costumes shall be flame-proofed or manufactured of noncombustible material.

4. Trash burning shall be done on the premises only in approved incinerators.

#### **B. Fire.**

1. Each new and existing child day care center building with an occupant load of more than 25 shall be provided with a manually operated fire alarm system.

2. Portable fire extinguishers shall be installed and maintained in all centers for emergency fire protection. Extinguishers hung on wall brackets shall have the top handhold within five feet of the floor. The use of carbon tetrachloride is prohibited. Each facility should provide a connected garden hose of adequate length to assist in fire fighting. All chemical fire extinguishers must be recharged one year from date of last charge, immediately after use or as otherwise necessary. Such recharge shall be done by a qualified person. Extinguishers shall be tagged showing date of charging and company performing the work. Written instructions shall be posted which shall include special staff assignments and general procedures in case of fire or other disaster. A fire evacuation drill shall be executed at the time of the annual fire inspection.

C. Exits and stairs.

1. A minimum of two exterior exits shall be provided for each floor level in all child care centers. Exit ways shall be kept clear of obstructions and at least 30 feet in width.

2. The door latch activator of required exit doors of all centers shall be located within 40 inches of the floor. Required exit doors shall have only one latching device. These devices shall be readily operable from the inside and without the use of a key or any special effort or knowledge.

3. All basement stairways shall be separated from the main floor by a full door at the main floor level and such door shall have a self-closing device and be kept locked when not in use. All stairways leading to rooms used by children of school age shall be equipped with railings suitable for the use of children.

D. Heating equipment. Heating facilities shall be adequately protected to prevent children from contacting them. The use of unvented or open-flame space heaters, portable heaters or sawdust burning furnaces is prohibited. All unused gas outlets shall have the valves removed and shall be capped at the wall or floor with a standard pipe cap. All gas fired devices shall be connected to the gas supply by means of a rigid pipe and equipped with automatic pilot gas shutoff controls. Such systems shall be inspected and serviced as needed and at least annually by a properly qualified person.

E. Electrical wiring. Electrical outlets shall be of a safe type or located out of reach of children. Extension cords shall not exceed seven feet in length and shall not extend from room to room. Cords shall not be stapled or otherwise permanently fastened to walls, fixtures, floors or ceilings and shall not be run on the floor under rugs. Electrical wires extending over outdoor play areas shall be securely supported, fully insulated and located at least 12 feet above the play area. All exposed wiring shall be fully insulated. The installation of any new electrical work or equipment shall comply with all applicable codes. Applicable utility company regulations shall govern service connections.

F. Windows. All low windows or arcadia doors shall be protected sufficiently to assure the safety of the children.

G. Poisons and acids. House and garden insecticides, medicines, flammable liquids in safety cans and all corrosive materials shall be kept in locked storage out of the reach of children. Such storage shall not be in or near food storage areas.

H. Tools and equipment. Garden tools and repair equipment shall be kept in a locked area and may be used by children only under adult supervision.

I. Animals. The operator shall be responsible for the behavior of pets or animals allowed on the premises. All dogs and cats on the premises shall be immunized against rabies.

J. Water temperature. Water used by children shall not exceed 110°F temperature.

K. Telephone. There shall be at least one readily available telephone in the agency.

### **History**

ACMY-192-71, May 12, 1971.

**Note.** Subsections (B)-(D) slightly reworded for purpose of clarity. Subsection headings added.

### **§ 2316. Sanitation requirements**

A. All agencies shall have and use facilities and equipment adequate to insure sanitation of premises, and have approved storage which shall be ventilated for cleaning supplies and equipment. Facilities for over 25 shall have utility sink properly installed and illuminated.

B. All parts of the premises and all furnishings, equipment and materials shall be kept in a sanitary condition and maintained free of flies, roaches, and other vermin at all times. Fixtures such as lavatories, playroom and kitchen floors shall be scrubbed daily, and more frequently if necessary, with an approved cleaning solution and disinfectant.

C. There shall be sufficient water pressure to meet sanitary needs at all times.

D. Garbage and rubbish shall be stored in containers with tight-fitting covers. Garbage shall be removed from the building daily, or more often if necessary to maintain a sanitary condition. Garbage containers shall be washed and sanitized after emptying. Garbage cans shall be lined with newspapers, paper bags or plastic liners.

E. The use of common drinking utensils is prohibited. Clean, single use cups, dispensed from an approved dispenser, are acceptable. Drinking fountains shall be kept clean and in working condition.

F. Where individual cloth towels, toothbrushes, washcloths or combs are provided for the children, they shall be kept in a sanitary condition.

G. Extra, clean clothing shall be available for the younger children to use in case of accidents.

H. There shall be separate, covered, waterproof, easily cleanable containers for the storage of soiled diapers and clothing. The children shall not have access to the containers. Permanent floor coverings shall be tight, smooth, washable and free from dampness and odors.

I. Appropriate fly control measures, such as screening all windows that open and all other direct openings to the outside other than doors, and placing self-closing devices on all doors to the outside, or any equivalent measure

approved by the Health Advisor, shall be taken when flies are prevalent.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Subsections (B), (C), and (F) slightly reworded for clarity.

#### **§ 2317. Isolation and medical care**

A. Isolation quarters, separate from the other facilities used by the children, shall be provided. A child in isolation shall be supervised at all times.

B. Any child showing symptoms during the day of a fresh cold, sore throat, inflammation, fever, rash, diarrhea, vomiting, etc., shall be immediately isolated from the group. Parents or guardians shall be notified at once and all necessary arrangements for prompt removal of the child shall be made.

C. Personnel shall never give medication, including aspirin, to children without instructions for administering the medication from the physician in charge of the child or written authorization from the parent or guardian.

D. Parents shall be notified immediately of any serious injury to the child that requires some medical attention, or the plan for the emergency care of the child agreed upon under 13 N.N.C. § 2305(D) shall be followed.

E. Emergency telephone numbers for the local fire department, police department, and ambulance service shall be posted conspicuously near the phone.

F. An approved first aid kit, accessible to all personnel and out of reach of children shall be kept in the center. At least one member of the staff on duty shall have received current first aid training.

G. Each child shall be observed by a staff member before he enters the center. A child shall not be accepted at the center if he is obviously ill with a communicable disease.

H. Parents shall be notified if their child has been exposed to a communicable disease, if so requested by a parent.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Subsections (A), (C), (D), (F)-(H) slightly reworded for purpose of clarity.

#### **§ 2318. Play areas and classrooms**

A. At least 35 square feet of indoor play space per child shall be provided. For children attending an organized school session under the supervision of a teacher, the minimum classroom space shall be 25 square feet

while the school session is being conducted. The play area shall be occupied only by the children's play materials, equipment and furniture. The floor space of kitchens, bathrooms, halls and permanent equipment such as built-ins is excluded in computing the minimum dayroom and classroom area.

B. Each child shall have an outdoor play period during good weather. The outdoor playing area shall have at least 75 square feet for each child occupying the area at any time, shall be easily accessible, fenced adequately to insure the safety of the children and free from hazards such as sharp objects, deep holes, construction equipment, drainage ditches and debris. The outside area shall have a suitable surface with tanbark, sand or a resilient material under swings and play equipment where falls may occur. A hard surfaced area can be provided for wheeled vehicles. Dust shall be kept to a minimum. Shaded areas shall be available during summer months. Outdoor play equipment shall be arranged to minimize hazard from conflicting activities. Any construction or equipment situated on the playground which constitutes a potential safety hazard shall be adequately fenced off so as not to be accessible to children.

C. All new and existing facilities shall provide sufficient materials and play equipment to meet the varied developmental levels and interests of children of different age groups. The equipment, both indoor and outdoor, shall be in sufficient quantity to provide variety and active physical play, shall be in good condition, safe and free of sharp, loose or pointed parts. Painted toys and equipment shall be free of toxic paints, lead, arsenic and guaranteed by the manufacturer as safe. Equipment shall be kept clean.

D. All play areas shall be directly supervised when in use.

E. There shall be provision to separate age groups in the indoor and outdoor areas where a large group of children (over 25) is cared for and the age varies. These groups shall follow the same maximum size and minimum staffing as set forth in 13 N.N.C. § 2306.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Subsections (A) and (E) slightly reworded for purpose of clarity.

#### **§ 2319. Infant care requirements**

A. Child day care centers which enroll infants shall have received permission to do so from the Navajo Office of Environmental Health. An infant shall be considered to be a child under 18 months, or one who has not yet reached the steady walking stage, or requires use of diapers.

B. Rooms used by infants shall be separated from rooms used by older children. There shall be no passageway through the infants' rooms by children of other age groups going from one area to another. Provisions shall be made for separation of crib infants from toddlers.

C. There shall be continuous supervision of infants while in the center.

D. There shall be hand washing facilities available in the infant area used for diaper changing. Each infant's diapers shall be changed as frequently as needed, and while the infant is in his own crib or on a surface which provides clean coverings. When changing diapers, the infant shall be washed and dried, using his own individual toilet accessories. Handwashing before and after the care of each infant shall be a routine procedure. There shall be a covered, waterproof container for the storage of soiled diapers and clothing.

E. All rooms in the nursery shall be ventilated by windows or mechanical means sufficient to prevent all objectionable odors, and in such a manner as to avoid direct drafts on the children. A moderate degree of temperature shall be maintained with a minimum of 68°F.

F. Formulas, and special or modified diets for children, should be provided by the parents. If prepared by the center, it shall be prepared in accordance with written instructions from the parent or physician in charge of the child and by a technique approved by the Health Advisor. All infants under six months of age shall be held when being fed from a bottle. Bottles shall be individually labeled for each child. All bottles, nipples and bottle covers shall be washed, rinsed and well drained. Infants shall be spoon fed as soon as they are of sufficient age and allowed to feed themselves as soon as this desire is shown.

G. High chairs shall be equipped with a safety step and shall be constructed so that the chair will not topple.

H. Playpens, walkers, strollers, etc., shall be provided. No more than one child shall be placed in a playpen at one time. Washable toys, large enough so they cannot be swallowed, shall be provided for cribs and playpens. Toys shall have no sharp edges or removable parts.

I. A crib shall be provided for each infant. Each crib shall be of sturdy construction with bars closely spaced so a child's head cannot be caught, and have clean, individual bedding including sheets and blanket. Each mattress shall be completely and securely covered with waterproof material. If plastic materials are used, they shall be heavy, durable and not dangerous to children. A child shall never be placed directly on a waterproof mattress cover. Cribs shall be cleaned and bedding laundered daily, or more often if necessary, and always upon change of occupant. There shall be no restraining device of any type used in cribs. The minimum spacing between cribs shall be two feet on any side.

### **History**

ACMY-192-71, May 12, 197 1.

**Note.** Subsections (A), (C), (D), (F), (G) and (I) slightly reworded for purpose of clarity.

### **§ 2320. Food; nutrition**

A. Food preparation, storage and handling areas shall be provided in child day care centers serving food. These areas shall be separated from rooms



used by children and shall not be used as a passageway by children to travel from one area to another. All food preparation, storage and handling facilities shall be constructed to conform to Chapter 1 of this title.

B. Meals shall be made available to all children at customary meal times. Individual sack lunches provided by the parents are acceptable. A warm meal shall be served the child in the variety and amounts necessary to meet approximately one-third of the "Recommended Dietary Allowances" of the National Council (when sack lunches are not provided by the parent).

C. Meals shall be planned a week in advance and posted. When a child is on a modified diet as prescribed by a physician, the food and snacks served this child shall comply with the dietary regime as requested.

D. Food shall be prepared and served so as to appeal to children and be easily eaten by them. Children shall be given assistance in feeding when necessary, and second servings shall be available.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Last sentence of Subsection (A) reworded for purpose of clarity.

#### **§ 2321. Transportation of children**

A. If transportation is provided, the child day care center is responsible, whether it provides the transportation or contracts it out.

B. The driver shall be between the ages of 21 and 65, have a current chauffeur's license, a pre-service physical and an annual in-service physical, and shall be capable and responsible for the discipline of the children. Unruly children may be denied transportation.

C. The vehicle shall be basically constructed for the transportation of persons, and shall be inspected annually in accordance with state law. All seats shall be securely fastened to the body of the vehicle, and children shall be properly seated with no one standing.

D. All loading and unloading shall be done from the right side of the vehicle and on the side of the street on which the child lives.

E. No child shall be left unattended in a bus or a car.

F. An additional attendant is required when children under two are transported.

G. The agency is responsible for adequate and proper transportation insurance coverage.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Subsections (A)-(C) slightly reworded for purpose of clarity.

**§ 2322. Required records and reports**

A. Each agency shall maintain the records set out in Subsections (B) and (C) of this Section at the agency. The records shall be up to date and available to the Health Advisor on request.

B. The following staff records shall be kept for all personnel, including part-time and volunteer:

1. An application blank giving pertinent information including the employee's name, birth date, experience, education, employment references, person to notify in emergency and social security number;

2. Documental evidence, given by a licensed MD, that the employee had a physical examination within six weeks of employment, a blood test, and which indicated freedom from communicable disease, physical disability such as blindness, deafness and epilepsy, and any other disability which might affect adequate care of the children. A skin test or chest X-ray, negative for evidence of active pulmonary tuberculosis, shall also have been obtained from a physician;

3. Unpaid volunteers are required to present evidence of a negative X-ray or a negative tuberculin skin test given within one year;

4. The negative chest X-ray and skin test report shall be obtained annually, and

5. If the child day care center is conducted in a private home, every member of the household shall be subject to the same physical examination and yearly negative tuberculosis report as are required of the staff.

C. The following individual records shall be kept for all children:

1. Name, address, sex, and date of birth;

2. Names of parents or guardians, and their home and work addresses and telephone numbers;

3. Name, address and telephone number of additional responsible person or persons in case parents or guardians cannot be located;

4. Name and telephone number of family physician or pediatrician;

5. A report by the parents or physicians noting history of immunizations, susceptibility to illnesses, including allergies, and special requirements for health and maintenance such as special diets or extra rest periods; and

6. A record of medication requested by the parent and administered by the center.

D. Daily attendance records shall be kept of the staff on duty and of all children admitted for any period of the day.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Subsections (A)-(C) partially reworded for purpose of clarity.

#### **§ 2323. Annual or periodic inspections**

A. The Navajo Office of Environmental Health and the Health Advisor are authorized to make inspections and obtain samples of water and sewage for laboratory analysis to determine the condition of the water and sewer systems.

B. Inspections of child day care centers may be made at least once every 12 months or more often if the Navajo Office of Environmental Health or Health Advisor deems it necessary for the protection of the health of the people.

C. The Navajo Office of Environmental Health or Health Advisor shall have the power to enter, at reasonable times, the property and buildings of the child day care center for the purpose of inspecting and investigating conditions relating to the enforcement of these regulations, and it shall be the duty of the owner or person in charge of the child day care center to give the Navajo Office of Environmental Health or Health Advisor free access to such premises at reasonable times for the purpose of inspections.

D. When the inspection is made by the Health Advisor, he shall leave with the management, or person in charge of the child day care center, a copy of the completed inspection report which indicates the sanitary conditions of the center. The report shall be displayed in a prominent place. A copy of the inspection report shall be sent to the appropriate person in the Bureau of Indian Affairs interested in such matters. A copy of the inspection report shall also be filed in the records of the Health Advisor.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Subsection (D) slightly reworded for purpose of clarity.

#### **§ 2324. Notice, hearing and orders**

A. When the Health Advisor recommends action pursuant to violation of any provision of this Chapter, the Navajo Office of Environmental Health shall give notice to the person or persons responsible therefor as hereinafter provided. Such notice shall: (1) be in writing; (2) include a statement of the reasons for its issuance; (3) allow a reasonable time for the performance of any action required; (4) be served upon the owner or his agent; provided that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to his last known address, or when he has been served by another method authorized by the Navajo Office of Environmental Health; (5) and contain an outline of remedial action which, if taken, will effect compliance with the provisions of this

Chapter.

B. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this Chapter may request and shall be granted a hearing on the matter before the Navajo Office of Environmental Health; provided, that such person shall file in the office of the President of the Navajo Nation, a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within 10 days after the day notice was served. Upon receipt of such petition the Navajo Office of Environmental Health shall set a time and place for such hearing and give the petitioner written notice thereof. At the hearing, petitioners shall be given an opportunity to be heard, and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than 10 days after the day on which the petition was filed; provided, that upon application of the petitioner, the Navajo Office of Environmental Health may postpone the date of the hearing for a reasonable time beyond such 10 day period if the petitioner has submitted a good and sufficient reason for such postponement.

C. After such hearing, the Navajo Office of Environmental Health with the consultation of the Health Advisor, shall sustain, modify or withdraw the notice, depending on the findings as to the compliance or noncompliance with this Chapter. If the Navajo Office of Environmental Health shall sustain or modify such notice, it shall be deemed to be an order. Any notice served pursuant to 13 N.N.C. § 2323 shall automatically become an order if a written petition for hearing shall not have been filed in the office of President of the Navajo Nation, within 10 days after such notice was served. After a hearing, in the case of any notice suspending any permit when such notice shall have been sustained by the Navajo Office of Environmental Health the permit shall be deemed to have been revoked; provided, however, that the Government Services Committee may grant a further opportunity to comply with this Chapter in its sound discretion.

D. The proceedings at such hearing, including the findings and decisions of the Navajo Office of Environmental Health shall be reduced to writing and entered as a matter of public record. Such record shall include every notice or order issued in connection with the matter.

#### **History**

ACMY-192-71, May 12, 1971.

**Note.** Words "President" inserted pursuant CD-68-89, Resolve #9.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454.

#### **§ 2325. Emergency orders; hearing**

Whenever the Navajo Office of Environmental Health upon the advice of the Health Advisor, finds that an emergency matter exists which requires immediate action to protect public health, the Navajo Office of Environmental Health may, without notice or hearing, take such action and issue such order as is deemed necessary to meet the emergency. Notwithstanding any other provision of this

Chapter, such order shall be effective immediately, but upon petition to the Navajo Office of Environmental Health shall be afforded a hearing as soon as possible. After such hearing, depending upon the findings as to compliance or noncompliance with the provisions of these regulations the Navajo Office of Environmental Health may continue the order in effect, modify it or revoke it.

### **History**

ACMY-192-71, May 12, 1971.

**Note.** Slightly reworded for purposes of clarity.

## **Chapter 17. Nursing Homes**

### **Subchapter 1. Generally**

#### **§ 2501. Definitions**

For the purposes of this Chapter the following definitions shall apply:

A. "Administrator" shall mean the permittee or the person designated by the permittee to supervise the care and administrative functions of the nursing home.

B. "Ambulatory resident" shall mean a resident or patient of the home who, unaided, is physically and mentally capable of walking a normal path to safety, including the ascent and descent of stairs.

C. "Annex" shall mean a subsidiary building to the main building located on the same premises as the nursing home.

D. "Approved" shall mean acceptable to the enforcing authority based on his determination as to conformance with appropriate standards and good public health practices.

E. "Automatic fire detection system" shall mean a system which automatically detects a fire condition and actuates an audible fire alarm signal device.

F. "Automatic sprinkler system" shall mean a system of specially sized piping connected to sprinkler heads and installed in accordance with standards outlined in N.F.P.A. Pamphlet No. 13, "Sprinkler Systems."

G. "Basement" shall mean a room or area which is one-half or more of its clear height below the elevation of the grounds adjoining the building on all sides.

H. "Bed-patient-bedfast" shall mean a person who is not an ambulatory patient as described above.

I. "Director of nursing" shall mean a registered nurse who shall have the responsibility for over-all planning, instruction and supervision of nursing care administered to patients by all personnel.

J. "Government Services Committee" shall mean the Government Services Committee of the Navajo Nation Council.

K. "Hazardous areas" shall mean boiler or furnace room, basement or attic used for storage of combustible material; workroom, such as carpenter shop, maintenance shop, and paint shop; central storeroom for furniture mattresses; and other similar areas intended to contain combustible materials.

L. "Health Committee" shall mean the Health and Social Services Committee of the Navajo Nation Council.

M. "Licensed practical nurse," abbreviated L.P.N., shall mean a person licensed by the Arizona State Board of Nurse Registration and Nursing Education for the State of Arizona to practice as a licensed practical nurse.

N. "New home" shall mean a nursing home never having been duly licensed or an existing nursing home where there has been a change in the ownership.

O. "NIHAO" shall mean the Navajo Indian Health Area Office of the United States Public Health Service.

P. "Nursing home" shall mean any nursing home, convalescent home, institution, home place or facility for the accommodation, care, treatment or boarding of two or more aged, sick, infirmed, convalescent, invalid, mentally ill, incompetent, decrepit, blind, disabled, injured, infected or chronically ill person, drug addict, dipsomaniac, or alcoholic, for which accommodation, care, treatment, or boarding, a charge is made or compensation is required or expected, whether by fee or gift; provided, however, that the accommodation, care, treatment, or boarding in a household or family, for compensation or otherwise of a person related by blood to head of such household or family, or to his or her spouse, shall not be deemed to constitute a nursing home within the meaning of this Chapter; and provided further that the provisions of this Chapter shall not apply to any nursing home, hospital, clinic, treatment center, institution or other facility operated or maintained by or under the jurisdiction of the federal government.

Q. "Nursing unit" shall mean a grouping of 40 to 60 beds around a central area, which is the nurses' station and which contains the charts, medicines, and other medical necessities for those beds.

R. "Patient-resident" shall mean a person who receives personal care or nursing care in a nursing home.

S. "Permit" shall mean a certificate to operate a nursing home on the Navajo Nation. "License" shall have the same meaning.

T. "Permittee" shall mean a person having a valid permit to establish, conduct or maintain a nursing home on the Navajo Nation, issued in accordance with this Chapter.

U. "Person" shall mean a natural person or persons, firm, partnership, association, corporation, organization or other legal entity.

V. "Registered nurse," abbreviated R.N., shall mean a person currently licensed by the Board of Nurse Registration and Nursing Education for the State of Arizona.

#### **History**

ACS-219-69, September 16, 1969.

**Note.** ACS-219-69 adopted regulations, attached thereto, for the licensing of nursing homes in the Navajo Nation.

Redesignation of Advisory Committee to Government Services Committee, see § 2501 (J), CD-68-89, December 15, 1989.

#### **§ 2502. Permits-Requirements**

A. No person shall establish, conduct or maintain a nursing home on the Navajo Nation without a permit issued by the Government Services Committee. The permit shall be issued on the basis of compliance with all standards or regulations adopted or established by the Government Services Committee.

B. Each permit shall be issued only to the person to conduct a nursing home on the premises described in the application and shall not be transferable or assignable to another nursing home or person. A separate permit shall be required for homes maintained on separate premises, even though operated under the same management or ownership, provided a separate permit shall not be required for separate buildings on the same grounds.

C. The permit shall be posted in a conspicuous place on the premises.

#### **History**

ACS-219-69, September 16, 1969.

**Note.** Words "Government Services" inserted pursuant CD-68-89, Resolve #10.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454.

#### **§ 2503. Applications**

A. Persons interested in constructing a nursing home on the Navajo Nation shall consult with the President of the Navajo Nation and describe the proposed facility, location, and approximate number of beds. The President shall provide proper application forms which shall be completed and returned to him for presentation to the Health and Social Services Committee. Health and Social Services Committee approval is necessary before the applicant can proceed further.

B. Application for permits shall be in writing, signed by the applicant and shall include the following:

1. The name and address of the applicant.

2. The location and legal description of the proposed nursing home;  
and

3. A description of the type of patients to be cared for and the proposed number of patient beds.

C. After approval of the application, the applicant shall contact NIHAO for information concerning preparation of plans, inspection procedures, and technical guidance on requirements of the regulations.

#### **History**

ACS-219-69, September 16, 1969.

**Note.** Word "President" inserted pursuant CD-68-89, Resolve #9.

#### **§ 2504. Renewal**

The permit to operate a nursing home shall be renewable annually by the Health and Social Services Committee, upon payment of an annual fee of twenty-five dollars (\$25.00) plus one dollar (\$1.00) per bed and upon approval by the NIHAO. In determining whether renewal should be allowed the Health and Social Services Committee shall consider among other things the recommendations of NIHAO.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2505. Denial, revocation or denial of renewal**

A. An application for a permit to operate a nursing home on the Navajo Nation may be disapproved and the issuance of a permit denied for:

1. Failure to meet any of the standards prescribed by these regulations;

2. Insufficient nursing personnel, lack of qualifications of nursing personnel or lack of training and experience to properly care for the number and type of patients; and/or

3. Previous denial or revocation of a permit to own or operate a nursing home on the Navajo Nation.

B. A permit may be revoked or renewal denied for:

1. Cruelty or indifference to the welfare of the patients;

2. Misappropriation of real or personal property of the residents without the consent of the resident or the immediate family; or

3. Failure to meet the standards prescribed by the Government Services Committee.



4. The revocation, suspension, or denial of permit shall become final 10 days after a notice is mailed or served, unless the applicant or permittee shall within 10 days file a written request for a hearing with the Health and Social Services Committee.

C. The Health and Social Services Committee shall hold hearings upon request of the applicant or permittee for any nursing home affected by the denial, suspension, revocation, or refusal to issue a permit. The following procedures shall be followed:

1. A notice from the Health and Social Services Committee will be sent by registered mail to the applicant or permittee advising him of the date and location of the hearing.

2. All testimony shall be under oath and shall be recorded and a copy of the procedures shall be sent to the applicant or permittee.

3. The NIHAO shall present the evidence supporting the denial or revocation of the permit and the applicant or permittee shall have the right to cross-examine. The applicant or permittee shall have an opportunity to present evidence to show cause as to why he should be granted a permit or why his permit should be continued.

4. On the basis of the evidence presented at the hearing, the Health and Social Services Committee shall make a determination specifying its findings of fact and conclusion of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or permittee.

5. Any applicant or permittee or the NIHAO, aggrieved by the decision of the Health and Social Services Committee after a hearing, may, within 30 days after the mailing or serving of notice of the decision, appeal to the Government Services Committee of the Navajo Nation Council for a review of the Health and Social Services Committee's decision. Pending final disposition of the matter, the status quo of the applicant or permittee shall be preserved, except as the Government Services Committee otherwise orders in the interest of the Navajo People.

6. Upon failure of the applicant or permittee or their duly authorized representative to appear at the hearing, the denial, suspension or revocation shall be final.

#### **History**

ACS-219-69, September 16, 1969.

**Note.** Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

#### **§ 2506. Inspections**

A. The NIHAO is empowered and authorized to make inspections and to determine the conditions of the nursing home.

B. The NIHAO shall have the power to enter, at reasonable times, the property and buildings of the nursing home for the purpose of inspecting and investigating conditions relating to the enforcement of this Chapter.

C. It shall be the duty of the operator-administrator of the nursing home to give the NIHAO free access of such premises at reasonable times for the purposes of inspections.

D. Inspections of nursing homes may be made as often as deemed necessary for the protection of the health and safety of the residents.

E. When the inspection is made by the NIHAO, a written report will be prepared and submitted to the operator/administrator. Copies of the written report, which indicates the conditions of the nursing home, will be forwarded to the Health and Social Services Committee, with recommendations as to necessary action.

F. The nursing home shall also be subject to periodic sanitation and fire inspections by those officials of the Navajo Nation and the Bureau of Indian Affairs authorized to do so by applicable Navajo Nation and federal law.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2507. Decisions and interpretations**

All decisions and interpretations made by the Government Services Committee shall be final.

#### **History**

ACS-219-69, September 16, 1969.

**Note.** Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

### **Subchapter 3. Construction Standards**

#### **§ 2551. Plans and specifications**

A. Two sets of preliminary plans describing new buildings, major alterations or additions to existing buildings for which a request is made to obtain a license for a nursing home, shall be submitted to the President of the Navajo Nation, who shall forward them to the Window Rock Field Office, United States Public Health Service, Division of Indian Health, for review and recommendations. Approval or disapproval with recommendations for compliance shall be made by the Health and Social Services Committee of the Navajo Nation Council. Preliminary plans shall be drawn to scale and shall include the following:

1. Rooms or spaces to be included in each department;

2. Functions or services to be performed in each room; including size of rooms and kind and size of equipment each will contain;

3. Drawings of each floor showing relationship of various departments and services;

4. Proposed roads, walks, service and entrance courts and parking areas;

5. Brief description of type of construction;

6. Description of site and type of construction; and

7. Owner's name and address, address and location of proposed facility.

B. After the preliminary plans have been approved by the President of the Navajo Nation, final working drawings and specifications shall be prepared and submitted to the Health and Social Services Committee for review and approval. Final working drawings shall be complete and distinctly drawn.

C. Separate drawings shall be prepared for each of the following branches of work: architectural, structural, mechanical, and electrical. Specifications shall be complete and shall contain detailed and descriptive information about the building and equipment.

D. All plans shall be drawn by a registered professional architect and shall bear his name and registry number.

E. At least two complete sets of plans and specifications shall be submitted for review, one of which shall be retained in the office of the NIHAO.

F. All construction shall be in strict compliance with the approved plans and no changes shall be made without written approval from the NIHAO.

### **History**

ACS-219-69, September 16, 1969.

**Note.** Word "President" inserted pursuant CD-68-89, Resolve #9.

### **§ 2552. Foundations, materials and methods**

A. Foundations shall rest on natural solid ground and shall be carried to a depth of not less than one foot below estimated frost line or shall rest on leveled rock or load-bearing piles when solid ground is not encountered. Footings, piers, and foundation walls shall be adequately protected against deterioration from ground water. Proper soil bearing values shall be established for the soil at the proposed site of the home.

B. Nursing homes shall be constructed of materials which have a full two-hour fire rating, except for non-bearing walls, partitions, ceilings, and

roof areas which may have only a one-hour fire rating. The ceiling of basements shall have a fire rating of at least two hours. Walls enclosing stairways, elevators, laundry and trash chutes and other vertical shafts, boiler rooms and rooms used for storage of combustible materials shall be of two-hour fire resistive construction.

C. Fire resistive ratings and practices shall be determined on the basis of standards of Underwriters' Laboratories, Inc., "Building Materials List", and the National Fire Codes.

D. All existing buildings which are to be converted to nursing homes and which do not meet the above construction standards for fire resistive ratings shall conform to Paragraph 2364 of N.F.P.A., Code 101, and shall be protected by a complete automatic sprinkler system installed in accordance with plans which have been approved by the NIHAO. All other requirements for nursing homes shall be met regardless of whether it is a converted building or a building constructed for the express purpose for occupancy as a nursing home.

E. Any additional building (outbuilding) or any addition to an existing licensed nursing home, which is to be used as a part of, or annex to, a nursing home for housing patients, shall be constructed in accordance with N.F.P.A. Code 101, Paragraphs 2312a and 2312b, Regulating New Construction, Additions and Conversions. The buildings shall be connected so traffic will not be required to pass through rooms other than halls, corridors, lounges or dining rooms. Plans and specifications shall be submitted to NIHAO and approval received in writing before construction of such building is begun or before an existing building is occupied. All such buildings shall meet all other requirements of the standards governing construction, fire safety, patient facilities and operation of the nursing home.

F. Nursing homes shall be of structural design with sufficient strength to support all dead, live and lateral loads without exceeding the working stresses permitted for materials used in the construction. Special provisions shall be made for machine or apparatus loads which would cause greater stress than that specified as the minimum live load.

### **History**

ACS-219-60, September 16, 1969.

### **§ 2553. Site**

A. No nursing home shall be located more than three miles from a responding fire station as measured along public thoroughfares unless the facility is protected by an approved automatic sprinkler system.

B. No nursing home shall be located more than thirty (30) miles from a practitioner of the healing arts licensed by the State of Arizona or certified by United States Public Health Service who has agreed to be called and will respond to calls in an emergency.

C. The nursing home should be located where competent medical consultation is available, and where employees can be recruited and retained.

D. The home shall not be located near insect breeding areas, sources of undue noise such as airports or near a cemetery.

E. The home shall be located where transportation is readily available within a reasonable distance on all weather roads.

F. All weather roads and sidewalks shall be provided within the lot lines to the main entrance and service entrance.

G. When possible, the home should be located where water in sufficient quantity and of acceptable quality can be obtained from a community supply, and where water carried waste can be discharged into a community sewerage system. If community water or sewerage systems are not available, the site shall be sized and so located to facilitate construction of individual water supply and/or waste disposal systems in accordance with recommended standards of the United States Public Health Service.

### **History**

ACS-219-69, September 16, 1969.

### **§ 2554. General design; facilities**

A. No patient rooms shall have more than four beds, and each bed in each multiple-bed room shall be provided with curtains, blinds, or similar fire resistive equipment for privacy. All patient rooms shall provide at least 80 square feet of floor space per bed in multiple-bed rooms and at least 100 square feet per bed in single-bed rooms. Space and room arrangement shall permit spacing of beds at least three feet apart in multiple-bed rooms and no bed shall be located closer than two feet from any wall except for the head or foot of the bed.

B. A minimum of one single room for each sex per each 10 beds shall be provided for incompatible patients or patients required to be isolated.

C. All patient rooms shall be outside rooms with window space equal to at least one-eighth (1/8) of the floor space. No hallway or any location commonly used for other than bedroom purposes shall be used for patient beds. No room shall be used for a patient's room which can only be reached by passing through another patient's room. Bedrooms shall not open into any room in which food is prepared, served or stored, or into a utility room, dining room or communal bathroom. Patients of the opposite sex shall not be housed in the same bedroom or ward except in cases of husband and wife. All patient rooms shall be numbered.

D. No patient shall be housed in a basement, attic story, trailer house, or any room other than an approved patient room.

E. At least one nurses' station shall be provided for each floor or for each 60 patients or major fraction thereof and shall be equipped with the following facilities:

1. Locked medicine cabinet or closet, complete with running water for preparation of medications;

2. Space allowance must be made for a refrigerator to store medications;

3. Nurses call system connected to call stations between each two beds in two-bed rooms and four-bed rooms, and one in each one bed room;

4. Storage space for current patient charts;

5. Desk and chair space; and

6. Nurses toilet and lavatory facilities.

F. The following facilities shall be located on each patient floor or for each 60 patients or major fraction thereof

1. A utility room which is divided into a clean and dirty area; (See Title 53 of Hill-Burton Act for appropriate standards.)

2. Facilities for flushing and sanitizing bedpans;

3. Toilet facilities:

a. When centralized toilets are used, a toilet room containing at least one lavatory and one water closet shall be provided for each eight patients of each sex. At least one water closet enclosure shall have minimum dimensions of five feet by six feet to permit toilet training. If private or semi-private toilet facilities are provided, a separate training toilet with minimum dimensions of five feet by six feet shall be provided on each patient floor and located conveniently to the patient area;

b. If private or semi-private toilet facilities are located between patient rooms, they shall be used only by those patients occupying the rooms adjacent to the toilet rooms. Patients from other areas of the home shall not be permitted to pass through other patient rooms to gain access to toilet facilities;

c. At least one toilet room for each sex shall be located adjacent to the dining room and/or recreation area; and

d. Public toilet facilities for each sex shall be provided conveniently to the lobby or waiting room;

4. Closet for clean linen storage;

5. Closet for storage of equipment and daily working supplies;

6. Janitors closet with hot and cold running water, storage shelves, janitors sink and racks for storing cleaning equipment;

7. At least one bathtub or shower on each patient floor for each 10 patients (separate for each sex);

8. At least one treatment room for each nursing unit; and

9. Nourishment kitchen. (See Title 53 of Hill-Burton Act for appropriate standards.)

G. The following facilities shall be provided and located convenient to but separate and apart from the patient care area:

1. Food service department consisting of the following:

a. Food preparation area.

b. Dishwashing (separate from food preparation and serving area). An approved, properly installed mechanical dishwashing machine shall be provided in nursing homes with 10 or more patients.

c. Refrigeration.

d. Garbage disposal facilities.

e. Employee dining area.

f. Janitors closet with hot and cold running water, shelves, janitors sink and racks for storing of cleaning equipment.

g. Storage space for supplies, staples and other food items not requiring refrigeration.

2. Housekeeping facilities with:

a. Space for storage of clean linens.

b. Separate room for soiled linens.

3. Mechanical equipment room or rooms for heating and air handling.

4. Employees facilities consisting of room for changing clothes with:

a. Lockers for storage of personal effects.

b. Toilet and lavatory facilities.

5. Storage space as follows:

a. General storage at rate of 15 square feet per patient bed to be used for storage of supplies and equipment. This general storage space shall be concentrated in one area.

b. Storage room for residents clothing.

c. Storage for outdoor equipment.

6. Gas or oil fired incinerator.

H. Residents dining, recreation, and occupational activities space shall be provided at the rate of at least 25 square feet for seventy-five percent (75%) of the total beds in the nursing home.

I. Outside recreation or sitting area shall be provided at the rate of at least 50 square feet per patient bed.

J. Wheelchair and stretcher storage and parking area.

### **History**

ACS-219-69, September 16, 1969.

### **United States Code**

Hill-Burton Act, see 42 U.S.C.A. § 291 *et seq.*

### **§ 2555. General specifications**

The following general specifications shall apply to all new construction, converted buildings, additions to existing buildings and remodeling of existing licensed buildings:

A. If laundry and trash chutes are located inside the building, they shall have a minimum diameter of two feet, shall be constructed of fire resistive material and shall be equipped with a flushing ring and automatic sprinkler head at the top of each chute. Each laundry and trash chute shall be vented to the atmosphere and have a floor drain in the room in which the chute terminates. An elbow and self-closing door shall be provided at the point of discharge of each chute.

B. Ceiling heights shall be as follows:

1. Boiler room-12 feet, except that a lesser height may be used for small buildings using a domestic type package unit. If a boiler is set in a pit, the height may be measured from the pit floor:

2. Laundry-11 feet.

3. Food preparation area-10 feet.

4. Patient rooms and corridors-Eight feet.

C. All doors through which patients must pass shall be at least three feet eight inches wide; except doors to private or semi-private toilet rooms which may have a width of 36 inches.

D. All corridors shall have a minimum width of eight feet.

E. Handrails shall be provided on both sides of all corridors and stairways used by patients.

F. All stairways shall be at least three feet eight inches wide as



measured between handrails if the handrails project more than three and one-half inches.

G. Thresholds at interior doorways shall be flush with the floor.

H. Approved angle-jet drinking fountains shall be located in patient corridors, in treatment areas, and in the lobby of the home. The drinking fountains shall be installed so they may be used by wheelchair patients.

I. Enclosures or partitions around water closets and showers which are to be used by patients shall have handrails on both sides.

J. Hardware on water closet enclosures shall be operable from both sides and all doors on water closet enclosures shall open outward.

K. Lavatories shall be installed with brackets and designed so wheelchair patients may slide wheelchairs underneath.

L. All bathtubs used by patients shall have handrails at the side and ends of the tub. Bathtubs shall not be elevated.

M. Floors of the following areas shall have smooth waterproof surfaces that are easily cleanable and resistant to heavy wear:

Toilet room	Bedpan rooms	Sterilizing
Bathrooms	Utility rooms	Locker rooms
Shower rooms	Janitors closets	Laundry rooms
Patient rooms	General storage	

N. Floors of the following areas shall be waterproof, greaseproof, smooth, easily cleaned and resistant to heavy wear:

Kitchens	Dining rooms
Food preparation rooms	Housekeeping storage rooms
Recreation rooms	

O. The walls and bases of the following areas shall have smooth surfaces with painted or equal washable grease-resistant finish in light color. The base of the walls shall be waterproof and free from spaces which might harbor vermin and insects:

Kitchen	Housekeeping storage rooms
Food preparation rooms	Utility rooms
Dining rooms	Locker rooms

P. The walls of the following areas shall have smooth, washable, waterproof, painted, glazed or similar finishes to a point above the splash or

spray line:

Toilet rooms	Bedpan rooms	Sterilizing rooms
Bathroom	Utility rooms	Laundry rooms
Showers	janitors closets	General storage rooms
Kitchens	Dishwashing rooms	Spaces with sinks

Q. Interior finish of all exitways, storage rooms, and all areas of unusual fire hazard shall have a flame spread rating of less than 20. Interior finish of patient rooms, patient day rooms, and other areas occupied by patients shall have a flame spread rating of less than 75. Interior finishes of other areas shall have a flame spread rating of less than 75, except that ten percent (10%) of the aggregate wall and ceiling areas of any space may have a flame spread rating up to 200. Interior finish materials shall be classified in accordance with their average flame spread rating on the basis of tests conducted in accordance with ASTM Standard No. E84. All acoustical materials used in the above areas shall withstand washing.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2556. Electrical installations**

A. All electrical installations or alterations to existing systems shall comply with standards of the National Electrical Code as published by the National Fire Protection Association. All electrical equipment shall be new and shall meet the standards and bear the approved label of the Underwriters' Laboratory.

B. Each area of the nursing home shall be provided with sufficient number of electrical outlets to meet the use requirements of the particular area and special attention shall be given to the laundry, food service department, physical and occupational therapy and other specialized areas.

C. The following shall be provided in all patient areas:

1. Patient bedrooms shall be provided with lights for general illumination, a night light and a reading light for each bed.

2. General illumination and night lights shall be controlled by switches located at the door to the room.

3. All switches in patient rooms shall be of an approved mercury or equal, quiet operating type.

4. Each bedroom shall have at least one duplex receptacle located at the head of each patient bed and at least one duplex receptacle located elsewhere in the room where it is easily accessible.

5. Emergency lighting shall be provided for all corridors,

exitways, and stairways and shall be supplied by an emergency generator or battery powered units equipped with an automatic throwover switch to provide automatic throwover to the emergency lighting system in case of failure of regular power.

6. If ceiling lights are used, they shall be of an indirect type and designed and installed so they will not shine in the patient's eyes.

7. Night lights shall be provided for all corridors, toilet rooms, stairways and patient rooms, and all nursing unit corridors shall have grounding type receptacles installed not more than 50 feet apart.

D. Lighting levels shall be provided as listed in 13 N.N.C. § 2565.

E. All light fixtures, wiring and equipment shall be tested by a competent electrician and certification made in writing to show that the system is free from grounds, shorts or open circuits.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2557. Plumbing**

A. All parts of the plumbing system shall comply with the standards set forth in the "Report of Public Health Service Technical Committee on Plumbing Standards."

B. Plumbing fixtures requiring both hot and cold water which are accessible to patients shall be supplied with water which is thermostatically controlled to provide a maximum water temperature of 125°F at the fixture.

C. Drinking fountains shall be provided at the rate of one for each 25 patients or at least one for each floor and shall be of angle-jet type and meet the standards of the American Standard Specifications A.S.A. Z 4.2-1942.

D. Hot water storage tank or tanks shall have a capacity of at least eighty percent (80%) of the total consumption during peak periods.

E. Recirculating pumps shall be used for all hot water lines extending more than 100 feet from the source of hot water supply to assure that hot water will be readily available at each hot water fixture.

F. Each fixture such as lavatories, water closets, sinks, showers, and janitors sinks shall be provided with a valve or fixture stop to permit repair of the fixture without disrupting the flow of water to other fixtures in the building.

G. All plumbing lines, both hot and cold, shall be sanitized before the nursing home is occupied.

#### **History**

ACS-219-69, September 16, 1969.

**§ 2558. Heating and ventilation**

A. All steam, hot water, warm air heating, ventilating and air conditioning systems shall comply with the minimum standards of the American Society of Mechanical Engineers, the American Society of Heating, Ventilating, and Air Conditioning Engineers, and the Underwriters' Laboratories, Inc. All gas fired equipment shall comply with the regulations of the American Gas Association.

B. All types of portable heaters are prohibited.

C. All nursing homes shall be heated by hot water, warm air, or steam system with thermostatic controls. The heating system shall be capable of maintaining a temperature of at least 80°F at all times.

D. The corridors of nursing homes shall not be used as a plenum. All return air shall be carried by return air ducts.

E. The nursing home shall be well ventilated by windows, forced air or a combination of both.

F. Each window, if used for ventilation, shall be screened with 16 mesh wire screening at all times except that screens may be removed and replaced with storm windows during the cold season.

G. All wet rooms such as utility rooms, bathrooms, toilet rooms, bedpan rooms, shower rooms, etc., shall be provided with forced ventilation to change the air at least once every six minutes. Wet rooms shall have one square inch of venting to the outside per one square foot of floor area.

H. All stacks, exhaust systems and other vents for the heating and ventilation systems shall discharge above the roof and shall be located at least 10 feet from any window.

**History**

ACS-219-69, September 16, 1969.

**§ 2559. Sewage disposal**

A. Every nursing home shall be provided with disposal system for body wastes. Water carried waste shall be discharged to public sewerage system if possible. If a public system is not available, an individual sewage disposal system shall be constructed which meets the standards contained in the latest edition of Manual of Septic Tank Practice published by the United States Public Health Service. If an individual waste disposal system is used, it shall be operated and maintained in a satisfactory manner.

B. In areas where a storage, collection and land fill operation approved by the NIHAO is available, it may be used to dispose of contaminated dressings and other infectious wastes. Where such approved operation is not available,

infectious wastes shall be disposed of in incineration facilities approved by the NIHAO.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2560. Water supply**

The water supply shall be from a source acceptable to the Health Advisor and shall be adequate to supply the demands of the nursing home.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2561. Elevators and dumbwaiters**

A. Elevators and dumbwaiters shall meet the applicable standards as outlined in the following:

1. "American Standard Safety Code for Elevators, Dumbwaiters and Escalators" (A17.1-1960).

2. "National Electrical Code" N.F.P.A. #70.

3. "The National Board of Underwriters".

B. Any nursing home with one or more floors and housing residents above the ground floor level shall have at least one hydraulic or electric motor driven elevator. Nursing homes with a bed capacity of from 60 to 200 above the first floor shall have at least two elevators.

C. Cabs of elevators shall be constructed of fire resistive material.

D. Car sizes of elevators shall be at least five feet by seven feet six inches inside dimensions and have a capacity of at least 3,500 pounds.

E. Doors to elevator cabs shall not be less than three feet eight inches clear opening.

F. Automatic, self-locking devices shall be provided for doors leading to the elevator cab from each floor level. The locking devices shall automatically lock the doors when the elevator leaves the floor.

G. Dumbwaiter cabs shall be at least 24 inches by 24 inches by 36 inches and shall be constructed of steel.

H. Doors to dumbwaiter shafts shall close automatically and shall remain closed at all times except when the dumbwaiter is being loaded or unloaded.

I. Shafts for dumbwaiters and elevators shall be of fire resistive material and no openings other than doors to each floor level shall be permitted.

## **History**

ACS-219-69, September 16, 1969.

### **§ 2562. Refrigeration**

A. All refrigerators shall be insulated with waterproof, nonabsorbent, vermin proof insulation.

B. All refrigeration facilities shall be lined with nonabsorbent material which will withstand heavy use and can be easily cleaned and sanitized.

C. Outer doors and walls of walk-in boxes shall have insulation equal to four inches of cork.

D. Portable ice chests shall have insulation in doors and walls equal to two inches of cork.

E. Refrigeration of adequate capacity shall be provided and located in or adjacent to all kitchens and other food preparation areas where perishable food will be stored.

F. Refrigeration for the main kitchen shall consist of at least two separate sections or separate boxes. One shall be used for storage of meats and dairy products and the other shall be used for general storage of foods requiring refrigeration.

G. Toxic or flammable refrigerants shall not be used in refrigerators or compressors that are located in buildings occupied by patients.

H. Compressors and evaporators shall be capable of maintaining temperatures of not more than 45°F at all times.

I. Compressors shall be automatically controlled.

J. Compressors, piping, and evaporators shall be tested for leaks and capacity.

K. Refrigeration equipment shall meet the applicable standards outlined in the "American Standard Safety Code for Mechanical Refrigeration," the National Board of Fire Underwriters and the minimum general standards set forth in the preceding Subsections.

## **History**

ACS-219-69, September 16, 1969.

### **§ 2563. Kitchen equipment**

A. All kitchen equipment shall be so constructed and installed in such a manner to meet all sanitation standards contained in the "Food Service Sanitation Manual" as recommended by the United States Public Health Service,

1962 Edition.

B. Equipment shall be adequate and arranged to provide a convenient work flow for the receipt of food, proper storage, preparation, cooking, serving, and dishwashing for the over-all food service for patients and staff.

C. Enclosed cabinets and other facilities shall be provided for storage or display of food, drink and utensils and shall be designed to protect them from contamination by insects, rodents, splash, dust and overhead leakage.

D. An approved number of sinks shall be provided for washing pots and pans, vegetable preparation, and the cooks work table. A regular lavatory with soap and paper towels shall be provided for handwashing. Nursing homes with 30 or more beds shall have at least one three-compartment sink for washing and sanitizing pots and pans, a separate two-compartment sink for vegetable preparation and a small sink with running water for the cooks work table.

### **History**

ACS-219-69, September 16, 1969.

### **§ 2564. Laundry**

A. If laundry is done commercially for the home, a separate room of adequate size shall be provided for sorting, processing and storing of soiled linens. Clean linen shall not be received in the same sorting and storage room for soiled linens. This space shall not be located where the activities conducted therein will disturb the patients or endanger their health and safety. The room shall be equipped with a floor drain and power vent to change the air at least once each six minutes.

B. If laundry is done in the home, facilities for this purpose shall be separate and located remote from the patient areas and food preparation and storage areas. The laundry room shall be of sufficient size and design to permit:

1. Space for sorting and storing soiled linens which is separate from the clean linen sorting or storage area.

2. Storage space for clean linen which is separate from the main laundry room.

C. If laundry is done in the home, commercial type laundry equipment shall be used and consist of the following minimum equipment:

1. At least two washers with combined rated capacity of at least 12 pounds of dry laundry per day per resident bed, when operating not more than 40 hours per week.

2. At least one flat ironer with capacity equal to seventy percent (70%) of the washer capacity when operating 40 hours per week.

3. At least one extractor with a daily capacity equal to that of the washers. (Combination washer-extractor may be used in lieu of

separate extractor.)

4. At least one tumbler with rated capacity equal to twenty-five percent (25%) of the washers when operating 40 hours per week.

D. Separate carts and equipment shall be used for transporting soiled and clean linens.

E. Table linens shall be laundered separate from bed linens, towels and clothing.

### **History**

ACS-219-69, September 16, 1969.

### **§ 2565. Lighting levels**

The lighting levels recommended for nursing homes are as follows:

AREA	FOOTCANDLES <sup>1</sup>
Corridors and interior ramps	20
Stairways other than exits	30
Exit stairways and landings	5 on floor
Doorways	10
Administrative and lobby areas	50
Administrative and lobby areas, night	20
Chapel or quiet area	30
Physical therapy	20
Occupational therapy	30
Worktable, course work	100
Worktable, fine work	200
Recreation area	50
Dining area	30
Patient care unit (or room), general	10
Patient care room, reading	30
Nurses' station, general, day	50
Nurses' station, general, night	20



Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Utility room, general	20
Utility room, work counter	50
Pharmacy area, general	30
Pharmacy, compounding and dispensing area	100
Janitor's closet	15
Toilet and bathing facilities	30
Barber and beautician areas	50

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2566. Codes and standards**

The codes and recommended standards listed shall be used for reference and interpretation and included as a part of the Navajo Nation standards when so indicated in the ordinance or established standards of the Navajo Nation Council.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2566A. List of Codes and Standards**

##### LIST OF CODES AND STANDARDS

U.S. Department of Commerce  
National Bureau of Standards  
Superintendent of Documents  
Washington, D.C.

- \*1. "American Standard Building Code," publication No. M 179.
2. "Food Service Sanitation Manual," 1962 edition, PHS publication No. 934.
3. "Milk Ordinance and Code," 1953 Recommendations of the Public Health Service, PHS publication No. 229.

4. "Public Health Service Drinking Water Standards," 1962 edition, PHS publication No. 956.

5. "Manual of Septic Tank Practice," 1963 edition, Public Health Service publication No. 526.

6. "Report of Public Health Service Technical Committee on Plumbing Standards," (a proposed revision of the National Plumbing Code ASA A40-81955), 1962 edition, PHS publication No. 1038.

National Fire Protection Association  
60 Batterymarch Street  
Boston, Massachusetts

1. "Building Exits Code," NFPA No. 101, 1963 edition.

2. "Uniform Building Code of the Pacific Coast Building Official Conference."

3. "Nonflammable Medical Gas Systems," NFPA No. 565, 1962 edition.

\*4. "National Electrical Code," NFPA No. 70, 1962 edition.

5. "Method of Test for Surface Burning Characteristics of Building Materials," NFPA No. 255, 1961 edition. '

6. "Standard Methods of Fire Tests of Building Construction and Materials," NFPA No. 251, 1963 edition.

7. "Standpipe and Hose Systems," NFPA pamphlet No. 14, 1963 edition.

8. "Gas Piping and Gas Appliances in Buildings," NFPA pamphlet No. 54, 1959 edition.

9. "Storage and Handling of Liquefied Petroleum Gases," NFPA pamphlet No. 58, 1963 edition.

10. "Proprietary, Auxiliary, and Local Signaling Systems," NFPA pamphlet No. 72, 1963 edition.

\*11. "Air Conditioning, Warm Air Heating, Air Cooling, and Ventilating Systems," NFPA pamphlet No. 90A, 1963 edition.

12. "Blower and Exhaust Systems," NFPA pamphlet No. 91, 1961 edition.

13. "Incinerators," Pamphlet No. 82, 1960 edition.

14. "Rubbish Handling," Pamphlet No. 82A., 1960.

15. "National Building Code," pamphlet No. 12, 1955 edition.
16. "Containers for Storing and Handling Flammable Liquids," NFPA pamphlet No. 30, 1963 edition.
17. "Portable Fire Extinguishers," NFPA pamphlet No. 10, 1963 edition.
18. "Sprinkler Systems," NFPA pamphlet No. 13, 1963 edition.

AMERICAN SOCIETY OF MECHANICAL ENGINEERS  
29 West 39th Street  
New York, New York 10018

- \*1. "Specifications for Drinking Fountains," ASA Z 4.2-1942 edition.
- \*2. "American Standards Code for Elevators, Dumbwaiters, and Escalators," No. A1 7.1, 1960 edition.
3. "American Standard Safety Code for Mechanical Refrigeration."

UNDERWRITERS LABORATORIES, INC.  
207 East Ohio Street  
Chicago, Illinois

1. "Fire Hazard Classification of Building Materials."
2. "Building Material List."

### **Subchapter 5. Fire Safety Standards**

#### **§ 2601. Occupancy**

A. The number of persons in any room used as sleeping quarters shall not exceed the proportion of one adult for each 80 square feet. All nursing homes shall provide floor space and ceiling heights in patient areas as outlined in Subchapter 3 of this Chapter.

B. No occupancy not under the control of, and not necessary to the administration of a nursing home, shall be contained in any building occupied by nursing home patients.

### **History**

ACS-219-69, September 16, 1969.

### **§ 2602. Firestopping**

Exterior walls of frame construction and interior stud partitions shall be firestopped so as to cut off all concealed draft openings. Horizontal openings shall be firestopped between basement rooms and vertical openings in basement at ceiling level. Firestopping material may consist of noncombustible material or of wood at least two inches thick.

### **History**

ACS-219-69, September 16, 1969.

### **§ 2603. Hazardous areas and combustibile materials**

A. All hazardous areas as defined in 13 N.N.C. § 2501 shall be separated from other areas of the nursing home by construction having a fire resistive rating of at least two hours; except that all areas other than boiler and furnace rooms may be protected by an automatic approved sprinkler system in lieu of such construction.

B. The use of attics or basements for storage of combustibile materials is prohibited.

### **History**

ACS-219-69, September 16, 1969.

### **§ 2604. Exit facilities**

Exit facilities shall be provided in accordance with applicable Sections of NFPA "Life Safety Code" #101 and shall include the following:

A. At least two exits, remote from each other, shall be provided for each occupied floor of the building, including the basement. Exits shall be located so there are no dead ends or pockets extending more than 30 feet beyond the exit.

B. Exits from each floor shall be located so the distance of normal travel to reach an exit does not exceed 100 feet from any part or section of the floor in an unsprinklered building or more than 150 feet in a sprinklered building.

C. Exit doors shall have a minimum width of three feet eight inches and shall open outward in the direction of exit travel. Screen or storm doors, if used, shall also open outward. Doors to patient rooms shall swing into the room and not into the corridors.

D. Corridors leading to exit doors shall have a minimum width of eight feet.

E. Each occupied room shall have at least one solid core door opening directly to the outside or to a corridor leading directly to an exit stair or exit door which opens directly to the outside.

F. All exit doors, doors to stairways or doors leading to ramps or other exit facilities shall be provided with panic hardware and self closing devices.

G. Required exits from each floor, above or below the first floor, shall lead directly or through an enclosed corridor or enclosed stairway to the outside. Exits, other than required exits, shall also be enclosed between floors but may lead to a first floor lobby rather than directly to the outside as for required exits.

H. Windows and doors within 10 feet of fire escapes shall be provided with wire glass.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2605. Stairways and vertical openings**

A. Stairways and ramps serving as required exits shall be at least three feet eight inches wide, with handrails on both sides.

B. A ramp shall be provided when necessary from the first floor or ground floor of the nursing home directly to the outside for the purpose of removal of nonambulatory patients. Ramps shall be provided with handrails, and the surface shall be roughened or of nonslip material. Ramp slope shall be a maximum of one foot rise in 10 feet run.

C. All vertical shafts or other floor openings extending to basement or cellar and between occupied floors shall be enclosed in partitions having a fire resistive rating of not less than two hours; except in sprinklered building such enclosures may be of construction having a fire resistance rating of not less than one-half (1/2) hour or may be wired glass in metal framework.

D. Doors to all vertical openings shall be located at each floor level and shall be equipped with self-closing devices and shall be kept closed at all times. All doors shall be consistent with the fire resistive ratings listed for enclosures in Subsection (C) above.

E. Stairways shall be designed in such a manner that patients from upper floors are not required to enter onto lower floors when descending. The stairway shall be a continuous shaft extending from the uppermost floor to the outside grade level, and entrance doors to the shaft shall be located at each floor level. Doors to the stairway shall open in the direction of travel from the floor.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2606. Corridors and passageways**

A. Required corridors and passageways shall be at least eight feet in width and shall be consistent with the fire resistive ratings as listed in 13 N.N.C. § 2552.

B. Corridors and passageways to be used as a means or a part of a required exitway, shall be unobstructed and shall not lead through any room or space used for a purpose that may obstruct free passage.

C. Corridors and passageways which lead to the outside from any required stairway shall be enclosed and constructed with materials to provide the fire resistive ratings required for stairways.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2607. Doorways**

A. Doorways serving as exits or parts of exits shall be at least three feet eight inches wide and hinged to swing in the direction of exit travel.

B. All doors to stairways, vertical openings, passageways or hazardous areas, which are required to be enclosed, shall be Class B, one hour or one and one-half (1 1/2) hour Underwriters' Laboratories labeled fire doors with self-closing devices.

C. Doors to all patient rooms shall be solid wood doors. Use of hollow-core doors or doors with vents or transoms are prohibited.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2608. Division of floor openings**

A. All floors of a nursing home which are occupied by patients and exceed 3,000 square feet in area shall be divided into separate areas by smoke barriers so located as to provide ample space on each side for the total number of beds on the floor. Doors provided for such smoke barriers shall be smoke-resistive and installed so they may normally be kept in an open position but will close automatically or may be released manually to self-closing section.

B. Smoke barriers shall have a fire resistance rating of not less than one-half (1/2) hour. Doors may be metal, metal-covered or one and three-quarter inch solid core flush type wood doors. Doors shall be hung so they are reasonably smoke tight.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2609. Exit signs**

All exits used by patients shall be clearly marked with large exit signs. Exit signs shall be continuously illuminated by artificial light. The line of travel to such exits shall be clearly marked with arrows and signs. Directional type exit signs with arrows pointing in the direction of the nearest exit shall be located at all corridor junctions or other areas where a change of direction is required to reach the nearest exit. All exit signs shall be included on the emergency generator lighting system or shall be illuminated by light from emergency battery lights.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2610. Interior finish and decorative materials**

A. Wall and ceiling surfaces of all occupied rooms and of all exitways therefrom shall be of such materials or so treated as not to have flame spread classification of more than 75 according to the method for the "Method of Test for Surface Burning Characteristics" of the National Fire Protection Association.

B. All decorative and acoustical material, including curtains or drapes located in corridors, passageways, stairway enclosures, lobbies, or other rooms or spaces occupied by patients or visitors, shall be fire resistive. Interior materials shall be classified in accordance with their average flame spread rating on the basis of tests conducted in accordance with ASTM Standards No. E 84. Materials shall be deemed fire resistive if it will not ignite and allow flame to spread over the surface when exposed to a match flame applied to a piece removed from the material. The Navajo Nation authority shall reserve the right to request the owner or operator of a nursing home to perform this test in the presence of the inspector at the time of routine inspections. All such tests shall be performed in a safe place.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2611. Heating, lighting and air conditioning equipment**

A. The heating of all buildings shall be restricted to central heating plant. Use of portable heaters of any type is prohibited.

B. All duct work for heating and air conditioning systems shall be provided with automatic fire dampers.

C. All lighting shall be restricted to electricity.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2612. Fire extinguishing equipment**

A. Fire extinguishers bearing the label of Underwriters' Laboratories, Inc. and meeting standards outlined in NFPA No. 10 shall be provided throughout the entire building or buildings. Fire extinguishers shall be located so a person will not have to travel more than 75 feet from any point in the building in order to reach a fire extinguisher.

B. An additional fire extinguisher or extinguishers shall be provided in or located adjacent to each kitchen and storage room. All personnel shall be trained in the proper use of all types of fire extinguishers. Fire extinguishers shall be inspected and recharged at least once a year and immediately after each use with date of checking and recharging recorded on a tag attached to the extinguisher. All fire protection equipment shall be inspected and dated periodically and maintained in readily usable condition.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2613. Automatic sprinkler system**

A. All hazardous areas, as defined in 13 N.N.C. § 2501 shall be protected by an approved, properly installed automatic sprinkler system unless the areas are protected by construction with a fire resistive rating of at least two hours.

B. All sprinkler systems shall be provided with an approved local or central station water flow alarm system.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2614. Alarm systems**

A. All buildings, except those protected by an approved automatic sprinkler system, shall be equipped with an approved automatic fire detection signal system. The fire detection system shall conform to the following minimum requirements:

1. All component parts shall be approved by Underwriters' Laboratories, Inc.

2. The system shall be electrically supervised or monitored.

3. The system shall be provided with an auxiliary source of power (automatic battery change-over).

4. All systems shall be installed in strict accordance with the National Fire Protection Association pamphlet No. 72, "Proprietary, Auxiliary, and Local Signaling Systems."

5. A separate circuit shall be provided for a basement.

6. The minimum number of circuits for any facility shall be as



follows:

- a. One-story buildings—one circuit.
- b. Two-story buildings—two circuits.
- c. Three-story buildings—one circuit each floor and one circuit for attic.

B. All nursing homes shall be provided with a manually operated remote station fire alarm system with manual "break-stations" located on each floor of the building. The "break-stations" shall be located so no person will be required to travel more than 75 feet from any point on the floor in order to reach the break-station. The manual fire alarm system shall be provided in addition to the automatic sprinkler system when the sprinkler system is required as outlined in 13 N.N.C. § 2613.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2615. Attendants**

A. Each building in which patients are housed shall have at least one attendant on duty, awake and dressed therein at all times, and, in addition, one standby attendant within the building and within hearing distance and available for emergency service. These attendants shall be at least 21 years of age and capable of performing the required duties of emergency evacuation of patients. No persons other than management or persons under the control of management shall be considered as an attendant. The patient-attendant ratio shall be at least one attendant and one stand-by attendant for each 20 patients or fraction thereof.

B. In homes where fifty percent (50%) or more of the patients are bedfast, the ratio shall be increased to one attendant and one stand-by attendant for each 15 patients.

C. Personnel employed to fulfill the requirements for attendants and standby attendants need not be capable of rendering professional care to the patients, but professional nurses, licensed practical nurses, and other patient care personnel may serve in this capacity to satisfy the requirements for attendants and standby attendants as well as rendering professional care to the patients.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2616. Evacuation plan**

Each nursing home shall formulate a written procedure to be followed in case of fire, explosion, or other emergency. All employees shall be familiar with the plan, and routine emergency evacuation drills shall be held at different times of the day in order that all employees, including the night

shifts, may participate. The evacuation plan shall include such items as: persons to notify, alarm signals, fire extinguisher locations, evacuation routes, procedures for evacuating helpless patients, and personnel assignments for specific duties and responsibilities.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2617. Smoking**

Smoking shall be permitted in nursing homes only where proper facilities are provided. Smoking shall not be permitted in sleeping quarters unless constant supervision is provided. Patients shall not be permitted to smoke in bed at any time. Smoking is prohibited in all rooms, wards and adjacent areas where oxygen is stored.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2618. Oxygen storage**

A. Oxygen tanks must be safely stored and labeled when empty. Provision shall be made for racks or fastenings to protect cylinders from accidental damage or dislocation.

B. Oxygen, when stored within the building, shall be enclosed in a separate room or enclosure within a room with a minimum fire resistant rating of at least two hours. The room shall be vented to the outside. No oxygen cylinders shall be stored within a patient's room.

C. No open flame, smoking, or spark-producing device shall be permitted within a room where compressed oxygen is used or stored.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2619. Trash and rubbish disposal**

All buildings shall be kept free from accumulation of combustible trash or rubbish. Metal containers for receiving same shall be placed in easily accessible locations. Trash shall be removed from the building daily. Ashes shall be kept in metal containers with metal covers and be removed from the building daily. Buildings shall not be littered with empty boxes, papers, accumulation of old clothes and other combustible material.

#### **History**

ACS-219-69, September 16, 1969.

### **Subchapter 7. Furnishing and Equipment**

**§ 2651. Furnishings; living rooms and bedrooms**

A. Living room for patients' use shall be provided with a sufficient number of reading lamps, tables, chairs or sofas of satisfactory design for elderly and infirm people.

B. Each patient shall be provided with his own bed which shall be at least 36 inches wide, have a headboard, be substantially constructed and in good repair. Roll-away type beds, cots, folding beds or double beds, shall not be used.

C. Each bed shall be provided with a satisfactory type spring in good repair and a clean comfortable mattress—at least five inches thick (four inches thick if of foam rubber construction and four and one-half inches thick if of inner spring type) and standard size for the bed.

D. Mattresses shall be protected by a cover and pad. Moisture proof covers or sheeting are recommended to keep mattresses clean and dry.

E. Each bed shall be provided with at least one clean, comfortable pillow. Additional pillows shall be available to meet the needs of the patients.

F. Each patient shall be provided with a satisfactory type bedside table with a drawer to accommodate personal possessions.

G. Each patient shall be provided with an individual rack for towel and washcloth. This may be attached to the bedside table.

H. Each patient shall also be provided with adequate drawer space for personal belongings and a wardrobe or an enclosed space or closet for hanging his clothing within the patient's room. If a common closet is used for two or more persons, there shall be separation of clothing for each person.

**History**

ACS-219-69, September 16, 1969.

**§ 2652. General equipment**

A. Walkers, wheelchairs, metal bedside rails, footstools, commodes and commode chairs (preferably metal), foot cradles, trapeze frames and similar equipment shall be provided in sufficient number to satisfactorily meet the needs of the residents in the home.

B. Cubicle curtains or portable bedside screens shall be provided as needed in multiple-bed rooms to insure privacy for patients.

C. All furniture and equipment shall be maintained in a sanitary manner, kept in good repair and shall be so located in the room that the patient may conveniently use it.

**History**

ACS-219-69, September 16, 1969.

**§ 2653. Nursing equipment and supplies**

A. Adequate and satisfactory equipment and supplies shall be provided to enable the nursing staff to satisfactorily serve the patient.

B. A sufficient number of utensils shall be available to meet the needs of other patients and shall be stored in an area provided for the storage of nursing care equipment. Utensils stored away from the patient's bedside shall be marked for the individual or shall be thoroughly and effectively sterilized after each use.

C. All utensils shall be kept in good condition. Chipped and otherwise damaged utensils shall not be used.

D. Separate sputum receptacles with disposable containers shall be available for use as needed, or paper tissues may be provided to collect secretions from the nose and mouth and shall be deposited in a paper bag and burned. Flip-top metal boxes with disposable parafined containers are recommended.

E. There shall be available such additional equipment and supplies as are necessary to carry out common nursing procedures as required by the type of patients accepted by the nursing home.

**History**

ACS-219-69, September 16, 1969.

**§ 2654. Linen**

A. There shall be an adequate supply of linen and other bedding according to the number and type of patients accepted by the home.

B. Each bed shall be supplied with two clean sheets large enough to tuck under the mattress, draw sheets as needed, pillow slips, bedspread and sufficient light weight blankets to insure warmth. All linen shall be changed at least twice weekly.

C. Blankets shall be laundered as often as necessary to assure cleanliness and freedom from odors.

D. Individual hand towels, bath towels and washcloths shall be provided for each patient and shall be changed at least twice weekly. Additional clean towels and washcloths shall be provided as needed.

E. Hotwater bottle covers and ice cap covers shall be provided and used whenever the physician orders application of hotwater bottles or ice caps.

F. Bedpan and urinal covers shall be provided.

G. Adequate and convenient storage space shall be provided for all

linens, pillows and bedding. Separate storage space should be provided on each floor or in each building.

H. Bed blankets shall be supplied as necessary and be made available to nursing personnel to assure the comfort of the patient.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2655. General care and cleaning of equipment**

A. Bedpans, urinals and commodes shall be emptied promptly and thoroughly cleaned after each use.

B. Following the discharge of any patient, all equipment shall be thoroughly cleaned prior to reuse. Bedpans, urinals, emesis basins, washbasins, soap basins and other individual items shall be thoroughly cleaned and sterilized.

#### **History**

ACS-219-69, September 16, 1969.

### **Subchapter 9. Food Sanitation Service**

#### **§ 2701. Generally**

All food handling facilities, personnel and procedures shall comply with recommended standards contained in the "Food Service Sanitation Manual" published by the United States Public Health Service, 1962 edition.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2702. Milk**

All fluid milk served directly to the patients in the nursing home shall be grade A pasteurized milk and shall be stored and served in accordance with standards contained in the "Recommended Milk Ordinance and Code" published by the United States Public Health Service.

#### **History**

ACS-219-69, September 16, 1969.

### **Subchapter 11. Administration and Personnel**

#### **§ 2751. Administrator, qualifications; duties and responsibilities**

A. A responsible and qualified person shall be on duty at all times to maintain a desirable standard of environmental sanitation and provide services

which shall satisfactorily meet the needs of the nursing home residents. This person, known as the administrator, shall be capable of directing and supervising persons working in the nursing home and shall be fully authorized and empowered to carry out recommendations of the Navajo Indian Health Area Office as may be necessary to fully comply with the standards established or adopted by the Government Services Committee.

B. The administrator shall not leave the premises without delegating necessary authority to a competent person who is at least 21 years of age to carry out the required duties during his absence.

C. The administrator shall be in good physical and mental health and shall have a genuine interest in the welfare of the residents of the home.

D. The administrator shall be of high moral character and shall never have been convicted of a felony.

E. The administrator shall have a thorough knowledge of the standards of the Government Services Committee governing the operation of the nursing home, and he shall instruct all employees in the home as to these requirements and insist that they are carried out to the fullest extent at all times.

F. The administrator shall be responsible for the completion, maintenance, or submission of all records or reports as may be required by the Navajo Nation.

G. The administrator shall notify the Health and Social Services Committee in writing if the nursing home is to cease operation. This notice shall be given at least 60 days prior to the date the home is to cease operation and shall contain detailed information as to the placement of patients who are residents of the home.

H. Each license issued to the home shall specify the maximum number of patients and bed patients that may be cared for in the home. The administrator shall see that no greater number of patients and bed patients shall be kept than is authorized by the license.

I. The administrator shall make provisions for prompt removal of a body when a death occurs.

J. The administrator shall attend in person and shall cause other responsible personnel to attend institutes and training courses in nursing care, nutrition, fire safety, and administration when sponsored by a reliable agency and held at a location within a reasonable distance from the home.

K. The administrator shall be responsible that bills rendered to the family or guardians of the patients, which are for services not covered by the contractual arrangement with the patient, shall be itemized, certified to, and accompanied by original invoices from the vendor.

#### **History**

ACS-219-69, September 16, 1969.

**Note.** Words "Government Services" inserted pursuant CD-68-89, Resolve #10.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454.

#### **§ 2752. Standing advisory committee**

A. At each nursing home, there shall be a standing advisory committee to the administrator. This committee shall consist of a physician, nurse, social worker, physical therapist or whatever specialists are appropriate in individual cases. The purpose of this committee shall be to advise the administrator on actions to be taken regarding patients of the nursing home.

B. Upon concurrence of the multi-discipline committee, a decision can be reached that further inpatient stay is no longer necessary or that further hospital or consultant skills are necessary. The patient's attending physician shall be notified of the decision.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2753. Personnel; qualifications; records**

A. All persons working in the nursing home, including the administrator, shall annually submit a health card and a report of a physical examination if indicated.

B. Each new employee shall have a health card before employment in the home begins.

C. Each employee shall be in good health and free from colds and other communicable diseases while on duty.

D. In addition to the staff engaged in the direct care and treatment of the patients, there shall be sufficient personnel to provide all other basic services including administration, food service, housekeeping, laundry and home maintenance.

E. No employee shall be less than 16 years of age.

F. A record of each employee shall be maintained and such records shall be available to authorized representatives of the State Department of Health.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2754. Admission policies**

A. The administrator of the nursing home shall be responsible for exercising discretion in the type of patients admitted to the home. He shall not accept patients for whom care cannot be provided in keeping with the

patient's mental or physical condition.

B. A physical examination shall be made and a medical diagnosis recorded within 48 hours after admission to the nursing home, unless the patient is accompanied by a record of a recent physical examination. Such record shall include the diagnosis, treatment, medications, diet and extent of physical activity prescribed and shall be signed by the physician.

C. Children under 16 years of age shall not be admitted to nursing homes caring for adults unless special segregated facilities are provided.

D. Patients with serious, acute illnesses requiring the medical, surgical or nursing care of a general or special hospital shall not be admitted to a nursing home.

E. No home, except one for tuberculosis patients, shall knowingly admit a person with a communicable disease. Provision shall be made for the isolation of cases of communicable disease contracted or diagnosed after admittance to the home either at a hospital or suitable isolation room in the home if satisfactory to the Health and Social Services Committee.

F. Maternity cases shall not be admitted to nursing homes.

G. Tuberculosis nursing homes should be equipped with approved isolation facilities.

### **History**

ACS-219-69, September 16, 1969.

### **§ 2755. Patients; register; inventory of personal possessions; rights and privileges**

A. A register shall be kept in a separate book, listing in chronological order the names of patients and the date of admissions and discharges.

B. An inventory in duplicate of the valuable personal possessions with which the patient entered the nursing home shall be prepared.

C. Patients shall receive their mail unopened. Outgoing mail written by patients shall not be censored by the nursing home administrator or by any employee.

D. Regular visiting hours shall be established.

E. Members of the clergy shall be admitted at the request of the patient or guardian.

F. Relatives or guardians shall be allowed to see critically ill patients at any time.

G. Privacy shall be available at all times to patients for visits with family, friends, clergy, social workers and for professional or other business reasons.



H. Every patient shall have the freedom of attending the church of his choice. No patient shall be deprived of the right to have visits from the minister, priest or rabbi of his choice.

I. When a person dies in a nursing home, neither the administrator nor any attendant shall call any mortician or make any arrangements for permanent disposition of the body without first making an effort to contact some relative or guardian of such person or the placing agency so as to give such relative, guardian, or agency the right to make their own arrangements.

#### **History**

ACS-219-69, September 16, 1969.

### **Subchapter 13. Physician and Nursing Services**

#### **§ 2801. Physicians; medical records and orders**

A. There shall be a duly state licensed physician or PHS authorized physician who shall advise on medical administrative problems, review the institution's plan for patient care, and handle emergencies, if the patient's personal physician is unavailable.

B. Each patient shall be under the care of a duly state licensed physician or PHS authorized physician, and shall be seen by a physician as the need indicates. A review of each patient's status will be completed at least every 60 days by the attending physician.

C. There shall be a medical record maintained for each patient, which shall include at least:

1. The medical history;
2. Report of physical examination;
3. Diagnosis;
4. Physician's orders;
5. Progress note (medical and nursing); and
6. Medications and treatments given.

D. All medical orders shall be in writing and signed by a physician. Emergency verbal orders will be cosigned at the physician's next visit.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2802. Director of nursing; duties and responsibilities**

A. The nursing home shall have a director of nursing who is a licensed registered professional nurse and who shall provide 24-hour direct registered professional nurse supervision of nursing care to adequately meet the total needs of patients.

B. If the director of nursing is also the administrator; a second registered nurse will be designated as an assistant director of nursing, who shall be responsible for the supervision and evaluation of nursing care.

C. The director of nursing participates in the planning and budgeting for nursing personnel, equipment and facilities.

D. The director of nursing is responsible for the selection, orientation, supervision, evaluation, and development of professional and allied nursing personnel.

E. The director of nursing shall adhere to written personnel policies, develop job descriptions, plan for orientation for new staff, and provide for in-service education.

F. The director of nursing shall be responsible for defining the activities of volunteer workers as related to patient care and in guiding the volunteers in carrying out their activities.

G. The director of nursing shall participate in the screening of prospective patients in terms of kinds of care available in the institution.

H. The director of nursing shall adhere to the written policies relating to the control of prescribed medicines and treatment, defined frequency of medical review and the renewal of orders. These policies shall have the approval of the consulting physician or responsible medical group.

I. The director of nursing shall be responsible for implementing an active program of restorative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence. This program includes the involvement of family members.

### **History**

ACS-219-69, September 16, 1969.

### **§ 2803. Nursing personnel; number, qualifications; hours of duty; statement of responsibilities and duties**

A. The facility shall have a sufficient total number of nursing personnel, including sufficient number of RNs and LPNs to meet the physical, physiological, psycho-social and teaching needs of the patient.

B. A registered professional nurse or a licensed practical nurse currently licensed in the State of Arizona shall be on duty and in charge of nursing service at all times depending upon the size of the home as follows:

1. In nursing homes of 39 beds or less: A registered nurse shall be on duty eight hours of each day and no less than a licensed practical

nurse shall be on duty on each of the other two shifts.

2. In nursing homes of 40 to 64 beds: A registered nurse shall be on duty 16 hours of each day. (One registered nurse for each of two shifts and no less than a licensed practical nurse for the remaining shift.)

3. In nursing homes of 65 beds and up: A registered professional nurse shall be on duty and in charge of nursing service at all hours of the day and night. (One registered nurse for each eight-hour shift.)

C. The following minimum ratio of nursing personnel engaged exclusively in nursing duties to patients in nursing homes is to be maintained seven days a week with provisions made for relief personnel whenever a nurse or attendant is off duty for any reason:

1. For the work period commonly termed the morning shift (approximately 7:00 a.m. to 3:00 p.m.), there shall be nursing personnel in the ratio of one per 10 patients or fraction thereof and one for each additional 10 patients or fraction thereof.

2. For the afternoon shift (approximately 3:00 p.m. to 11:00 p.m.) there shall be nursing personnel in the ratio of one per 15 patients or fraction thereof and one for each additional 15 patients or fraction thereof.

3. For the night shift (approximately 11:00 p.m. to 7:00 a.m.), there shall be nursing personnel on duty and fully dressed in the ratio of one per 25 patients or fraction thereof and one for each additional 25 patients or fraction thereof.

D. The provisions of the Arizona Nurse Practice Act<sup>1</sup> shall be applicable to all nursing personnel. Those provisions shall be considered part of these regulations and shall be enforced by the Navajo Nation with the cooperation of NIHAO.

E. Employed nursing personnel and/or attendants or any person having a responsibility for the care of patients shall be at least 17 years of age (preferably over 21 years of age) and be physically and mentally capable.

F. The administrator shall cause to be posted a written statement outlining authority, responsibilities and duties of all personnel in the home. Such statements shall be amended or revised whenever a change in the staff occurs which would render the statement inaccurate.

### **History**

ACS-219-69, September 16, 1969.

### **§ 2804. Nursing care**

A. A nursing assessment shall be conducted on each new admission and reassessment done on an on-going basis by registered professional nurses.

B. A nursing care plan shall be established and currently maintained with long and short term goals for each patient based on nursing assessment. In the development of the nursing care plan, it is necessary to have a written statement by the physician regarding the nature of the illness, the condition of the patient, and the treatment prescribed and expected outcome of care.

C. A nursing record shall be maintained for each patient. A registered nurse shall be responsible for the accuracy of the reporting and recording of the patients' symptoms, reactions, and progress.

D. A registered professional nurse shall make rounds with the physician and confer with him concerning the patients nursing needs.

E. No restraint shall be used except upon a physician's direct order on the patient's chart, which should include the date, time of order, reason for restraint, means of restraint, and period of time the patient is to be restricted. No restraint of rough material or that which may otherwise cause harm to the patient shall be used.

F. While under restraint, the patient shall be observed at least every hour and a full report of his condition during the restriction period shall be written and signed by the nurse responsible for his care.

G. No patient shall be secluded in any room by locking or fastening a solid door from the outside. A half door is acceptable in case of mentally disturbed patients.

H. Oxygen shall be administered only by licensed personnel pursuant to a physician's written order. The nurse in charge shall be responsible to the attendant physician for the safe administration and handling of oxygen.

I. Nursing care standards can roughly be defined as follows:

1. Custodial:

- a. Patients shall be fed, kept clean and dry.
- b. Patients shall receive ordered medications and treatment.
- c. Patients shall be protected from accidents and injuries.

2. Therapeutic in addition to Subsection (I)(1)(a), (b), and (c) above:

a. Each patient shall be given proper daily personal attention and care, including skin, nails, hair and oral hygiene.

b. A regular program of encouraging activity and self-help for each patient should be established. If patients are up and about, every effort should be made to keep them ambulatory.

3. Restorative in addition to Subsections (I)(1)(a), (b) and (c), and (I)(2)(a) and (b) above:

a. Each patient shall have a planned interesting activity to maintain mental and psychological ability to the highest level possible.

b. Each patient shall be assessed and evaluated by a registered professional nurse for recognition of symptoms and nursing intervention to prevent unnecessary deterioration.

c. Active measures to maintain normal range of motion and to prevent deformities should be carried out.

#### **History**

ACS-219-69, September 16, 1969.

**Note.** Subsection reworded for purposes of clarity.

### **Subchapter 15. Supervision and Care of Medications**

#### **§ 2851. Storage generally**

A. A drug storage area shall be provided at the nursing station. It should be of sufficient size, properly lighted, and easily accessible. It shall be locked when not in use. The key for the lock of this drug storage area or cabinet shall be carried by or be accessible to only licensed nursing personnel.

B. Internal and external medications shall be kept in separate areas in the medicine cabinet or in separate locked cabinets.

C. All poisonous, dangerous and habit-forming drugs, including narcotics, sedatives and amphetamines, shall be maintained apart from the other medical products, and are to be secured by double lock.

D. Biologicals, insulin and other medications requiring cold storage shall be refrigerated and kept in covered containers. Temperature shall be maintained at 40°F to 45°F, unless the label on the biologicals requires a lower storage temperature.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2852. Individual prescriptions**

A. Prescriptions belonging to patients shall be given to them when discharged, if so authorized by the attending physician.

B. When the patient is no longer in the nursing home, the remaining drugs (in their original containers) shall be placed in a box separate from the daily medication of other patients, and the licensed PHS pharmacist shall be notified to pick up these drugs.

C. The contents of all individual prescriptions shall be kept in the

original container bearing the original label. No in-patient shall be permitted to retain any medication.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2853. Narcotics and other dangerous drugs**

A. To comply with state and federal regulations governing narcotics and other dangerous, poisonous, and habit-forming drugs, there shall be a narcotic record book with complete data recorded on each dose administered. In addition, a recorded audit shall be done at least once daily. Each time a narcotic is given a notation shall be made on the patient's nursing record.

B. All narcotics shall be placed under double lock. This may be accomplished by maintaining a separate locked box, cabinet, or drawer within the locked medication cabinet. If a locked box is used, it should be bolted or permanently attached within the cabinet. The key to the narcotic container shall be carried by the person duly authorized to give medication.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2854. Administration**

A. Licensed nursing personnel shall be responsible for handling and administering drugs and individual prescriptions.

B. A full time licensed PHS pharmacist shall be available on call and for routine visits, which will permit stock supplies of narcotics, sedatives, dangerous, poisonous, or habit-forming drugs, prescription legend drugs, or other medications to be kept on the premises.

C. No medications shall be given without a written order signed by the physician. Emergency telephone orders can be accepted by a registered professional nurse and cosigned by the physician on his next visit.

D. Any pharmaceutical container having soiled or damaged labels should be returned to the pharmacist for relabeling. If label is missing or illegible, the contents should be destroyed immediately.

E. Graduated medicine glasses and medicine droppers should be available for the purpose of accurately measuring liquid medication. After each use the articles shall be washed and disinfected and stored in a suitable place.

F. Hypodermic syringes, needles, medicine droppers and similar equipment shall be sterile when used.

G. First aid supplies shall be readily available to all personnel.

#### **History**

ACS-219-69, September 16, 1969.

### **Subchapter 17. Patient's Records**

#### **§ 2901. General requirements**

A. The administrator of each nursing home shall be held responsible for the proper preparation, preservation and adequacy of records of all persons admitted to the home.

B. Individual records for each patient shall be maintained. These records shall be kept up-to-date and complete on each patient in the home. After the death or discharge of the patient, the record shall be placed in an inactive file and kept for a minimum of two years. The active records shall be kept in the home at all times and available to the staff.

C. All records shall be kept in ink or typewritten.

D. All medical records relating to the patient shall be considered confidential, except that they shall be made available to the authorized persons having legal responsibility pertaining to the licensing of nursing homes.

#### **History**

ACS-219-69, September 16, 1969.

#### **§ 2902. Patient charts**

Each patient's chart kept from the time of admission to the time of discharge or death shall include the following information:

A. Admission record containing identifying information:

1. Name;
2. Religion;
3. Usual residence, including street address, city or town, county or state;
4. Sex;
5. Color or race;
6. Marital status; for example, single, married, widowed or divorced;
7. Birthplace;
8. Date of birth including year, month and day;
9. Usual occupation and kind of business or industry;

10. Social Security Number;

11. Father's name and his birthplace—at least the state or foreign country;

12. Mother's maiden name and her birthplace—at least the state or foreign country;

13. Whether or not the resident ever was a member of the U.S. Armed Forces and if so, the dates of service (if available);

14. The person or persons or agency responsible for the patient;

15. Next of kin;

16. Name and address of the attending physician;

17. Date of admission;

18. Date of discharge, reason for discharge, discharge diagnosis or date and time of death and disposition of body;

B. Medical records:

1. Medical examination record containing information found on the physical examination signed and dated by the physician performing the examination;

2. Record should include whether the patient was ambulatory or non-ambulatory at the time of admission, whether there were bedsores, bruises or marks on the body and a description of the mental condition of the patient;

3. Physician's order record containing the physician's authorization for the required medical and nursing care, administration of drugs, medicines, treatment, diet, extent or restriction of activity, etc. Each entry and order shall be dated and signed (or countersigned) by the physician;

C. Nursing record and notes shall be kept current and shall include such information as outlined in regulations below:

1. All pertinent factors pertaining to the patient's general condition. Charting of observations shall include date and time and shall be done by the person who makes the observation or renders the nursing care;

2. Date, time, kind, dosage and method of administration of all medications shall be recorded daily and signed by the nurse who administered the drug. This may be recorded on the regular nursing notes or on individual medication records;

3. Date and time of all treatments and dressing;



4. Any change in the patient's condition;
5. Observations on patients may be summarized and recorded;
6. Restriction of activity of any patient including reason for restriction used, the time of starting and ending the restrictions, regular observations of any patient while restricted;
7. Any incident or accident occurring and time of occurrence, while the patient is in the home;
8. Date of each physician's visit;
9. All other significant observations, such as moods, delusions, hallucinations, judgment, orientation and behavior; and
10. Nursing notes shall be signed by the person writing the note. If geriatric check sheet is used, it must also be signed by the nurse in charge.

D. The maintenance of progress notes is recommended and should include all subsequent medical examinations, including findings and recommendations for further care following regular visits to or by the physician.

#### **History**

ACS-219-69, September 16, 1969.

### **Chapter 19. Midwives**

#### **§ 3101. Authorization of training program**

The Director of the Navajo Area Indian Health Service, in cooperation with the University of Utah College of Midwifery, is authorized to establish a program to train and develop nurses to be employed as midwives in the Navajo Nation.

#### **History**

ACJY-196-70, July 14, 1970.

**Note.** Beginning of Section reworded for purpose of statutory form.

### **Chapter 21. Discharge of Sulfur**

#### **§ 3151. Permits; exception**

On or before the effective date of this Chapter the Navajo Environmental Protection Commission shall issue sulfur emission permits to all static sources within the Navajo Nation (whether operated by individuals, corporations, partnerships, governments, syndicates, or other forms of organizations) discharging sulfur or its compounds into the atmosphere of the Navajo Nation;

provided however, that no permit shall be required or issued to any person, all of whose static sources discharge less than 1,000,000 pounds of sulfur into the atmosphere annually.

#### **History**

CS-59-77, September 15, 1977.

CJN-45-77, June 8, 1977.

#### **§ 3152. Discharge reports; fees**

A. Every permit holder shall report to the Navajo Tax Commission the quantity of sulfur discharged into the atmosphere during each calendar quarter, commencing with the quarter beginning, after the effective date of this Chapter. Together, with such report, the permit holder shall remit a sulfur discharge fee according to the following schedule:

##### CALENDAR QUARTERS

Beginning On	Fee (per pound)
January 1, 1978	\$.15
January 1, 1979	.30
January 1, 1980	.45
January 1, 1981	.60
January 1, 1982	.75

B. The report and payment to the Navajo Nation required by this Section shall be made on or before the 45th day after the end of the quarter for which the report is made.

C. The fee imposed shall not apply to the first 250,000 pounds of sulfur discharged each quarter by a given person. In calculating this exemption, all static sources owned, operated or controlled by a person, in whole or in part, within a 10 mile radius shall be considered as a single static source.

#### **History**

CS-59-77, September 15, 1977.

CJN-45-77, June 8, 1977.

**Note.** Effective date of Chapter. See CS-59-77, September 15, 1977.

#### **§ 3153. Rules and regulations**

The Navajo Environmental Protection Commission and the Navajo Tax Commission are vested with the authority to enforce this permit system by appropriate rules and regulations. The Commissions may divide this authority

as they deem fit and mutually agree.

#### **History**

CJN-45-77, June 8, 1977.

#### **§ 3154. Legal proceedings**

The Courts of the Navajo Nation are vested with jurisdiction:

A. To hear and determine any challenge to the validity of this Chapter, either generally, or as applied to any person; and

B. Over any and all persons subject to this Chapter, provided however:

1. No private right of action by any person or group of persons either directly against any person subject to this Chapter or indirectly against any Navajo Nation official or body to compel the enforcement of the provisions of this Chapter shall be deemed created by this Chapter or be within the subject matter jurisdiction of the Courts of the Navajo Nation.

2. No injunction or restraining order shall issue from any Court of the Navajo Nation to enforce the provisions of this Chapter.

#### **History**

CS-59-77, September 15, 1977.

CJN-45-77, June 8, 1977.

**Note.** Subsections renumbered for statutory clarity.

#### **§ 3155. Severability clause**

If any provision of this Chapter or its application to any person or circumstances is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

#### **History**

CJN-45-77, June 8, 1977.

### **Chapter 23. Navajo Nation HIV/AIDS Code**

#### **§ 3201. Purpose**

A. The Navajo Nation HIV/AIDS Policy Development Work Group, after extensive study of the requirements of the Navajo Nation, has developed a "Navajo Nation HIV/AIDS Policy". This Act is based on that Policy and that Policy should be consulted to resolve any questions or ambiguities in this Act.

B. It is the policy of the Navajo Nation to ensure that all individuals within the jurisdiction of the Navajo Nation receive education and appropriate counsel with respect to the HIV, a virus that leads to Acquired Immune Deficiency Syndrome (AIDS), and other similar communicable diseases. Further, it is the policy of the Navajo Nation that an individual infected with the AIDS virus should receive compassionate medical treatment and be protected from discrimination and invasion of privacy due to their infection or suspected infection with the HIV/AIDS virus.

C. Navajo Nation programs and service providers shall cooperate to prevent the spread of the HIV/AIDS virus. Activities coordinated under this Act shall emphasize Navajo concepts of harmony, culture, traditional practices and the role of the family, kinship and community.

### **History**

CO-100-94, October 21, 1994.

### **§ 3202. Education**

A. Communicable diseases generally. All programs, services and businesses within the Navajo Nation shall adopt simple, accessible infection control procedures and protocols for their organizations. These procedures shall include appropriate education on communicable diseases. The Navajo Occupational Safety and Health Administration and the Navajo Division of Health shall assist in the planning, implementation, education, and monitoring of infection and communicable disease control procedures. As appropriate and available, the Navajo Area Indian Health Service shall participate in these activities.

B. Schools. Local school boards and parent advisory groups shall be educated to assist with HIV/AIDS prevention efforts in the schools. Lesson plans and curricula, similar to the "Navajo Beauty Way" shall be developed and implemented to allow for traditional Navajo values in HIV/AIDS education. Adil'idli and other Navajo traditional teachings shall be incorporated wherever relevant. Parents, family members, and community leaders are to be involved in this education process. The Navajo Division of Education and the Navajo Division of Health will assist in developing this education curriculum.

### **History**

CO-100-94, October 21, 1994.

### **§ 3203. Confidentiality and testing**

A. Testing. All HIV antibody testing shall be voluntary. No person shall be required to undergo an HIV antibody test, against his or her free will, to receive any benefit, employment opportunity, or for any other reason. Except as provided in this Act, and subject to the provisions of the Privacy Act, 5 U.S.C. § 552a, all test results, counseling and treatment of individuals who may be infected with the HIV/AIDS is confidential. Otherwise confidential information may be obtained by a Court Order of the Navajo Nation District Courts, provided appropriate safeguards are taken to ensure individual privacy.

B. Notification of persons "at-risk." If, based on an investigation, it appears that an uninfected individual, who is unaware, may have been infected with HIV, a public health investigator shall inform that individual. All information relating to the notification shall otherwise be kept in strict confidence.

C. Equal access to services. No person shall be denied services nor offered substandard services because of real or suspected HIV/AIDS infection. Nor shall any program or business within the Navajo Nation refuse services or employment opportunities to anyone based on real or suspected HIV/AIDS infection.

#### **History**

CO-100-94, October 21, 1994.

#### **§ 3204. Coordination with Navajo Nation Division of Health**

A. Reporting requirements. Consistent with this Act, all HIV-positive test results and HIV/AIDS cases shall be reported to the Navajo Nation AIDS Office.

B. Maintenance of records. All reports and records of HIV-positive tests and cases of HIV/AIDS shall be confidentially maintained consistent with the Privacy Act, 5 U.S.C. § 552a. No unauthorized persons shall be allowed access to these records. The Navajo Nation AIDS Office shall use these records to monitor the incidence of HIV/AIDS cases and assist HIV-positive patients and their families in receiving appropriate medical care and services.

C. Coordination of services. The Navajo Nation AIDS Office shall assist in the development of a comprehensive and coordinated system of care for HIV positive patients and their families, and identification of alternative resources and treatment programs. Local HIV/AIDS-related resource listings shall be developed and made available to assist patients and non-medical providers in accessing direct care services.

D. The Navajo Nation AIDS Office shall assist in researching traditional Navajo teachings and re-initiating the traditional ways of dealing with HIV/AIDS and other sexually transmitted diseases.

#### **History**

CO-100-94, October 21, 1994.

#### **§ 3205. Treatment**

A. Service provider requirements. Treatment of HIV positive persons shall be comprehensive, competent and compassionate. All service providers shall make special efforts to keep clinical services up-to-date with recent developments in HIV/AIDS-related care. Direct services shall include, but not be limited to, HIV antibody testing, counseling, HIV/AIDS education and prevention, current pharmacological treatment for HIV/AIDS infection, mental health, and counseling services for HIV-positive patients and their families.

Service providers shall select an existing program or develop an appropriate program that is culturally relevant or Navajo-specific, respectful of the Navajo culture, and reflects current knowledge and clinical guidelines about medical care and treatment is appropriate, respectful, and reflects current knowledge and clinical guidelines about HIV/AIDS related illnesses. Patients and their families shall have input into these processes.

B. Use of traditional Navajo treatment. Traditional Navajo healing methods may evolve as a primary means of treatment for persons already suffering from HIV/AIDS. As appropriate, the Navajo Division of Health shall include and assist such organizations as the Diné Spiritual and Cultural Society, Inc., in their efforts to develop treatment methodologies.

#### **History**

CO-100-94, October 21, 1994.

#### **§ 3206. Amendments**

Upon the recommendation of the Health and Social Services Committee of the Navajo Nation Council, the Navajo Nation Council may amend the Navajo Nation HIV/AIDS Code by majority vote of the members present.

#### **History**

CO-100-94, October 21, 1994.

### **Chapter 25. Navajo Nation Human Research Code**

#### **§ 3251. Title**

This Code shall be known as the Navajo Nation Human Research Code.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

#### **§ 3252. Purpose**

The purpose of this Code shall be to set forth the conditions under which investigators, physicians, researchers and others may perform research activities on living human subjects within the territorial jurisdiction of the Navajo Nation.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

#### **§ 3253. Policy**

A. All persons within the territorial jurisdiction of the Navajo Nation are free from unreasonable harmful, intrusive, ill-conceived or otherwise offensive research and investigation procedures.

B. Research conducted is beneficial, community-based, and consistent with Navajo Nation priority and concerns.

C. Research information and data generated by and about Navajo individuals, communities, culture represent inalienable intellectual properties of the Navajo people and over which the Navajo Nation will provide oversight.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

#### **§ 3254. Rules and regulations**

The Health and Social Services Committee is authorized to promulgate rules and regulations consistent with and necessary to implement this Code.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

#### **§ 3255. Definitions**

As used in this Code, the following definitions apply:

A. Subjects. As used in this Code, "Subjects" means a living individual about whom a researcher (whether professional or student) conducting research obtains private information or data through intervention or interaction with the individual, involving physical procedures by which data are gathered (for example, venipuncture) and/or manipulations of the subject or the subject's environment.

B. Navajo Nation Human Research Review Board. This is the Board created in Section 3256 of this Code

C. Research. As used in this Code, "research" is the use of systematic methods (including but not limited to note taking, interviewing, video and audio taping) to gather and analyze information for the purpose of proving or disproving a hypothesis, concepts or practices, or otherwise adding to knowledge and insight in a particular medical or psychological discipline. Generally, proposed studies are defined as "research" if their goal is to produce generalizable descriptive knowledge through the use of human subjects or volunteers whose protection must be assured in accordance with the ethical principles of respect for persons; the duty to help others or beneficence; and justice or fairness. This may include, at the discretion of the Navajo Nation Human Research Review Board, quality assurance activities, chart reviews

and program evaluations. All data and research subject to this Code are the property of the Navajo Nation, although a researcher may be given a permit.

D. Publication. As used in this Code, the term "Publication" includes all proposed professional and program papers and reports concerning Navajo individuals. Also requiring advance approval are papers based on research conducted within the territorial jurisdiction of the Navajo Nation, prepared for presentation at national or international professional society meetings by researchers. Papers or reports for technical and lay audiences prepared and approved by Indian Health Service or the Navajo Nation for compliance with contract or grant requirements are specifically excluded from this definition.

E. Researcher. As used in this Code, the term "researcher" means any person, organization, business or other entity which conducts research within the territorial jurisdiction of the Navajo Nation.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

#### **§ 3256. Creation of the Navajo Nation Human Research Review Board**

There is hereby created the Navajo Nation Human Research Review Board, whose purpose is to review all proposals (notwithstanding other IRB approvals) for human research which will occur within the territorial jurisdiction of the Navajo Nation or which otherwise concerns Navajo individuals as an identifiable group, issue permits for those projects which are consistent with the terms and intent of this Code, and, as appropriate, review and approve the results of such studies before publication. However, this Board is to coordinate with the Historic Preservation Department to avoid jurisdiction conflicts. The Navajo Nation Human Research Review Board is administratively assigned to the Navajo Nation Division of Health for support services.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

#### **§ 3257. Composition and term of the Navajo Nation Human Research Review Board**

A. The Navajo Nation Human Research Review Board shall be composed of 15 individuals, selected as follows: three persons appointed by the Navajo Area Health Board; three persons appointed by the Office of the President of the Navajo Nation; three persons appointed by the Health and Social Services Committee of the Navajo Nation Council; three persons appointed by the Navajo Area Indian Health Service Area Director; and three persons appointed by the Education Committee. At least two persons serving on the Navajo Nation Human Research Review Board shall be licensed physicians and at least one of the appointees must be a community representative.

B. The term of an appointment to the Navajo Nation Human Research Review



Board shall be three years from appointment.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

#### **§ 3258. Meetings, quorum**

The Navajo Nation Human Research Review Board shall meet at least quarterly, but as often as necessary. Five members, one of whom must be a licensed physician and one of whom must be a community representative, of the Navajo Nation Human Research Review Board shall constitute a quorum.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

#### **§ 3259. Purposes of the Navajo Nation Human Research Review Board**

The purposes of the Navajo Nation Human Research Review Board are to assure that research and publication activities:

A. Are consistent with the health and education goals and objectives of the Navajo Nation.

B. Do not detract from, nor interfere with, the provision of human services to the Navajo people.

C. Do not endanger the well-being of individuals or communities.

D. Require informed consent of all affected individuals or their legal representatives.

E. Are culturally relevant to the extent possible and are appropriate clinically, technically, epidemiologically and statistically.

F. Present only reasonable risks to subjects in relation to anticipated benefits, if any, to those subjects, and the importance of knowledge that reasonably may be expected to result.

G. Select subjects equitably. In making this assessment the Navajo Nation Human Research Review Board shall take into account the purposes of the research, the setting in which the research will be conducted, and the population from which subjects will be recruited.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

### **§ 3260. Powers of the Navajo Nation Human Research Review Board**

Consistent with the requirements of this Code, the powers of the Navajo Nation Human Research Review Board shall include:

- A. The review and approval or disapproval of research proposals.
- B. The review and approval or presentation materials and manuscripts, including thesis, dissertations and abstracts, prior to publication.
- C. The negotiation of additional and/or revised procedures, methodologies, and approaches to research and publication with researchers.
- D. The Board may request assistance from other persons with specialized knowledge in the review of any application, proposal or manuscript. When research is reviewed involving a category of vulnerable subjects (e.g., prisoners, children, and individuals who are mentally disabled), the Navajo Nation Human Research Review Board shall include in its reviewing body one or more individuals who have a particular concern for the welfare of these subjects.
- E. Subject to the approval of the Health and Social Services Committee, and Education Committee and the requirements of this Code, the Navajo Nation Human Research Review Board shall adopt appropriate rules and procedures regarding: confidentiality of subjects; storage of specimens and other research materials; monitoring of research activities; amendments to any research proposals; financial disclosure regarding the research; volunteer payments and fees; adverse reactions of any volunteers; applications and their contents; fees for permits and other services; and other procedures to implement this Code.
- F. The Board will coordinate with other appropriate boards and committees including but not limited to, other Institutional Review Boards, and the Historic Preservation Department for activities which may also be subject to the Cultural Resources Preservation Act (CMY-19-88).

### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

### **§ 3261. Record retention**

The Navajo Nation Human Research Review Board shall develop and maintain an up-to-date file on all research projects, past and ongoing, approved and disapproved. Records of research projects will be maintained at least 10 years after the Navajo Nation Human Research Review Board receives the proposal or five years after publication of a paper derived from the research activity, whichever is longer. The Navajo Nation Human Research Review Board shall maintain a file of reprints of publications resulting from all research projects conducted within the territorial jurisdiction of the Navajo Nation.

### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

### **§ 3262. Research permit required**

Prior to undertaking any human research within the territorial jurisdiction of the Navajo Nation, a researcher must apply for and receive from the Navajo Nation Human Research Review Board a Research Permit as provided for in Section 3264 or within the Cultural Preservation Act.

### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

### **§ 3263. Administrative fees**

The Navajo Nation Human Research Review Board may assess reasonable costs associated with the review of proposals and other materials; any monies generated are for the exclusive use of the administration of this Code.

### **History**

CAP-16-02, April 16, 2002.

### **§ 3264. Research application**

The Research Application shall be in a form developed by the Navajo Nation Human Research Review Board in accordance with Section 3259, but such application, at a minimum shall include research goals, methodology, and anticipated results. The application shall also include a separate section addressing specific anticipated benefit to the study's subjects, Navajo individuals or groups of tribal members, the Navajo Nation and all other readily identifiable potential beneficiaries. The Research Application must be signed by the Researcher and include a provision that the Researcher agrees to the civil jurisdiction of the Navajo Nation with respect to the research to be undertaken and any publications arising from such research.

### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

### **§ 3265. Confidentiality and security**

There must be adequate assurance, as determined by the Navajo Nation Human Research Review Board, that the data and information generated during the conduct of research is protected from unauthorized access and misuse consistent with informed consent provisions, the Navajo Nation Privacy Act, and other

Navajo Nation information technology requirements.

#### **History**

CAP-16-02, April 16, 2002.

#### **§ 3266. Informed consent**

Before any research may be conducted on any subject, the researcher must obtain the active informed consent of that prospective subject, or their parent, legal custodian or guardian, as appropriate. At a minimum, this informed consent must be in writing, acknowledged by the subject, which informs the subject of the purpose of the research, any potential risks, and alternative treatments or procedures. The Informed Consent may not include any exculpatory language or disclaimer of liabilities.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

#### **§ 3267. Progress reports on research**

A. Researchers shall report to the Navajo Nation Human Research Review Board the progress of their research as often and in the manner prescribed by the Navajo Nation Human Research Review Board in the research permit.

B. Researchers shall promptly report any injuries or adverse impacts (including violations of an individual's privacy) to human subjects to the Navajo Nation Human Research Review Board.

C. Researchers shall promptly report any unanticipated problems which involve risks to the human research subjects or others to the Navajo Nation Human Research Review Board.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

#### **§ 3268. Continuing review of research activities**

The Navajo Nation Human Research Review Board shall regularly review all research activities conducted within the territorial jurisdiction of the Navajo Nation. If, during the course of a research activity, the research conditions change, the Navajo Nation Human Research Review Board may require the researcher to amend their application consistent with the changed conditions. If the Navajo Nation Human Research Review Board determines that a research project is no longer viable because of changes in the scope or effect of the research, it may rescind any research permit or otherwise limit the scope of research activities which may be conducted under the permit.

### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

### **§ 3269. Publication review procedures**

A. All individuals proposing publishing covered by this Code are required to submit a manuscript to the Navajo Nation Human Research Review Board for approval, in advance of publication.

B. The manuscript will be reviewed for technical content and validity, organization of content, readability, as well as assurance that they are consistent with the goals, intent and policies of this Code.

### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

### **§ 3270. Permit appeal procedures**

A. Researchers who are denied a research permit may request reconsideration of their application upon a showing of good cause. A request for reconsideration shall be deemed to have shown good cause if it:

1. Presents significant relevant information not previously considered by the Navajo Nation Human Research Review Board;

2. Demonstrates that significant changes have occurred in the factors or circumstances considered by the Navajo Nation Human Research Review Board in reaching its decision; or

3. Demonstrates that the Navajo Nation Human Research Review Board failed to follow its adopted procedures in reaching its decision.

B. A request for reconsideration must be received within 30 days after the researcher is notified of a decision.

C. If deemed in good cause, reconsideration shall be conducted within 30 days after receipt of the appeal request.

### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

### **§ 3271. Enforcement**

Whenever it appears that a researcher or other person or entity has violated the provisions of this Code, the Navajo Nation Human Research Review

Board on its own initiative may petition the Courts of the Navajo Nation for injunction or other appropriate relief. If the Court, after a hearing, finds that this Code has been violated, it may assess civil penalties of up to five thousand dollars (\$5,000), in addition to any other damages resulting from an unpermitted research activity.

#### **History**

CAP-16-02, April 16, 2002.

CO-106-95, October 25, 1995.

### **Chapter 31. Community Works Program**

#### **§ 3301. Purpose**

The purpose of this Chapter is to set guidelines for the Administration and expenditures of the Community Works Program funds of the Navajo Nation.

#### **History**

ACJY-83-78, July 18, 1978.

ACAP-77-76, April 1, 1976.

ACAU-189-75, August 28, 1975.

ACJY-79-74, July 3, 1974.

ACAU-114-74, August 15, 1974.

ACMA-83-75, March 21, 1975.

ACAP-108-75, April 9, 1975.

ACAU-317-73, August 8, 1973.

ACJA-7-74, January 11, 1974.

ACJY-222-72, July 13, 1972.

ACAU-302-72, August 25, 1972.

ACS-368-72, September 28, 1972.

ACD-401-72, December 6, 1972.

ACJY-198-71, July 1, 1971.

ACJY-244-71, July 14, 1971.

ACF-30-72, February 10, 1972.

ACJA-1-7 1, January 26, 1971.

ACJN-151-70, June 16, 1970.

ACJN-150-69, June 27, 1969.

ACJN-116-68, June 12, 1968.

ACJN-134-67, June 22, 1967.

ACJY-146-66, July 22, 1966.

ACAP-47-65, April 27, 1965.

ACJY-120-64, July 23, 1964.

ACAU-145-62, August 9, 1962.

ACAU-159-60, August 25, 1960.

#### **§ 3302. Control of Program**

The Office of Navajo Revenue Sharing will direct the Community Works Program.

#### **History**

ACAP-77-76, April 1, 1976.

#### **§ 3303. Projects**

A. Projects will be originated by the people of each chapter and certified at a duly called chapter meeting with the help of respective council member and chapter officers in accordance with Community Work's Plan of Operation.

B. The Community Works personnel of the Office of Navajo Revenue Sharing will screen and approve or deny all applications according to the Plan of Operation. On technical matters, assistance will be sought from Navajo Nation, PHS and BIA personnel.

#### **History**

ACJY-83-78, July 18, 1978.

ACAP-77-76, April 11, 1976.

#### **§ 3304. Work orders; procurement**

A. Upon approval of specified projects, work order authorization forms and work project information will be given to the council member and/or chapter officers requesting the project.

B. Procurement of necessary materials and supplies will be channeled

through the Navajo Nation Purchasing Department. Requests for such materials and supplies will be made on a Purchase Requisition. The Navajo Nation Purchasing Department will call for bids on substantial orders. Materials will be secured through the issuance of a Purchase Order and will be delivered to the Navajo Nation Warehouse. Materials will be released from the Warehouse upon receipt of the proper Warehouse Materials Requisition Form. No purchases are to be made by the foreman without proper processing.

C. Authorization for immediate purchases from local vendors to program jobsites may be performed at the discretion of the Office of Navajo Revenue Sharing, provided funds are available, functioning in direct liaison with the Navajo Nation Purchasing Department and the Office of the Controller. Any purchases made with chapter funds to prevent a complete halt of the project is permissible and the concerned chapter shall be reimbursed with its Community Works funds upon presentation of a proper vendor invoice.

#### **History**

ACAP-77-76, April 1, 1976.

#### **§ 3305. Employment—Preference**

A. After a project is approved, the chapter organization, with their Council Member, will procure the foreman and workmen required on the project at an officially called Chapter meeting. Personnel selection will include one foreman per project. Hiring will be on the basis of local knowledge of need.

B. The chapter will make every possible effort to employ only those persons of the community who are in need of assistance, giving preference to those with the greatest need.

C. Chapter officers, grazing committee and land board members may work as laborer or foreman on a Community Works Project, but only with the permission of chapter membership having voted on the proposition. However, they may not work more than two times out of each appropriation.

D. Due to technicalities involved, a person shall not work under another person's name or social security number.

#### **History**

ACAP-77-76, April 1, 1976.

#### **§ 3306. Persons who may not work under this Chapter**

A. Members of the Nation and their immediate families, who are permanently employed by the Navajo Nation, federal government agencies, state agencies, and other agencies, may not work under this Chapter.

B. Proper withholding of social security and other taxes required by law will be made by the Financial Services Department on all Community Works Payrolls.

C. A schedule of pay periods will be made out and sent to all Chapter



Officers. Timecards submitted to the Financial Services Department on schedule will be processed during the week and checks made ready for delivery on the Friday following pay period worked.

#### **History**

ACJY-83-78, July 18, 1978.

ACAP-77-76, April 1, 1976.

#### **§ 3307. Work stoppages**

A. If a work project is not being done according to the Plan of Operation, the Council Member, Chapter Officers, and/or Office of Navajo Revenue Sharing representative will stop the work project and call a chapter meeting to correct the mistakes.

B. Projects will be stopped during unfavorable weather at the discretion of Chapter Officers and/or Council Member.

#### **History**

ACAP-77-76, April 1, 1976.

#### **§ 3308. Allocation of funds to Chapters**

The funds shall be allocated by chapters on the basis of unemployed population as determined by the current census figures. It will be the duty of Council Members and chapter organizations, with the assistance of the Tribal Work Experience Program Office, to give the latest census information as to its increase and decrease. A regulation census form supplied by the Office of Navajo Revenue Sharing will be used. Household heads who are permanently employed, and their families, will not be counted in population for allocation of funds.

#### **History**

ACAP-77-76, April 1, 1976.

#### **§ 3309. Disbursement**

A. Payment of wages, rental of trucks and teams and/or any claim arising out of the Community Works Program will be made through the Office of the Controller at Window Rock, Arizona. Individual timecards; and equipment rental cards will be supplied as part of the information kit at the start of each project and given to the elected foremen of the project.

B. Proper withholding of social security and other taxes required by law will be made by the Office of the Controller on all Community Works Payrolls.

C. A schedule of pay periods will be made out and sent to all Chapter Officers. Timecards brought into the Window Rock Office on schedule will be processed during the week and checks made ready for delivery on the Friday following the pay period worked.

D. Only Council Members, Chapter Officers and Director or Assistant Director of the Office of Navajo Revenue Sharing can sign out payroll checks. Individuals will not be given checks by Community Works Office personnel. In the event of the unavailability of a Council Member to sign Community Works documents, and to prevent inconvenience and hardship to all concerned, the Director or Assistant Director of the Office of Navajo Revenue Sharing may sign the documents; this authorization is valid only in cases of emergencies where the Council Members are unavailable to sign Community Works documents.

### **History**

ACAP-77-76, April 1, 1976.

### **§ 3310. Compensation**

A. Common laborers shall be compensated at the rate of two dollars and thirty cents (\$2.30) per hour; foreman two dollars and forty cents (\$2.40) per hour; and summer student supervisors two dollars and forty cents (\$2.40) per hour. Only in unusual situations where protection of property or safety measures so requires may chapters secure services of skilled workmen who can be paid in excess of two dollars and forty cents (\$2.40) per hour.

B. Equipment rental rates are as follows:

1. Teams and 1/2-ton Pickups—Three dollars (\$3.00) per hour when actually employed. (Not to exceed eight hours per day.)

2. 3/4-ton Pickups and 1-ton Trucks—Three dollars and fifty cents (\$3.50) per hour when actually employed. (Not to exceed eight hours per day.)

3. Tractor (farm) and rental of heavy equipment—Four dollars and fifty cents (\$4.50) per hour when actually employed. (Not to exceed eight hours per day.)

C. Rental of personal equipment owned by members of the Navajo Nation Council is permissible only with the approval of the chapter.

D. Rental of chapter-owned vehicle and heavy equipment on Community Works Project is permissible and payment shall be made to concerned chapter. (Not to exceed eight hours per day.) Payment shall be made with proper vendor's invoice and completed direct payment form from the Office of Navajo Revenue Sharing requesting payment.

E. Payment for all heavy equipment rented by the chapter on an approved project in excess of four dollars and fifty cents (\$4.50) per hour or on contracts will be made upon completion of "Request for Direct Payment" forms with supporting documents from the vendor.

### **History**

ACAP-77-76, April 1, 1976.

**§ 3311. Duties and responsibilities**

A. Project Foremen:

1. Will be hired only at Chapter meetings;
2. Will rotate every 10 days;
3. Will direct laborers on assigned projects;
4. Will keep accurate project records and will report time for laborers on proper timecards;
5. Will turn timecards properly signed by Council Members into Community Works, Financial Services Department at regular pay periods; and
6. Will be responsible for the safety of laborers under their supervision.

B. Laborers:

1. Will be hired on the basis of need only (in accordance with eligibility rules in 13 N.N.C. §§ 3305, 3306);
2. Will be hired only at Chapter meetings; and
3. Will rotate every 10 days.

C. The use of intoxicants is expressly forbidden and any workman drinking on Community Works Projects shall be terminated immediately by the foreman, Chapter Officers or Council Member.

D. A person may not work as a foreman or laborer and have a family vehicle rented on a project at the same time.

**History**

ACJY-83-78, July 18, 1978.

ACAP-77-76, April 1, 1976.

**§ 3312. Types of projects**

A. Rug weaving and other arts and crafts (Chapter Officers or project foreman may contact Arts and Crafts personnel as to size, design, dye, etc.).

B. Home improvement (payment for labor, purchase of lumber, cinder blocks). Order of preference:

1. Needy.
2. Those unable to construct for themselves and who have their materials available. If a needy family has received assistance from all

Welfare Departments with lumber, doors, windows, etc., and the material is delivered and another family not so needy also has their materials ready for construction, the needy family's house should be worked on first. This shall be a one-time project for each qualifying individual family in any one fiscal year.

C. Fence construction (not to be done on individual farm plots).

D. Rehabilitation or small irrigation projects (for which no appropriation is available and which is not in conflict with any existing agreements of the Navajo Nation or Bureau regulations). Purchase of farm tractors or implements (freight cost) and repairs will be permitted.

E. Construction of roads for community use (labor and materials).

F. Construction or improvement of a permanent structure (dipping vat, Chapter house addition, landscaping, corral construction, custodian's quarters, police quarters, preschool building, rodeo ground facilities, warehouse construction, bus shelter, athletic and recreational facilities and multipurpose building).

G. Summer Student Program. Purchase of essential materials for worthwhile projects (cabinet-making, sewing projects and painting).

H. Woodcutting and hauling (labor only).

I. Removal of dirt overburdened from open pit coal mines so that said coal mines may be used by the community and purchase of coal (labor only).

J. Hiring an individual to act as custodian of chapter facilities under salary, duration and terms as the chapter shall determine.

K. Maintenance of Chapter buildings, not to exceed the sum of three thousand dollars (\$3,000) (out of each appropriation) where approved by individual Chapters to deposit such amount into their bank accounts. Chapter Revenue Sharing funds shall not apply.

L. Repairs and maintenance of any Chapter-owned motor vehicles and/or equipment not to exceed two thousand dollars (\$2,000) (out of each appropriation), which funds shall be deposited into a local bank account of the respective chapter. Chapter Revenue Sharing Funds shall not apply.

M. Purchase of seeds and fertilizer.

N. Water hauling for Livestock (labor and equipment rental only).

O. Construct or repair Charco Dam (labor and equipment rental only).

P. Labor and/or materials for construction and repair of shallow wells to provide water for livestock.

Q. Labor to assist Grazing Committee in dipping and vaccination of sheep and branding of cattle and horses.

R. Purchase of livestock spray machine, scale, water tank, trough, vaccination and branding supplies and freight cost thereof.

S. Purchase of materials for Tribal Work Experience Program's community project and for programs under CETA.

T. Labor and/or materials for community farms (farm project not to be done on individual farm plots).

U. Maintain community trash dump.

V. Purchase of feed and hay for livestock (labor and equipment rental).

W. Purchase of Chapter equipment, trucks, heavy equipment, appliances and office equipment. There shall be a Plan of Operation for trucks and heavy equipment and insurance coverage provided before the initial purchase is made.

### **History**

ACJY-83-78, July 18, 1978.

## **Chapter 33. Assistance to Needy**

### **Code of Federal Regulations**

Financial assistance and social services programs, see 25 CFR § 20.100 *et seq.*

#### **§ 3501. Definitions**

Where the following terms are used in this Chapter, their meaning shall be defined as follows:

A. "Need" shall mean a condition requiring supply or relief; or the existence of an urgent exigency; or the lack of means to provide the basic subsistence of a person or family group.

B. "Income" shall mean a gain or benefit derived from property, labor or from the combination of both measured in money or in kind.

C. "Eligibility" shall mean the applicant is capable of meeting the basic standards of the Navajo Nation Health and Welfare policy.

D. "Resources" shall mean any new or reserve source which is an immediate and a possible source of revenue or support for the person or family group.

E. "Building materials" shall mean lumber and other necessary building materials to erect foundation, walls, roofs and/or renovate a permanent dwelling. This request will materialize with assistance of other existing agency funds.

F. "Emergency illness" shall mean critical illness as diagnosed by an attending physician (Physician meaning doctors with medical certificate or a medicine man).

G. "Health rehabilitation" shall mean a reinstatement of a condition of physical and emotional health to a useful and constructive state.

H. "Agency" shall mean a program dealing with welfare under the federal government, Public Health Service, Bureau of Indian Affairs, State or Navajo Division of Social Services components.

#### **History**

ACN-503-73, November 21, 1973.

ACMA-80-69, March 13, 1969.

#### **§ 3502. Policy**

A. It is the policy of the Navajo Nation to provide only emergency assistance to needy Navajo persons to enable them to maintain a reasonable standard of health and well-being, and to accomplish this in a manner which encourages and aids the individual or family toward self-reliance and fuller development for individual capacities.

B. The purpose of Navajo Nation Welfare assistance is to supplement income and other resources which are inadequate to meet emergency or temporary need within the defined standards.

#### **History**

ACN-503-73, November 21, 1973.

#### **§ 3503. Welfare standards generally**

A. The welfare standards for granting assistance shall be established by the Navajo Division of Social Services staff with approval and concurrence by the Navajo Nation Health and Social Services Committee and the Government Services Committee of the Navajo Nation Council.

B. Need shall be determined by an evaluation of each case based on reasonable standards compatible with decency, health and welfare. In order to give fair and impartial treatment of individual cases, basic standards are herein set forth which shall be used as guidelines in determining eligibility.

#### **History**

ACN-503-73, November 21, 1973.

**Note.** Words "Government Services" inserted pursuant CD-68-89, Resolve #10.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(2).

#### **§ 3504. Application; standards of eligibility**

A. Application for assistance may be made in person, by letter or by referral. Bills submitted for payment by business firms shall not be considered unless there has been prior authorization for their payment.

B. Applicant must be in need for the type of assistance available from the Navajo Nation Division of Social Services.

C. The applicant shall provide all requested information as to his income and/or resources. He shall be responsible for the disclosure of consistent and truthful factual information necessary to establish his eligibility. All necessary supplemental information shall be secured from other sources for evaluation and consideration.

D. To be eligible, an applicant must:

1. Have inadequate income and/or resources;

2. Be a member of the Navajo Nation and have a census number; or if not a member of the Navajo Nation must provide verification by proper documents of a legal marriage with an enrolled Navajo Indian; and

3. Be verified as being incapacitated or disabled to the extent he is unable to do any work to support himself or family.

E. Applications for Navajo Nation assistance should be acted on as soon as possible due to the emergency nature of such assistance. In no event should an application for assistance pend for more than 90 days if applicant has provided all necessary information and forms such as homesite leases in building materials assistance.

#### **History**

ACN-503-73, November 21, 1973.

#### **§ 3505. Financial assistance**

A. Navajo Nation welfare assistance of a temporary nature may be provided by issuance of a check or purchase order only to an indigent person who has verified his immediate need and has met the basic standards of eligibility.

B. An unemployed applicant must show reasonable effort to secure employment. Said effort must be shown in writing.

C. An applicant must not receive monthly grants from another agency.

D. The amount authorized shall not exceed fifty dollars (\$50.00). Thereafter, the applicant will be referred to another agency for long term assistance.

E. Supplemental funds for assistance may be negotiated by the Division of Social Services.

#### **History**

ACN-503-73, November 21, 1973.

**§ 3506. Burnout assistance**

A. Navajo Nation assistance may be provided not to exceed three hundred dollars (\$300), in cases of hardship caused by fire or natural disasters of dwelling used as residence during the year that contained essential clothing and household items.

B. Applicant shall be a member of the Navajo Nation, have a census number, and have inadequate resources to cover the disaster.

C. The following must be established:

1. Official report or verification to be submitted to the Navajo Nation Division of Social Services within the 15 days after the burnout; and

2. That the burnout occurred on the Navajo Nation.

**History**

ACN-503-73, November 21, 1973.

**§ 3507. Building material assistance**

A. Navajo Nation welfare assistance may be granted to eligible persons in the form of building materials not to exceed six hundred dollars (\$600.00) in retail value to improve, build a permanent residence, or to meet standards of health, safety, sanitation, well-being and self-reliance.

B. Applicant shall meet the basic standards of eligibility.

C. Applicant shall apply for housing assistance from other agencies or departments. If this assistance is not sufficient to improve or build applicant's permanent residence, then building material can be supplied by the Navajo Nation Division of Social Services.

D. Homesite lease must be cleared and approved by the local people living in immediate area, chapters, grazing committee, and then the council person. A homesite lease within a proposed community development must be cleared through proper channels or it must be clear that the homesite lease will be approved in the near future.

E. Homesite on allotted land or deeded land must be supported, or documents proving ownership submitted.

F. Applications for homesite lease on deeded land (Trust Land) must be processed properly with the concurrence of the local chapter and clearance made through the Navajo Nation Office of Land Administration, Window Rock, Arizona.

G. A home visit may be required for evaluation of current home condition when necessary.



H. Upon recommendation and approval by the chapter and verification by other resource agencies, applicant must submit a list of building materials needed to complete project.

I. In unusual circumstances, applications will be accepted for a separate structure.

J. Unusual circumstances shall be considered when due to Navajo Nation cultural religion and beliefs.

K. The Navajo Nation Division of Social Services shall not be responsible for assembling materials.

#### **History**

ACN-503-73, November 21, 1973.

#### **§ 3508. Burial and transportation assistance**

A. Minimum burial assistance may be provided in cases of death outside the Navajo Nation, for the purpose of returning the deceased to the Navajo Nation for burial.

B. Applicants who request burial or transportation assistance must meet the basic standards of eligibility.

C. Applicant representing the immediate family must make the request.

D. Applicant requesting burial assistance must have prior authorization from the Navajo Nation Division of Social Services covering the minimum cost for returning body to the Navajo Nation.

E. Burial assistance shall be provided only if the deceased was a member of the Navajo Nation and had a census number.

F. Transportation assistance must have prior authorization from the Navajo Nation Division of Social Services.

G. The Division of Social Services shall have the authority to request and obtain the funds that the Bureau of Indian Affairs and Public Health Service have available for burial assistance. If the Bureau of Indian Affairs and Public Health Services allow the Navajo Nation Division of Social Services to administer their burial funds, the Division of Social Services will give consideration to such agreement and process the applications for burial assistance under the respective eligibility standards of the BIA and PHS burial contracts.

#### **History**

ACN-503-73, November 21, 1973.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(2).

Intergovernmental Relations Committee powers, see 2 N.N.C. § 824(B)(6).

**§ 3509. Health, rehabilitation**

A. Navajo Nation assistance may be available for items needed for health rehabilitation requirements when no such services or resources are available from other agencies; provided, this assistance shall not include the cost of hospitalization and medical care. Rehabilitation items include eyeglasses, hearing aids, crutches, and such other items that the department may deem it appropriate to acquire.

B. The applicant must have a written medical statement and/or referral recommending any of the items mentioned in Subsection (A) of this Section.

C. Prior authorization must be secured from the Navajo Nation Division of Social Services for the items listed under Subsection (A) of this Section. The applicant shall be responsible for all repairs and maintenance.

D. Rehabilitation supplies no longer needed shall be sent to nearest United States Public Health Service Hospital or Navajo Nation Division of Social Services.

**History**

ACN-503-73, November 21, 1973.

**§ 3510. Appeals**

A. Determination of eligibility of an applicant under this Chapter, refusal to let an individual apply for assistance, failure to take action on an application within 30 days, and discriminating conditions and practices in the operation of the program, may be appealed.

B. The Division of Social Services shall inform applicants of their right to appeal.

C. An appeal may be filed in writing by a letter to the Division of Social Services.

D. The appeal must be filed within 30 days following the decision or action of the Division of Social Services which forms the basis of the grievance, unless extreme conditions prevent the person from filing the appeal within the time allowed. The Division of Social Services shall determine if extreme conditions warrant that an appeal procedure is permissible.

E. The Division of Social Services will review the appeal which is submitted. If the applicant requests a hearing, then the Division of Social Services will designate an impartial agency employee to conduct the hearing. If the information in the client's record is incomplete, then the office shall request that the appropriate Division of Social Services department present a complete review of the case.

F. The hearing shall be held within 30 days of the filing of the appeal

with the Division of Social Services and shall be held in a place convenient for the applicant. The applicant shall have at least 10 days notice before the hearing and shall be advised that he or a representative can present his case.

G. The hearing officer will conduct the hearing and record the proceedings. The applicant will have the opportunity to present and confront witnesses to produce evidence.

H. The hearing officer will file a report of the hearing with the appropriate Division of Social Services department within seven days after the hearing.

I. The Division of Social Services will review the appeal and the report of the hearing and render a decision.

J. In the event an applicant is not satisfied with the decision of the Division of Social Services he/she shall present a written appeal to the Health and Social Services Committee for review, evaluation, and final decision on the case. The Division of Social Services shall present the report on the hearing, tentative findings, conclusions and all other materials to the Health and Social Services Committee.

K. Copies of the findings and conclusions of the Health and Social Services Committee must be filed with the clients record. Clients shall be furnished a written statement on the decision.

L. The decision of the Health and Social Services Committee shall be binding and final.

#### **History**

ACN-503-73, November 21, 1973.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454.

### **Chapter 35. Contributions to Worthy Causes**

#### **§ 3701. Policy**

The Navajo Nation gives its support to all worthy causes and the Government Services Committee of the Navajo Nation Council urges the members of the Navajo Nation to support organizations conducting drives for funds through individual contributions and through the organization of community benefit affairs.

#### **History**

ACJ-14-59, February 9, 1959.

**Note.** Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

## **Chapter 37. Navajo Nation Work Experience Program**

### **§ 3901. Authorization**

A. The Advisory Committee of the Navajo Nation Council hereby approves and adopts the revised Plan of Operation for the Navajo Nation Work Experience Program.

B. Resolution No. ACJN-133-70, which approved the previous Plan of Operation, is hereby rescinded.

C. The Program Director shall submit a complete comprehensive report to the Government Services Committee of the Navajo Nation Council at each six-month period.

### **History**

ACMY-178-72, May 11, 1972.

ACJN-133-70, June 15, 1970.

**Note.** Words "Government Services" are to be inserted for the words "Advisory Committee" pursuant CD-68-89, Resolve #10, December 15, 1989.

### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454.

## **Chapter 51. Navajo Home Health Agency**

### **History**

**Note.** Former Sections 4301-4306, based on CYJ-39-76 and relating to the establishment, membership and functions of the Navajo Area Indian Health Board, were rescinded by CMY-46-80, § 1, effective May 6, 1980.

### **§ 4301. Establishment**

The Navajo Home Health Agency (NHHA) was established by the Advisory Committee of the Navajo Tribal Council upon recommendation from the Health and Human Services Committee.

### **History**

ACO-135-84, October 11, 1984.

### **§ 4302. Purposes**

The purposes of the Navajo Home Health Agency are:

A. To provide home health services to eligible patients in the Navajo Nation, including but not limited to, skilled nursing care and home health aide

care;

B. To promote, maintain and restore health;

C. To prevent illness, disease and disability;

D. To coordinate, plan and provide comprehensive health care to the sick and disabled in their homes which is culturally relevant and appropriate to their needs; and

E. To foster independence and self-respect among the recipients of home health care.

#### **History**

ACO-135-84, October 11, 1984.

#### **§ 4303. Goal**

The goal of the NHHA is that all people across the Navajo Nation achieve the highest attainable level of health through comprehensive and coordinated home health care services.

#### **History**

ACO-135-84, October 11, 1984.

#### **§ 4304. Administration and organization**

A. The management of the NHHA is the responsibility of the Board of Directors and the NHHA's administrator.

B. The Board of Directors shall be appointed by the Government Services Committee of the Navajo Nation Council upon recommendation from the Health and Social Services Committee.

C. The Board of Directors shall appoint a Professional Advisory Committee (PAC), consisting of health professional personnel, who will establish and review annually the Agency's policies governing scope of services offered, admission and discharge policies, medical supervision, plans of treatment, emergency care, clinical records, personnel qualifications and program evaluation. The PAC will serve the Parent Agency (Window Rock/Ft. Defiance), as well as the entire NHHA.

D. There shall be a Subunit Professional Advisory Committee (Subunit PAC) located in each service unit which functions as a Subunit of the NHHA. There shall be no more than seven Subunit Professional Advisory Committees. They shall be located in Crownpoint, Chinle, Gallup, Kayenta, Shiprock, Tuba City and Winslow. At least one representative from each of the Subunit Professional Advisory Committees shall serve as a member of the PAC established by the Board of Directors.

E. The Subunit Professional Advisory Committees shall assist the Home Health Agency located in each respective subunit in establishing and

recommending policies and procedures that govern the scope of services offered by the Agency. A representative from each Subunit PAC shall share these recommendations with the PAC established by the Board of Directors.

### **History**

ACO-135-84, October 11, 1984.

**Note.** Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

### **§ 4305. Services**

A. The NHHA will utilize home health teams to provide the following services to homebound patients on the Navajo Nation:

1. Part-time or intermittent skilled nursing care by Navajo Nation hired registered nurses which has been ordered by a physician; and
2. Auxiliary health services by Navajo Nation hired home health aides.

B. The home health teams will be located in each service unit (where feasible) and will consist of a registered nurse, hereafter called the home health nurse, and two home health aides.

C. Specific home health services described in the NHHA Policy and Procedure Manual will be delivered to those individuals who are in need of the services. The services of the home health nurse will include making the initial evaluation visit to the patient, regularly reevaluating the patient's nursing needs, initiating the plan of treatment and necessary revisions, providing those services which require substantial and specialized nursing skill, initiating appropriate preventive and rehabilitative nursing procedures, preparing clinical and progress notes, coordinating services, informing the physician and other health personnel of changes in the patient's condition and needs, counseling the patient and family in meeting nursing and related needs, participating in in-service programs, and supervising and teaching other nursing and auxiliary personnel.

D. The services of the home health aide will be given under the direction and supervision of the home health nurse. Written instructions for patient care will be prepared by the nurse. Services will include the performance of simple procedures as an extension of therapy services, personal care, ambulation, exercise, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's condition and needs and completing appropriate records.

E. As the need is demonstrated, other services, such as medical social work, physical, occupational and/or speech therapy may be added as the NHHA is expanded. These services may also be provided through contractual arrangements.

F. Services will be available 8:00 a.m. to 5:00 p.m. Services may also

be provided on weekends and holidays when the need is justified. No limit will be established for the number of patients to be accepted for service; however, this will be determined by the number of available staff.

#### **History**

ACO-135-84, October 11, 1984.

#### **§ 4306. Target population**

A. Home health services will be available to everyone in the community, regardless of race, creed, color, political affiliation or ability to pay. The services must be ordered by a physician and the patient's diagnosis must meet specific requirements required by Title XVIII (Medicare)<sup>1</sup> and Title XIX (Medicaid)<sup>2</sup> of the Social Security Act.

B. Referrals for service can be made by any of the following and not limited to: physicians, Chapters, family, friends, schools, community health nurses, community health representatives, the patient, and/or other community organizations.

#### **History**

ACO-135-84, October 11, 1984.

#### **§ 4307. Funding**

A. The overall plan and budget which provides for an annual operating budget and capital expenditure plan will be prepared under the direction of the Board of Directors by the administrative staff of the NHHA. The overall plan and budget will be reviewed and updated at least annually by the Board of Directors.

B. The NHHA is currently funded by grant funds under the Indian Self-Determination Act, P.L. 93-638.<sup>1</sup> The administrative staff, as well as the home health nurses and home health aides, function under this grant.

C. It is anticipated that a large proportion of the NHHA's operating funds in the future will come from third party payments, such as Title XVIII<sup>2</sup> (Health Insurance for the Aged and Disabled, commonly known as Medicare) or Title XIX<sup>3</sup> (Grants to States for Medical Assistance Programs, known as Medicaid) of the Social Security Act. In order to collect the reimbursements from third party payors, the home health services must be in accordance with HCFA's Conditions of Participation and the reimbursement regulations outlined in the Home Health Agency Manual (HIM 11). Once these regulations are met, the NHHA will apply for federal and state certification and licensure, respectively.

D. The Medicare law requires home health agencies to work with fiscal intermediaries in performing specified administrative functions including the determination of reasonable costs of services delivered to the beneficiary and the payment of such costs. The fiscal intermediary selected and authorized by the Social Security Administration to work with NHHA is Aetna Life and Casualty Company of Reno, Nevada.

E. Prior to the NHHA application for federal certification and state licensure, the following steps must be completed:

1. The Government Services Committee of the Navajo Nation Council, upon recommendation from the Health and Social Services Committee must establish the NHHA; and

2. The delegated oversight Committee of the Navajo Nation Council and the Budget and Finance Committee of the Navajo Nation Council must approve the establishment of an account number to receive revenue generated from third party payments. This account will be a Revolving Account and NHHA shall annually submit a certified audit report to the Budget and Finance Committee of the Navajo Nation Council.

#### **History**

ACO-135-84, October 11, 1984.

**Note.** Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

#### **§ 4308. Evaluation**

At least once a year a group of professional personnel, specifically the Professional Advisory Committee, will evaluate the performance of the NHHA's total operations as written in the policies. The evaluation will assess the extent to which the NHHA's total operations are appropriate, adequate, effective and efficient. The total operations refer not only to those services provided directly to patients, but also to the broader concepts of overall agency administration including, but not limited to, policies, procedures, personnel, fiscal management and patient care.

#### **History**

ACO-135-84, October 11, 1984.

#### **Chapter 53. [Reserved]**

**§§ 4501 to 4527. [Reserved]**

#### **History**

ACD-179-82, § 1, December 27, 1982.

#### **Chapter 55. [Reserved]**

#### **History**

**Note.** Former Chapter 55, §§ 4701-4705, "Navajo Nation Safety Committee" (ACMY-65-78, May 11, 1978), was deleted in its entirety by CAP-39-00, April 20, 2000, which also approved the "Navajo Nation Occupational Safety and Health Act" codified in Title 15 of the Navajo Nation Code.



## **Chapter 57. Navajo Nation Council on Handicapped**

### **§ 4801. Purpose**

The Navajo Nation Council on Handicapped (NNCOH) will serve as an advocate for handicapped Navajo People and their families. The NNCOH will be composed of handicapped consumers, representatives of public and private service providers and other groups concerned with services to handicapped Navajo People, representatives of the business community, and other interested persons. The NNCOH will be responsible for insuring that Navajo handicapped persons have equal access to employment and to public buildings and programs or services on the Navajo Nation and to otherwise promote the concept that all persons should have an opportunity to realize their potential to the extent of their mental and physical capabilities.

### **History**

CAP-12-79, April 25, 1979.

### **§ 4802. Objectives**

#### **A. Advocacy:**

1. Identify and express the needs of handicapped Navajo People and their families;

2. Stimulate the development of a full continuum of appropriate support services to all age groups of Navajo handicapped persons in the least restrictive environment. Potential areas of interest include, but are not limited to:

a. Prevention of developmental disabilities and other handicapping conditions;

b. Early identification of these conditions;

c. The quality of health related services;

d. The quality of educational services;

e. The provision of adequate housing;

f. The creation of employment opportunities; and

g. Return of institutionalized Navajos to their homes and communities;

3. Monitor the activities of all employers conducting operations on the Navajo Nation to insure compliance with the Navajo Nation Affirmative Action Plan for the Handicapped;

4. Promote activities to recognize exemplary efforts of employers

in improving employment opportunities and working conditions for handicapped individuals; and

5. Provide incentives to handicapped persons by presenting an annual award to the "Outstanding Handicapped Employee of the Year."

B. Planning:

1. Encourage the development of planning efforts leading to long-range, comprehensive service programs which will meet the many different needs of these people;

2. Provide technical assistance for the development of these plans;

3. Review these plans for completeness and appropriateness; and

4. Develop priorities for the expansion of service programs to meet the needs of the target population.

C. Evaluation:

1. Evaluate the quality and effectiveness of programs serving handicapped Navajo People and their families;

2. Report the results of these evaluations and make recommendations for program improvement to those entities responsible for the funding of these service programs; and

3. Provide technical assistance and consultation to these service programs with the aim of improving their quality.

D. These advocacy, planning and evaluation efforts will be directed towards the Navajo Nation Council, the Bureau of Indian Affairs, and other federal agencies, the states of Arizona, New Mexico, and Utah, private service providers, and other groups concerned with the needs of handicapped Navajo People.

### **History**

CAP-12-79, April 25, 1979.

### **§ 4803. Membership**

A. The NNCOH shall, at all times, include in its membership, representatives of the principal governmental and non-governmental agencies, private business, and groups concerned with services to handicapped Navajo People. All geographic areas of the Navajo Nation shall be represented on the Council.

B. At least one-third of the membership of NNCOH will consist of either handicapped persons or members of their families.

C. Members are recommended by the community of those involved in human service delivery and are appointed by the President of the Navajo Nation.

D. The number of NNCOH members shall be no less than 15 and no more than 20.

E. Members, once selected, will serve for three years.

F. Resignation of a NNCOH member must be done by a letter to this effect to the Chairman of NNCOH with a copy to the President of the Navajo Nation.

G. A vacancy created by a member resigning will be filled by appointment at the earliest possible date by the President of the Navajo Nation after review of NNCOH's recommendations.

### **History**

CAP-12-79, April 25, 1979.

**Note.** Word "President" inserted pursuant CD-68-89, Resolve #9.

### **§ 4804. Meetings**

A. The NNCOH will meet at least four times a year and more frequently if necessary to carry out the Council's business. Meeting notices will be sent out to members at least two weeks prior to the regular meetings. Notices shall include a proposed agenda. Members not able to attend a particular meeting are required to send an alternate to the meeting to represent them. Emergency meetings may be called under special circumstances by the chairman or by the Executive Committee. Phone or mailgram notices shall be given for emergency meetings.

B. A simple majority of the voting membership shall constitute a quorum.

C. All appointed members shall have the right to vote on all matters related to the functions of the NNCOH. An alternate attending a meeting in the place of a regular member shall be eligible to vote for that member. Decisions are made by a simple majority vote, with the chairman voting only in case of ties.

### **History**

CAP-12-79, April 25, 1979.

### **§ 4805. Officers**

A. The officers shall consist of a chairman, a vice-chairman, a secretary, and a treasurer.

B. The chairman shall set the agenda for and preside at all meetings of the NNCOH. He shall serve as a liaison between NNCOH and the Navajo Nation Council.

C. The vice-chairman shall exercise all rights and duties of the chairman in his absence.

D. The secretary, with the help of the NNCOH secretarial staff, shall record and keep an accurate account of all the council meetings and the distribution of council minutes.

E. The treasurer, with the help of the NNCOH's financial officer, shall maintain, review, and report on the financial standing of the council.

F. The chairman, vice-chairman, secretary, and treasurer, plus two other members of the council as appointed by the chairman, shall constitute the executive committee.

#### **History**

CAP-12-79, April 25, 1979.

#### **§ 4806. Election**

A. Election of officers will be held at the first meeting of each calendar year. Officers will serve for a period of one year from the date of the election. Vacancies will be filled by majority vote at a meeting where a quorum is present.

B. A nominating committee will be selected by the chairman prior to the election date. It will recommend one member for each office. Members will not be nominated for office without asking them first. Once the nominating committee reports, candidates may be nominated from the floor.

#### **History**

CAP-12-79, April 25, 1979.

#### **§ 4807. Expenses**

When funds are available, expenses related to attendance by council members or alternates at meetings will be reimbursed. Members attending in an official capacity from their agency or through administrative leave should not expect reimbursement. Cost of reimbursements for per diem and other expenses shall be set and approved by the NNCOH. This schedule shall not exceed the rates used by the Navajo Nation Council.

#### **History**

CAP-12-79, April 25, 1979.

#### **§ 4808. Rule of order**

Except where already stated in this Chapter, questions of order and parliamentary procedure will be resolved by Robert's Rules of Order.

#### **History**

CAP-12-79, April 25, 1979.

#### **§ 4809. Reports**

The Chairman of the NNCOH shall appear before the Health and Social Services Committee of the Navajo Nation Council at least once annually to give a full report on the activities of the council.

#### **History**

CAP-12-79, April 25, 1979.

#### **Cross References**

Health and Social Services Committee powers, see 2 N.N.C. § 454.

### **Chapter 59. Alcohol and Drug Abuse Task Force**

#### **§ 4901. Purposes**

The purpose of the Alcohol and Drug Abuse Task Force are:

- A. To consider the extent of alcohol and drug abuse on the Navajo Nation;
- B. To consider alternative strategies for the prevention and/or treatment of alcohol and drug abuse;
- C. To disseminate all information received and gathered by the task force to all Chapters throughout the Navajo Nation; and
- D. To recommend further study by the respective standing committees of the Navajo Nation Council.

#### **History**

ACJY-124-83, July 18, 1983.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 4902. Membership**

- A. The task force shall consist of 15 members.
- B. At least six members shall be members of the Navajo Nation Council.
- C. The Vice-President of the Navajo Nation shall serve as the Chairman of the Task Force.
- D. At least one of the local school boards operating within the Navajo Nation shall be a member of this task force.

#### **History**

ACJY-124-83, July 18, 1983.

**Note.** Words "Vice-President" inserted pursuant CD-68-89, Resolve #9, December

15, 1989.

**§ 4903. Powers**

The Alcohol and Drug Abuse Task Force shall exercise the following powers:

A. To acquire and disseminate information from the various Navajo Nation divisions, offices, and commissions regarding alcohol and drug abuse.

B. To acquire and disseminate information on treatment strategies for alcohol and drug abuse.

C. To serve as a clearinghouse for drug and alcohol abuse information and prevention programs for the Navajo Nation.

**History**

ACJY-124-83, July 18, 1983.

**Note.** Slightly reworded for purposes of statutory form.

**§ 4904. Meetings**

A. Meetings shall be held at least once a month.

B. All meetings shall be in Window Rock or as designated by the Chairman of the Task Force.

**History**

ACJY-124-83, July 18, 1983.

**Title 14**

**Navajo Nation Motor Vehicle Code**

**History**

**Note.** Title 14 section numbers and some subchapters have been redesignated.

See CMY-30-88, May 6, 1988, for the original order of the Title 14 section numbers.

**Chapter 1. General Application**

**§ 100. Jurisdiction: civil infractions and misdemeanor offenses**

The District Courts of the Navajo Nation shall have exclusive original jurisdiction over all civil traffic infractions under this title, committed within their respective jurisdictions by any person 18 years of age or older; and over all criminal misdemeanor offenses under this title, committed within their respective jurisdictions by Indian persons 18 years of age or older.

Jurisdiction over all provisions under this title over juveniles under 18 years of age, shall be as provided under the Navajo Nation Children's Code (9 N.N.C. § 1121) and all other applicable laws.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **Cross References**

9 N.N.C. § 1121.

#### **§ 102. Court-appointed civil traffic hearing officers**

Subject to available funding, the Chief Justice of the Supreme Court of the Navajo Nation may appoint qualified traffic hearing officers to preside over hearings and dispositions of civil traffic infractions occurring within the respective jurisdictions of the District Courts of the Navajo Nation. Such traffic hearing officers may hear and dispose of civil traffic infractions under the supervision of the District Court judge, and the judgment and disposition by the traffic hearing officers shall constitute the final judgment and order of the District Court, subject to the provisions of § 104 contained herein. All criminal misdemeanor offenses shall be heard and determined only by the judge of the District Court, consistent with the provisions of the Law and Order Code, 17 N.N.C., and all other applicable laws, court rules and regulations of the Navajo Nation.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **Cross References**

17 N.N.C. § 201 *et seq.*

#### **§ 103. Deposit to and appropriation of general funds**

All fees, assessments, fines, penalties and forfeitures imposed and collected under this Title, excluding those collected by the Navajo Nation Motor Vehicle Authority, shall be deposited to and appropriated from the general funds of the Navajo Nation, to designated established accounts as directed and approved by resolution of the Navajo Nation Council, toward the funding of Law Enforcement, Public Safety and Navajo Nation Court functions relating to enforcement and implementation of this Title, including appointment of traffic hearing officers as provided herein. All fees, assessments, fines, penalties, forfeitures and interest imposed and collected by the Navajo Nation Motor Vehicle Authority pursuant to 14 N.N.C. § 1704(A)(2) shall be used first to support the Navajo Nation Motor Vehicles Division in accordance with an approved plan of operation and fund management plan, with all funds in excess of these costs deposited to the Navajo Nation general fund to be distributed as

described above.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 104. Civil compromise dismissal**

A. In any pending action based upon a complaint or citation for any civil infraction under this Title (except when the applicable statute authorizes the Court to order restitution in addition to the civil assessment provided) the judge of the District Court may dismiss such pending action, upon motion filed by the defendant together with the sworn stipulation and acknowledgment by all parties claiming injury or damage resulting therefrom, of receipt from defendant of full compensation and satisfaction therefor.

B. This Section shall not authorize such dismissal by any traffic hearing officer; nor shall any pending citation or complaint for any misdemeanor offense hereunder be dismissed upon such grounds.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 105. Definitions**

The definitions contained herein shall apply to all Chapters of Title 14 and the laws in this Title shall be referred to as the Navajo Nation Motor Vehicle Code, unless the context otherwise requires:

A. "Abandoned vehicle" means a vehicle or motor vehicle left unattended on either private or public property, for an unreasonable length of time, which, after being reported to a law enforcement agency, has been discovered by that agency:

1. Not to have been stolen; and
2. Not capable of the establishment of legal ownership by normal record-checking procedures; and
3. The legal ownership of which is not claimed or asserted by any person.

B. "All-Terrain Vehicle (ATV)" means an engine-driven device which has a net weight of 1000 pounds or less which has a width of 50 inches or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control. A low-pressure



tire has a minimum width of 6 inches, is designed to be mounted on a rim with a maximum diameter of 12 inches, and is inflated with an operating pressure not to exceed 6 pounds per square inch as recommended by the manufacturer.

C. "ATV Safety Training Course" an ATV Safety Training Course is a safety training provided by a certified ATV Safety Institute recognized instructor to the owner or any person operating an all-terrain vehicle. The student or trainee must obtain a certification at the completion of the training.

D. "Authorized emergency vehicle" means properly marked vehicles of a fire department, police vehicles, and ambulances or other emergency vehicles designated or authorized as such by the Navajo Nation, the State of Arizona, the State of New Mexico, the State of Utah or the United States Government and with authorized emergency equipment in operation.

E. "Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than 16 inches in diameter or having three wheels in contact with the ground any of which is more than 16 inches in diameter.

F. "Cargo tank" means any tank designed to be permanently attached to any motor vehicle and in which is to be transported any flammable liquid or compressed gas solely for the transportation and delivery of such liquid or gas.

G. "Crosswalk" means:

1. That part of a roadway at an intersection included within the prolongations or connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the travelable roadway.

2. Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

H. "Cushion tire" means an air-filled tire.

I. "Division" means the Navajo Division of Public Safety.

J. "Drag race" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit.

K. "Driver" means every person who drives or is in actual physical control of a motor vehicle, including a motor-driven cycle, upon a highway or any lands under the jurisdiction of the Navajo Nation or who is exercising control over or steering a vehicle being towed by a motor vehicle.

L. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows and mowing machines and other implements

of husbandry.

M. "First offender" means a person who has been convicted once in a trial court under tribal, state or federal law or municipal ordinance of the charge of driving a motor vehicle while under the influence of intoxicating liquor, narcotic drug or any other drug which renders the person incapable of driving a motor vehicle. This includes a person who pled guilty to the charge or pled *nolo contendere* to the charge whether or not his or her sentence was suspended or deferred, or a person who was convicted, pled guilty or pled *nolo contendere*, but had such conviction dismissed by virtue of his or her attendance at, and successful completion of, a driver rehabilitation program or a "Driving-While-Intoxicated School".

N. "Freight trailer" means any trailer, semitrailer or pole trailer drawn by a truck which has a gross vehicle weight of more than 26,000 pounds. The term does not include house trailers, trailers of less than one ton carrying capacity used to transport animals, or fertilizer trailers of less than 3,500 lb. empty weight.

O. "Gross vehicle weight" means the weight of a vehicle without load, plus the weight of any load thereon.

P. "Highway" or "street" means the entire width between the boundary lines of every way within the jurisdiction of the Navajo Nation when any part thereof is open to the use of the public for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

Q. "Improved highway" means a highway paved with cement concrete or asphaltic concrete, or having a hard surface and distinct roadway not less than four inches thick, made up of a mixture of rock, sand or gravel, bound together by an artificial binder other than natural soil.

R. "In bulk" means the transportation of any loose materials in a motor vehicle when such materials are not packed in individual packages or containers.

S. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles; or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways 30 or more feet apart, then every crossing of each roadway of such divided intersecting highway shall be regarded as a separate intersection. If the intersection highway also includes two roadways 30 or more feet apart, then every crossing of two roadways of the highway shall be regarded as a separate intersection.

T. "Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

U. "Mobile home" means a house trailer other than one held as inventory for sale or resale by a registered dealer, that exceeds either a width of 16 feet and/or a length of 72 feet, when equipped for the road.

V. "Moped" means a two-wheeled or three-wheeled vehicle having fully operative pedals for propelling by human power, an automatic transmission and a motor having a piston displacement of less than 50 cubic centimeters which is capable of propelling the vehicle at a maximum speed of not more than 25 miles an hour on level ground.

W. "Motorcycle" means every motor vehicle having a seat or saddle for the use of a rider designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

X. "Motor vehicle" means every vehicle which is self-propelled by the use of an internal combustible engine, electricity or motor vehicle fuel.

Y. "Negligence" means the failure to use a reasonable degree of care which an ordinary prudent person would exercise under the circumstances, which failure results in injury to persons or damage to the property of another.

Z. "Official traffic-control devices" means all signs, signals markings and devices not inconsistent with this Chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

AA. "Operator" means a person other than a chauffeur, who drives or is in actual physical control over a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle or exercising control over a motor-driven cycle, all-terrain vehicle, moped, or recreational vehicle, upon a highway, roadway or any lands within the Navajo Nation.

BB. "Owner" means a person who holds the legal title of a vehicle or, if a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement.

CC. "Park" if prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of, and while actually engaged in loading or unloading.

DD. "Passenger vehicle" means a motor vehicle with motor power designed to carry passengers; this does not include motorcycles, trailers or vehicles constructed on a truck chassis with a gross vehicle weight of more than 10,000 pounds.

EE. "Pedestrian" means any person afoot. A person who is not ambulatory and is in a wheelchair is considered a pedestrian.

FF. "Person" means every natural person, firm, co-partnership, association or corporation.

GG. "Police or law enforcement officer" means every officer duly authorized or commissioned by the authority of the Navajo Nation to direct or regulate traffic or to enforce or to make arrests for violations of the Navajo Nation Motor Vehicle Code.

HH. "Public transit" or "Mass transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus, taxi or any vehicle not operated on a scheduled route basis.

II. "Race" means the use of one or more vehicles to outgain or outdistance another vehicle from passing, to arrive at a given destination ahead of another vehicle, or to test the physical or mental stamina or endurance of drivers over long-distance routes.

JJ. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. "Right-of-way" when used within the context of the real property upon which transportation facilities and appurtenances to such facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

KK. "Recreational vehicle" shall include all vehicles primarily used or designed for recreational purposes such as camper trailers, motor homes and all towed vehicles.

LL. "Repeat offender" means a person who, under tribal law, state law, federal law or municipal ordinance, has been convicted, pled *nolo contendere* or pled guilty to the charge of driving a motor vehicle while under the influence of intoxicating liquor, narcotic drug or any other drug which rendered him or her incapable of safely driving a motor vehicle, and who was previously a "first offender" as defined in this Section or whose sentence was suspended or deferred, or the deferred sentence was subsequently dismissed.

MM. "Roadway" shall mean that portion of a thoroughfare (route) improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder.

NN. "Safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

OO. "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

PP. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

QQ. "School bus" means any motor vehicle operating under the jurisdiction of a school district, private school, parochial school, community school, government school, or contract school which is used to transport children, students or teachers to and from school, or to and from any school activity, including any vehicle but not:

1. Operated by a common carrier, or private mass transit system subject to and meeting all federal requirements and not used exclusively for the transportation of pupils; or

2. Operated solely by a governmental-owned public transit authority, if the public transit authority meets all applicable federal requirements and safety requirements of the applicable school district but is not used exclusively for transportation of pupils.

RR. "Semi-trailer" means any vehicle without mechanical power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

SS. "Shoulder" means the area immediately adjacent to the edge of a paved road.

TT. "Single axle load" means the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches or less apart extending across the full width of the vehicle.

UU. "Solid tire" means a tire filled with matter and not hollow.

VV. "Stop", if required, means complete cessation from movement.

WW. "Stop, stopping or standing", if prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic-control sign or signal.

XX. "Tandem axle load" is the total-load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes more than 40 inches apart but less than 120 inches apart, extending across the full width of the vehicle.

YY. "Tank motor vehicle" means any motor vehicle designed or used for the transportation of liquids or gases covered by these regulations in any cargo tank.

ZZ. "Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any highway for purposes of travel.

AAA. "Traffic-control signal" means a device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

BBB. "Through highway" means a highway or portion of a highway at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing and when stop signs are erected, as provided in this Chapter.

CCC. "Truck" means any motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and

includes a motor vehicle to which has been added a box, platform or other equipment for such carrying.

DDD. "Title" is a certificate issued by the Navajo Nation as proof of ownership for the motor-driven cycle.

EEE. "Truck tractor" means any motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle, and load down.

FFF. "Unpaved public roadway" means a dirt graveled street or road that is constructed, designed and maintained for regular passenger-car use by the general public.

GGG. "Vehicle" shall mean every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame chassis or body of any vehicle or motor vehicle except devices driven by human power or used exclusively upon stationary rails or tracks.

#### **History**

CO-37-09, October 22, 2009. Navajo Nation All-Terrain Vehicles Act of 2009.

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**Note.** Slightly reworded for purposes of statutory form.

## **Chapter 2. Civil Infractions; Responsibility and Assessment**

### **Subchapter 1. General Application**

#### **§ 200. Enforcement**

The Navajo Police, and other police officers authorized by the Navajo Nation, shall be responsible for the enforcement of all regulations, rules and controls as established in this Chapter.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 201. Valid driver's license required**

Any person operating a motor vehicle within the jurisdiction of the Navajo Nation must possess a valid driver's license.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act,

effective date April 20, 2007.

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**Note.** Section 201 should be read concurrently with 14 N.N.C. § 1701.

#### **Cross References**

See generally, The Navajo Nation Motor Vehicle Authority and the Navajo Nation Motor Vehicles Division, 14 N.N.C § 1700 *et seq.*

#### **§ 202. Authorized emergency vehicles**

A. The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of law, or when responding to, but not upon returning from a fire alarm, is exempt from the requirements in this Chapter.

B. The provisions of this Section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall these provisions exempt any party from the consequences of his or her reckless disregard for the safety of others.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 203. Traffic laws apply to persons riding animals or driving animal-drawn vehicles**

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Chapter, except those provisions of this Chapter which by their very nature can have no application.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 204. Provisions of chapter uniform throughout the Navajo Nation**

The provisions of this Chapter shall be applicable and uniform throughout the territory under the jurisdiction of the Navajo Nation.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 205. Civil assessment fee**

A. It shall be a civil infraction for any person to violate any of the provisions of this Chapter.

B. Any person violating any provision of this Chapter within the territorial jurisdiction of the Navajo Nation shall be subject to a civil assessment fee of not less than thirty-seven dollars and fifty cents (\$37.50) nor more than five hundred dollars (\$500.00) for any infraction for which a specific assessment fee is not stated.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 206. Traffic control devices and signs**

A. The appropriate Department of the Navajo Nation, is authorized to place and maintain traffic-control devices and weigh stations upon or within the right-of-way or vicinity of the streets, roadways and bridges of the Navajo Nation.

B. No person shall place or maintain any traffic-control device or sign upon or near any highway, roadway or bridge under the jurisdiction of the Navajo Nation, except upon advance permission granted by the appropriate authority of the Navajo Nation and only when in conformance and compliance with all applicable Tribal and federal laws.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**Subchapter 3. Accidents**

**§ 220. Duty upon striking unattended vehicle**

The driver of any vehicle which collides with or otherwise causes damage to any vehicle left unattended shall immediately stop and either locate and notify the operator or owner of the vehicle or shall leave in a conspicuous place in or on the vehicle damaged, a written notice giving the name and address of the driver and the owner of the vehicle causing the damage. The driver of the vehicle shall report the accident as required by § 222 hereof.

**History**

ACJN-131-88, June 29, 1988.



CMY-30-88, May 6, 1988.

**§ 221. Duty upon striking fixtures upon a highway**

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a roadway shall take reasonable steps to locate and notify the owner or person in charge of the property of that fact. The driver shall give his or her name, address and the registration number of the vehicle he or she is driving, and shall upon request exhibit his or her operator's or chauffeur's license and shall make report of the accident as required by § 222 hereof.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 222. Written reports of accidents**

A. The driver of any vehicle involved in an accident resulting in bodily injury to or death of any person or total property damage to an apparent extent of three hundred dollars (\$300.00) or more shall immediately file a written report of the accident with the Division of Public Safety, as required under this Subchapter.

B. The Division of Public Safety may require any driver of a vehicle involved in an accident requiring the completion and filing of a report as provided under this Subchapter, to file supplemental reports when the original report is deemed insufficient in the opinion of the Division, and the Division may also require witnesses to accidents to render reports and or statements as deemed appropriate by the Division.

C. Every law enforcement officer who investigates a motor vehicle accident requires a report to be made and filed as provided under this Subchapter, either at the time of and at the scene of the accident or thereafter by interviewing passenger(s) or witnesses shall, within 72 hours after said accident, complete and submit a written report of the accident. The original copy of the report shall be retained by the Division. The Division shall stamp the date and hour received and may place such notes, date stamps, identifying numbers, marks or other information on such copies as required, provided that it will not alter the original information as reported by the investigating officer. Copies of the report form shall be made available to the parties involved at a charge established by the Division.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 223. Notice to parents or legal guardian of minor involved in motor vehicle accident**

Every law enforcement officer who makes the initial investigation of a motor vehicle accident in which a minor was involved, shall inquire and attempt to determine or locate the telephone number and address of the parents or legal guardian of that minor and shall make every reasonable effort to notify or have the parents or legal guardian notified of the accident immediately or as soon as possible, upon securing the scene of the accident and determining that required arrangements have been made for the transportation and/or care of the injured party(ies).

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 224. When driver is unable to report**

A. When the driver of a vehicle is physically incapable of making an immediate report of an accident as required in § 712 of Chapter 5, and there is another occupant in the vehicle at the time of the accident capable of making a report, that occupant shall make or cause the report to be made.

B. When the driver is physically incapable of making a written report of an accident as required in § 222 hereof, and the driver is not the owner of the vehicle, then the owner of the vehicle involved in the accident shall immediately make a report upon being informed.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 225. Accident report forms**

A. The Division of Public Safety, through a designated duly authorized department shall prepare, and upon request, supply to law enforcement officers and other suitable agencies or individuals, forms for accident reports required under this Chapter. The written reports to be made by persons involved in accidents and by investigating officers shall include space for sufficiently detailed information regarding a traffic accident including disclosure of all causes, weather and road conditions, the location of the accident and identification of an persons, witnesses and vehicles involved, injuries (if any), damage(s) observed, photo(s) and relevant statements, measurements and diagrams depicting the physical scene and all other relevant information.

B. Every accident report required to be made in writing shall be made on the appropriate form approved by the Division and shall contain all of the information required therein.

C. Every accident report shall contain information sufficient to enable the Division to determine whether the requirements for the deposit of security under any of the laws of the Navajo Nation are applicable by reasons of the existence of insurance or other exceptions specified therein.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **§ 226. Accident reports confidential; exceptions**

A. All accident reports made by persons involved in accidents or by garages shall be without prejudice to the individual reporting. The Division may disclose:

1. The identities of the parties involved in an accident; and
2. The fact that the owner or operator of a motor vehicle involved in the accident is or is not insured and if he or she is insured, the name and address of the insurance carrier.

B. The Division shall furnish upon demand of any person or their lawfully authorized representative who has or claims to have made a report or upon the demand of any court, a certificate showing that a specified accident report has or has not been made to the Division solely to prove compliance or a failure to comply with the requirement that a report be made to the Division.

C. The Division shall furnish a copy of the investigating officer's accident report to the parties involved and to any court of competent jurisdiction.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **§ 227. Garages, dealers and wreckers of vehicles to report**

The person in charge of any garage, repair shop, dealership or wrecker services for vehicles, to which any motor vehicle is brought showing recent evidence of having been involved in an accident which is required to be reported, as provided by this Chapter, or struck by any bullet shall report to the Division within 24 hours after such motor vehicle is received. The engine number, registration number and the name and address of the owner or operator of such vehicle shall be reported to the Division. Non-compliance may result in the loss of business license.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

## **Subchapter 5. Speed Regulations**

**§ 240. Speed regulation**

A. No person shall operate a vehicle on a roadway at a speed greater than:

1. 15 miles per hour when passing a school or leaving school, and when the school zone is properly posted;
2. 25 miles per hour in any business or residential district;
3. The maximum posted speed as provided under § 241 herein; and
4. 55 miles per hour on highways in open country, or as otherwise posted.

B. No person shall drive a motor vehicle at such speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 241. Speed zone**

A. The director of any agency having authority to maintain any roadway on the Navajo Nation is hereby empowered to do the following:

1. To determine upon the basis of an engineering survey and traffic investigation that any speed limit established by law is greater or less than is reasonable and safe under the conditions found to exist upon any part of such roadway; and
2. To determine and declare a reasonable and safer maximum speed as well as a variable safer limit for such location, which shall be in effect when appropriate signs giving notice thereof are erected.

B. The agency establishing a speed zone under this Section shall be responsible for erecting at the beginning of each such zone, both a sign designating a maximum allowable speed within the zone, and at the end thereof a sign bearing either the legend "Resume Speed" or setting forth a new maximum speed limit.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 242. Special speed limitations**

A. No person shall drive any vehicle equipped with solid tires at a speed greater than 10 miles per hour.

B. No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a roadway at a speed which is greater than the maximum posted speed.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 243. Classification of complaint of excessive speed as alleging civil or criminal infractions**

A. In every complaint for exceeding the lawful speed limitation established in accordance with the regulations in this Chapter, the complaint shall specify the speed at which the defendant is alleged to have driven and the maximum speed applicable within the district or at the location.

B. In addition to those violations which are expressly designated in this Chapter as criminal offenses, the Courts may elect to classify any complaint for speeding more than 15 miles per hour in excess of the posted or otherwise applicable speed limit; or any complaint alleging the violation of any speed regulation which violation causes or contributes to an accident resulting in any injury to the person or damage to the property of another or others, in excess of three hundred fifty dollars (\$350.00), as alleging a misdemeanor violation or violations.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **Subchapter 7. Traffic Signs and Signals**

#### **§ 260. Obedience to traffic-control devices**

The driver of any vehicle shall obey the instructions of any official traffic-control device placed by the authority or official having jurisdiction, unless otherwise directed by a traffic or police officer, subject to the exemptions granted the driver of an authorized emergency vehicle in this Chapter.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 261. Traffic control signal legend**

A. When traffic is controlled by traffic control signals showing different colored lights, or colored lighted arrows, either one-at-a-time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend. Such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

1. Green indication:

a. Vehicular traffic facing a green signal may proceed straight through or turn right or left unless a sign at that place prohibits either turn. Vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is shown.

b. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

c. Unless otherwise directed by a pedestrian control signal, as provided in § 262 herein, pedestrians facing any green signal, except if the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

2. Steady yellow indication:

a. Vehicular traffic facing a steady yellow signal is being warned that the related green indication is being terminated or that a red indication will be shown immediately thereafter when vehicular traffic shall not enter the intersection.

b. Pedestrians facing a steady yellow signal, unless otherwise directed by pedestrian control signals as provided in § 262, are thereby advised that there is not enough time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

3. Red indication:

a. Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop-line before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain at a standstill or stopped until an indication to proceed is shown except as provided in subdivision (b) of this Paragraph.

b. The driver of a vehicle which is stopped as close as practicable at the entrance to the crosswalk on either side of the intersection or, if there is no crosswalk then at the entrance to the

intersection, in obedience to a red signal, may make a right turn, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal. Right turns may be prohibited against a red signal at any intersection when a sign is erected at the intersection prohibiting such turn.

c. Unless otherwise directed by a pedestrian control signal as provided in § 262, pedestrians facing a steady red signal shall not enter the roadway.

B. If an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this Section shall be applicable. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of a sign or marking, the stop shall be made at the signal.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 262. Pedestrian control signals; loitering prohibited**

A. When pedestrian control signals exhibiting the words "Walk" or "Don't Walk" are in place, the signals shall indicate as follows:

1. "Walk". Pedestrians facing the signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of vehicles.

2. "Don't Walk". No pedestrians shall start to cross the roadway in the direction of the signal, but any pedestrian who has partially completed his or her crossing on the "walk" signal shall proceed to a sidewalk or safety island while the "don't walk" signal is showing.

B. A pedestrian shall not loiter or unduly delay crossing the roadway after traffic has stopped to give the right-of-way.

C. Failure to comply with this Section may result in the imposition of a civil assessment fee not to exceed thirty-seven dollars and fifty cents (\$37.50).

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 263. Flashing signals**

When an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

A. Flashing red (stop signal). When a red light shows rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit-line when marked, or if none, then before entering the intersection. The right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

B. Flashing yellow (caution signal). When a yellow light shows rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 264. Display of unauthorized signs, signals or markings**

A. No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which is a copy of or looks similar to an official traffic-control device or railroad sign and signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal. No person shall place upon any traffic sign or signal any commercial advertising or political campaign literature. This Section shall not prohibit the erection upon private property adjacent to highways, of signs giving useful directional information and of a type that cannot be mistaken for official signs.

B. Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway, including police officers of the Division, is empowered to remove the same or cause it to be removed without notice.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 265. Interference with official traffic-control devices or railroad signs or signals**

A. No person shall without lawful authority alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription shield or insignia thereon, or any part thereof.

B. Restitution. The court, in addition to or in lieu of any assessment imposed, may require any person found in violation of this Section, to pay to the Navajo Nation the full cost of replacing such traffic-control device or railroad sign or signal as is damaged or defaced.

#### **History**



ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **Subchapter 9. Right-of-Way**

#### **§ 280. Vehicle approaching or entering intersections; right-of-way; exception**

A. When two vehicles enter or approach an intersection from different streets or roadways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. This Paragraph does not apply to vehicles approaching or entering an uncontrolled "T" intersection when the vehicle on the left is on a continuing street or roadway and the vehicle on the right is on the terminating street or roadway. The vehicle on the terminating street or roadway shall yield to the vehicle on the continuing street or roadway.

B. The right-of-way rule in Subsection (A) of this Section is modified at through-highways, and otherwise as stated in this Chapter.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 281. Vehicle turning left at intersection**

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 282. Vehicles entering stop or yield intersection**

A. Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in this Chapter.

B. Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a "stop" intersection indicated by a stop sign shall stop. After having stopped, the driver shall "yield" the right-of-way to any vehicle which has entered the intersection from another roadway or which is approaching so closely on the roadway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.

C. The driver of a vehicle approaching a yield sign shall, in obedience

to the sign, slow down to a speed reasonable for the existing conditions, and shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection. If the driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of his or her failure to yield right-of-way.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 283. Vehicle entering roadway from private road or driveway**

The driver of a vehicle about to enter or cross a roadway from a private road or driveway shall yield the right-of-way to an closely approaching vehicles on the roadway.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **Subchapter 11. Driving; Overtaking; Passing**

#### **§ 300. Overtaking a vehicle on the left**

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules stated in this Subchapter.

A. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe speed and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

B. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on signal light at daytime or blinking of head lamp at nighttime, and shall not increase speed of his or her vehicle until completely passed by the overtaking vehicle.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 301. When overtaking on the right is permitted**

A. The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn.

2. Upon a street or roadway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction.

3. Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

B. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions allowing the movement in safety. In no event shall the movement be made by driving off the pavement or main-traveled portion of the roadway.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 302. Limitations on overtaking on the left**

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event, the overtaking vehicle must return to the right-hand side of the roadway before coming within 250 feet of any vehicle approaching from the opposite direction.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 303. Further limitations on driving to left of center of roadway**

A. No vehicle shall at any time be driven to the left side of the center of the roadway under the following conditions:

1. When approaching the crest of a grade or upon a curve in the roadway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction.

2. When approaching within 100 feet of or traversing any

intersection or where appropriate signs or markings have been installed to define a no passing zone.

3. When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel.

B. The limitations set forth in Subsection (A) of this Section shall not apply upon a one-way roadway.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 304. No passing zones**

The agency of appropriate jurisdiction is authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway indicate the beginning and end of such zones; and when the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 305. Driving on roadways laned for traffic**

When any roadway has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent with this Section shall apply:

A. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane, until the driver has first made sure that the movement can be made with safety.

B. Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance, or in preparation for a left turn or where the center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is sign-posted to give notice of the allocation.

C. Official signs may be posted directing slow-moving traffic to use a designated lane, or designating those lanes to be used by traffic moving in a particular direction, regardless of the center of the roadway. Drivers of vehicles shall obey the directions of such signs.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 306. Following too closely**

A. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable, having due regard for the speed of the vehicle and the traffic upon and the condition of the roadway.

B. The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residential district and when following another motor truck or motor vehicle drawing another vehicle shall, when conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy the space between them without danger.

C. Motor vehicles being driven upon any roadway outside of a business or residential district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow enough space between each vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy the space without danger. The provisions of this Subsection shall not apply to funeral processions.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 307. Driving on divided roadway**

When any roadway has been divided into two roadways by leaving an intervening space or by a physical barrier or by clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across or within the dividing space, or barrier except through an opening in the physical barrier or dividing section, or at a crossover or intersection established by public authority.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**Note.** Slightly reworded for purposes of statutory form.

**§ 308. Restricted access**

No person shall drive a vehicle onto or from any controlled access roadway except at established entrances and exits.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 309. Drive on right side of roadway; exceptions**

A. Upon all roadways of sufficient width a vehicle shall be driven upon the right-half of the roadway, and where practicable, entirely to the right of the center thereof, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
2. When the right-half of a roadway is closed to traffic while under construction, repair or when an accident has occurred hindering traffic;
3. Upon a roadway divided into three marked lanes for traffic under the applicable rules; or
4. Upon a roadway designated and sign-posted for one-way traffic.

B. Upon all roadways, any vehicle proceeding at less than the normal speed of traffic shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another car proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**Subchapter 13. Turning, Starting and Signals on Stopping and Turning**

**§ 320. Required position and method of turning at intersections**

The driver of a vehicle intending to turn at an intersection shall do so as follows:

- A. The approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.
- B. When making a left turn from a two-way road onto a two-way road, the driver shall use the lane closest to the centerline. When entering the intersection, the driver, if possible shall drive to the left of the center of the intersection and proceed cautiously to the lane closest to the center lane on the right of the road which the driver is entering.
- C. When making a left turn into and/or from a one-way road, the driver shall use the extreme left-hand lane and enter the extreme left-hand lane

available in the direction he or she is going upon the road being entered.

D. Upon a roadway with two or more lanes for through-traffic in each direction, where a center turning lane has been provided by distinctive pavement markings for the use of vehicles turning left from both directions, no vehicle shall turn left into the other lane. A vehicle shall not be driven in the center lane for the purpose of overtaking or passing another vehicle proceeding in the same direction. Any maneuver other than a left turn from this center lane will be deemed a violation of this Section.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 321. Turning on curve or crest of grade prohibited**

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 322. Starting parked vehicle**

No person shall move a vehicle which is stopped, standing or parked unless and until the movement can be made with reasonable safety.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 323. Turning movements and required signals**

A. No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway, as required in § 320, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway, unless and until the movement can be made with reasonable safety. No person shall turn any vehicle without giving an appropriate signal in the manner provided by this Chapter in the event any other traffic may be affected by the movement.

B. A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

C. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided by this Chapter to the driver of any vehicle immediately to the rear when there is opportunity to give the signal.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 324. Signal device**

A. Any required stop or turn signal shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device except as otherwise provided in Subsection (B).

B. Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 325. Method of giving hand and arm signals**

All signals required by this Chapter to be given by hand and arm shall be given from the left side of the vehicle in the following manner and the signals shall indicate as follows:

A. Left turn: Hand and arm extended horizontally.

B. Right turn: Hand and arm extended upward.

C. Stop or decrease speed: Hand and arm extended downward.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **Subchapter 15. Standing and Parking**

#### **§ 340. Stopping, standing or parking outside of business or residential**



## **district**

A. Upon any roadway outside of a business or residential district, no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the roadway when it is practicable to stop, park or leave the vehicle off that part of the roadway. In any event, an unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles, and a clear view of the stopped vehicles shall be available from a distance of 200 feet in each direction upon the roadway.

B. This Section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in such position.

## **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

## **§ 341. Officers authorized to remove illegally stopped vehicles**

A. When any police officer finds a vehicle standing upon a roadway in violation of the provisions of § 340, the officer is authorized to move the vehicle, or require the driver or other person in charge of the vehicle to move it to a position off the paved or main-traveled part of the roadway.

B. Any police officer is authorized to remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any roadway, bridge, causeway, or in any tunnel, in such position or under such circumstances as to obstruct the normal movement of traffic.

C. Any police officer is authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a roadway:

1. When a report has been made that such vehicle has been stolen or taken without the consent of the owner;

2. When the person or persons in charge of such vehicle are unable to provide for its custody or removal;

3. When a vehicle is "abandoned" for an unreasonable length of time and legal ownership can neither be established by normal record keeping procedures nor is asserted or claimed by any person; or

4. When the person driving or in control of such vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested immediately into custody.

D. Any police officer shall conduct a thorough inventory of property found in a vehicle upon the arrest of the person driving or in control of the vehicle.

## History

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### § 342. Stopping, standing or parking in specified places

No person shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

- A. On a sidewalk;
- B. In front of a public or private driveway;
- C. Within an intersection;
- D. Within 20 feet of a fire hydrant;
- E. On a crosswalk;
- F. Within 30 feet of a crosswalk at an intersection;
- G. Within 30 feet upon the approach to any flashing beacon, stop sign, yield sign or traffic-control sign located along the side of the roadway;
- H. Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless local authorities indicate a different length by signs or markings;
- I. Within 50 feet of the nearest rail or railroad crossing, except while a motor vehicle with automotive power is loading or unloading railroad cars;
- J. Within 30 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of the entrance when properly posted;
- K. Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
- L. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
- M. Upon any bridge or other elevated structure upon a roadway or within a roadway tunnel;
- N. At any place where official signs prohibit standing or stopping; or
- O. At any parking space designated for disabled persons.

## History

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **§ 343. Parking privileges for physically disabled**

A physically disabled person who displays upon the motor vehicle parked by him or her, or under his or her direction and for his or her use, a distinguishing insignia provided for in this Section, or number plates bearing the international wheelchair symbol may park except as provided in §§ 340 and 342 herein and § 506 of Chapter 3, except where such parking would create a dangerous situation or impede the normal flow of traffic. The distinguishing insignia or number plates bearing the international wheelchair symbol shall be displayed on or in the motor vehicle in the manner prescribed by the Division.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **§ 344. Additional parking regulations**

A. Except as otherwise provided in this Section every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of the vehicle parallel to and within 18 inches of the right-hand curb.

B. The parking of vehicles with the left-hand wheels adjacent to and within 18 inches of the left-hand curbs of a one-way roadway shall be permitted only within those areas properly posted as authorized parking zones.

C. A vehicle may be angle-parked only within those areas properly posted or marked as allowing angle-parking, except that angle-parking shall not be permitted on any federal-aid or state highway unless the jurisdictional governmental agency has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle-parking without interfering with the free movement of traffic.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

## **Subchapter 17. Special Stops Required**

### **§ 360. Authority to designate stop and yield intersection**

A. The authorities with roadways under their jurisdiction may designate through roadways and post "stop" or "yield" signs at specified entrances thereto or may designate any intersection as a "stop" or "yield" intersection and post like signs at one or more entrances to the intersection.

B. Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 361. Emerging from alley or private driveway**

The driver of a vehicle within a business or residential district emerging from an alley, driveway or building shall stop the vehicle immediately prior to driving onto a sidewalk or into the sidewalk area extending across any alley-way or private driveway. The driver shall yield the right-of-way to pedestrians as may be necessary to avoid collision and upon entering a road, shall yield the right-of-way to all closely approaching vehicles on the roadway.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 362. Duty when approaching horse-drawn vehicles and livestock**

Every person operating a motor vehicle upon any public roadway and approaching any horse-drawn wagon, or any horse upon which any person is riding, or livestock being driven upon the highway, shall exercise reasonable precaution to prevent frightening and to safeguard such animals, and to insure the safety of any person riding or driving the same.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **Subchapter 18. Pedestrians' Right and Duties**

#### **§ 370. Pedestrians subject to traffic regulations**

Pedestrians shall obey traffic control signals at intersections; where no signals are in place pedestrians shall have the right-of-way subject to the restrictions in this Chapter.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 371. Pedestrians right-of-way in crosswalks**

A. When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slow down or stop if necessary, to allow a pedestrian to cross the roadway within a crosswalk when the pedestrian is upon the same half of the roadway as the vehicle, or when the pedestrian is close enough on the other side to be in danger.

B. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

C. When any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 372. Crossing at other than crosswalks**

Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 373. Pedestrians on roadways**

All pedestrians shall exercise due caution and reasonable care when walking adjacent to a roadway.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**Subchapter 21. Miscellaneous Provisions**

**§ 400. Riding on motorcycles**

A. No person shall operate a motorcycle or motor-driven cycle upon a public street, road or highway in the Navajo Nation unless he or she has a valid motorcycle license.

B. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and the operator shall not carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the rear or side of the operator.

C. Any person operating a motorcycle not having a fixed windshield shall wear an eye protective device, which may be a face-shield attached to a safety helmet, goggles or safety eyeglasses. All eye protective devices or windshields shall be of a type complying with appropriate state regulations or codes.

D. Any person who violates the provisions of this Section shall be subject to a civil assessment fee not to exceed one hundred fifty dollars (\$150.00).

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 401. Mandatory use of protective helmets**

A. No person under 18 years of age shall operate or be a passenger on a motorcycle unless he or she is wearing a safety helmet securely fastened on his or her head in a normal manner as headgear and meeting the standards specified in applicable regulations or codes.

B. Any person who violates the provisions of this Section shall be subject to a civil assessment fee not to exceed three hundred-seventy dollars (\$370.00).

#### **History**

CAP-40-00, April 20, 2000.

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 402. Obstruction to driver's view**

A. No person shall drive a vehicle when it is so loaded or when there are in the front seat such number of persons as to obstruct the view of the driver to the front or sides or rear of the vehicle or as to interfere with the driver's control over the driving mechanism(s) of the vehicle.

B. No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides or to the rear or to interfere with his or her control over the driving mechanism(s) of the vehicle.

C. Any person who violates the provisions of this Section shall be subject to a civil assessment fee not to exceed one-hundred fifty dollars (\$150.00).

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 403. Coasting prohibited**

The driver of any motor vehicle when traveling upon a down-grade shall not coast with the clutch disengaged or with the motor off.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 404. Placing litter, glass or other objects on roadway**

A. No person shall litter or deposit upon any roadway any paper, glass bottle, glass, nails, tacks, wire, cans or any other substance upon the roadway.

B. Any person who drops, or permits to be dropped or thrown, upon any roadway a destructive or injurious material shall immediately remove the same or cause it to be removed.

C. Any person removing a wrecked or damaged vehicle from a roadway shall remove any glass or other injurious substance dropped by the wrecked or damaged vehicle upon the roadway.

D. Any person who violates the provisions of this Section shall be subject to a civil assessment fee of not more than five hundred dollars (\$500.00).

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 405. Livestock on highways**

A. It is unlawful for any person, during the hour of darkness, to ride a horse or other animal upon the shoulder or upon the traveled portion of any roadway which is normally used by motor vehicles.

B. It is unlawful for any person to permit livestock to wander or graze upon any fenced roadway at any time or to drive livestock along or upon any roadway which is normally used by motor vehicles during the hours of darkness.

C. Owners of livestock ranging in pastures through which unfenced roadways pass, shall not be liable for damages or injuries to persons or property caused by collisions of vehicles with livestock unless the owner of the livestock is guilty of negligence.

D. Any person who violates the provisions of this Section shall be subject to a civil assessment fee not to exceed five hundred dollars (\$500.00).

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **Annotations**

##### **1. Liability**

"Navajo law imposes a duty on drivers to exercise 'reasonable precaution' when approaching horse drawn vehicles and livestock. This Court has recognized a heightened standard of care for drivers in open range areas on the Navajo Nation. This heightened standard of care, however, does not apply in a closed range area where a fence prevents livestock from trespassing onto an adjacent highway. Under these circumstances, a grazing permittee has a duty to contain her livestock inside the fenced area and off of the highways." *Castillo, et al. v. Charlie, et al.*, 7 Nav. R. 181, 183-184 (Nav. Sup. Ct. 1995).

##### **§ 406. Prohibited activities while driving; wireless mobile telephone use; definitions; penalty**

A. A person shall not drive a motor vehicle while using a wireless mobile telephone to engage in a call unless that wireless mobile telephone is specifically designed and configured to allow hands-free listening and talking, and is used exclusively in that manner while driving.

B. A person shall not drive a motor vehicle while using a wireless mobile telephone to create, send or read text messages despite the hands-free capability.

C. Subsection (A) does not apply to:

1. A person using a wireless mobile telephone for emergency purposes, including but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity.

2. An emergency services professional using a wireless mobile telephone while operating an authorized emergency vehicle in the course and scope of his or her duties.



3. A person while driving a motor vehicle on a privately maintained road not open to the public.

4. A person operating a farm vehicle that is exempt from registration and that is not being driven on public roadways.

D. Definitions; for purposes of this Section:

1. "Hands-free" means the use of a wireless mobile telephone with a speaker phone, headset, or earpiece.

2. "Wireless mobile telephone" shall mean any device used by subscribers and other users of wireless telephone service to access such service.

3. "Using" shall mean holding a wireless mobile telephone to, or in the immediate proximity of, the user's ear.

4. "Engage in a call" shall mean talking into or listening on a hand-held wireless mobile telephone, but shall not include holding a wireless mobile telephone to activate, deactivate, or initiate a function of such telephone.

E. Violators of this Section are subject to a civil assessment fee of not more than twenty dollars (\$20) for the first offense and fifty dollars (\$50) for each subsequent offense.

#### **History**

CAP-13-09, April 22, 2009.

### **Subchapter 23. Operation of Bicycles and Play Vehicles**

#### **§ 420. Application of provisions**

A. The parent(s) of a child or the guardian(s) of a ward who authorize or knowingly permit the child or ward to violate any of the provisions of this Chapter may be found liable and assessed for each such violation.

B. The regulations of this Chapter in their application to bicycles shall apply when a bicycle is operated upon any roadway or any path set-aside for the exclusive use of bicycles subject to those exceptions stated in this Subchapter.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 421. Traffic laws apply to persons riding bicycles**

Every person riding a bicycle upon a roadway shall be granted all the rights and shall be subject to all the duties applicable to the driver of a vehicle by this Chapter, except as to special regulations in this Subchapter and except as to those provisions of this chapter which by their nature can have no application.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 422. Riding on bicycles**

A. A person riding a bicycle shall not ride other than upon or astride a permanent attached seat.

B. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

C. Any person riding a bicycle shall have at least one hand on the handle bar.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 423. Clinging to vehicles**

No persons riding upon any tricycle, bicycle, coaster, roller skates, skateboards, sleds or toy vehicles shall attach the same or himself or herself to any vehicle operated upon a roadway.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 424. Riding on roadways and bicycle paths; prohibition of motor vehicle traffic on bike path**

A. Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or when passing a vehicle proceeding in the same direction.

B. Persons riding bicycles upon a roadway shall ride single-file, except on paths or parts of roadways set aside for the exclusive use of bicycles.

C. Wherever a path for bicycles has been provided adjacent to a roadway, a bicycle rider shall use the path and shall not use the roadway.

D. Motor vehicles are totally prohibited from operating on bike paths.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 425. Carrying articles**

No persons operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handle bars.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 426. Lamps and other equipment on bicycles**

A. Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear which shall be visible from all distances at least 150 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector.

B. Every bicycle shall be equipped with a brake which will enable the operator to make the brake wheels skid on dry, level, clean pavement.

C. Any person who violates a provision of this Subchapter shall be subject to a civil assessment fee not to exceed thirty-seven dollars and fifty cents (\$37.50).

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 427. Valid All-Terrain Vehicles Safety Training Course Certificate**

Any person operating an All-Terrain Vehicle ("ATV") within the jurisdiction of the Navajo Nation is not required to be licensed by the Navajo Nation, however a person operating an ATV must possess a valid ATV Safety Training Course Certificate.

**History**

CO-37-09, October 22, 2009. Navajo Nation All-Terrain Vehicles Act of 2009.

**§ 428. Operation of All-Terrain Vehicles; penalties**

A. Every owner-operator of an All-Terrain Vehicle (ATV) shall observe the following:

1. ATVs shall be registered and titled.
2. ATVs shall have a valid license plate.
3. ATV operators shall have an ATV Safety Training Course Certificate.
4. ATV operators under the age of 18 shall wear a helmet and eye protection.
5. ATV operators under the age of 18 shall not carry passengers.
6. ATV operators under the age of 16 shall be supervised by an adult.
7. ATV operators under the age of 16 shall only operate age-appropriate size-fit ATVs.
8. ATVs shall not be operated by persons under 6 years of age.
9. ATVs shall not be operated on paved streets, except to cross, but must yield to traffic.
10. ATVs shall not be operated without headlights and taillights when visibility is limited.

B. Violators shall pay a civil assessment fee of one hundred dollars (\$100.00) for any infraction of this Section. An ATV Safety Fund is established. The Fund consists of all civil penalties deposited pursuant to this Section and any monies donated by the public. The Navajo Nation Department of Highway Safety shall administer the Fund as follows: for each fee assessed, fifty dollars (\$50.00) shall be deposited into the Navajo Nation General Fund and fifty dollars (\$50.00) shall be deposited into the ATV Safety Fund. The ATV Safety Fund will be used to purchase incentives or fund interventions to promote ATV safety educational awareness and training on the Navajo Nation.

#### **History**

CO-37-09, October 22, 2009. Navajo Nation All-Terrain Vehicles Act of 2009.

### **Chapter 3. Equipment**

#### **§ 500. Equipment**

A. It shall constitute a civil infraction for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in an unsafe condition so as to endanger any person. Any vehicle which does not contain those parts, or is not at all times equipped with such lamps and other

equipment, in proper condition and adjustment, as required in this Chapter, or which is equipped in any manner that is in violation of this Chapter or for any person to do any act forbidden, or fail to perform any act required under this Chapter shall constitute a civil infraction.

B. The use of additional parts and accessories on any vehicle shall not be prohibited, unless inconsistent with the provisions of this Chapter.

C. The provisions of this Chapter with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors except as made applicable by this Chapter.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 501. When lighted lamps are required**

Every vehicle operating upon a highway within the Navajo Nation at any time from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any persons and/or vehicles on the highway at a distance of 500 feet ahead, shall display lighted lamps and reflective devices as required by this Chapter. Exceptions with respect to parked vehicles as stated in this Chapter shall apply.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 502. Visibility distance and mounted height of lamps**

A. When a requirement is set forth in this Chapter as to the distance from which certain lamps and devices shall render objects visible or within which the lamps or devices shall be visible, such provisions shall apply during the times stated in § 501 in respect to a vehicle when upon a straight, level unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

B. When a requirement is set forth in this Chapter as to the mounted height of lamps or devices, it shall mean from the center of the lamp or device to the level ground upon which the vehicle stands when the vehicle is without a load.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **§ 503. Headlamps**

A. Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two head-lamps with at least one on each side of the front of the motor vehicle, which headlamps shall comply with the requirements and limitations set forth in this Chapter.

B. Every motorcycle and every motor-driven cycle shall be equipped with at least one and not more than two headlamps which shall comply with the requirements and limitations set forth in this Chapter.

C. Every headlamp, upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the headlamp of not more than 54 inches nor less than 24 inches from level ground.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **§ 504. Tail lamps**

A. Every motor vehicle, trailer, semitrailer and pole trailer and any other vehicle which is being drawn last, shall be equipped with at least one tail lamp mounted on the rear, which, when lighted as required by this Chapter, shall emit a red light plainly visible from a distance of 500 feet to the rear.

B. Every tail lamp upon every vehicle shall be located at a height of not more than 72 inches nor less than 20 inches from the level ground.

C. Any tail lamp together with any separate lamp for illuminating the rear license plate, shall be wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted, and free of any obstruction.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **§ 505. Lamp or flag on projecting load**

At the time specified in § 501, whenever a load upon any vehicle extends at least four feet or more beyond the bed or body of the vehicle, there shall be displayed at the extreme rear end of the load a red light or lantern plainly visible from a distance of at least 500 feet to the sides and rear. The red light or lantern shall be in addition to the red rear light required upon every vehicle. At the time besides those specified in § 501, there shall be displayed at the extreme rear end of the load a red flag or cloth not less than 12 inches square and hung so that the entire area is visible to the driver of a vehicle approaching from the rear.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **§ 506. Lamps and reflectors on parked vehicles**

A. When a vehicle is lawfully parked upon a street or roadway during the hours between one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise, no lights need be displayed upon the parked vehicle.

B. When a vehicle is parked or stopped upon a roadway or nearby, whether attended or unattended during the hours between one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise, the vehicle so parked or stopped shall be equipped with one or more reflectors on the rear of the vehicle. The foregoing shall apply to a motor-driven cycle.

C. Any lighted headlamps upon a parked vehicle shall be depressed or dimmed.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **§ 507. Spot lamps and auxiliary lamps**

A. A motor vehicle may be equipped with no more than one spot lamp and every lighted spot lamp shall be aimed and used upon approaching another vehicle so that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than 100 feet ahead of the vehicle.

B. A motor vehicle may be equipped with no more than two fog lamps mounted upon the front at a height not less than 12 inches nor more than 30 inches above the level surface upon which the vehicle stands and so aimed when the vehicle is not loaded, that none of the high intensity portion of the light to the left of the center of the vehicle shall, at a distance of 25 feet ahead, project higher than a level of four inches below the level of the center of the lamp from which it comes.

C. A motor vehicle may be equipped with no more than one auxiliary passing lamp mounted on the front at a height not less than 24 inches nor more than 42 inches above the level surface upon which the vehicle stands, and every auxiliary passing lamp shall meet the requirements and limitations set forth in §§ 500 through 517.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 508. Signal lamps and signal devices**

A. A motor vehicle shall be equipped with the following signal lamps or devices:

1. A stop lamp or stop lamps on the rear which shall emit a red or yellow light and which shall light up upon use of the foot brake and which may be incorporated with one or more rear lamps; and

2. A lamp or lamps or mechanical signal device capable of clearly indicating an intention to turn either to the right or to the left and which is visible both from the front and rear.

B. Every stop lamp shall be plainly visible from a distance of 100 feet to the rear both during normal sunlight and at nighttime. A signal lamp or lamps indicating the intention to turn shall be visible and understandable during daytime and nighttime from a distance of 100 feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.

C. All electro-mechanical signal devices shall be self-illuminated when in use during the times mentioned in § 501.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 509. Additional lighting equipment**

A. A motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

B. A motor vehicle may be equipped with no less than one running-board courtesy lamp on each side which shall emit a white or amber light without glare.

C. A motor vehicle may be equipped with not more than two back-lamps either separately or in combination with other lamps, except that a back-up lamp shall not be lighted when the motor vehicle is in forward motion.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 510. Multiple-beam road lighting equipment**

Except as provided in this Chapter, the headlamps or the auxiliary driving lamp, or the auxiliary passing lamp, or combination thereof, on motor



vehicles shall be so arranged that the driver may select between distributions of different light elevations, subject to the following requirements and limitations.

A. There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions.

B. There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead, and under any condition none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 511. Use of multiple-beam road lighting equipment**

Whenever a vehicle is being operated on a roadway or an adjacent shoulder during the times specified in § 501, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

A. When a driver of a vehicle approaches an oncoming vehicle within 500 feet, the driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver; and

B. The lowermost distribution of light or composition beam as specified in § 510(B) shall satisfy the requirements of this Subsection.

C. When the driver of a vehicle overtakes another vehicle proceeding in the same direction and within 200 feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays do not project through the rear window of the overtaken vehicle.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 512. Single-beam road lighting equipment**

Headlamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured prior to January 1, 1951, in lieu of multiple-beam road-lighting equipment specified in this Chapter if the single distribution of light complies with the following requirements and limitations.

A. The headlamps shall be aimed so that when the vehicle is not loaded, none of the high intensity portion of the light shall, at a distance of 25 feet ahead, higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case, higher than 42 inches above the level on which the vehicle stands at a distance of 75 feet ahead; and

B. The intensity shall be sufficient to reveal persons and vehicles at a distance of at least 200 feet.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 513. Number of driving lamps required or permitted**

A. At all times specified in § 501, at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle or motor-driven cycle, except when the vehicle is parked subject to the regulations governing lights on parked vehicles.

B. When a motor vehicle equipped with headlamps as required by this Chapter is also equipped with an auxiliary lamp or a spot lamp or any other lamp on the front, and projects a beam of intensity greater than 300 candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a roadway.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 514. Special restrictions on lamps**

A. Any lighted lamp or illuminating device upon a motor vehicle other than headlamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

B. No person shall drive or move any vehicle or equipment upon any highway with any lamp or device displaying a red light visible from directly in front of the center of the vehicle or equipment.

C. Flashing red lights are prohibited except as provided in Subsection (D) of this Section and except on authorized emergency vehicles including emergency volunteers when responding to an emergency, school buses, snow-removal equipment and highway-marking equipment. Flashing red lights may be used as warning lights on disabled or parked vehicles and on any vehicle as a means of indicating a turn.

D. Tow trucks standing on highways for the purpose of removing disabled vehicles, and while engaged in towing any disabled vehicle, shall display flashing blue lights. This shall not be construed to permit the use of flashing lights by tow trucks in going to or returning from the location of disabled vehicles unless actually engaged in towing a disabled vehicle.

E. Only fire department vehicles, law enforcement agency vehicles, ambulances, school buses and other authorized vehicles shall display flashing red lights visible from the front of the vehicle.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 515. Standards for lights on snow removal equipment**

The lights on snow removal equipment when in operation on the highways within the Navajo Nation shall conform to the standards and specifications set forth in this Chapter and those adopted by the American Association of State Highway Officials.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 516. Equipment required on certain vehicles**

Every bus or truck less than 80 inches in overall width shall be equipped at a minimum as follows:

A. On the front: two headlamps; and

B. On the rear: one red tail lamp; one red stop lamp; two red reflectors, one at each side.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 517. Color of clearance lamps, side-marker lamps and reflectors**

Every bus or truck 80 inches or more in overall width shall be equipped as follows:

A. On the front: two headlamps and two amber clearance lamps, one at each side;

B. On the rear: one red tail lamp, one red stop lamp, two red clearance

lamps, one at each side, and two red reflectors, one at each side;

C. All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white; and

D. On each side: one amber side-marker lamp, located at or near the front; one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; and one red reflector, located at or near the rear.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 518. Lamps and reflectors: truck tractors and road tractors**

Every truck tractor and road tractor shall be equipped as follows:

A. On the front: two headlamps; two amber clearance lamps, one at each side; and

B. On the rear: one red tail lamp and one red stop lamp.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 519. Lamps and reflectors: large semitrailers, full trailers and house trailers**

A. Every semitrailer, full trailer or house trailer 80 inches or more in overall width and in motion shall be equipped as follows:

1. On the front: two amber clearance lamps, one at each side;

2. On the rear: one red tail lamp; one red stop lamp; two red clearance lamps, one at each side, two red reflectors, one at each side; and

3. On each side: one amber side-marker lamp, located at or near the front; one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear.

B. Side-marker lamps may be in combination with clearance lamps and may use the same light source.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 520. Lamps and reflectors: small semitrailers, house trailers and trailers**

On the rear of every semitrailer, house trailer or trailer less than 80 inches in overall width there shall be the following equipment as follows: one red tail lamp; two red reflectors, one at each side; one red stop lamp, if the semitrailer, house trailer or trailer obscures the stop lamp on the towing vehicle.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 521. Lamps and reflectors: pole trailers**

Every pole trailer shall be equipped as follows:

A. On the rear: one red tail lamp, two red reflectors, one at each side; some indicator of the extreme width of the pole trailer; and

B. On each side, on the rearmost support for the load: one combination marker lamp showing amber to the front and red to the side and rear, mounted to indicate the maximum width of the pole trailer; and red reflector, located at or near the rear; and on pole trailers 30 feet or more in overall length, an amber marker-lamp on each side near the center.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 522. Lamps and reflectors: combination in drive-away/tow-away operations**

Combinations of motor vehicles engaged in drive-away/tow-away operations shall be equipped as follows:

A. On the towing vehicle:

1. On the front: two headlamps and two amber clearance lamps, one at each side;

2. On each side and near the front: one amber side-marker lamp;

3. On the rear: one red tail lamp; one red or amber stop lamp; and

4. Provided, however, that vehicles of less than 80 inches in width

shall be equipped as provided in § 516.

B. On the towed vehicle of a tow-bar combination, the towed vehicle of a single saddle-mount combination and the rearmost towed vehicles of a double saddle-mount combination:

1. On each side, and near the rear: one red side marker lamp; and

2. On the rear: one red tail lamp; two red clearance lamps, one at each side; one red or amber stop lamp; two red reflectors, one at each side.

C. On the first saddle-mount of a double saddle-mount combination: on each side, and near the rear, one amber side-marker lamp; and

D. Combinations of vehicles less than 80 inches in width in driveway/tow-away operations shall carry lamps and reflectors as required in § 516.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 523. Mounting of reflectors, clearance lamps and side-marker lamps**

A. Reflectors required by §§ 516 and 517 shall be mounted upon the motor vehicle at a height of not less than 24 inches nor more than 60 inches above the ground on which the motor vehicle stands, except that reflectors shall be mounted as high as practicable on motor vehicles which are so constructed as to make compliance with the 24 inch requirement impractical. They shall be so installed as to function adequately and reliably and except for temporary reflectors required for vehicles in drive-away/tow-away reflectors shall be permanently and securely mounted so as to provide the maximum stability, and minimum likelihood of damage. Required reflectors otherwise properly mounted may be securely installed on flexible strapping or belting provided that under conditions of normal operation they reflect light in the required directions. Required temporary reflectors, mounted on motor vehicles during the time they are in transit in any drive-away/tow-away operations, all operation, must be firmly attached.

B. All reflectors on the rear and those nearest to the rear on the side, except those referred to in Subsection (C) of this Section, shall reflect a red color; all other reflectors, except those referred to in Subsection (C) of this Section, shall reflect an amber color. This requirement shall not be construed to prohibit the use of motor vehicles in combination if such motor vehicles are severally equipped with reflectors as required by §§ 516-522.

C. Retro-reflective surfaces, other than required reflectors, may be used, provided:

1. Designs do not resemble traffic control signs, lights or devices, except that straight-edge striping resembling a barricade pattern may be used;

2. Designs do not tend to distort the length or width of the motor vehicle;

3. Such surfaces shall be at least three inches from any required lamp or reflector unless of the same color as such lamp or reflector;

4. No red color shall be used on the front of any motor vehicle; and

5. No provision of this Subsection shall be so construed so as to prohibit the use of retro-reflective registration plates required by any state or local authority.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **§ 524. Brakes**

A. The following brake equipment is required:

1. Every motor vehicle, other than a motorcycle or motor-driven cycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold the vehicle. This shall include two separate means of applying the brakes, each of which shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that a failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

2. Every motorcycle and every motor-driven cycle, when operated upon a highway, shall be equipped with at least one brake which may be operated by hand or foot.

3. Every trailer or semitrailer of a gross-weight of 3000 pounds or more when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold the vehicle. Brakes shall be so designed as to either be applied by the driver of the towing motor vehicle from its cab or be of a type which will operate automatically when the service brakes of the towing vehicle are applied. The brakes shall be so designed and connected that in case of an accidental break-away of the towed vehicle the brakes shall be automatically applied.

4. In any combination of motor-drawn vehicles, means shall be provided for applying the rear-most trailer brakes, of any trailer equipped with brakes, in approximate synchronism with brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate. Any alternative means shall be provided of applying braking effort first on the rearmost trailer equipped with

brakes. Both of the above means capable of being used alternatively may be employed.

5. The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both services and foot operation.

B. Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service or foot brake, within the distances specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances.

	Feet to stop from 20 miles per hour	Deceleration in feet per second
Vehicles or combination of vehicles having brakes on all wheels	30	14
Vehicles or combination of vehicles not having brakes on all wheels	40	10.7

C. All brakes shall be maintained in good working order and shall be adjusted as to operate as equally as possible.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 525. Horns and warning devices**

A. Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud and harsh sound or a whistle. The driver of a motor vehicle shall, when reasonably necessary to insure safe operation, give audible warning with his or her horn but shall not otherwise use the horn when upon a highway.

B. No vehicle shall be equipped with, nor shall any person use upon a vehicle any siren, whistle or bell, except as otherwise permitted in this Section.

C. It is permissible for a vehicle to be equipped with a theft alarm signal device which is so designed that it cannot be used by the driver as an ordinary warning signal.

D. Any authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of at least 500 feet. The siren shall not be used except when the



vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law. In the latter event, the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of its approach.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 526. Mufflers; prevention of noise; emission control devices**

A. Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise. No person shall use a muffler cut-out, bypass or similar device upon a motor vehicle on a roadway.

B. The muffler, emission-control equipment device, engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

C. Every registered gasoline-fueled motor vehicle manufactured or assembled, commencing with the 1968 models, shall at all times be equipped and maintained in good working order with the factory-installed devices and equipment or their replacements designed to prevent, reduce or control exhaust emissions or air pollution.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 527. Mirrors**

Every motor vehicle shall be equipped with a mirror located so as to reflect to the driver an unobstructed view of the roadway for a distance of at least 200 feet to the rear of such vehicle under all conditions of loading.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 528. Windshields must be unobstructed and equipped with wipers; windows must be transparent**

A. No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon or in the front windshield, windows to the immediate right and left of the driver or in the rearmost window if the latter is used for driving visibility.

B. The windshield on every motor vehicle, except a motorcycle, shall be equipped with a mechanical device for cleaning rain, snow or other moisture from the windshield and shall be so constructed as to be controlled or operated by the driver of the vehicle, and shall be maintained in good working order.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 529. Restrictions as to tire equipment**

A. When their use is permitted, every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire outside surface.

B. No person shall operate or move on any roadway vehicle, having any metal tire in contact with the roadway, except that for the purposes of this Chapter, a snow tire with metal studs designed to increase traction on ice or snow shall not be considered a metal tire.

C. No tire on a vehicle moved on a highway within the jurisdiction of the Navajo Nation shall have on its outside surface any block, flange, cleat, spike or any other projection of any material other than rubber which is beyond the tread of the traction surface of the tire. It is permissible to use farm machinery with tires having rubber projections which will not damage the highway. It is permissible to use tire chains of reasonable proportions or snow tires with metal studs designed to increase traction on ice or snow upon any vehicle, when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid.

D. The Division may issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the outside surfaces of such moveable tracks, or farm tractors or other farm machinery, the operation of which upon a roadway would otherwise be prohibited by this Chapter.

E. No vehicle equipped with solid rubber tires shall be permitted upon any roadway of the Navajo Nation without special permission first being granted by the Division. In no event may any such vehicle be operated at a speed in excess of that specified by law.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 530. Safety glazing materials in motor vehicles**

No motor vehicle sold as new on or after January 1st of the year following approval of this Code by the Navajo Nation Council, shall be operated within the Navajo Nation unless it is equipped with safety glazing material

whenever glazing materials are used in doors, windows or windshields. The foregoing provision shall apply to all passenger-type motor vehicles, including passenger buses and school buses.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 531. Emergency warning equipment**

A. Requirements for red emergency reflectors. Each red emergency reflector shall conform to the following requirements.

1. Each reflector must be composed of at least one reflecting element or surface; and

2. If the reflecting elements of the reflector are so designed or constructed that the reflecting surfaces would be adversely affected by dust, soot, or other foreign matter or contact with other parts of the reflector or its container, then such reflecting surfaces shall be adequately sealed with the body of the reflector; and

3. Every reflector shall be of such weight and dimensions as to remain stationary and perpendicular when subject to a 40 mile per hour wind when a vehicle is placed on any clean, dry, paved road surface. The reflector shall be constructed to withstand reasonable shocks without breakage.

B. Requirements for fuses. Each fuse shall be capable of burning at least 15 minutes, and shall be equal to the specifications of the Bureau of Explosives, 30 Vesey Street, New York, New York, dated December 15, 1944, and be so marked.

C. Red cloth flags shall be not less than 12 inches square, with standards adequate to maintain the flags in an upright position.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 532. Certain vehicles to carry flares or other warning devices**

On every bus, truck tractor, and road-tractor, and every driven vehicle in a drive-away/tow-away operation, of a width greater than 80 inches, there shall be:

A. Warning devices for stopped vehicles. One of the following combinations of warning devices:

1. Three flares or liquid-burning pot torches and three fuses and

two red cloth flags; or

2. Three red electric lanterns, two red cloth flags and three fuses; or

3. Three red emergency reflectors, two red cloth flags, and three fuses; or

4. Flares or pot torches, fuses, oil lanterns, or any signal produced by a flame, shall not be carried on motor vehicles used in the transportation of explosives, flammable liquids, or flammable compressed gases in cargo tanks, or in any motor vehicle using flammable compressed gases as a motor fuel; but in lieu of such flares and fuses, three electrical lanterns or three red emergency reflectors shall be carried; and

5. The protective devices used shall comply with the requirements given in Subsections (A)-(C) of this Section.

B. Requirements for flares. Flares or pot torches shall be adequate and reliable.

C. Requirements for Red Electric Lanterns. Red electric lanterns shall be adequate, reliable, and equipped with a working battery or batteries within each unit.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 533. Unattended vehicles**

A. For purposes of §§ 534-537 the term "motor vehicle" is hereby defined to include every bus, truck, truck-tractor, road-tractor, and every driven vehicle in drive-away/tow-away operations, required by § 532 to have emergency equipment.

B. Unattended Vehicles: Precautions. No motor vehicle shall be left unattended until the parking brake has been securely set. All reasonable precautions shall be taken to prevent the movement of any vehicle left unattended.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 534. Stopped vehicles not to interfere with other traffic**

No motor vehicle shall be stopped, parked, or left standing, whether attended or unattended upon the traveled portion of any highway outside of a

business or residential district, when it is practicable to stop, park, or leave such vehicle off the traveled portion of the roadway. In the event that conditions make it impossible to move the motor vehicle from the traveled portion of the highway, the driver shall make every effort to leave all possible width of the highway opposite the standing vehicle for the free passage of other vehicles and he or she shall take care to provide a clear view of the standing vehicle as far as possible to the front and rear and comply with the other sections of this Chapter.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 535. Emergency signals; stopped or parked vehicles**

Whenever for any cause other than necessary traffic stops, any motor vehicle is stopped upon the traveled portion of any highway, or shoulder, the driver of such vehicle shall immediately operate the emergency flashing lights of his or her vehicle.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 536. Emergency signals; flame-producing**

No driver shall attach or permit any person to attach a lighted fuse or other flame-producing emergency signal for protecting any motor vehicle transporting of any flammable liquid or flammable compressed gas as a motor fuel. Red electric lanterns or red emergency reflectors shall instead be used, as follows:

A. The driver shall place three liquid-burning flares or pot torches, or three red electric lanterns, or three red emergency reflectors on the traveled portion of the highway in the following order:

1. One at a distance of approximately 100 feet from the disabled vehicle in the center of the traffic lane occupied by such vehicle and toward traffic approaching in that lane;

2. One at a distance of approximately 100 feet in the opposite direction from the disabled vehicle in the center, of the traffic lane occupied by such vehicle; and

3. One at the traffic side of the disabled vehicle, not less than 10 feet to the front of it. If a red electric lantern or red emergency reflector has been placed on the traffic side of the vehicle in accordance with Subsection (A) of this Section, it may be used for this purpose.

B. If disablement of any motor vehicle shall occur within 500 feet of a curve, crest of a hill, or other obstruction to view, the driver shall so place the warning signal in that direction as to afford ample warning to other users of the highway, but in no case less than 100 feet, nor more than 500 feet from the disabled vehicle. One warning signal shall also be placed at a distance of approximately 100 feet in the opposite direction from the disabled vehicle in the center of the traffic lane occupied by such vehicle.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 537. Vehicles transporting explosives or other dangerous substances**

Any person operating any vehicle transporting explosives or other dangerous substances as cargo upon a roadway shall comply with the provisions of §§ 538-543. Vehicles transporting explosives or dangerous substances will not be permitted to stop while en route to a destination unless instructed to do so by an authorized law enforcement office.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 538. Classification of explosives**

A. For the purpose of this Act explosives are divided into the following three classes:

1. Class A. Explosives; detonating or otherwise of maximum hazard.
2. Class B. Less dangerous explosives; flammable hazard.
3. Class C. Relatively safe explosives; minimum hazard.

B. All provisions of the Navajo Nation Fireworks Code are incorporated herein.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 539. Dangerous substances**

Dangerous substances include but are not limited to:

A. Flammable Liquid—A flammable solid is a solid substance other than one classified as an explosive, which is liable, under conditions incident to

transportation, to cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from the manufacturing or processing.

B. Oxidizing Materials—An oxidizing material is a substance such as chlorate, permanganate, peroxide, or nitrate, that yields oxygen readily to stimulate the combustion of organic matter.

C. Acids and other Corrosive Liquids—Corrosive liquids are those acids, alkaline caustic liquids and other corrosive liquids which, when in contact with living tissue, will cause severe damage of such tissue by chemical action; or in case of leakage, will materially damage or destroy other freight by chemical action; or are liable to cause fire when in contact with organic matter or with certain chemicals.

D. Compressed Gas—A compressed gas is defined as any material with a gauge pressure exceeding 40 pounds per square at seventy degrees (70°) Fahrenheit; or any liquid flammable material having a Reid vapor pressure exceeding 40 pounds per square inch, absolute, at one hundred degrees (100°) Fahrenheit.

No one shall transport compressed gas (butane propane) in an enclosed vehicle, but should transport it in an open, ventilated transportation device. Transportation of such compressed gas shall comply with other Navajo Nation environmental protection regulations.

E. Poison—

1. Class A. Extremely Dangerous Poison—Poisonous gases or liquids of such nature that a very small amount of the gas, or vapor of the liquid mixed with air, is dangerous to life. Poisonous gases shall be labeled as dangerous.

2. Class B. Less Dangerous Poisons—Poison liquid or solid, including pastes and semi-liquids, are substances of such nature that they are chiefly dangerous by external contact with the body or by being taken internally as in contaminated foods or feeds.

The vapors of some of this class of materials are also offensive and dangerous; these poisons shall be labeled as such.

3. Class C. Tear Gases or Irritating Substances—Tear gases are liquid or solid substances which upon contact with fire, or when exposed to air give off dangerous or intensely irritating fumes, such as brombensylcyanide, chloracetophonone, diphenylaminechlorisane, and diphelychlorasine. These substances shall be labeled as such.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 540. Marking on motor vehicles motor-vehicles other than tank motor vehicles**

A. Every motor vehicle other than a tank motor vehicle transporting 2,500 pounds or more of any one class of explosives, or other dangerous substances, or transporting an aggregate of 5,000 pounds or more, of more than one class of such article, in the event the lading does not contain 2,500 pounds of any one class, shall be marked as prescribed in the following list:

- A. Explosives, Class A.....EXPLOSIVES
- B. Explosives, Class B.....DANGEROUS
- C. Flammable Liquid.....DANGEROUS
- D. Flammable Solid.....DANGEROUS
- E. Oxidizing Material.....DANGEROUS
- F. Corrosive Liquid.....DANGEROUS
- G. Compressed Gas.....COMPRESSED GAS
- H. Poison Gas, Class A.....POISON GAS
- I. TearGas.....DANGEROUS
- J. Poisons, Class B.....DANGEROUS-POISON GAS

B. The prescribed markings shall be by means of signs or lettering on each side and the rear of the motor vehicle, and the letters shall be at least three inches high on a background of sharply contrasting color.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 541. Tank motor vehicles**

Every tank motor vehicles used for the transportation of any flammable liquid, regardless of the quantity being transported, or whether loaded or empty, shall be conspicuously and legibly marked on each side and on the rear in letters at least three inches high on a background of sharply contrasting color, optionally as follows:

A. With a sign or lettering on the motor vehicle with the word "Flammable" and with the common name of the flammable liquid being transported; or

B. With the name of the carrier or his or her trademark, when and only when such name or mark plainly indicates the flammable nature of the cargo.

**History**



ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 542. Only one marking required**

Any motor vehicles transporting more than one class of dangerous substances for which signs are required to be displayed pursuant to § 540 shall have a sign which designates the most dangerous substance being transported.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 543. Formulation of rules and regulations governing transportation of compressed gases and corrosive liquids**

A. The Navajo Nation is empowered and directed to formulate, adopt and promulgate rules and regulations containing standards of safety, having uniform force and effect in the transporting of compressed gases and corrosive liquids by tank vehicle upon the public roadways. Those standards applicable to compressed gases and those applicable to corrosive liquids shall be separately formulated and distinguished. The Division is empowered to enforce such rules and regulations.

B. The standards of safety shall be consistent with nationally-recognized industry practice for tank vehicle transportation of compressed gases, corrosive liquids and other dangerous substances.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 544. Safety belts required**

It is unlawful for any person to buy, sell, lease, trade or transfer from or to residents of the Navajo Nation a motor vehicle, which is manufactured or assembled commencing with the 1974 models, unless the vehicle is equipped with safety belts installed for use in the front seat(s) of the motor vehicle.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 545. Safety belts—Types and manner of installation**

Safety belt type and installation specifications shall meet the standards

as currently established by the Society of Automotive Engineers.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 546. Safety belt requirement in passenger vehicles**

The use of seat belts in passenger vehicles shall be mandatory as follows:

A. Front seat occupants of all passenger vehicles shall have a safety belt properly fastened about his or her body at all times when the vehicle is in motion.

B. Violators of this Section are subject to a civil assessment fee of not less than thirty-seven dollars and fifty cents (\$37.50) and not more than seventy-five dollars (\$75.00).

C. Evidence of a violation of this Section shall be admissible for the purposes of mitigation of damages, appointment of damages or comparative fault, or other issues as determined by the court, with respect to any person who is involved in an accident and seeks to recover damages for injuries resulting from the accident.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 547. Infant/child passenger restraints**

A. Any parent, guardian or custodian of an infant, child or youth under the age of 12 years and less than 4'9", when transporting the child in a non-commercial motor vehicle operated on any highway of the Navajo Nation, shall properly secure the child in a child passenger restraint system. The restraint system shall meet Federal Motor Vehicle Safety Standard Number 213, which requires the following information:

1. On a permanent label attached to the restraint, the statement, "This child restraint system conforms to all applicable Federal Motor Vehicle Safety Standards" shall be printed; and

2. On a permanent label, attached to the restraint, the manufacturer's recommendations of the minimum and maximum weight and height of the children who can safely occupy the system shall be printed.

B. A person shall not operate a passenger car, van or pickup truck within the Navajo Nation, except for an authorized emergency vehicle, public transportation or a school bus, unless all passengers less than 12 years of age

and less than 4 feet 9 inches in height are properly restrained. Each child less than 12 years of age and less than 4 feet 9 inches in height shall be properly secured in a child passenger restraint device or by a safety belt, unless all seating positions equipped with safety belts are occupied, as follows:

1. Children, less than one year of age shall be properly secured in a rear-facing child restraint of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle with the passenger-side air bag deactivated.

2. Children, one year of age through four years of age, regardless of weight; or children who weigh less than forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards for this age and size range.

3. Children, five years of age through 12 years of age, regardless of weight; or children who weigh less than 60 pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards, by a booster seat or by a seat belt.

C. A child is properly secured in an adult seat belt when the lap belt properly fits across the child's thighs and hips and not the abdomen. The shoulder strap shall cross the center of the child's chest and not the neck, allowing the child to sit all the way back against the vehicle seat with knees bent over the seat edge.

D. If all seating positions equipped with safety belts are occupied, children shall be restrained in accordance with this Section, by the order of age, beginning with the youngest through the eldest.

Violators of this Section are subject to a civil assessment fee not more than one hundred twenty-five dollars (\$125.00) except that civil assessment shall be reduced to seventy-five dollars (\$75.00) if the person attends a two-hour Children are Precious Passengers (CAPP) course taught by a certified child passenger safety technician, and obtains a child restraint device that meets federal standards should the court require such proof. A child passenger restraint fund is established. The fund consists of all civil penalties deposited pursuant to this Section and any monies donated by the public. The Navajo Nation Safe Kids Coalition shall administer the fund.

#### **History**

CJA-02-09, January 27, 2009.

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **Chapter 4. Weight and Size Limitations**

#### **§ 600. Scope and effect of Article**

A. It is a civil infraction for any person to drive or move or permit to be driven or moved on any highway, any vehicle or vehicles of a size or weight exceeding the limitations stated in this Chapter, or otherwise in violation of this Chapter. The maximum size and weight of vehicles specified in this Chapter shall be lawful throughout the Navajo Nation.

B. The provisions of this Chapter governing size, weight and load shall not apply to fire apparatus, road machinery engaged in highway construction or maintenance, or to implements of husbandry, including farm tractors, temporarily moved upon a highway, or to a vehicle operated under the term of a special permit issued as provided herein.

C. Restitution: The court, in addition to or in lieu of any assessment imposed may require any person found in violation of this Section, to pay the full cost of repairing or replacing any property damaged as the result of such violation.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 601. Projecting loads on passenger vehicles**

No passenger-type vehicle, except a motorcycle, shall be operated on any highway with any load carried on it extending beyond the line of the fenders on the left side of the vehicle nor extending more than six inches beyond the line of the fenders on the right side of the vehicle.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 602. Height and length of vehicles of loads**

A. No vehicle, including any load on it, shall exceed a height of 13 feet, six inches.

B. No vehicle, including any load thereon, shall exceed a length of 40 feet extreme over-all dimension, inclusive of front and rear bumpers, except when operated in combination with another vehicle as provided in Subsection (C) of this Section.

C. No combination of vehicles coupled together shall consist of more than two units, except that a truck tractor and semitrailer will be permitted to pull one trailer and, excepted further, that a double or triple saddle-mount of vehicles in transit by drive-away/tow-away methods will be permitted. However, any saddle-mount combination of vehicles must comply with the rules, regulations and standards of the United States Department of Transportation in regard to safety and no combination of vehicles, including any load thereon,

shall exceed an over-all length of 65 feet, inclusive of the front and rear bumpers.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 603. Minimum wheelbase**

A. It is unlawful to operate any motor vehicle with a wheelbase, between any two axles, of less than three feet seven inches, on the highways of the Navajo Nation.

B. For the purpose of this Section, wheelbase shall be measured upon a straight line from the center of the vehicle axles.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 604. Special load limits**

Subject to the foregoing provisions of the Chapter limiting the length of vehicles and loads, the load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than three feet beyond the foremost part of the vehicle. The load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than six feet beyond the rear of the bed or body of such vehicle.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 605. Loads on vehicles**

A. No vehicles shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of the load from dropping, shifting, leaking, or otherwise escaping from it. However, the load may be dropped or sprinkled for the purpose of securing traction, or cleaning or maintaining the roadway.

B. No person shall operate on any highway any vehicle or combination of vehicles with any load unless the load and any covering on it is securely fastened so as to prevent the covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 606. Trailers and towed vehicles**

A. When one vehicle is towing another, the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and the drawbar or other connection shall not extend more than 15 feet from one vehicle to the other, except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered. When a combination of vehicles are engaged in transporting poles, pipe, machinery, or the objects of structural nature which cannot readily be dismembered, the load shall be distributed so as to equalize the weights on the axles of each vehicle.

B. When one vehicle is towing another and the connection consists of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than 12 inches square.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 607. Load limits on single-axles, wheels and tires**

A. The gross weight imposed on the highway by the wheels of any one axle of a vehicle shall not exceed 21,600 pounds, nor shall any one wheel carry a load in excess of 11,000 pounds. Nor shall a tandem axle carry a load in excess of 34,320 pounds.

B. No wheel equipped with pneumatic, solid rubber, or cushion tires shall carry a load in excess of 600 pounds for each inch of tire width. The width of pneumatic tires shall be taken at the manufacturer's rating. The width of solid rubber and cushion tires shall be measured at the flange of the rim.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 608. Gross weight of vehicles and loads**

A. Subject to the weight limits imposed in § 607, the total gross weight with load of a vehicle or combination of vehicles with two or more consecutive axles shall not exceed the gross weight given for the respective distance between the first and last axle measured longitudinally to the nearest foot, as set forth in the following table:

Distance in feet between first and	Allowed load
------------------------------------	--------------

last axles of group	in pounds on group of axles
4	32,000
5	32,000
6	32,000
7	32,900
8	33,600
9	34,300
10	35,000
11	35,700
12	36,400
13	37,100
14	43,200
15	44,000
16	44,800
17	45,600
18	46,400

B. The total gross weight with load imposed on the highway by any vehicle or combination of vehicles where the distance between the first and last axles is more than 18 feet shall not exceed that given for the respective distances in the following table:

Distance in feet	Allowed load in pounds
19	47,200
20	48,000
21	48,800
22	49,600
23	50,400
24	51,200
25	55,250
26	56,100

27	56,950
28	57,800
29	58,650
30	59,500
31	60,350
32	61,200
33	62,050
34	62,900
35	63,750
36	64,600
37	65,450
38	66,300
39	68,000
40	70,000
41	72,000
42	73,280
43	73,280
44	73,280
45	73,280
46	73,280
47	73,280
48	73,280
49	73,280
50	73,280
51	73,280
52	73,600
53	74,400



54	75,200
55	76,000
56 or over	76,800

C. The distance between axle shall be measured to the nearest even foot. When a fraction is exactly one-half (1/2) foot the next larger whole number shall be used.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 609. Permits for excessive size and weight**

A. Upon application to the appropriate authority, a special permit may be issued authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this Chapter, or otherwise not in conformity with the provisions of this Chapter, upon any highway of the Navajo Nation.

B. Whenever vehicles are being moved upon the highway under a special permit, escort vehicles shall be required in front of and behind the non-conforming vehicle.

C. Upon application to the appropriate authority, a special permit may be issued authorizing logging truckers to operate or move a vehicle or a combination of vehicles of a size or overweight, up to 87,000 pounds in hauling logs, specified in this Chapter, or otherwise not in conformity with the provisions of the Chapter, upon any established logging road and highway of the Navajo Nation.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**Chapter 5. Misdemeanor Offenses, Fines, Penalties, Implied Consent**

**§ 700. Obedience to police officers**

No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer or other law enforcement official vested by law with authority to direct, control or regulate traffic.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 701. Penalty**

Any offense or conviction of an offense under this Chapter shall be classified as a misdemeanor or petty misdemeanor and shall be punishable as stated herein or if not otherwise provided under the specific section, then in 17 N.N.C. §§ 221-225.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 702. Unlawful flight from pursuing law enforcement vehicle**

Any driver of a motor vehicle who willfully flees or attempts to elude a pursuing official law enforcement vehicle is guilty of a misdemeanor punishable by a fine of not more than five hundred (\$500.00) dollars.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 703. Homicide by vehicle**

A. Homicide by vehicle is the killing of a human by the unlawful operation of a motor vehicle.

B. Any person who is convicted of homicide by vehicle while violating § 707 or § 708 shall be subject to imprisonment and a fine of the maximum amounts allowed by law.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**Annotations**

**1. Double jeopardy**

"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).

#### **§ 704. Public officers and employees to obey Chapter; exceptions**

The provisions of this Chapter are applicable to the drivers of vehicles upon the highways and shall apply to the drivers of all vehicles owned or operated by the Navajo Nation or any other political subdivision of the Navajo Nation, except as otherwise specifically provided in this Chapter as applicable to specified vehicles and to specified circumstances or conditions.

##### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 705. Operation of vehicles on approach of authorized emergency vehicles**

A. Upon the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting a red light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle, other than a police vehicle when operated as an authorized emergency vehicle, and when the driver is given an audible signal by siren, exhaust whistle, or bell, the driver of every vehicle shall yield the right-of-way and shall immediately drive to a position parallel and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

B. This Section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the roadway.

##### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 706. Driver to exercise due care**

Notwithstanding the provisions of this Subchapter every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 707. Persons under influence of intoxicating liquor or drugs**

A. It is unlawful for any person who is under the influence of intoxicating liquor or drugs to drive or be in actual physical control of any vehicle within the territorial jurisdiction of the Navajo Nation.

B. It is unlawful for any person who is under the influence of any narcotic drug, or who is under the influence of any other drug or controlled substance to a degree which renders him or her incapable of safely driving a vehicle, to drive or be in actual physical control of any vehicle within the Navajo Nation. The fact that any person charged with a violation of this Subsection is or has been entitled to use such drug under the laws of any state or the Navajo Nation shall not constitute a defense.

C. Any person convicted of violating this Section shall be sentenced to serve not less than 24 consecutive hours in jail. The court shall not grant probation, pardon, parole, commutation or suspension of sentence or release on any other basis, except upon the condition that the person serve not less than 24 consecutive hours in jail. The court shall order the person to pay a fine of not less than three hundred (\$300.00) dollars and may order the person to perform not less than eight nor more than 24 hours of community service.

D. The District Courts of the Navajo Nation may require a person convicted of violating the provisions of this Section to surrender to the court the operator's or chauffeur's license of such person and shall, in such event, forward the surrendered license or permit to the state office issuing the license or permit together with a certified order of the court suspending or revoking the driving privileges of the convicted person.

E. The court may require the person to attend traffic safety or alcohol abuse classes at the offender's expense or, if in the court's opinion the offender has the problem of habitual abuse of alcohol or drugs, the court may require the person to obtain treatment under its supervision; however, in no case shall an offender be excused from spending 24 consecutive hours in jail

F. If a person is convicted of a second violation of this Section within a period of 24 months, the person shall be ordered to serve a term of not less than 30 days in jail. A court shall not grant probation, pardon, parole, commutation or suspension of sentence or release on any other basis, except upon the condition that the person serve not less than 90 days in jail. The court shall also order the person to pay a fine of not less than five hundred (\$500.00) dollars. The dates of the commission of the offense shall be the

determining factor in applying this rule. No judge may grant probation to, suspend the imposition or execution of a jail sentence, or fail to require the surrender to him or her of any license, of any person for subsequent conviction. If in the court's opinion the offender has the problem of habitual abuse of alcohol or drugs, the court shall require the person to obtain treatment under its supervision.

G. If a person is convicted of a third or subsequent violation of this Section within a period of 36 months, the person shall be sentenced to serve not less than six months in jail. A judge shall not grant probation, pardon, parole, commutation or suspension of sentence or release on any other basis, except upon the condition that the person serve not less than six months in jail. The dates of the commission of the offense are the determining factor in applying this rule. The judge shall require the surrender to him or her of any operator's or chauffeur's license of the person. A judge shall not suspend the imposition of a prison sentence, or fail to require the surrender to him or her of any license of a person for a third or subsequent conviction. If, in the court's opinion, the person has the problem of habitual abuse of alcohol or drugs, the court shall require the person to obtain treatment under its supervision.

H. Any political subdivision processing or utilizing the services of a person ordered to perform community services pursuant to this Section, shall not incur any civil liability to the person ordered to perform community services as a result of these activities, unless the political subdivision, its agent or employee is guilty of gross negligence, or is in willful or wanton disregard for the rights or safety of such person, in a manner so as to endanger or be likely to endanger such person or their property.

I. The court may, upon pronouncement of any jail sentence under this Section, provide in the sentence that the defendant be permitted, if he or she is employed and can continue his or her employment, to continue such employment for not more than 12 hours per day nor more than six days per week; the remaining day, days or parts of days shall be spent in jail until the sentence is served. He or she shall be allowed out of jail only long enough to complete his or her actual hours of employment and no longer.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **Annotations**

##### **1. Double jeopardy**

"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).

### **§ 708. Reckless driving**

A. Any person who drives a vehicle carelessly in willful or wanton disregard of the rights or safety of others, and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving.

B. Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a term of not less than ten days nor more than 90 days, or by a fine of not less than one-hundred fifty dollars (\$150.00) nor more than three hundred seventy dollars (\$370.00), or both. On a second or subsequent conviction within a period of 24 months, punishment shall consist of imprisonment for a term not less than 20 days nor more than six months, or by a fine of not less than two hundred twenty-five dollars (\$225.00) nor more than five hundred dollars (\$500.00), or both, and to attend traffic safety education which includes a Defensive Driving Course II (DDC II).

C. The license or permit to drive of any person found guilty of violating this Section may be suspended by the proper authority for a period not to exceed 90 days. The court, upon suspending the license of any such person, shall follow the procedure set forth in § 707(D) of this Chapter.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**Note.** Slightly reworded for purposes of statutory form.

### **Annotations**

#### **1. Double jeopardy**

"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).

#### **§ 709. Racing on highways**

A. No person shall drive a vehicle on a highway in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, whether or not the speed is in excess of the maximum speed prescribed by law. No person shall in any manner participate in any such race, drag race, competition, contest, test or exhibition.

B. Any person found guilty of violating any provision of this Section shall be subject to imprisonment for a term not to exceed three months or a fine not to exceed three hundred-seventy five dollars (\$375.00), or both, to and attend a traffic safety education course (DDC II).

C. Upon a second or subsequent conviction committed within a periods of 24 months, such person shall be punished by imprisonment for a term of not less than 20 days nor more than six months, or be ordered to pay a fine of not less than two hundred-twenty five dollars (\$225.00) nor more than five hundred dollars (\$500.00) or both.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 710. Accidents involving death or personal injuries**

A. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle and remain at the scene of the accident until he or she has fulfilled all requirements under this title.

B. Any person involved in an accident failing to stop or to remain at the scene of any accident as provided hereunder shall be ordered to pay a fine not to exceed five hundred dollars (\$500.00) or by imprisonment for not less than 30 days nor more than 150 days, or both. Penalties and assessments under this

Section may be cumulative and imposed in addition to any appropriate penalty, fine or civil assessment upon conviction or determination of other or related offense or infractions involved.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 711. Accidents involving damage to attended vehicle**

A. The driver of any vehicle involved in an accident resulting only in damage to a vehicle shall immediately stop his or her vehicle at the scene of the accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of the accident until he or she has fulfilled all requirements under this title.

B. Any person failing to stop or comply with the requirements of this Section shall be subject to be a fine not to exceed three hundred seventy-five dollars (\$375.00).

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 712. Duty to give information and render aid**

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall: (1) call the police, (2) render reasonable assistance to any person injured in the accident by making arrangements for the carrying of the person to the hospital for medical treatment when it is apparent that such treatment is necessary; and (3) give his or her name, address and the registration number of the vehicle he or she is driving, and shall upon request exhibit his or her operator's or chauffeur's license and proof of insurance coverage to a police officer and to the person struck or the driver or occupant of, or person attending any vehicle damaged as a result of the accident.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 713. Immediate report of accidents**

The driver of a vehicle involved in an accident resulting in an injury to or death of any person shall immediately, by the quickest means of communication, give notice of the accident to the Navajo Police or to the nearest law enforcement agency.



### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 714. Implied consent to submit to chemical test**

A. Any person who operates a motor vehicle within the Navajo Nation shall be deemed to have given consent to a chemical test or tests of his or her breath and/or blood for the purpose of determining the alcoholic and/or drug content of his or her blood, if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs.

B. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person has been driving or in actual physical control of a motor vehicle within the Navajo Nation while under the influence of intoxicating liquor or drugs. The Division shall designate the test to be administered.

C. Any person in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by Subsection (A), and the test or tests designated by law enforcement officers may be administered.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 715. Refusal to submit to chemical test—Suspension of privilege to drive**

A. Any person who refuses to submit to a chemical test as requested by an officer pursuant to § 714 shall have his or her driving privileges suspended by the court for a period of one year. The court, upon suspending the license of any such person, shall follow the procedures set forth in § 701 of this Chapter.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 716. Use of chemical tests in criminal actions or civil actions—Presumptions of intoxication**

A. The results of a chemical test performed pursuant to this Chapter may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested while driving or in actual physical control of a motor vehicle while under the influence of

intoxicating liquor or drugs.

B. The amount of alcohol in a person's blood as shown by analysis of the person's blood, breath or other bodily substance shall give rise to the following presumptions:

1. If there was that time five one-hundredths of one percent (0.05%) or less by weight of alcohol in the defendant's blood it shall be presumed that the defendant was not under the influence of intoxicating liquor.

2. If there was at that time in excess of five one-hundredths of one percent (0.05%) but less than eight one-hundredths of one percent (0.08%) by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

3. If there was at the time eight one-hundredths of one percent (0.08%) or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

4. Paragraph 1, 2, or 3 of this Subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor.

C. The percent by weight of alcohol shall be based on the grams of alcohol per 100 cubic centimeters of blood.

#### **History**

CF-13-01, February 1, 2001.

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 717. Administration of chemical test—Payment of costs—Additional tests**

A. Only the persons authorized by § 718 shall withdraw blood from any person for the purpose of determining its alcoholic or drug content. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be given an opportunity to arrange for a physician, licensed professional or practical nurse, or laboratory technician or technologist who is employed by a hospital or physician, of his or her own choosing to perform a chemical test in addition to any test performed at the direction of a law enforcement officer. The law enforcement agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test. If a person exercises his or her right to have a chemical test performed upon him or her by a person of his or

her own choosing, then the cost of that test shall be paid by the person exercising his or her rights.

C. Upon the request of the person tested, full information concerning the test or tests performed at the direction of the law enforcement officer shall be made available to him or her as soon as it is available from the person performing the test.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 718. Blood-alcohol and/or drug tests directed by police, judicial or probation officer—Persons qualified to perform tests—Relief from civil and criminal liability**

Only a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician shall withdraw blood from any person in the performance of a blood-alcohol and/or drug test. No such physician, nurse, technician or technologist who withdraws blood from any person in the performance of a blood-alcohol and/or drug test that has been directed by any police officer, or by any judicial or probation officer, shall be held liable in any civil or criminal action for assault, battery, false imprisonment, or any conduct of any police officer, except for negligence, any person assisting in the performance of such a test, or any hospital wherein blood is withdrawn in the performance of such test, be subject to civil or criminal liability for assault, battery, false imprisonment, or any conduct of any police officer, except for negligence.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 719. Blood-alcohol and/or drug tests—Police, judicial or probation officer unauthorized to make arrest or direct test authorized by law**

Nothing in this Chapter is intended to authorized any police officer, or any judicial or probation officer, to make any arrest or to direct the performance of a blood-alcohol and/or drug test otherwise unauthorized by law.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 720. Records of disposition**

All records regarding the disposition of cases in which a person is charged with a violation of § 708 shall be maintained by the court and made accessible to the general public. The court shall include in these records an explanation of its reasons for accepting any plea agreement or dismissing any charge of a violation of § 707.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 721. School crossings**

A. Crosswalks may be established over highways near a school or the grounds nearby, and all children crossing the highway shall be required to do so within the marked crosswalks. The Division, with respect to streets under their jurisdiction, with advice from the local superintendent of schools, shall establish and mark, or cause to be established and marked, these highway crossings.

B. Crosswalks over highways not adjoining school grounds may be established by the appropriate jurisdiction with the advice of the local superintendent of schools, after adequate assurance has been given that proper safety precautions, pursuant to regulations of the appropriate authorities, will be maintained.

C. At all school crossings, except as provided in this Section, appropriate signs shall be provided as prescribed by the appropriate jurisdictions, indicating the crossings and regulations for traffic movement within the school zones.

D. School crossings are not required to be specially posted when they are located:

1. At a signalized intersection; or
2. At an intersection where traffic is controlled by a stop sign;  
or
3. At a point where a pedestrian tunnel or overhead crossing is provided.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 722. Use of white cane and other ambulation or mobility devices**

A. The driver of a vehicle approaching a legally blind pedestrian who is carrying a cane predominantly white or metallic in color, or is using a guide-dog or is assisted by a sighted person shall yield the right-of-way and

take reasonable precautions to avoid injury to such pedestrian. In addition, the pedestrian shall have the same rights as all other pedestrian whether or not he or she is carrying such cane, using such dog or being assisted by such sighted person.

B. A person who violates any provision of this Section shall be subject to a fine not to exceed five hundred dollars (\$500.00).

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 723. Throwing or dropping objects at moving vehicles**

A. It shall constitute an offense for any person to intentionally or negligently throw, shoot, or otherwise propel any object at a motor vehicle which is being operated on a roadway.

B. Any person who violates the provisions of this Section shall be subject to a fine of not more than five hundred dollars (\$500.00).

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 724. Overtaking and passing school bus**

A. The driver of a vehicle upon a roadway, upon meeting or overtaking from either direction any school bus which has stopped and has its red flashers in operation on the roadway for the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus and shall not proceed until the school bus resumes motion and the red flashing lights are not in operation.

B. Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "School Bus" in letters not less than eight inches in height.

C. Every bus used for the transportation of school children shall be equipped with a signal with the word "Stop" printed on both sides in white letters not less than five inches high on a red background. The signal shall not be less than 20 inches long and shall be manually operated by the operator of the school bus in such manner as to be clearly visible from both the front and rear when extended from the left of the body of the bus. It shall be displayed only when passengers are being received or discharged from the bus.

D. The driver of a vehicle upon a roadway with separated lanes need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled access roadway and the school bus stopped in a loading zone which is a part of or adjacent to the roadway and where pedestrians are

not permitted to cross the roadway.

E. Any person who violates the provisions of Subsection (A) of this Section shall be guilty of an infraction punishable by a civil assessment fee of not more than one hundred fifty dollars (\$150.00). A second conviction within one year thereafter shall be a misdemeanor subject to a fine of not more than three hundred seventy-five dollars (\$375.00). A third or subsequent conviction within one year after the last conviction shall be a misdemeanor subject to not less than five hundred dollars (\$500.00) or imprisonment for not less than 60 days, nor more than six months, or both.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

### **Chapter 6. Parties, Procedure Upon Arrest and Reports in Criminal Cases**

#### **§ 800. Parties to a criminal or misdemeanor offense**

A person who commits, attempts to commit, conspires to commit or aids or abets in the commission of, any act classified under this title to be a criminal or misdemeanor offense, whether individually or in connection with one or more other persons or as a principal, agent or accessory, is guilty of the offense. A person who falsely, fraudulently, forcibly or wilfully induces, causes, coerces, requires, permits or directs another to violate any provision of this title is likewise guilty of the offense.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 801. Offenses by person owning or controlling vehicles**

It is unlawful for the owner, or any other person employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of the vehicle upon a highway in any manner contrary to law.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 802. When person arrested must be taken before a judge of the District Court**

A person who is arrested for any of the following misdemeanor or criminal charges shall be taken before a District Judge of the Navajo Nation within a reasonable and lawful period of time.

- A. Homicide by vehicle;
- B. Driving while under the influence of intoxicating liquor or drugs;
- C. Failure to stop or to remain at the scene in the event of involvement in an accident causing death, personal injuries or damage to property; or
- D. In any event when the person arrested refuses to give his or her written promise to appear in court as provided in this Chapter.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 803. When person arrested for misdemeanor to be given notice to appear in Court**

A. When a person is arrested for any other misdemeanor of this title, besides those instances specified in § 802 above, the arresting officer shall prepare in quadruplicate written notice to appear in court containing the name and address of the person, the license number of his or her vehicle, if any, and the offense charged.

B. The arrested person in order to secure release as provided in this Section, shall give his or her written promise to appear in court as specified in the written notice by signing at least one copy of the written notice prepared by the arresting officer. The officer shall deliver a copy of the notice to the person promising to appear. The officer shall then release the person arrested from custody.

C. An officer violating any of the provisions of this Section is guilty of misconduct and is subject to removal.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 804. Violation of promise to appear**

A. Any person wilfully violating his or her written promise to appear in court, given as provided in § 803, is guilty of an offense regardless of the disposition of the charge upon which he or she was originally arrested.

B. A written promise to appear in court may be complied with by an appearance by counsel.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 805. Procedure prescribed in this article not exclusive**

A. The provisions of §§ 800-804 shall govern all police officers in making arrests without a warrant for violations of the Title, but the procedure prescribed in this Subchapter shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

B. For any misdemeanor or criminal offense alleged to have been committed in violation of this title where an officer must have a warrant to arrest, the officer may proceed as in any other offense; that is, either under a warrant of arrest or a summons and notice to appear.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 806. Form for traffic citations**

A. The Division shall use a uniform traffic ticket and complaint form appropriately designating either civil or misdemeanor traffic citation which shall be issued in books with consecutively numbered citations in quadruplicate and meeting the requirements of this title.

B. The Division shall be responsible for the issuance of the books and shall maintain a record and receipt of every book issued to members of the Division.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**§ 807. Disposition and records of traffic citations**

A. Every law enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the Navajo Nation Motor Vehicle Code shall deposit the original or a copy of the traffic citation with the District Courts of the Navajo Nation.

B. Upon the deposit of the original or a copy of the traffic citation with a district court, the original or copy of the traffic citation may be disposed of only by the court. Disposition by the court includes trial, forfeiture of bond or bail, entry of judgment or determination, the deposit of sufficient bond or bail with the court, payment by the offender of any fine or assessment to the court; or imposition of appropriate sentences, penalty or imprisonment.

C. It is unlawful and official misconduct for any law enforcement officer



or other officer or public employee to dispose of an original, copy or record of traffic citation in a manner other than as required by this article.

D. The Division shall require the return of a copy of every traffic citation issued by an officer to an alleged violator of any provision of the Navajo Nation Motor Vehicle Code and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

E. The Division shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer, a record of the disposition of the charge by the court in which the original or copy of the traffic citation was deposited.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 808. Illegal cancellation of traffic citation; audit of citation records**

A. Any person who cancels and dismisses or otherwise nullifies a traffic citation other than pursuant to a lawful court order or as otherwise provided in this article, shall be guilty of a misdemeanor.

B. Every record of traffic citations and their dispositions as required in this title shall be audited annually by the Office of the Auditor General.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

#### **§ 809. Certification of traffic citation forms and complaints certification; false certification**

A. Traffic citation forms or traffic complaints need not be sworn to if they contain a form of certification by the arresting officer in substance as follows:

"I hereby certify that I have reasonable grounds to believe and do believe that the person cited herein committed the offense described herein contrary to law."

B. A false certification under the provisions of Subsection (A) shall constitute a misdemeanor offense.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

## **Chapter 8. Construction of Highways**

### **History**

**Note.** With the exception of § 1002, all other sections were previously codified at 14 N.N.C. §§ 1, 2, and 61-66.

### **Subchapter 1. Generally**

#### **§ 1000. Location and character**

The location and character of the roads to be constructed on Navajo Nation lands shall first be approved by the Transportation and Community Development Committee which shall give due consideration to the needs of the Navajos before approving the construction of any road or roads.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

1922-1951 Res. p. 283, July 10, 1950.

**Note.** The Advisory Committee is no longer a standing committee of the Navajo Nation Council. See 2 N.N.C. § 423(E) for the authority of the Transportation and Community Development Committee.

#### **§ 1001. Width of rights-of-way**

Rights-of-way of 100 feet or 50 feet on each side of the center line of all presently maintained and constructed roads any roads to be constructed on Navajo Nation lands under the ten year program are granted. In the case of irrigated lands where rights-of-way are now less than 100 feet, such rights-of-way may be increased to 100 feet only with the consent of the users of the land or upon payment for any damage to such users.

### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

1922-1951 Res. p. 283, July 10, 1950.

#### **§ 1002. Warning devices at construction sites**

A. Any contractor, person, firm, corporation or political subdivision or other entity performing work on roads, streets or highways, shall place or cause to be placed at every such work or construction site, specified notices, warning and traffic control signs and devices in conformity with the specifications required by the National Highway Safety Code and approved by the

Division; and shall maintain at the work site such warning signs, signals, markers and barricades, adequate to warn those using such road, street, or highway until the work is completed or until such time as the governing body authorizes their removal.

B. Any person failing to place or maintain such notices, warnings or traffic control signs and devices as required herein, shall upon conviction thereof, be guilty of a misdemeanor, punishable by a fine of not less than three hundred dollars (\$300.00), nor more than five hundred dollars (\$500.00), or by imprisonment for not more than 60 days, or both.

C. In addition to the penalties provided herein, the Division may order that the conduct of any highway, roadway or street work construction or maintenance not in conformity with the requirements of this Section, be secured and suspended, until brought into full compliance and conformity with said requirements; and the Court shall order any party found guilty of violating this Section, to pay and to reimburse the Division for all costs reasonably incurred in order to appropriately secure and safely traverse such road work, construction or maintenance site.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

**Note.** This Section was previously designated as § 800 by CMY-30-88, May 6, 1988.

### **Subchapter 3. Rights-of-Way for Routes 1 and 3**

#### **§ 1020. Survey, construction, and grant of rights-of-way; authority to consent; waiver of compensation**

A. The President of the Navajo Nation is authorized to give the consent of the Navajo Nation to the Bureau of Indian Affairs for the survey, construction, and grant of rights-of-way for Routes 1 and 3; said rights-of-way not to exceed 300 feet wide on Route 1, and not to exceed 200 feet wide on Route 3 across Navajo Nation land.

B. All claim of the Navajo Nation to compensation for use of its lands for highway purposes within such rights-of-way is waived. This waiver shall not extend to extraordinary actual damages.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CAP-25-59, April 16, 1959.

**Note.** This Section should be read in light of the amendments made to Title Two

of Navajo Nation Code by CD-68-89, December 15, 1989. See 2 N.N.C. § 420 *et seq.* for the authority of the Transportation and Community Development Committee. See also 2 N.N.C. § 691 *et seq.* for the authority of the Resources Committee.

**§ 1021. Transfer of rights-of-way to state of Arizona; authority to consent**

The President of the Navajo Nation may consent on behalf of the Navajo Nation to the transfer of the rights-of-way for Routes 1 and 3 or of any parts of them to the State of Arizona, reserving the right of the Nation to compensation for the use of its lands within rights-of-way if after such transfer such routes or any part of them are made controlled access highways.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CAP-25-59, April 16, 1959.

**Note.** This Section should be read in light of the amendments made to Title Two of Navajo Nation Code by CD-68-89, December 15, 1989. See 2 N.N.C. § 420 *et seq.* for the authority of the Transportation and Community Development Committee. See also 2 N.N.C. § 691 *et seq.* for the authority of the Resources Committee.

**§ 1022. Terms or conditions; authority to attach**

The President of the Navajo Nation may attach any terms or conditions not inconsistent with 14 N.N.C. §§ 1020 and 1021, to the Navajo Nation consents regarding rights-of-way that the President is empowered to give.

**History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CAP-25-59, April 16, 1959.

**Note.** Slightly reworded.

This Section should be read in light of the amendments made to Title Two of Navajo Nation Code by CD-68-89, December 15, 1989. See 2 N.N.C. § 420 *et seq.* for the authority of the Transportation and Community Development Committee. See also 2 N.N.C. § 691 *et seq.* for the authority of the Resources Committee.

**§ 1023. Damages for improvements—Generally**

A. Whenever in the course of construction of Routes 1 and 3 by the Bureau of Indian Affairs across Navajo Nation land, or any allotment owned by a Navajo or Navajos, it is necessary to remove, destroy, or otherwise damage any improvement belonging to a Navajo who will not donate the same, the Navajo

Nation shall pay damages to the rightful claimant thereof out of Navajo Nation funds.

B. As used herein "improvement" means houses, hogans, sunshades, stables, storage sheds and dugouts, and sweathouses; sheep and horse corrals, lamb pens, and fences lawfully maintained; irrigation ditches, dams, charcos, development work on springs, and other water supply developments; any and all structures used for lawful purposes and other things having economic value.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CAP-25-59, April 16, 1959.

#### **Cross References**

Compensation for improvements and customary use rights upon adverse disposition of land, see 16 N.N.C. § 1401 *et seq.*

#### **§ 1024. Cost of removal**

Where any improvement owned by a Navajo is readily removable and he or she has an opportunity to remove the same, damages payable on account of such improvement shall be limited to the reasonable cost of removal, if any, even though the claimant thereof may have failed to remove such improvement and it may have been destroyed in the course of construction on the right-of-way.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CAP-25-59, April 16, 1959.

#### **§ 1025. Knowledge that area included in right-of-way**

No damages shall be paid to any person for any improvement, when such person at the time of building or acquiring such improvement knew or ought to have known that the area in which it was located was proposed to be included in a right-of-way.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CAP-25-59, April 16, 1959.

## **Chapter 10. Zoning Sides of Highways**

### **§ 1200. Generally**

Controlled zones of 750 feet on both sides of the right-of-way of any constructed, maintained or new proposed roads are established.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

1922-1951 Res. p. 138, March 16, 1950.

**Note.** This Section was previously codified as 14 N.N.C. § 201.

### **§ 1201. [Superceded]**

#### **History**

This Section enacted by 1922-1951 Res. p. 138, March 16, 1950, was previously codified as 14 N.N.C. § 202 and was entitled "Authority of Advisory Committee". The Advisory Committee is no longer a standing committee of the Navajo Nation Council pursuant to CD-68-89, December 15, 1989. See 2 N.N.C. § 420 *et seq.* for the authority of the Transportation and Community Development Committee.

## **Chapter 12. Traffic Codes for Navajo Nation in Arizona, New Mexico and Utah**

### **§ 1400. Authority to prepare**

The President of the Navajo Nation is authorized and empowered to cause to be prepared highway traffic codes for the portions of the Navajo Nation lying respectively within the States of Arizona, New Mexico and Utah, which will be identical with or substantially similar and parallel to the highway laws of the above-mentioned states, to be in effect in those portions of the Navajo Nation lying within such states.

#### **History**

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CMY-23-62, May 2, 1962.

ACAU-170-62, August 24, 1962.

**Note.** The term "reservation" has been replaced by the term "Navajo Nation". This Section was previously codified at 14 N.N.C. § 701.

## **Chapter 15. The Navajo Nation Motor Vehicle Authority and the Navajo**

## **Nation Motor Vehicles Division**

### **History**

**Note.** This Chapter was previously codified at §§ 901 through 904.

#### **§ 1700. Findings; establishment**

##### **A. Findings:**

1. In 2005 there were an estimated 100,000 motor vehicles registered and operating on the Navajo Nation with an estimated 8,000 new titles issued each year. It is estimated that between 6,000 and 15,000 used motor vehicles were bought and sold in the same year. It is estimated that in 2005 there were at least 100,000 licensed drivers on the Navajo Nation, and that 30,000 to 40,000 drivers' licenses were issued. The registration of motor vehicles and licensing of motor vehicle operators on the Navajo Nation have been done through the states of Arizona, New Mexico, and Utah, resulting in a wide variety of requirements and costs for the registration of motor vehicles and licensing of individual operators, as well as loss of control over the registration and licensing process.

2. Revenue derived from the registration of motor vehicles and licensing of individual motor vehicle operators on the Navajo Nation, estimated to be well in excess of \$10,000,000.00 per year in New Mexico alone, has been diverted to the states of Arizona, New Mexico and Utah rather than remaining within the Navajo Nation to serve the needs of the Navajo people. Capturing this lost revenue is essential for the Navajo Nation to be self-supporting and self-governing. Furthermore, the Navajo people will have uniform and consistent rules, regulations and rates, rather than being subject to the widely varying rules, regulations and rates of the separate states.

3. The Navajo Nation is in desperate need of the ability to control the DWI records, and the insurance records for motor vehicles operated on the Navajo Nation, and to share these records on a national basis. The current locations for such records are scattered among four separate jurisdictions and often unavailable for use on the Navajo Nation.

4. The Navajo people lack ready access to motor vehicle licensing and registration services and often must travel great distances to register motor vehicles, and obtain license plates and drivers licenses outside of the territorial boundaries of the Navajo Nation.

5. Navajo license plates and Navajo driver licenses will not only keep the revenues within the Navajo Nation, they will be an expression of the pride and inherent sovereignty of the Navajo people.

6. As an exercise of the inherent sovereignty of the Navajo Nation and in order to provide for consistency in the registration of motor vehicles and the licensing of individual motor vehicle operators, and to provide for the consistency of motor vehicles program administration, as

well as to recapture the revenue which is being lost to the states, the Navajo Nation hereby establishes the Navajo Nation Motor Vehicle Authority. The Navajo Nation Motor Vehicles Authority is charged with the creation and oversight of the Navajo Nation Motor Vehicles Division.

B. Establishment:

As a service to the Navajo people, to capture a source of revenue that is currently being diverted to the surrounding states, and as an exercise of the inherent sovereignty of the Navajo Nation, the Navajo Nation Motor Vehicle Authority is hereby established and charged with the development of a Navajo Nation Motor Vehicles Division.

### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

**Note.** Previous Section 1700 was deleted in its entirety and replaced by Resolution CO-41-06.

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CO-39-51, October 19, 1951.

### **§ 1701. Definitions**

A. "Authority" means the Navajo Nation Motor Vehicle Authority.

B. "Director" means a director of the Navajo Nation Motor Vehicle Authority.

C. "Fee" means a dollar amount charged to an individual or organization to defray the transactional costs incurred in issuing licenses for the privilege of operating and registering motor vehicles on the Navajo Nation and for raising revenue for the Navajo Nation general fund.

D. "Fine" means a dollar amount charged for failure to comply with provisions of this Chapter or regulations issued by the Authority and approved by the Government Services Committee of the Navajo Nation Council as authorized by this Chapter.

E. "Forfeiture" means the seizure of a motor vehicle by the Authority for failure to comply with this Chapter or regulations issued by the Authority and approved by the Government Services Committee of the Navajo Nation Council as authorized by this Chapter.

F. "License" means a permit issued by the Navajo Nation allowing persons to operate motor vehicles, or permitting motor vehicles to be operated on the Navajo Nation.

G. "License Plate" means a plate attached to a motor vehicle indicating



the motor vehicle has been registered with the Navajo Nation Motor Vehicles Division.

H. "Navajo Nation Motor Vehicles Division" means the Navajo Nation Motor Vehicles Division contracted for by the Navajo Nation Motor Vehicle Authority to administer the motor vehicle registration and individual licensing laws and regulations of the Navajo Nation.

I. "Penalty" means a dollar amount charged for failure to comply with provisions of this Chapter or regulations issued by the Authority and approved by the Government Services Committee of the Navajo Nation Council as authorized by this Chapter.

J. "Regulations" means the regulations developed by the Navajo Nation Motor Vehicle Authority and approved by the Government Services Committee of the Navajo Nation Council to guide the day to day activities of the Navajo Nation Motor Vehicles Division.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

**Note.** Previous Section 1701 was deleted in its entirety and replaced by Resolution CO-41-06.

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CO-39-51, October 19, 1951.

#### **§ 1702. Name, location and places of business**

A. The name of the Authority shall be the Navajo Nation Motor Vehicle Authority, which shall establish the Navajo Nation Motor Vehicles Division.

B. The principal place of business for the Authority shall be in Window Rock, Navajo Nation (Arizona) 86515.

C. The Navajo Nation Motor Vehicles Division shall establish an office in Window Rock, Navajo Nation (Arizona) 86515 and at such other locations as the Authority may from time to time require.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

**Note.** Previous Section 1702 was deleted in its entirety and replaced by Resolution CO-41-06.

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CO-39-51, October 19, 1951.

### **§ 1703. Purposes**

A. The purpose of the Authority shall be:

1. To enter into memoranda of agreement with the states of Arizona, New Mexico and Utah, and such other state and national organizations as are appropriate, to assure the uniformity and recognition of registration and licensing of motor vehicles and uniformity in the issuing of drivers' licenses between the jurisdictions and, where appropriate, revenue sharing agreements.

2. To contract for a Navajo Nation Motor Vehicles Division.

3. To plan for and contract for field and mobile offices for the Navajo Nation Motor Vehicles Division at various locations throughout the Navajo Nation.

4. To promulgate regulations, subject to the approval of the Government Services Committee of the Navajo Nation Council, for the registration of motor vehicles on the Navajo Nation, the issuance of license plates and tags for motor vehicles, the issuance of drivers' licenses to qualified individuals, and the collection of fees related to the above activities.

B. To do everything necessary, proper, advisable or convenient for the accomplishment of the purposes set forth above, and to do all things necessary or connected to these purposes which are not forbidden by law.

### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

**Note.** Previous Section 1703 was deleted in its entirety and replaced by Resolution CO-41-06.

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CO-39-51, October 19, 1951.

### **§ 1704. Powers and duties of the Authority**

A. Subject to applicable Navajo Nation laws and regulations, the Motor Vehicles Authority shall direct the purposes and exercise the following powers and duties:

1. The Authority shall provide or contract for the Navajo Nation

Motor Vehicles Division. If the Authority elects to contract for these services the Authority shall do so by performance based sealed competitive proposals in full compliance with the Navajo Nation Procurement Code, 12 N.N.C. § 301 *et seq.*; and in full compliance with the Navajo Business Opportunity Act, 5 N.N.C. § 201 *et seq.*

2. The Authority shall develop and issue regulations, subject to approval by the Government Services Committee of the Navajo Nation Council, for the registration of motor vehicles on the Navajo Nation, the issuance of license plates and tags for motor vehicles, the issuance of drivers' licenses to qualified individuals, and the collection of fees related to the above activities, and to assess fines and penalties, and interest, and to provide for forfeitures under authority of this Chapter or regulations issued pursuant to this Chapter.

3. The Authority shall acquire all facilities, services, hardware, and software, necessary for the operation and maintenance of the Navajo Nation Motor Vehicles Division.

4. The Authority shall exercise its powers in the best interests of the Navajo Nation within the limits of responsible judgment, and with the stipulation that the Authority shall not incur contractual obligations in excess of its ability to make payments for such obligations as they fall due.

5. The Authority shall select from the members of its board of directors a chairperson of the Authority and such other officers as it may from time to time find necessary; and to promulgate such rules as it determines are necessary in order to conduct its business.

6. Members of the board of directors of the Authority shall be reimbursed for expenses incurred in attending meetings of the Authority and the Authority, at its discretion, may provide for a stipend to be paid to its directors on a per-meeting basis subject to the prior approval of the Government Services Committee of the Navajo Nation Council.

7. The directors of the Authority, acting through their chairperson, shall make not less than annually, a report to the Government Services Committee and the Budget and Finance Committee of the Navajo Nation Council, and such report shall include a summary of the budget which has been approved for the Authority and the Navajo Nation Motor Vehicles Division for the coming year.

8. No contract or other transaction shall be permitted between the Authority and any of its directors, or between the Authority and any corporation, partnership, firm or other legal entity in which any member of the board of directors of the Authority holds a direct or indirect interest.

B. Subject to applicable Navajo Nation and federal laws, the Authority shall have the following powers:

1. To manage and operate, directly or through agents, all real and

personal property and facilities necessary to accomplish the purposes of this Chapter.

2. To collect fees, impose fines and penalties and assess interest thereon, and impose forfeitures, under authority of this Chapter and regulations issued pursuant to this Chapter.

3. To perform all acts, either directly or through agents, which are reasonable and necessary to accomplish the purposes of this Chapter.

4. To appoint agents and officers, acquire property, and enter into contracts as are reasonable and necessary to accomplish the purposes of this Chapter.

5. To act as an agent on behalf of the Navajo Nation to negotiate such intergovernmental agreements as are necessary to accomplish the purpose of this Chapter with the understanding that such intergovernmental agreements are subject to the approval of the Government Services Committee and the Intergovernmental Relations Committee of the Navajo Nation Council.

6. To enter into leases of restricted tribal trust lands subject to applicable Navajo Nation and federal laws and to acquire interests either by purchases or through leases in fee lands within the territorial boundaries of the Navajo Nation.

7. To rent, lease, purchase, or otherwise acquire personal property and to hold, own, manage, operate, pledge, mortgage, hypothecate, exchange, sell, or otherwise dispose of such property as is reasonable and necessary to accomplish the purposes of this Chapter.

8. To execute guarantees and enter into indebtedness to the extent of the net worth of the Authority subject to the provision that such guarantees are the guarantees of the Authority alone and are not the guarantees of the Navajo Nation and that any guarantee by the Navajo Nation could be given only by an action of the Navajo Nation Council under Navajo Nation law.

9. To designate and approve financial institutions to serve as depositories for the funds of the Authority.

10. To make, enter into, perform, carry out, cancel and rescind contracts for any lawful purpose reasonable and necessary to accomplish the purposes of this Chapter subject to Navajo Nation and applicable federal law.

11. To create and approve budgets for the operation of the Authority and the Navajo Nation Motor Vehicles Division.

12. To borrow funds and enter into indebtedness to the extent of the net worth of the Authority subject to the provision that such indebtedness is the indebtedness of the Authority alone and is not in the indebtedness of the Navajo Nation and that any guarantee on the indebtedness of the Authority by the Navajo Nation could be given only by

an action of the Navajo Nation Council under Navajo Nation law.

13. To accept grants or loans from any state or federal agency which are reasonable and necessary to accomplish the purpose of this Chapter subject to applicable Navajo Nation law.

C. The Authority shall have all additional powers which are reasonable and necessary to accomplish the purposes of this Chapter subject to Navajo Nation and applicable federal law.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

#### **§ 1705. Indemnification of directors and employees of the Authority**

The Authority shall indemnify any officer, employee or member of the board of directors of the Authority, or any former officer, employee or member of board of directors of the Authority, or any person who may have served at its request as an officer, employee or director of the Authority against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit or proceeding of which he or she is made a party by reason of being, or having been such officer, employee or member of the board of directors of the Authority 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; or except in relation to matters in which such officer, employee or director was acting beyond the scope of his or her agency. The Authority shall also reimburse to any officer, employee or member of the board of directors of the Authority reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the board of directors of the Authority other than the director involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Authority and the Navajo Nation that such settlements are made and that such officer, employee or member of the board of directors of the Authority was not guilty of negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee, or member of the Authority be entitled to receive.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

#### **§ 1706. Membership of the board of directors; selection, qualifications; term of office**

A. The Authority shall consist of a five person board of directors, whereby one member shall represent each of the five agencies, all of whom shall be confirmed by the Government Services Committee of the Navajo Nation Council.

B. The directors shall be selected by the President of the Navajo Nation based upon their expertise in motor vehicle licensing and regulation, public safety or the administration of large and complex business or governmental systems, accounting, finance or other similar expertise.

C. Three of the directors shall be members of the Navajo Nation who have sufficient education and experience to qualify them for learning motor vehicle licensing and regulation, public safety and the business practices and procedures of the Authority, and for making sound judgments.

D. Directors shall be selected for the following terms of office and shall hold office until the qualification and selection of their successors:

1. The initial directors shall be appointed for a period of one year or until their successors have been appointed and have qualified. Directors shall be eligible for reappointment.

2. Beginning the second year, the directors shall be selected by the President of the Navajo Nation and confirmed by the Government Services Committee in three groups, the first group of two to serve one year, the second group of two to serve for two years, and the third group of one to serve for three years. Thereafter, all terms shall be for three years.

3. Vacancies on the Authority may be filled by the President of the Navajo Nation for the unexpired term of the vacant office.

### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

### **§ 1707. Meetings of the board of directors**

A. The annual meeting of the board of directors shall be held at 10:30 a.m. on the second Wednesday of October at the principal place of business, or at such other place as the board of directors shall fix, commencing with 2006. No notices shall be required for annual meetings.

B. The board of directors shall meet at least quarterly upon notice fixing the time and place.

C. Special meetings of the board of directors may be held upon notice given by the chairperson, or secretary, or by any three members of the board of directors, at such place as the chairperson, secretary or directors shall direct or as shall be fixed by the notice.

D. Notice.

1. Notice of meetings stating the time and date, shall be given in writing by letter, facsimile or e-mail properly addressed to each member according to the latest available Authority records, not later than five days nor more than 30 days immediately preceding the meeting excluding

the day of the meeting.

2. Notice may be waived in writing signed by the directors entitled to such notices; whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any director at the special meeting shall constitute a waiver of notice.

E. Three members of the board of directors 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 Authority.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

#### **§ 1708. Principal officers**

The principal officers of the board of directors of the Authority shall consist of the following:

A. Chairperson of the board of directors of the Authority.

B. Secretary and a treasurer, who need not be directors of the Authority.

C. In the discretion of the directors, there may be a vice-chairperson of the board of directors.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

#### **§ 1709. Powers and duties**

All directors, officers and agents of the Authority shall have the following duties and such other duties as may be determined by resolution of the directors not inconsistent with this Chapter:

A. The chairperson of the board of directors of the Authority shall be chosen from among the directors, shall preside at all meetings of the board of directors if present, and shall, in general, perform all duties incident to the office of the chairperson and such other duties as, from time to time, may be assigned by the board. If a vice-chairperson is elected, he or she shall act in the capacity of the chairperson in the absence of the latter, and shall discharge any other duties designated by the chairperson.

B. The secretary shall keep, or cause to be kept the minutes of the meeting of the directors. The secretary shall see that all notices are duly

given in accordance with provisions of this Chapter. The secretary shall be custodian of the seal and records, and in general, shall perform all duties incident to the office of the secretary, and such other duties as may, from time to time, be assigned by the directors or the chairperson.

C. The treasurer shall be the financial officer of the Authority and shall have charge and custody of, and be responsible for, all funds of the Authority, and shall deposit such funds in such banks, trust companies, or other depositories as shall have been approved by the directors. The treasurer shall receive and give receipts for monies due and payable to the Authority from any source whatsoever; and, in general, shall perform all duties incident to the office of the Treasurer and such other duties as, from time to time, may be assigned by the directors or the chairperson. The treasurer shall render to the chairperson and the directors, whenever the same may be required, an account of all transactions as treasurer and of the financial condition of the Authority. The treasurer shall, at the expense of the Authority, give a bond for the faithful performance and discharge of the, duties in such amount, so conditioned, and with such surety or sureties as the directors may require.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

#### **§ 1710. Election of officers; term of office; qualifications**

The officers shall be chosen annually by the directors at their annual meeting, or as soon after such annual meeting as newly appointed directors shall have qualified. Each officer shall hold office until a successor is chosen and qualified or shall have been removed in the manner provided herein.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

#### **§ 1711. Removal**

Any officer or agent elected or appointed by the directors may be removed by the directors whenever, in their judgment, the best interest of the Authority may be served thereby, but in the absence of dereliction in duty, negligence or malfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the persons who are removed.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

#### **§ 1712. Resignation; vacancies**



Any officer may resign at any time by giving written notice to the directors, or to the chairperson, or secretary, such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy in any office because of death, disqualification, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

#### **§ 1713. Other officers and agents**

The directors may appoint such other officers and agents, including a General Manager at the discretion of the directors, as they deem necessary or expedient, and may determine their duties, as well as the terms of their holding office.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

#### **§ 1714. Accounting; fiscal year**

The accounting system for the Authority shall be maintained in accordance with generally accepted accounting practices. Financial operating statements shall be provided to the Government Services Committee and the Budget and Finance Committee of the Navajo Nation Council and the directors on a regular basis. The fiscal year of the Authority shall be October 1st to September 30th.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

#### **§ 1715. Records; inspection; audits**

The books, records and property of the Authority shall be available for inspection at all reasonable times by authorized representatives of the Navajo Nation. The accounts and records of the Authority shall be audited at the close of each fiscal year. Copies of such audit reports shall be furnished to the Government Services Committee and the Budget and Finance Committee of the Navajo Nation Council.

#### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

**§ 1716. Fees, fines, penalties, forfeitures and interest**

All fees charged for motor vehicle registration and licensing services, and fines, penalties, forfeitures and interest required to enforce compliance with this Chapter shall be adopted by the directors and included within the regulations promulgated by the Authority with the approval of the Government Services Committee of the Navajo Nation Council.

**History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

**§ 1717. Pledges and security interests**

Any pledge of, or security interest in, personalty, fixtures, revenues or other monies or funds, or of a revenue-producing contract or contracts made by the Authority shall be valid and binding from the time when the pledge is made or the security interest is given; the personalty, fixtures, revenues, or other monies or proceeds of any contract or contracts so pledged or secured and thereafter received by the Authority shall immediately be subject to the lien of such pledge or security interest without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof.

**History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

**§ 1718. Exemption from levy and execution**

All property, including funds, of the Authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against such property nor shall any judgment against the Authority be a charge or lien upon its property; provided, however, that this section shall not apply to or limit the right of note holders or bondholders to pursue any remedies or rights, including, but not limited to, possession, execution, attachment, and sale of security, for the enforcement of any pledge or lien given by the Authority on its property, including personalty, fixtures, revenues, rates, fees, or other income of any other funds.

**History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

## **§ 1719. Liability of Authority**

A. The Navajo Nation Council does hereby pledge to contract and agree with 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, that it obligates itself not to limit or alter the rights or powers vested in the Authority until all such notes or bonds at any time issued, together with interest thereon are fully met, paid and discharged. The Navajo Nation Council does further pledge to contract and agree with any federal agency that in the event any such agency shall loan or contribute any funds for construction, extension, improvement or enlargement of any facilities that the Navajo Nation Council will not alter or limit the rights or powers of the Authority in any manner which would be inconsistent with the due performance of any agreements between the Authority and any Creditor; and the Authority shall continue to have and may exercise all rights and powers under its plan of operation, so long as the same shall be necessary or desirable for the carrying out of its purposes and those of any Creditor loaning or contributing funds for the construction, extension, improvement, enlargement, or operation of any facilities or programs.

B. The foregoing shall be construed as an explicitly limited exception to the sovereign immunity of the Navajo Nation and shall not be construed to waive any immunity of the Navajo Nation, nor to extend any liability to any assets, revenues or income of the Navajo Nation, other than those of the Authority. Otherwise, the provisions of the Navajo Sovereign Immunity Act (as amended) shall not be deemed altered or amended.

### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

## **§ 1720. Remedies of note or bondholders**

A. Subject to any contractual limitations binding upon the holders of any issue of notes or bonds, or trustees therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of any note or bond, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of notes or bonds similarly situated:

1. By mandamus or other suit, action, or proceeding at law or in equity in the Courts of the Navajo Nation to compel the Authority, and its directors, officers, agents or employees, to perform and carry out their duties and obligations under the Authority's plan of operation, and their covenants and agreements with such holders;

2. By action or suit in equity in the Courts of the Navajo Nation to require the Authority to account as if they were the trustees of an express trust;

3. By action, suit or other proceeding at law or in equity in the Courts of the Navajo Nation to have a receiver appointed and/or to enforce any pledge, lien or security agreement given in connection with the issuance of any note or bond, such enforcement right to include the power to possess, control and sell the security in accordance with the applicable security agreement, lien or pledge;

4. By action or suit in equity in the Courts of the Navajo Nation against the Authority or its directors to enjoin any acts or things which may be unlawful or in violation of the rights of the note or bondholders; and

5. To bring suit against the Authority in the Courts of the Navajo Nation upon the notes or bonds, security instruments or loan contracts.

B. No remedy conferred by this section upon any holder of the notes or bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy, and may be exercised without exhausting and without regard to any other remedy conferred by this resolution or by any other law. No waiver of any default or breach of duty or contract, whether by any holder of the notes or bonds, or any trustee therefor, shall extend to or shall effect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any note or bondholder, or any trustee therefor, to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy, conferred upon such holder may be enforced and exercised from time to time as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be determined adversely to the holder of the note or the bond, or any trustee therefor, then and in every such case the Authority and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken.

C. The foregoing shall be construed as a limited exception to the general principles of sovereign immunity and shall not be construed to waive any immunity of the Navajo Nation, nor to extend any liability to any assets, revenues or income of the Navajo Nation other than the Authority. Otherwise, the provisions of the Navajo Nation Sovereign Immunity Act (as amended) shall not be deemed altered or amended.

### **History**

CO-41-06, October 20, 2006. The Navajo Nation Motor Vehicle Authority Act, effective date April 20, 2007.

## **Title 15**

### **Labor**

#### **Chapter 1. [Reserved]**

### **History**

**Note.** Former Chapter 1, "Office of Labor" (CF-22-75, February 21, 1975), was superseded by the current Navajo Nation Division of Human Resources. For current information see the Division of Human Resources Plan of Operation. Also see Enabling Legislation for the Division of Human Resources in Title 2 of the Navajo Nation Code.

## **Chapter 3. Office of Navajo Labor Relations**

### **§ 201. Establishment**

The Office of Navajo Labor Relations ("ONLR") is established within the Executive Branch of the Navajo Nation to implement, monitor and enforce the Navajo Preference in Employment Act ("NPEA"), as amended.

### **History**

GSCJY-19-06, July 26, 2006.

GSCS-83-03, September 9, 2003.

GSCJY-39-91, July 23, 1991.

ACJY-159-87, July 21, 1987.

ACJY-134-85, July 18, 1985.

CJA-4-72, § 1, January 19, 1972.

### **§ 202. Purposes**

The purposes of the ONLR are as follows:

- A. To monitor and enforce the NPEA.
- B. To implement the employment and labor laws, policies, and regulations of the Navajo Nation.
- C. To act as an administrative agency for matters relating to the enforcement of employment preference in hiring, recruitment, promotion, layoff, termination, transfer and other areas of employment.
- D. To gather information from employers, employees, labor organizations, and governmental agencies relating to employment, compensation, benefits and working conditions.
- E. To recommend and propose policies, rules, regulations, and guidelines, concerning labor and employment to the Human Services Committee and the Navajo Nation Council.
- F. To assist and encourage, where appropriate, the settlement of

employment and labor disputes within the territorial jurisdiction of the Navajo Nation.

G. To provide orientation and training to educate employers and employees about the NPEA.

#### **History**

GSCJY-19-06, July 26, 2006.

GSCS-83-03, September 9, 2003.

GSCJY-39-91, July 23, 1991.

ACJY-159-87, July 21, 1987.

ACJY-134-85, July 18, 1985.

CJA-4-72, § 1, January 19, 1972.

#### **Cross References**

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*

#### **§ 203. Personnel**

A. There is established the position of Director of ONLR, a labor attorney and such other positions as may be budgeted by the Navajo Nation Council.

B. The Director of ONLR shall be hired by, report and be responsible to the Executive Director of the Division of Human Resources ("DHR") in accordance with the Navajo Nation Personnel Policies Manual.

C. The Director of ONLR shall be authorized to recommend additional professional, technical and clerical positions as needed to carry out organizational purpose(s). Additional positions shall be acquired and compensated in accordance with the Navajo Nation Personnel Policies Manual and within applicable budget rules established for conducting the annual Navajo Nation budget process.

#### **History**

GSCJY-19-06, July 26, 2006.

GSCS-83-03, September 9, 2003.

GSCJY-39-91, July 23, 1991.

ACJY-159-87, July 21, 1987.

ACJY-134-85, July 18, 1985.

CJA-4-72, § 1, January 19, 1972.

#### **§ 204. Authority, duties and responsibilities**

ONLR shall have the powers necessary to properly carry out the purposes set forth in § 202 of this Plan of Operation. ONLR is hereby authorized and directed:

- A. To ensure that all employers are complying with the NPEA, as amended;
- B. To develop appropriate guidelines for the employment of Navajos desiring work with employers;
- C. To monitor and enforce Navajo employment and labor laws, rules, policies and regulations;
- D. To recommend laws, rules, regulations, guidelines and policies as may be necessary to accomplish the purposes of the NPEA;
- E. To require employers to submit such reports and information as deemed necessary to carry out the purposes of the NPEA;
- F. To report annually to the Navajo Nation Council, and quarterly to the Human Services Committee, the extent to which employers are complying with the NPEA;
- G. To assist in coordinating such education and job training programs as necessary to provide qualified Navajo workers for employers;
- H. To ensure appropriate preferential employment and training provisions are included in all agreements entered into by employers;
- I. To recommend employment and labor provisions (including employment, registered apprenticeship participation, wages, benefits, promotion, termination, grievance procedures, and related employment matters) for inclusion in all agreements entered into by employers;
- J. To conduct investigations and make administrative determinations concerning compliance by employers with the NPEA or labor provisions in contracts, subcontracts, leases, permits or other agreements; and
- K. To establish and institute administrative policies and procedures and take all necessary action to carry out the NPEA, including but not limited to the imposition of a reasonable filing fee, as approved by the Human Services Committee, to accompany each individual claim and petition for certification by a labor organization.

#### **History**

GSCJY-19-06, July 26, 2006.

GSCS-83-03, September 9, 2003.

GSCJY-39-91, July 23, 1991.

ACJY-159-87, July 21, 1987.

ACJY-134-85, July 18, 1985.

CJA-4-72, January 19, 1972.

#### **§ 205. Avoidance of ex parte communications**

Except as otherwise permitted or required by law, ONLR and its legal counsel shall take reasonable measures to avoid: (a) disclosure to members, staff and legal counsel of the Commission of specific factual or legal issues concerning alleged violations of the NPEA under investigation or conciliation by ONLR and not a matter of record before the Commission; and (b) ex parte communications with Commission members, staff or legal counsel concerning a pending proceeding before the Commission without notice to the respondent employer which is a party in such proceeding.

#### **History**

GSCJY-19-06, July 26, 2006.

GSCS-83-03, September 9, 2003.

GSCJY-39-91, July 23, 1991.

ACJY-159-87, July 21, 1987.

ACJY-134-85, July 18, 1985.

CJA-4-72, January 19, 1972.

#### **§ 206. Place of office**

ONLR shall have its main office in Window Rock, Navajo Nation (Arizona). ONLR may also establish sub-offices at such other locations as the ONLR Director, in consultation with the Executive Director of the Division of Human Resources, deems appropriate and for which adequate funds are available.

#### **History**

GSCS-83-03, September 9, 2003.

GSCJY-39-91, July 23, 1991.

ACJY-159-87, July 21, 1987.

ACJY-134-85, July 18, 1985.

CJA-4-72, § 1, January 19, 1972.

#### **§ 207. Legislative oversight**

The Human Services Committee of the Navajo Nation Council shall be the legislative oversight committee for the Office of Navajo Labor Relations



pursuant to 2 N.N.C. § 604(B)(5).

#### **History**

GSCS-83-03, September 9, 2003.

#### **§ 208. Amendments to the Plan of Operation**

Upon recommendation by the Human Services Committee, the Plan of Operation may be amended by the Government Services Committee of the Navajo Nation Council.

#### **History**

GSCJY-19-06, July 26, 2006.

GSCS-83-03, September 9, 2003.

GSCJY-39-91, July 23, 1991.

ACJY-159-87, July 21, 1987.

ACJY-134-85, July 18, 1985.

CJA-4-72, January 19, 1972.

#### **Cross References**

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*

### **Chapter 4. Navajo Nation Labor Commission**

#### **§ 301. Establishment**

A. The Board of Directors of the Office of Navajo Labor Relations (the "Board") was originally established by CJA-4-72 and underwent a name change in 1976 to the Board of Directors of the Division of Equal Opportunity and Employment. The Board's original name was reinstated and its Plan of Operation amended by ACJY-134-85.

B. The Board is continued under the name Navajo Nation Labor Commission (the "Commission") and shall have the powers prescribed in this Plan of Operation, as well as such additional powers as may be granted to the Commission by law.

#### **History**

ACJY-160-87, July 21, 1987.

ACJY-134-85, July 18, 1985. (Previously codified as the "Board of Directors" at 15 N.N.C. § 203).

CJA-4-72, January 19, 1972.

**Note.** Slightly reworded for purposes of statutory form.

### **§ 302. Purposes**

The purposes of the Commission shall be to:

A. Hear and adjudicate cases as the quasi-judicial hearing body under the Navajo Preference in Employment Act.

B. Conduct and hold quasi-judicial hearings in accordance with applicable Navajo Nation laws concerning Navajo employment.

C. Process and decide all formal complaints/petitions.

D. Adopt rules and regulations for Commission hearings.

### **History**

IGRF-34-08, February 5, 2008.

ACJY-160-87, July 21, 1987.

### **§ 303. Organization**

The Commission shall consist of five members.

A. Membership. The Commission shall consist of: (1) two members of the Human Services Committee of the Navajo Nation Council to be designated by that Committee; and (2) three members appointed by the President of the Navajo Nation with the concurrence of the Government Services Committee of the Navajo Nation Council.

B. Commission Members Qualifications. The two members of the Human Services Committee and the three members of the Commission appointed by the President of the Navajo Nation shall be familiar with labor practices, human resources and employment of the Navajo Nation. One appointed member shall be a Navajo worker familiar with human resources and employment practices. Neither the Executive Director of the Division of Human Resources ("DHR"), the Directors of any department within DHR, nor any person employed by DHR or its departments shall be eligible to serve as a member of the Commission.

C. Officers. The officers of the Commission shall be elected every four years from among the Commission by a majority vote of the Commission and shall consist of a Chairperson, Vice-Chairperson, and Secretary.

1. Chairperson. The Chairperson of the Commission shall preside at meetings/deliberative sessions/hearings of the Commission, assure orderly meetings/deliberative sessions/hearings in accordance with accepted Navajo Nation Labor Commission rules, and sign all documents/pleadings as required for action of the Commission.

2. Vice-Chairperson. The Vice-Chairperson shall serve in the absence of the Chairperson and in the performance of this service shall

exercise all the powers and bear all the responsibilities of the Chairperson.

3. Secretary. The Secretary shall carry out such duties as may be prescribed. In the absence of the Chairperson and Vice-Chairperson, the Secretary shall preside at all meetings/deliberative sessions/hearings of the Commission.

4. The Commission may recall former members to complete pending cases.

D. Term of Office. Each member of the Commission shall serve for a term of four years and until his or her successor is appointed.

E. Commission Vacancies.

1. Any Commission member may resign by submitting 30 days prior written notice of their resignation and such resignation shall be accepted by the Commission at the next Commission meeting.

2. Any member of the Commission shall be removed from the Commission if:

a. Such member has been convicted of any crime reflecting upon such member's honesty or ability to fulfill the fiduciary obligations imposed by law upon such member; or

b. Such member violates the disclosure of conflicts of interest requirements set forth in the Navajo Nation Ethics in Government Law.

3. In the event a Commission member is found to be in violation of § 303(E)(2), such member shall be removed from his or her position, effective upon written notice of removal by the Chairperson of the Commission. The Commission shall promptly submit the appropriate information and facts concerning the violation and removal to the appointing authority.

4. In the event a vacancy is created on the Commission by reason of resignation, removal or any other reason, such vacancy shall be filled by the authority which is authorized to appoint members to such vacant seat, in accordance with the procedure prescribed in § 303(A) and (B). Appointment of a replacement member shall be made within 30 days after the date the appointing authority receives written notification of the vacancy.

### **History**

IGRF-34-08, February 5, 2008.

IGRJN-132-96, June 3, 1996. Rescinded IGRMA-59-93, thereby restoring the 1987 Plan of Operation adopted by ACJY-160-87.

IGRMA-59-93, March 15, 1993.

ACJY-160-87, July 21, 1987.

**Note.** Slightly reworded for purposes of statutory form.

#### **Cross References**

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*

Government Services Committee of the Navajo Nation Council, 2 N.N.C. § 343(B) (3).

#### **Annotations**

##### **1. Due process**

"The Navajo Nation Code explicitly provides for a five-member Commission and a quorum of three. The same three Labor Commission members who initially heard the case reviewed the evidence and decided the case on remand. Therefore, the case was decided by a quorum, and Cameron suffered no deprivation of due process in this regard." *Manygoats v. Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 10 (Nav. Sup. Ct. August 12, 2003).

##### **§ 304. Authority, duties and responsibilities**

The Commission is authorized and directed to:

A. Submit annual/quarterly reports of its activities to the Office of the Speaker of the Navajo Nation Council for distribution to the Human Services Committee and the Navajo Nation Council;

B. Formulate overall administrative and operating policies pertaining to the function of the Commission;

C. Regulate the course of hearings and conduct of participants;

D. Administer oaths and affirmations;

E. Rule on motions and other procedural matters;

F. Grant applications for subpoenas and rule on petitions to revoke subpoenas;

G. Inquire fully into all issues and obtain a complete record upon which Commission decisions can be rendered;

H. Receive, rule on, exclude, and limit evidence, lines of questioning, or testimony which are irrelevant, immaterial, or unduly repetitious;

I. Examine witnesses for the purpose of clarification of the facts and issues;

J. Direct the submission of briefs and set the time for the filing thereof;

K. Issue findings of fact, conclusions of law and order, and impose appropriate damages, sanctions, fines and other relief for non-compliance;

L. Set the amount of bond and such appropriate conditions thereto as the Commission may deem necessary;

M. Prepare and submit an annual budget;

N. Exercise such other authority as may be conferred by law; and

O. Hold deliberative sessions/meetings/hearings at such locations on the Navajo Nation to accommodate the Commission/parties/witnesses, upon approval by the Chairperson.

### **History**

IGRF-34-08, February 5, 2008.

ACJY-160-87, July 21, 1987.

### **Cross References**

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*

Intergovernmental Relations Committee of the Navajo Nation Council, 2 N.N.C. § 824(B) (1).

### **Annotations**

#### **1. Review**

"Moreover, the Navajo Nation Code authorizes and directs the Labor Commission to '[r]eceive, rule on, exclude, and limit evidence, lines of questioning, or testimony which are irrelevant, immaterial, or unduly repetitious.' 15 N.N.C. § 304 (H). Holding another hearing would have been unduly repetitious because Cameron did not claim to have any new evidence to present." *Manygoats v. Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 10-11 (Nav. Sup. Ct. August 12, 2003).

#### **§ 305. Meetings/hearings/deliberative sessions; procedure**

A. Meetings/hearings/deliberative sessions shall be called by the Chairperson or designee of the Commission for business transactions or as required by pending cases filed before the Commission. Three members of the Commission shall constitute a quorum for the transaction of business.

B. The Commission may hold meetings with the Human Services Committee of the Navajo Nation Council for informational and coordinating purposes as it deems appropriate.

C. The Commission shall adopt rules for the conduct of its meetings/hearings or deliberative sessions and keep a record of all its proceedings and transactions. All formal substantive action shall be taken by

written resolution duly certified by the presiding officer, or memorialized by written memorandum setting forth the action taken.

D. Members of the Commission shall receive a \$250 stipend and shall be reimbursed for lodging, meals, expenses and mileage (at the Navajo Nation rate) incurred in connection with the performance of their duties. Commission members shall be eligible for any insurance provided by the Navajo Nation to its employees, other boards, commissions, elected officials and other tribal entities. All Commission expenses shall be paid from the budget of the Commission.

### **History**

IGRF-34-08, February 5, 2008.

ACJY-160-87, July 21, 1987.

**Note.** Slightly reworded for purposes of statutory form.

### **Cross References**

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*

### **Annotations**

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

"The Navajo Nation Code explicitly provides for a five-member Commission and a quorum of three. The same three Labor Commission members who initially heard the case reviewed the evidence and decided the case on remand. Therefore, the case was decided by a quorum, and Cameron suffered no deprivation of due process in this regard." *Manygoats v. Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 10 (Nav. Sup. Ct. August 12, 2003).

#### **§ 306. Personnel**

A. The Commission may employ independent legal counsel and personnel as it deems necessary and as provided in its budget to carry out the duties and responsibilities herein set forth.

B. The Commission office personnel shall provide administrative support to the Commission including, but not limited to:

1. Accepting and processing complaints, petitions, and related pleadings;
2. Recording hearings and meetings;
3. Administering oaths to witnesses;
4. Accepting and maintaining evidence;
5. Providing information to the public, parties, legal counsel and other Navajo Nation offices regarding the operations, requirements or

public records of the Commission, subject to principles of due process and the Navajo Nation Privacy and Access to Information Act;

6. Providing official records of the Commission to the Supreme Court as necessary for appeals and petitions concerning Commission decisions; and

7. Other duties as necessary to carry out the purposes and responsibilities of the Commission as provided herein.

C. The Commission office personnel shall consist of an Executive Director and such other support staff as needed and provided for in the Commission budget to provide administrative support to the Commission. The Executive Director shall be under the general direction and guidance of the Commission through its Chairperson. The Executive Director shall be authorized to employ and supervise additional personnel as needed and provided for in the Commission budget to carry out the purposes of the Commission. All personnel of the Commission office shall be employed and compensated pursuant to the Navajo Nation Personnel Policies Manual.

#### **History**

IGRF-34-08, February 5, 2008.

ACJY-160-87, July 21, 1987.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 307. Place of office**

The Commission shall have its principal office and staff located in Window Rock, Navajo Nation, (Arizona). The Commission may expand its offices as needed and provided for in the Commission budget.

#### **History**

IGRF-34-08, February 5, 2008.

ACJY-160-87, July 21, 1987.

#### **§ 308. Amendment**

This Plan of Operation may be amended from time to time by the Intergovernmental Relations Committee of the Navajo Nation Council. Prior to any such amendment, the Human Services Committee shall review and recommend any change or proposed amendment to this Plan of Operation.

#### **History**

ACJY-160-87, July 21, 1987.

**Note.** Slightly reworded for purposes of statutory form.

#### **Cross References**

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*

Intergovernmental Relations Committee of the Navajo Nation Council, 2 N.N.C. § 824(B) (1).

## **Chapter 5. [Reserved]**

### **History**

ACJY-126-60, July 20, 1960.

ACJN-74-60, June 13, 1960.

**Note.** Previous Chapter 5, "Wages", §§ 401-401, repealed by CD-79-82, December 16, 1982.

## **Chapter 7. Navajo Preference in Employment Act**

### **History**

Former Chapter 7. Former Chapter 7 was repealed in its entirety by CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

CAU-39-63, August 20, 1963.

CA-54-58, August 26, 1958.

### **§ 601. Title**

This Act shall be cited as the Navajo Preference in Employment Act.

### **History**

CO-78-90, October 25, 1990.

CAU-63-85, § 1, August 1, 1985.

**Note.** Slightly reworded for purposes of statutory form.

### **Annotations**

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

"This responsibility is to all people within the Nation, whether Navajo or non-Navajo. Consistent with this view, the Court interprets the NPEA to protect all employees within the Nation, including non-Indians." *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-footnote 1 (Nav. Sup. Ct. October 19, 2007), citing *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 3 (Nav. Sup. Ct. March 23, 2006); and *Staff Relief, Inc.*



v. *Polacca*, No. SC-CV-86-98, slip op. at 4-5 (Nav. Sup. Ct. August 18, 2000).

"We hold that the cited provisions of the 1985 Navajo Preference in Employment Act are valid exercises of the treaty powers, inherent powers, and police power of the Navajo Nation. The Navajo Nation has the right to enact legislation to regulate labor and employment, including provisions to protect the civil rights of workers." *Arizona Public Service Co. v. Office of Navajo Labor Relations*, 6 Nav. R. 246, 249 (Nav. Sup. Ct. 1990).

## **2. Validity**

"On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, conflicts with the New Mexico Human Rights Act, § 28-1-1, *et seq.* NMSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

"... [W]e hold that the application of the Navajo Preference in Employment Act to the Judicial Branch does not violate the principle of separation of powers and judicial independence under the Navajo Nation Judicial Reform Act of 1985 and the Title II Amendments of 1989." *Tuba City Judicial District of the Navajo Nation v. Sloan*, No. SC-CV-57-97, slip op. at 11 (Nav. Sup. Ct. September 7, 2001).

## **3. Jurisdiction**

"Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

"Upon reconsideration we hold that Dr. Stago's NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup. Ct. August 29, 2002).

### **§ 602. Purpose**

A. The purposes of the Navajo Preference in Employment Act are:

1. To provide employment opportunities for the Navajo work force;
2. To provide training for the Navajo People;
3. To promote the economic development of the Navajo Nation;
4. To lessen the Navajo Nation's dependence upon off-Reservation sources of employment, income, goods and services;

5. To foster the economic self-sufficiency of Navajo families;
6. To protect the health, safety, and welfare of Navajo workers;  
and
7. To foster cooperative efforts with employers to assure expanded employment opportunities for the Navajo work force.

B. It is the intention of the Navajo Nation Council that the provisions of this Act be construed and applied to accomplish the purposes set forth above.

### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

### **Annotations**

#### **1. Validity**

"On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, conflicts with the New Mexico Human Rights Act, § 28-1-1, *et seq.* NMSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

#### **2. Purpose**

"Additionally, the Commission must consider these factors in light of the stated intent of the Navajo Nation Council in passing the NPEA, which includes '[t]o provide employment opportunities for the Navajo work force,' and '[t]o foster cooperative efforts with employers to assure expanded employment opportunities for the Navajo work force.' 15 N.N.C. § 602(A)(1)(7) (1995)." *Etsitty v. Dine Bii Association for Disabled Citizens, Inc.*, No. SC-CV-48-04, slip op. at 7 (Nav. Sup. Ct. December 5, 2005).

"We take judicial notice of the fact that Navajo Nation unemployment rates are very high. The Navajo Nation Council enacted the NPEA to ensure the economic growth of the Nation and the economic well being of the Navajo workforce." *Manygoats v. Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 8 (Nav. Sup. Ct. August 12, 2003).

"Among the purposes of NPEA is the protection of the health, safety, and welfare of Navajo workers." *Arizona Public Service Co. v. Office of Navajo Labor Relations*, 6 Nav. R. 246, 262 (Nav. Sup. Ct. 1990).

#### **3. Construction and application**

"Absent an unmistakable waiver of the Nation's authority to regulate employment, all lessees, including public school districts must comply with the NPEA." *Cedar Unified School District v. Navajo Nation Labor Commission, and concerning Hasgood, et al., and Red Mesa Unified School District v. Navajo Nation Labor Commission, and concerning Yellowhair*, No. SC-CV-53-06 and No. SC-CV-54-06, slip op. at 6 (Nav. Sup. Ct. November 21, 2007).

"This responsibility is to all people within the Nation, whether Navajo or non-Navajo. Consistent with this view, the Court interprets the NPEA to protect all employees within the Nation, including non-Indians." *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-footnote 1 (Nav. Sup. Ct. October 19, 2007), citing *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 3 (Nav. Sup. Ct. March 23, 2006); and *Staff Relief, Inc. v. Polacca*, No. SC-CV-86-98, slip op. at 4-5 (Nav. Sup. Ct. August 18, 2000).

"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).

"We hold that the prohibition on hiring and retaining relatives by marriage was a violation of the Act ... " *Arizona Public Service Co. v. Office of Navajo Labor Relations*, 6 Nav. R. 246, 263 (Nav. Sup. Ct. 1990).

#### **4. Construction with United States law**

"This Court has previously held that the Eleventh Amendment does not grant state school districts immunity from NPEA claims." *Cedar Unified School District v. Navajo Nation Labor Commission, and concerning Hasgood, et al., and Red Mesa Unified School District v. Navajo Nation Labor Commission, and concerning Yellowhair*, No. SC-CV-53-06 and No. SC-CV-54-06, slip op. at 7 (Nav. Sup. Ct. November 21, 2007), citing *Office of Navajo Labor Relations ex rel. Jones v. Central Consolidated Dist. No. 22*, No. SC-CV-13-98, slip op. at 3-5 (Nav. Sup. Ct. June 5, 2002).

"The Court holds that Title VII has no effect on the NPEA's 'just cause' requirement, and therefore does not prohibit Commission review of Real Parties' claims, even if *Dawavendewa* was binding." *Cedar Unified School District v. Navajo Nation Labor Commission, and concerning Hasgood, et al., and Red Mesa Unified School District v. Navajo Nation Labor Commission, and concerning Yellowhair*, No. SC-CV-53-06 and No. SC-CV-54-06, slip op. at 11 (Nav. Sup. Ct. November 21, 2007).

"Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

"Upon reconsideration we hold that Dr. Stago's NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor

Commission] has jurisdiction over her claim." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup. Ct. August 29, 2002).

#### **5. Comity; res judicata**

"The clear mandate of the Council to apply the NPEA in all situations not explicitly exempted precludes this Court from deferring to Arizona law." *Cedar Unified School District v. Navajo Nation Labor Commission, and concerning Hasgood, et al., and Red Mesa Unified School District v. Navajo Nation Labor Commission, and concerning Yellowhair*, No. SC-CV-53-06 and No. SC-CV-54-06, slip op. at 12 (Nav. Sup. Ct. November 21, 2007).

"Comity does not independently block review of a complaint under the NPEA, but is a threshold requirement before Navajo Nation courts or administrative tribunals can grant or deny res judicata effect to a separate sovereign's decision. Comity means that a Navajo court or administrative tribunal may refuse to recognize a separate sovereign's decision, but, in the interest of promoting respectful relations between governments, such tribunals should recognize the decision unless some strong policy justifies rejection. Only after comity is granted does a court or tribunal have to analyze whether res judicata applies." *Bradley v. Lake Powell Medical Center*, No. SC-CV-55-05, slip op. at 3-4 (Nav. Sup. Ct. February 16, 2007).

"The Court concludes that the unique purposes of the state unemployment statute and the NPEA make application of res judicata inappropriate." *Bradley v. Lake Powell Medical Center*, No. SC-CV-55-05, slip op. at 11 (Nav. Sup. Ct. February 16, 2007).

#### **§ 603. Definitions**

A. The term "Commission" shall mean the Navajo Nation Labor Commission.

B. The term "employment" shall include, but is not limited to, the recruitment, hiring, promotion, transfer, training, upgrading, reduction-in-force, retention, and recall of employees.

C. The term "employer" shall include all persons, firms, associations, corporations, and the Navajo Nation and all of its agencies and instrumentalities, who engage the services of any person for compensation, whether as employee, agent, or servant.

D. The term "Navajo" means any enrolled member of the Navajo Nation.

E. The term "ONLR" means the Office of Navajo Labor Relations.

F. The term "probable cause" shall mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of.

G. The term "territorial jurisdiction" means the territorial jurisdiction of the Navajo Nation as defined in 7 N.N.C. § 254.

H. The term "counsel" or "legal counsel" shall mean: (a) a person who is an active member in good standing of the Navajo Nation Bar Association and duly authorized to practice law in the courts of the Navajo Nation; and (b) for the

sole purpose of co-counseling in association with a person described in Clause (a), an attorney duly authorized, currently licensed and in good standing to practice law in any state of the United States who has, pursuant to written request demonstrating the foregoing qualifications and good cause, obtained written approval of the Commission to appear and participate as co-counsel in a particular Commission proceeding.

I. The term "necessary qualifications" shall mean those job-related qualifications which are essential to the performance of the basic responsibilities designated for each employment position including any essential qualifications concerning education, training and job-related experience, but excluding any qualifications relating to ability or aptitude to perform responsibilities in other employment positions. Demonstrated ability to perform essential and basic responsibilities shall be deemed satisfaction of necessary qualifications.

J. The term "qualifications" shall include the ability to speak and/or understand the Navajo language and familiarity with Navajo culture, customs and traditions.

K. The term "person" shall include individuals; labor organizations; tribal, federal, state and local governments, their agencies, subdivisions, instrumentalities and enterprises; and private and public, profit and non-profit, entities of all kinds having recognized legal capacity or authority to act, whether organized as corporations, partnerships, associations, committees, or in any other form.

L. The term "employee" means an individual employed by an employer.

M. The term "employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to obtain for employees opportunities to work for an employer.

N. The term "labor organization" or "union" means an organization in which employees participate or by which employees are represented and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms and conditions of employment, including a national or international labor organization and any subordinate conference, general committee, joint or system board, or joint council.

O. The term "petitioner" means a person who files a complaint seeking to initiate a Commission proceeding under the Act.

P. The term "respondent" means the person against whom a complaint is filed by a petitioner.

Q. The term "Act" means the Navajo Preference in Employment Act.

### **History**

CO-73-90, October 25, 1990.

CAU-63-85, § 1, August 1, 1985.

## **Cross References**

Navajo Nation Healthy Start Act of 2008, 15 N.N.C. §§ 701-708.

## **Annotations**

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

"Under this test, we find clear intent to override NHA's general exemption from enforcement of a monetary judgment in the NPEA. In that act the Council defines the term 'employer' to include 'all persons, firms, associations, corporations, and the Navajo Nation and all of its agencies and instrumentalities who engage the services of a person for compensation, whether as an employee, agent or servant.' " *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 6 (Nav. Sup. Ct. August 26, 2004).

"On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, conflicts with the New Mexico Human Rights Act, § 28-1-1, *et seq.* NMSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

"Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

"Upon reconsideration we hold that Dr. Stago's NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup. Ct. August 29, 2002).

### **2. Employer**

"NHA is clearly included within the NPEA definition of employer." *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 6 (Nav. Sup. Ct. August 26, 2004).

### **3. Independent contractors**

"[W]e conclude there is a distinction recognized by the Navajo Nation Council, and therefore this Court, between 'employees' and 'independent contractors.' Further, independent contractors are not covered by the NPEA. Consequently, if Etsitty was an independent contractor, as it is only empowered to hear complaints under the NPEA." *Etsitty v. Dine Bii Association for Disabled Citizens, Inc.*, No. SC-CV-48-04, slip op. at 4 (Nav. Sup. Ct. December 5, 2005).

"The Court accepts the 'control test,' but adds several other factors to the analysis. Because, like 'just cause,' labor relationships vary significantly based on a variety of unique facts, one useful definition for 'independent contractor' is not possible." *Etsitty v. Dine Bii Association for Disabled Citizens, Inc.*, No. SC-CV-48-04, slip op. at 6 (Nav. Sup. Ct. December 5, 2005).

"We therefore expand New Mexico's control test to include the following factors: (1) how the alleged employee was hired, (2) how the employer treated him or her (that is, whether as a regular employee or not for advertising the position, providing fringe benefits, and withholding taxes), (3) whether the work he or she did was a single, finite project to be completed by the end of the contract period or were general duties that the alleged employer would continue even if the contract was not renewed. We also alter the control test's tenth factor, see *supra*, slip op. at 5, by requiring the consideration of whether, based on the representations in the contract and in course of dealing between the parties, the alleged employee reasonably believed he or she was an employee." *Etsitty v. Dine Bii Association for Disabled Citizens, Inc.*, No. SC-CV-48-04, slip op. at 7 (Nav. Sup. Ct. December 5, 2005).

"Additionally, the Commission must consider these factors in light of the stated intent of the Navajo Nation Council in passing the NPEA, which includes '[t]o provide employment opportunities for the Navajo work force,' and '[t]o foster cooperative efforts with employers to assure expanded employment opportunities for the Navajo work force.' 15 N.N.C. § 602(A)(1)(7) (1995)." *Etsitty v. Dine Bii Association for Disabled Citizens, Inc.*, No. SC-CV-48-04, slip op. at 7 (Nav. Sup. Ct. December 5, 2005).

#### **§ 604. Navajo employment preference**

A. All employers doing business within the territorial jurisdiction [or near the boundaries] of the Navajo Nation, or engaged in any contract with the Navajo Nation shall:

1. Give preference in employment to Navajos. Preference in employment shall include specific Navajo affirmative action plans and timetables for all phases of employment to achieve the Navajo Nation goal of employing Navajos in all job classifications including supervisory and management positions.

2. Within 90 days after the later of: (a) the effective date of this § 604(A)(2); or (b) the date on which an employer commences business within the territorial jurisdiction of the Navajo Nation, the employer shall file with ONLR a written Navajo affirmative action plan which complies with this Section and other provisions of the Act. In any case where a labor organization represents employees of the employer, the plan shall be jointly filed by the employer and labor organization. Any such associated labor organization shall have obligations under this Section equivalent to those of the employer as to employees represented by such organization. Failure to file such a plan within the prescribed time limit, submission of a plan which does not comply with the requirements of the Act, or failing to implement or comply with the terms of a conforming plan shall constitute a violation of the Act. In the event of a required joint plan by an employer and associated labor

organization, only the noncomplying party shall be deemed in violation of the Act, as long as the other party has demonstrated a willingness and commitment to comply with the Act.

3. Subject to the availability of adequate resources, ONLR shall provide reasonable guidance and assistance to employers and associated labor organizations in connection with the development and implementation of a Navajo affirmative action plan. Upon request, ONLR shall either approve or disapprove any plan, in whole or in part. In the event of approval thereof by ONLR, no charge shall be filed hereunder with respect to alleged unlawful provisions or omissions in the plan, except upon 30 days prior written notice to the employer and any associated labor organization to enable voluntary correction of any stated deficiencies in such plan. No charge shall be filed against an employer and any associated labor organization for submitting a non-conforming plan, except upon 30 days prior notice by ONLR identifying deficiencies in the plan which require correction.

B. Specific requirements for Navajo preference:

1. All employers shall include and specify a Navajo employment preference policy statement in all job announcements and advertisements and employer policies covered by this Act.

2. All employers shall post in a conspicuous place on its premises for its employees and applicants a Navajo preference policy notice prepared by ONLR.

3. Any seniority system of an employer shall be subject to this Act and all other labor laws of the Navajo Nation. Such a seniority system shall not operate to defeat nor prevent the application of the Act, provided, however, that nothing in this Act shall be interpreted as invalidating an otherwise lawful and bona fide seniority system which is used as a selection or retention criterion with respect to any employment opportunity where the pool of applicants or candidates is exclusively composed of Navajos or of non-Navajos.

4. The Navajo Nation when contracting with the federal or state governments or one of its entities shall include provisions for Navajo preference in all phases of employment as provided herein. When contracting with any federal agency, the term Indian preference may be substituted for Navajo preference for federal purposes, provided that any such voluntary substitution shall not be construed as an implicit or express waiver of any provision of the Act nor a concession by the Navajo Nation that this Act is not fully applicable to the federal contract as a matter of law.

5. All employers shall utilize Navajo Nation employment sources and job services for employee recruitment and referrals, provided, however, that employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.

6. All employers shall advertise and announce all job vacancies in



at least one newspaper and radio station serving the Navajo Nation, provided, however, that employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.

7. All employers shall use non-discriminatory job qualifications and selection criteria in employment.

8. All employers shall not penalize, discipline, discharge nor take any adverse action against any Navajo employee without just cause. A written notification to the employee citing such cause for any of the above actions is required in all cases. Provided, that this Subsection shall not apply to Division Directors, or to other employees and officials of the Navajo Nation who serve, pursuant to a specific provision of the Navajo Nation Code, at the pleasure of the Navajo Nation Council, the standing committees of the Navajo Nation Council, the President of the Navajo Nation, the Speaker of the Navajo Nation Council, the Chief Justice of the Navajo Nation, or those persons employed pursuant to 2 N.N.C. §§ 281(C) and 1009.

9. All employers shall maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and harassment.

10. Training shall be an integral part of the specific affirmative action plans or activities for Navajo preference in employment.

11. An employer-sponsored cross-cultural program shall be an essential part of the affirmative action plans required under the Act. Such program shall primarily focus on the education of non-Navajo employees, including management and supervisory personnel, regarding the cultural and religious traditions or beliefs of Navajos and their relationship to the development of employment policies which accommodate such traditions and beliefs. The cross-cultural program shall be developed and implemented through a process which involves the substantial and continuing participation of an employer's Navajo employees, or representative Navajo employees.

12. No fringe benefit plan addressing medical or other benefits, sick leave program or any other personnel policy of an employer, including policies jointly maintained by an employer and associated labor organization, shall discriminate against Navajos in terms or coverage as a result of Navajo cultural or religious traditions or beliefs. To the maximum extent feasible, all of the foregoing policies shall accommodate and recognize in coverage such Navajo traditions and beliefs.

C. Irrespective of the qualifications of any non-Navajo applicant or candidate, any Navajo applicant or candidate who demonstrates the necessary qualifications for an employment position:

1. Shall be selected by the employer in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position; and

2. Shall be retained by the employer in the case of a reduction-in-force affecting such class of positions until all non-Navajos employed in that class of positions are laid-off, provided that any Navajo who is laid-off in compliance with this provision shall have the right to displace a non-Navajo in any other employment position for which the Navajo demonstrates the necessary qualifications.

3. Among a pool of applicants or candidates who are solely Navajo and meet the necessary qualifications, the Navajo with the best qualifications shall be selected or retained, as the case may be.

D. All employers shall establish written necessary qualifications for each employment position in their work force, a copy of which shall be provided to applicants or candidates at the time they express an interest in such position.

### **History**

CN-104-98, November 25, 1998.

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

### **Cross References**

Navajo Nation Healthy Start Act of 2008, 15 N.N.C. §§ 701-708.

### **Annotations**

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

"On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, conflicts with the New Mexico Human Rights Act, § 28-1-1, *et seq.* NMSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

"The NPEA separately required (and still requires) that there be a specific provision mandating Navajo preference in leases with state entities." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 6 (Nav. Sup. Ct. June 23, 2004).

"The Council clearly intended to apply the NPEA to Navajo corporations when they have contracts with the Nation, regardless of the status of the land where the contract is performed. 15 N.N.C. § 604(A) extends the NPEA separately to (1) activities within the territorial jurisdiction of the Navajo Nation, and to (2) activities performed under contracts with the Navajo Nation. We hold that the Navajo Nation's NPEA subject matter jurisdiction extends to the activities of Navajo corporations under contracts with the Nation, whether or not the

contract is to be performed within the territorial jurisdiction of the Nation." *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 7 (Nav. Sup. Ct. February 11, 2004).

## **2. Scope of act**

"Petitioner makes much of the language in the NPEA that defines the territorial reach of the act. However, the act prohibits termination without just cause by all employers doing business 'within the territorial jurisdiction [or near the boundaries] of the Navajo Nation, or engaged in any contract with the Navajo Nation.' " *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 4 (Nav. Sup. Ct. February 11, 2004).

"However, we focus on the language following the word 'or,' which provides an alternative for jurisdiction by applying the NPEA to employers 'engaged in any contract with the Navajo Nation.' This language disposes of this case." *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 4 (Nav. Sup. Ct. February 11, 2004).

"Petitioner makes much of the language in the NPEA that defines the territorial reach of the act. However, the act prohibits termination without just cause by all employers doing business 'within the territorial jurisdiction [or near the boundaries] of the Navajo Nation, or engaged in any contract with the Navajo Nation.' " *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 4 (Nav. Sup. Ct. February 11, 2004).

## **3. Covered employees**

"This responsibility is to all people within the Nation, whether Navajo or non-Navajo. Consistent with this view, the Court interprets the NPEA to protect all employees within the Nation, including non-Indians." *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-footnote 1 (Nav. Sup. Ct. October 19, 2007), citing *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 3 (Nav. Sup. Ct. March 23, 2006); and *Staff Relief, Inc. v. Polacca*, No. SC-CV-86-98, slip op. at 4-5 (Nav. Sup. Ct. August 18, 2000).

"The NPEA governs all employers in the Navajo Nation, including those under federal contracts." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup. Ct. August 29, 2002).

## **4. Jurisdiction**

"We hold that the Navajo Nation's NPEA subject matter jurisdiction extends to the activities of Navajo corporations under contracts with the Nation, whether or not the contract is to be performed within the territorial jurisdiction of the Nation." *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op at 7 (Nav. Sup. Ct. February 11, 2004).

"Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

"Upon reconsideration we hold that Dr. Stago's NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup. Ct. August 29, 2002).

#### **5. Sufficiency of evidence**

"Cameron's original notification was written on torn scrap paper and stated only that Manygoats was fired for 'violating company policies.' Given that Cameron (1) had no formal personnel policies and procedures in place, (2) did not properly document Manygoats' alleged offenses at the time they occurred, and (3) never told Manygoats until after she was fired that she was in violation of company policies, the Labor Commission was reasonable in concluding that Cameron did not show that it had just cause to terminate Manygoats' employment." *Manygoats v. Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 12-13 (Nav. Sup. Ct. August 12, 2003).

#### **6. Notice**

"Cameron's original notification did not meet the NPEA's requirement that written notification must in all cases cite the cause or specific reasons for the adverse action taken by an employer against an employee. 15 N.N.C. § 604(B)(8). One of the main purposes of the written notification provision is to 'inform an individual of the basis for adverse action.' ... This ensures that employees are given the opportunity to decide whether to take appropriate legal action if they feel they have been wronged. In this case, the notice Manygoats received contained no facts that would support her termination. She had to file a complaint with the ONLR to find out why she had been terminated." *Manygoats v. Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 13 (Nav. Sup. Ct. August 12, 2003).

#### **7. Adverse action; just cause**

"These two cases dispose of Mr. Tsosie's final argument because his contract expired on its own terms after both parties fulfilled their contractual obligations and the contract did not require automatic renewal. The NNLC therefore did not abuse its discretion when it found by substantial evidence that the non-renewal of Mr. Tsosie's contract was not 'adverse action' and that CCSD was not required to show 'just cause'." *Tsosie v. Central Consolidated School District, No. 22*, No. SC-CV-34-06, slip op. at 8 (Nav. Sup. Ct. August 12, 2009).

"The Court holds that Title VII has no effect on the NPEA's 'just cause' requirement, and therefore does not prohibit Commission review of Real Parties' claims, even if *Dawavendewa* was binding." *Cedar Unified School District v. Navajo Nation Labor Commission, and concerning Hasgood, et al., and Red Mesa Unified School District v. Navajo Nation Labor Commission, and concerning Yellowhair*, No. SC-CV-53-06 and No. SC-CV-54-06, slip op. at 11 (Nav. Sup. Ct. November 21, 2007).

"The phrases 'willful misconduct' and 'just cause' differ only in words and not in legal substance. Both determine if an employer had a justifiable reason for termination of an employee. If either tribunal finds fault on the part of an

employee, the termination is used to deny benefits or award remedies. Merely because ADES does not utilize the exact phrase 'just cause' in its determination does not mean that the ADES action is different for purposes of res judicata." *Bradley v. Lake Powell Medical Center*, No. SC-CV-55-05, slip op. at 9 (Nav. Sup. Ct. February 16, 2007).

"The NPEA mandates that employers only 'penalize, discipline, discharge' or take 'adverse action' when there is 'just cause'." *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 3 (Nav. Sup. Ct. March 23, 2006).

"To protect an employee from unjust action by an employer, the Navajo Nation Council (Council) enacted a broad range of requirements for employers to fulfill, including engaging in 'adverse action' against an employee only for 'just cause'." *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 3 (Nav. Sup. Ct. March 23, 2006).

"The School's refusal to employ Goldtooth clearly is 'adverse.' 'Action' in this context does not include all types of acts by the employer, however, but only those acts affecting 'ongoing employment'." *Goldtooth v. Naa Tsis' Aan Community School, Inc.*, No. SC-CV-14-04, slip op. at 4-5 (Nav. Sup. Ct. July 18, 2005).

"Assuming there was 'adverse action,' the validity of the contract also determines whether there was 'just cause' under the NPEA, and therefore whether the School is liable to Goldtooth for damages. If there was 'adverse action' the School must have provided written justification of 'just cause' for the action." *Goldtooth v. Naa Tsis' Aan Community School, Inc.*, No. SC-CV-14-04, slip op. at 5 (Nav. Sup. Ct. July 18, 2005).

"An explicit rule in the Navajo Nation Personnel Policies provides that failure to call or report to a supervisor for three days will subject an employee to termination. Is such failure 'just cause' for termination under the Navajo Preference Employment Act? Under the circumstances of this case we affirm the Navajo Nation Labor Commission that the employee violated the rule and uphold the termination." *Smith v. Navajo Nation Department of Head Start*, No. SC-CV-50-04, slip op. at 1 (Nav. Sup. Ct. September 21, 2005).

"Based on these reciprocal expectations, a rule set out clearly in a personnel manual, with notice to the employee, generally is binding, and this Court will enforce it as 'just cause' for termination if termination is a stated consequence for non-compliance." *Smith v. Navajo Nation Department of Head Start*, No. SC-CV-50-04, slip op. at 5 (Nav. Sup. Ct. September 21, 2005).

## **8. Harassment**

"A security company supervisor shouted at his subordinates and was terminated by his employer. We conclude that, under the circumstances, the supervisor's conduct constitutes 'harassment,' and therefore 'just cause' for termination. We therefore reverse the Navajo Nation Labor Commission." *Kesoli v. Anderson Security Agency*, No. SC-CV-01-05, slip op. at 1 (Nav. Sup. Ct. October 12, 2005).

"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).

#### **9. Contract; apparent authority**

"Under the circumstances of this case, we hold that a binding contract exists between the parties. Under the rule suggested by Goldtooth, the Executive Director had the apparent authority to offer the contract, as Goldtooth's belief that such authority existed was reasonable based on the conduct of the Board. Goldtooth's acceptance therefore was enough to create a contract." *Goldtooth v. Naa Tsis' Aan Community School, Inc.*, No. SC-CV-14-04, slip op. at 7 (Nav. Sup. Ct. July 18, 2005).

#### **10. Lay off; reduction in force**

"This Court holds that a layoff is 'adverse action' and therefore within the jurisdiction of the Commission to review. A layoff clearly affects ongoing employment in a tangible, negative way as, by definition, an employee no longer works for the employer. Further, because a layoff is 'adverse action' an employer must provide 'just cause,' and the Commission may review whether such just cause was provided." *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 4 (Nav. Sup. Ct. March 23, 2006).

"Unless there is a clear layoff policy in some other document available to NTUA's employees, Milligan's layoff is invalid. The only other document that might set out a layoff policy is NTUA's affirmative action plan, a document required by the NPEA." *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 7 (Nav. Sup. Ct. March 23, 2006)

"Despite the good job performance of employees, businesses sometimes have to make adjustments to their work force to maintain financial viability and operational efficiency. As a tribal enterprise providing needed utilities for Navajo people, NTUA has a unique need to promote financial viability and operational efficiency. The NPEA anticipates the need for employer flexibility and balances it with the rights of Navajo workers, requiring that, when there is a 'reduction-in-force,' Navajos be retained until all non-Navajo workers are first 'laid-off'." *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 8 (Nav. Sup. Ct. March 23, 2006).

"The Court holds that 'just cause' for layoffs does not require 'substantial misconduct' of employees, but layoffs may be made when necessary to promote financial viability or operational efficiency." *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 8-9 (Nav. Sup. Ct. March 23, 2006).

"However, a mere statement by an employer that a layoff was necessary is not sufficient, because the employer has the burden of proof to justify its action under the NPEA." *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 9 (Nav. Sup. Ct. March 23, 2006).

"Therefore, the Commission must review the evidence presented by the employer on the reasons for the layoff, and the employee may challenge the evidence as inaccurate or as pretext to avoid a conduct-based termination." *Milligan v.*

*Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 9 (Nav. Sup. Ct. March 23, 2006).

#### **11. Sexual harassment**

"The Court holds that in this case the very broad, ambiguous language in Section 604(B)(9) does not authorize an employee to file a claim with the Commission against an employer for sexual harassment." *Yazzie v. Navajo Sanitation*, No. SC-CV-16-06, slip op. at 6 (Nav. Sup. Ct. July 11, 2007).

#### **12. 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).

#### **§ 605. Reports**

All employers doing business or engaged in any project or enterprise within the territorial jurisdiction of the Navajo Nation or pursuant to a contract with the Navajo Nation shall submit employment information and reports as required to ONLR. Such reports, in a form acceptable to ONLR, shall include all information necessary and appropriate to determine compliance with the provisions of this Act. All reports shall be filed with ONLR not later than 10 business days after the end of each calendar quarter, provided that ONLR shall have the right to require filing of reports on a weekly or monthly schedule with respect to part-time or full-time temporary employment.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

#### **§ 606. Union and employment agency activities; rights of Navajo workers**

A. Subject to lawful provisions of applicable collective bargaining agreements, the basic rights of Navajo workers to organize, bargain collectively, strike, and peaceably picket to secure their legal rights shall not be abridged in any way by any person. The right to strike and picket does not apply to employees of the Navajo Nation, its agencies, or enterprises.

B. It shall be unlawful for any labor organization, employer or employment agency to take any action, including action by contract, which directly or indirectly causes or attempts to cause the adoption or use of any employment practice, policy or decision which violates the Act.

## History

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

### § 607. Navajo prevailing wage

A. Definitions. For purposes of this Section, the following terms shall have the meanings indicated:

1. The term "prevailing wage" shall mean the wage paid to a majority (more than fifty percent (50%)) of the employees in the classification on similar construction projects in the area during a period not to exceed 24 months prior to the effective date of the prevailing wage rate set hereunder; provided that in the event the same wage is not paid to a majority of the employees in the classification, "prevailing wage" shall mean the average of the wages paid, weighted by the total number of employees in the classification.

2. The term "prevailing wage rate" shall mean the rate established by ONLR pursuant to this Section.

3. The term "wage" shall mean the total of:

a. The basic hourly rate; and

b. The amount of: (a) contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan or program for the benefit of employees; and (b) costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to employees pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the employees affected. The types of fringe benefits contemplated hereunder include medical or hospital health care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeships or other similar programs; or other bona fide fringe benefits.

4. The term "area" in determining the prevailing wage means the geographic area within the territorial jurisdiction of the Navajo Nation; provided that in the event of insufficient similar construction projects in the area during the period in question, "area" shall include the geographic boundaries of such contiguous municipal, county or state governments as ONLR may determine necessary to secure sufficient wage information on similar construction projects.

5. The term "classifications" means all job positions in which persons are employed, exclusive of classifications with assigned duties which are primarily administrative, executive or clerical, and subject to



satisfaction of the conditions prescribed in §§ 607(E)(7) and (8), exclusive of "apprentice" and "trainee" classifications as those terms are defined herein.

6. "Apprentice" means: (a) a person employed and individually registered in a *bona fide* apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with an Apprenticeship Agency administered by a state or Indian Tribe and recognized by the Bureau; or (b) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state or Tribal Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

7. "Trainee" means a person: (a) registered and receiving on the job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration; or (b) employed and/or receiving on-the-job training under a public employment or work experience program which is approved and funded by the Navajo Nation.

8. The term "construction" shall mean all activity performed under a contract which relates to: (a) the building, development, rehabilitation, repair, alteration or installation of structures and improvements of all types, including without limitation buildings, bridges, dams, plants, highways, sewers, water mains, powerlines and other structures; (b) drilling, blasting, excavating, clearing and landscaping, painting and decorating; (c) transporting materials and supplies to or from the site of any of the activities referred to in (a) or (b) by employees of the contractor or subcontractor; and (d) manufacturing or finishing materials, articles, supplies or equipment at the construction site of any of the foregoing activities by employees of the contractor or subcontractor.

9. The term "contract" shall mean the prime construction contract and all subcontracts of any tier thereunder entered into by parties engaged in commercial, business or governmental activities (whether or not such activities are conducted for profit).

B. Establishment of wage rates.

1. For all construction reasonably anticipated to occur in the area on a regular basis, ONLR shall establish a general prevailing wage rate for each classification within specified types of construction. ONLR shall define classifications and types of construction in accordance with guidelines generally recognized in the construction industry. In all cases where construction is contemplated for which prevailing wage rates have not been set, the contract letting entry shall submit to ONLR a written request for a project prevailing wage scale. Such request shall be submitted not less than 60 days prior to the scheduled date for bid

solicitation and shall include detailed information on the anticipated construction classifications, nature of the project and completion plans. ONLR shall use its best efforts to provide a project prevailing wage scale for each classification involved in the project construction within 60 days after receipt of a request therefor.

2. In setting prevailing wage rates, ONLR shall conduct such surveys and collect such data as it deems necessary and sufficient to arrive at a wage determination. Wage data may be collected from contractors, contractors' associations, labor organizations, public officials and other sources which reflect wage rates paid in classifications on types of construction in the area, including the names and addresses of contractors and subcontractors; the locations, approximate costs, dates and types of construction; the number of workers employed in each classification on the project; and the wage rates paid such workers. Wage rate data for the area may be provided, and considered in making wage determinations, in various forms including signed statements, collective bargaining agreements and prevailing wage rates established by federal authorities for federally-assisted construction projects.

3. Any classification of workers not listed in a prevailing wage rate and which is to be used under a construction contract shall be classified in conformance with the prevailing wage determination issued and applicable to the project; provided that an additional classification and prevailing wage rate therefor will be established in the event each of the following criteria are satisfied:

a. The work performed by the proposed classification is not performed by a classification within the existing prevailing wage scale;

b. The proposed classification is utilized in the area by the construction industry; and

c. The wages set for the proposed classification bear a reasonable relationship to the wage rates contained in the existing scale for other classifications.

4. Subject to the prior written approval thereof by the Director of ONLR, a general prevailing wage rate shall be effective on the date notice of such rate is published in a newspaper in general circulation in the Navajo Nation. The notice shall contain the following information:

(1) The fact a prevailing wage rate has been set and approved in writing by the Director of ONLR;

(2) The type of construction for which the rate was established;

(3) The effective date, described as the date of publication of the notice or other specified date;

(4) The address and telephone number of ONLR; and

(5) A statement that ONLR will provide a copy of the full wage determination on request, and respond to any reasonable questions regarding such determination or its application.

a. General prevailing wage rates shall continue in effect until such time as any modifications are adopted.

b. A prevailing wage rate for a particular project shall be effective on the date of issuance to the requesting party of a written wage determination approved by the Director of ONLR. The wage determination shall continue in effect for the duration of the project; provided that any such determination may be modified by ONLR in the event the period of time from the effective date of the determination to the date bids are solicited exceeds 180 days and the estimated date of completion of the project is more than one year after the effective date of the determination.

c. Project and general wage determinations may be modified from time to time, in whole or in part, to adjust rates in conformity with current conditions, subject to the special conditions applicable to project determinations. Such modifications become effective upon the same terms and conditions which are applicable to original determinations.

d. Fringe benefits. The fringe benefit amount of wages reflected in a prevailing wage rate shall be paid in cash to the employee, and shall not be deducted from such employee's wages, unless each of the following conditions is satisfied:

(1) The deduction is not contrary to applicable law;

(2) A voluntary and informed written consent authorizing the deduction is obtained from the employee in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining or continuing employment;

(3) No profit or other benefit is obtained as a result of deduction, directly or indirectly, by the contractor, subcontractor or any person affiliated with them in the form of a commission, dividend or other consideration; and

(4) The deduction serves the convenience and interests of the employee.

C. No contract-letting entity, contractor or subcontractor shall proceed with a construction contract subject to this Section in the absence of a contractual requirement for payment of prevailing wages pursuant to a specified wage determination issued by ONLR. Violation of this obligation shall render the contract-letting entity, and the employer contractor or subcontractor, jointly and severally liable for the difference between wages actually paid and the prevailing wage rate, together with interest thereon (or if no prevailing wage rates have been set, such wage rate as may be issued by ONLR during the course, or after the completion, of the construction project).

1. Failure by any employer, contractor or subcontractor to pay prevailing wages shall render such employer liable for the difference between the amount of wages actually paid and the prevailing rate, together with interest thereon.

2. Any deduction of fringe benefits by an employer contractor or subcontractor in violation of § 607(C) shall render such employer liable for the amount of such deduction, together with interest thereon.

3. Upon written request of ONLR, a contract-letting entity or contractor, as the case may be, shall withhold from any monies payable on account of work performed by an employer contractor or subcontractor under a construction contract such sums as may be determined by ONLR as necessary to satisfy any liabilities of such contractor or subcontractor for unpaid prevailing wages or wrongful deduction of fringe benefits.

4. If following a hearing under § 611 a contract-letting entity (other than the Navajo Nation), contractor or subcontractor is found to have willfully violated this Section the Commission may enter a debarment order disqualifying such party from receiving any contract, or subcontract thereunder, with the Navajo Nation for a period not to exceed three years.

5. The liabilities described in this § 607(C) shall not foreclose the Commission from awarding such other relief or imposing such other civil penalties as may be appropriate following a hearing conducted under § 611.

D. Exemptions. This Section shall not apply to:

1. A contract associated with a construction activity which relates to the provision of architect, engineer, legal or consultant services, or, except as provided under § 607(A)(8)(d), the manufacturing or furnishing of materials or performance of services and maintenance work by persons not employed by a prime contractor or any of its subcontractors.

2. A construction contract relating to a project having a total cost of two thousand dollars (\$2,000) or less.

3. A construction contract which is let by a natural person who is an owner or person legally authorized to let such contract, for such person's personal, family or household purposes.

4. A construction contract to the extent the work thereunder is performed by employees of the owner, or employees of the person or entity legally authorized to let the prime contract.

5. A construction contract for a project receiving federal financial assistance to the extent the prevailing wage is set by federal authorities pursuant to the Davis-Bacon Act, 40 U.S.C., § 276a et seq.,<sup>1</sup> (as amended), or other federal law applicable to such project.

6. A construction contract to the extent such contract requires

payment of wages pursuant to a wage scale established under a collective bargaining agreement between any contractor or subcontractor and a labor organization.

7. With the exception of the provisions of § 607(C), an apprentice, provided that the apprentice is paid not less than: (a) the basic hourly rate prescribed in the registered program for the apprentice's level of progress, expressed as a percentage of the applicable journeyman rate specified in the prevailing wage rate; and (b) the fringe benefit amount prescribed in the registered program or, if not specified, the fringe benefit amount set in the prevailing wage rate for the applicable journeyman classification. An apprentice who is not enrolled in a registered program (within the meaning of § 607(A)(6)), shall be paid wages in an amount of not less than the level prescribed for the applicable journeyman classification specified in the prevailing wage rate.

8. With the exception of the provisions of § 607(C), a trainee provided that the trainee is paid not less than: (a) the basic hourly rate prescribed in the approved program for the trainee's level of progress, expressed as a percentage of the applicable journeyman rate specified in the prevailing wage rate; and (b) the fringe benefit amount prescribed in the approved program or, if not specified and as to federally approved programs only, the fringe benefit amount set in the prevailing wage rate for the applicable journeyman classification. A trainee who is not enrolled in an approved program (within the meaning of § 607(A)(7)), shall be paid wages in an amount not less than the level prescribed for the applicable journeyman classification specified in the prevailing wage rate.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

#### **§ 608. Health and safety of Navajo workers**

Employers shall, with respect to business conducted within the territorial jurisdiction of the Navajo Nation, adopt and implement work practices which conform to occupational safety and health standards imposed by law.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

#### **Cross References**

Navajo Nation OSHA, 15 N.N.C. § 1401 *et seq.*

#### **§ 609. Contract compliance**

A. All transaction documents, including without limitation, leases, subleases, contracts, subcontracts, permits, and collective bargaining agreements between employers and labor organizations (herein collectively "transaction documents"), which are entered into by or issued to any employer and which are to be performed within the territorial jurisdiction of the Navajo Nation shall contain a provision pursuant to which the employer and any other contracting party affirmatively agree to strictly abide by all requirements of this Act. With respect to any transaction document which does not contain the foregoing provision, the terms and provisions of this Act are incorporated therein as a matter of law and the requirements of the Act shall constitute affirmative contractual obligations of the contracting parties. In addition to the sanctions prescribed by the Act, violation of the Act shall also provide grounds for the Navajo Nation to invoke such remedies for breach as may be available under the transaction document or applicable law. To the extent of any inconsistency or conflict between a transaction document and the Act, the provision of the transaction document in question shall be legally invalid and unenforceable and the Act shall prevail and govern the subject of the inconsistency or conflict.

B. Every bid solicitation, request for proposals and associated notices and advertisements which relate to prospective contracts to be performed within the territorial jurisdiction of the Navajo Nation shall expressly provide that the contract shall be performed in strict compliance with this Act. With respect to any such solicitation, request, notice or advertisement which does not contain the foregoing provision, the terms and provisions of this Act are incorporated therein as a matter of law.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

#### **Annotations**

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

"The Court holds that the NPEA prohibits employees and employers from waiving the act by contract, and therefore the choice of law clauses are invalid." *Cedar Unified School District v. Navajo Nation Labor Commission, and concerning Hasgood, et al., and Red Mesa Unified School District v. Navajo Nation Labor Commission, and concerning Yellowhair*, No. SC-CV-53-06 and No. SC-CV-54-06, slip op. at 9 (Nav. Sup. Ct. November 21, 2007).

"On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, conflicts with the New Mexico Human Rights Act, § 28-1-1, *et seq.* NMSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

"The NPEA, then and now, requires a separate provision providing that the contracting party agrees to Navajo preference." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 6 (Nav. Sup. Ct. June 23, 2004).

## **2. Jurisdiction**

"Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

"Upon reconsideration we hold that Dr. Stago's NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup. Ct. August 29, 2002).

## **§ 610. Monitoring and enforcement**

A. Responsible Agency. Compliance with the Act shall be monitored and enforced by ONLR.

B. Charges.

1. Charging Party. Any Navajo may file a charge ("Individual Charge") claiming a violation of his or her rights under the Act. ONLR, on its own initiative, may file a charge ("ONLR Charge") claiming a violation of rights under the Act held by identified Navajos or a class of Navajos, including a claim that respondent is engaging in a pattern of conduct or practice in violation of rights guaranteed by the Act. An Individual Charge and ONLR Charge are collectively referred to herein as a "Charge".

2. Form and Content. A Charge shall be in writing, signed by the charging party (which shall be the Director of ONLR in the case of an ONLR Charge), and contain the following information:

a. The name, address and any telephone number of the charging party;

b. The name and address or business location of the respondent against whom the Charge is made.

c. A clear and concise statement of the facts constituting the alleged violation of the Act, including the dates of each violation and other pertinent events and the names of individuals who committed, participated in or witnessed the acts complained of;

d. With respect to a Charge alleging a pattern or practice in violation of the Act, the period of time during which such pattern or practice has existed and whether it continues on the date of the Charge;

e. The specific harm sustained by the charging party in the case of an Individual Charge or the specific harm sustained by specified Navajos or a class of Navajos with respect to an ONLR Charge; and

f. A statement disclosing whether proceedings involving the alleged violation have been initiated before any court or administrative agency or within any grievance process maintained by the respondent, including the date of commencement, the court, agency or process and the status of the proceeding.

g. ONLR shall provide assistance to persons who wish to file Individual Charges. Notwithstanding the foregoing provisions, a Charge shall be deemed sufficient if it contains a reasonably precise identification of the charging party and respondent, and the action, pattern or practice which are alleged to violate the Act.

3. Place of Filing. Individual Charges may be filed in any ONLR office. An ONLR Charge shall be filed in ONLR's administrative office in Window Rock.

4. Date of Filing. Receipt of each Individual Charge shall be acknowledged by the dated signature of an ONLR employee which shall be deemed the date on which the Individual Charge is filed. The date on which an ONLR Charge is signed by the ONLR Director shall be deemed the date of filing for such Charge.

5. Amendment. A Charge may be amended by filing, in the office where the Charge was first submitted, a written instrument which sets forth the amendment and any portions of the original Charge revised thereby. To the extent the information reflected in the amendment arose out of the subject matter of the original Charge, the amendment shall relate back and be deemed filed as of the filing date of such Charge. Any portion of the amendment which does not qualify for relation back treatment shall constitute a new Charge.

6. Time Limitation. A Charge shall be filed within one year after accrual of the claim which constitutes the alleged violation of the Act. The date of accrual of a claim shall be the earlier of:

a. The date on which the charging party had actual knowledge of the claim; or

b. Taking into account the circumstances of the charging party, the date on which the charging party should reasonably have been expected to know of the existence of the claim; provided, however, that a Charge relating to a continuing, or pattern or practice, violation of the Act shall be filed within one year after the later of:

(1) The date of termination of such violation, pattern or practice; or

(2) The date of accrual of the claim to which the Charge relates. Failure to file a Charge within the time limitations prescribed herein shall bar proceedings on the related claim before the



Commission or in any court of the Navajo Nation; provided, however, that nothing herein shall be interpreted as foreclosing proceedings before any Navajo court or administrative body (other than the Commission) on any claim which also arises under applicable common, statutory or other law independent of this Act.

7. Notice to Respondent. Within 20 days after a Charge is filed, ONLR shall serve a copy thereof on respondent; provided, however, that if in ONLR's judgment service of a copy of the Charge would impede its enforcement functions under the Act, ONLR may in lieu of a copy serve on respondent a notice of the Charge which contains the date, place and summary of relevant facts relating to the alleged violation, together with the identity of the charging party unless withheld for the reason stated above. Service of any amendment to the Charge shall be accomplished within 20 days after the amendment is filed. Failure of ONLR to serve a copy of a Charge or notice thereof within the prescribed time period shall not be a ground for dismissal of the Charge or any subsequent proceedings thereon.

8. Withdrawal of Charge.

a. ONLR may, in its discretion, withdraw any ONLR Charge upon written notice thereof to respondent and each person identified in the Charge whose rights under the Act were alleged to have been violated. Any person receiving notice of withdrawal or any other person who asserts a violation of his or her rights as a result of the violation alleged in the withdrawn ONLR Charge may file an Individual Charge which, if filed within 90 days after the issuance date of ONLR's withdrawal notice, shall relate back to the filing date of the ONLR Charge.

b. Any charging party may, in his or her discretion, withdraw an Individual Charge by filing a written notice of withdrawal with the ONLR office where the Charge was submitted, with a copy thereof filed with the ONLR administrative office in Window Rock. ONLR shall, within 20 days after receiving the notice, transmit a copy to the respondent. Within 90 days after receipt of the withdrawal notice, ONLR may file an ONLR Charge relating in whole or part to the violations alleged in the withdrawn Individual Charge. Any filing of an ONLR Charge within the prescribed time period shall relate back to the filing date of the withdrawn Charge.

9. Overlapping Charges. Nothing herein shall be construed as prohibiting the filing of any combination of Individual Charges and an ONLR Charge which, in whole or part, contain common allegations of violations of the Act.

10. Informants. Irrespective of whether a person is otherwise eligible to file an Individual Charge, any such person or an organization may in lieu of filing a Charge submit to ONLR written or verbal information concerning alleged violations of the Act and may further request ONLR to file an ONLR Charge thereon. In addition to other limitations on disclosure provided in § 610(M) and in the absence of the written consent of the informant, neither the identity of the informant nor any information provided by such informant shall be disclosed to the

respondent, agents or legal counsel for the respondent, or the public, either voluntarily by ONLR or pursuant to any discovery or other request for, or order relating to, such information during the course of any judicial or non-judicial proceeding, including a proceeding before the Commission or any subsequent appeal or challenge to a Commission or appellate decision; provided, however, that in the event the informant is called as a witness by ONLR at a Commission proceeding involving the information provided by the informant:

a. The informant's name may be disclosed, but his or her status as an informant shall remain privileged and confidential and shall not be disclosable through witness examination or otherwise; and

b. With the exception of the witness status as an informer, information provided by the informant is disclosable in accordance with the procedures outlined under § 610(M).

#### C. Investigation of Charges.

1. ONLR shall conduct such investigation of a Charge as it deems necessary to determine whether there is probable cause to believe the Act has been violated.

##### 2. Subpoenas.

a. The Director of ONLR shall have the authority to sign and issue a subpoena compelling the disclosure by any person evidence relevant to a Charge, including a subpoena ordering, under oath as may be appropriate:

(1) The attendance and testimony of witnesses;

(2) Responses to written interrogatories;

(3) The production of evidence, including without limitation books, records, correspondence or other documents (or lists or summaries thereof) in the subpoenaed person's possession, custody or control, or which are lawfully obtainable by such person; and

(4) Access to evidence for the purposes of examination and copying. Neither an individual charging party nor a respondent shall have a right to demand issuance of a subpoena prior to the initiation of any proceedings on the Charge before the Commission, in which event subpoenas are issuable only pursuant to the procedures governing such proceedings.

b. Service of the subpoena shall be effected by one of the methods prescribed in § 610(O). A subpoena directed to a natural person shall be served either on the person at his or her residence or office address or, in the case of personal delivery, at such residence or office either on the person subpoenaed or on anyone at least 18 years of age (and in the case of office service, a person who is also an employee of such office). Service of a subpoena directed to any other person shall be addressed or delivered to either the statutory agent (if any) of such

person or any employee occupying a managerial or supervisory position at any office of the person maintained within or outside the territorial jurisdiction of the Navajo Nation. Personal service may be performed by a natural person at least 18 years of age, including an employee of ONLR.

c. The subpoena shall set a date, time and place for the attendance of a witness, or production of or access to evidence, as the case may be, provided that the date for compliance shall be not less than 30 days after the date on which service of the subpoena was effected.

d. Any person served with a subpoena intending not to fully comply therewith shall, within five business days after service, serve on the Director of ONLR a petition requesting the modification or revocation of the subpoena and identifying with particularity each portion of the subpoena which is challenged and the reasons therefor. To the extent any portion of the subpoena is not challenged, the unchallenged parts shall be complied with in accordance with the terms of the subpoena as issued. The ONLR Director shall issue and serve on petitioner a decision and reasons therefor within eight business days following receipt of the petition, and any failure to serve a decision within such period shall be deemed a denial of the petition. In the event the Director's decision reaffirms any part of the subpoena challenged in the petition, the Director may extend the date for compliance with such portion for a period not to exceed 10 business days. Any petitioner dissatisfied with the decision of the ONLR Director shall either:

(1) Comply with the subpoena (with any modifications thereto reflected in the Director's decision); or

(2) Within five business days following receipt of the Director's decision or the date such decision was due, file a petition with the Commission (with a copy concurrently served on the ONLR Director) seeking modification or revocation of the subpoena and stating with particularity therein each portion of the subpoena challenged and the reasons therefor. A copy of the ONLR Director's decision, if any, shall be attached to the petition.

e. In the event a person fails to comply with a served subpoena, ONLR may petition the Commission for enforcement of the subpoena. For purposes of awarding any relief to petitioner, the Commission may issue any order appropriate and authorized in a case where it is established that a Commission order has been violated. A copy of the petition shall be concurrently served on the non-complying person.

f. Beginning on the first day of non-compliance with a subpoena served on a respondent, or any employee or agent of respondent, until the date of full compliance therewith, there shall be a tolling of all periods of limitation set forth in this Section.

#### D. Dismissal of Charges.

1. Individual Charges. ONLR shall dismiss an Individual Charge upon reaching any one or more of the following determinations:

a. The Individual Charge, on its face or following an ONLR investigation, fails to demonstrate that probable cause exists to believe a violation of the Act has occurred;

b. The Individual Charge was not filed within the time limits prescribed by § 610(B)(6);

c. The charging party has failed to reasonably cooperate in the investigation of, or attempts to settle, the Individual Charge;

d. The charging party has refused, within 30 days of receipt, to accept a settlement offer agreed to by respondent and approved by ONLR, which accords substantially full relief for the harm sustained by such party; or

e. The Charge has been settled pursuant to § 610(G).

2. ONLR Charges. ONLR shall dismiss an ONLR Charge upon determining that:

a. No probable cause exists to believe a violation of the Act has occurred;

b. The Charge was not filed within the time limits prescribed by § 610(B)(6); or

c. The Charge has been settled pursuant to § 610(G).

3. Partial Dismissal. In the event a portion of a Charge is dismissible on one or more of the foregoing grounds, only such portion of the Charge shall be dismissed and the remainder retained by ONLR for final disposition.

4. Notice. Written notice of dismissal, stating the grounds therefor, shall be served on respondent and the individual charging party in the case of an Individual Charge or, in the case of an ONLR Charge, on the respondent and any person known to ONLR who claims to be aggrieved by the violations alleged in such Charge. Such notice shall be accompanied by a right to sue authorization pursuant to § 610(H).

E. Probable Cause Determination. Following its investigation of a Charge and in the absence of a settlement or dismissal required under § 610(D), ONLR shall issue written notice of its determination that probable cause exists to believe a violation of the Act has occurred or is occurring. Such notice shall identify each violation of the Act for which probable cause has been found, and copies thereof shall be promptly sent to the respondent, the charging party in the case of an Individual Charge, and, in the case of an ONLR Charge, each person identified by ONLR whose rights are believed to have been violated. Any probable cause determination shall be based on, and limited to, the evidence obtained by ONLR and shall not be deemed a judgment by ONLR on the merits of allegations not addressed in the determination.

F. Conciliation. If, following its investigation of a Charge, ONLR determines there is probable cause to believe the Act has been or is being

violated, ONLR shall make a good faith effort to secure compliance and appropriate relief by informal means through conference, conciliation and persuasion. In the event there is a failure to resolve the matter informally as to any allegations in an Individual Charge for which probable cause has been determined, ONLR shall either issue the notice prescribed in § 610(H) or initiate a Commission proceeding under § 610(I) concerning unresolved allegations. A successful resolution of any such allegation shall be committed to writing in the form required under § 610(G). Nothing herein shall be construed as prohibiting ONLR from initiating or participating in efforts to informally resolve a Charge prior to issuance of a probable cause determination.

#### G. Settlement.

1. Settlement agreements shall be committed to writing and executed by respondent, the individual charging party if any and, in the case of any Charge, by the Director of ONLR. Refusal of an individual charging party to execute a settlement agreement subjects the Individual Charge to dismissal under the conditions set forth in § 610(D)(1)(d). Settlement agreements may also be signed by those aggrieved persons identified as having a claim with respect to an ONLR Charge.

2. Settlement agreements hereunder shall be enforceable among the parties thereto in accordance with the terms of the agreement. Any member of a class of persons affected by the settlement who is not a signatory to the agreement shall have the right to initiate proceedings before the Commission pursuant to the procedure in § 610(H)(2)(a)(3).

3. Each settlement agreement shall provide for the dismissal of the Charge to the extent the violations alleged therein are resolved under the agreement.

4. Any breach of a settlement agreement by respondent shall present grounds for filing a Charge under this Section. A charging party asserting a claim for breach may either seek:

a. Enforcement of that portion of the settlement agreement alleged to have been breached; or

b. In the case of a material breach as to any or all terms, partial or total rescission of the agreement, as the case may be, and such other further relief as may have been available in the absence of settlement. A Charge asserting a breach of a settlement agreement with respect to any original allegation in the Charge covered by such agreement shall, for purposes of all time limitations in this Section, be deemed to arise on the accrual date of the breach.

#### H. Individual Right to Sue.

##### 1. Individual Charges.

a. Prior to the expiration of 180 days following the date an Individual Charge was filed, ONLR, by notice to the individual charging party, shall authorize such individual to initiate a proceeding before

the Commission in accordance with the procedures prescribed in § 610(J), if:

(1) The Individual Charge has been dismissed by ONLR pursuant to § 610(D)(1);

(2) ONLR has issued a probable cause determination under § 610(E), there has been a failure of conciliation contemplated by § 610(F), and ONLR has determined not to initiate a Commission proceeding on behalf of the individual charging party; or

(3) Notwithstanding the absence of a probable cause determination or conclusion of conciliation efforts, ONLR certifies it will be unable to complete one or both of these steps within 180 days after the date on which the Individual Charge was filed.

b. After the expiration of 180 days following the date an Individual Charge was filed, the individual charging party shall have the right to initiate a proceeding before the Commission irrespective of whether ONLR has issued a notice of right to sue, made a probable cause determination, or commenced or concluded conciliation efforts.

## 2. ONLR Charges.

a. Prior to the expiration of 180 days following the date an ONLR Charge was filed, ONLR, by notice to any person known to it who claims to be aggrieved by the allegations presented in such Charge, shall authorize such person to initiate a proceeding before the Commission in accordance with the procedures prescribed in § 610(J), if:

(1) The ONLR Charge has been dismissed by ONLR pursuant to § 610(D)(2);

(2) ONLR has issued a probable cause determination under § 610(E), there has been a failure of conciliation contemplated by § 610(F), and ONLR has determined not to initiate a Commission proceeding on the Charge;

(3) ONLR has entered into a settlement agreement under § 610(G) to which such aggrieved person is not a party; or

(4) Notwithstanding the absence of a probable cause determination or conclusion of conciliation efforts, ONLR certifies it will be unable to complete one or both of these steps within 180 days after the date on which the ONLR Charge was filed.

b. After the expiration of 180 days following the date an ONLR Charge was filed and prior to the date on which ONLR commences a Commission proceeding, any person claiming to be aggrieved by the allegations presented in such Charge shall have the right to initiate a proceeding before the Commission irrespective of whether ONLR has issued a notice of right to sue, made a probable cause determination or commenced or concluded conciliation efforts.

3. Content of Notice. A notice of right to sue shall include the following information:

a. Authorization to the individual charging party or aggrieved person to initiate a proceeding before the Commission pursuant to and within the time limits prescribed by § 610(J);

b. A summary of the procedures applicable to the institution of such proceeding, or a copy of the Act containing such procedures;

c. A copy of the Charge; and

d. A copy of any written determination of ONLR with respect to such Charge.

4. ONLR Assistance. Authorization to commence Commission proceedings hereunder shall not prevent ONLR from assisting any individual charging party or aggrieved person in connection with Commission proceedings or other efforts to remedy the alleged violations of the Act.

#### I. ONLR Right to Sue.

1. Individual Charges. ONLR shall have the right to initiate proceedings before the Commission based on the allegations of an Individual Charge with respect to which ONLR has issued a probable cause determination under § 610(E) and there has been a failure of conciliation contemplated by § 610(F). ONLR shall have such right notwithstanding that the individual charging party has a concurrent right to sue hereunder which has not been exercised. ONLR's right to sue shall continue until such time as the individual charging party commences a Commission proceeding and, in that case, shall be revived in the event the proceeding is dismissed or concluded for reasons unrelated to the merits. Initiation of Commission proceedings by ONLR shall terminate the right to sue of an individual charging party, subject to revival of such right in the event the proceeding is dismissed or concluded for reasons unrelated to the merits. Nothing herein shall be construed as foreclosing ONLR from exercising its right to intervene in a Commission proceeding under § 610(L).

2. ONLR Charges. ONLR shall have the right to initiate proceedings before the Commission based on the allegations of an ONLR Charge with respect to which ONLR has issued a probable cause determination under § 610(E) and there has been a failure of conciliation contemplated by § 610(F). ONLR shall have such right notwithstanding that a person claiming to be aggrieved as a result of the allegations in the ONLR Charge has a concurrent right to sue hereunder which has not been exercised. In the event an aggrieved person first initiates a Commission proceeding in an authorized manner, ONLR's right to sue shall only expire as to such person and shall revive in the event the aggrieved person's proceeding is dismissed or concluded for reasons unrelated to the merits. Nothing herein shall be construed as foreclosing ONLR from exercising its right to intervene in a Commission proceeding under § 610(L).

J. Initiation of Commission Proceedings. Proceedings before the Commission shall be initiated upon the filing of a written complaint by a petitioner with the Commission.

1. Complaints shall satisfy each of the following conditions:

a. The petitioner is authorized to file the Complaint under the terms and conditions prescribed by this Section;

b. The underlying Charge was filed within the time limits prescribed in § 610(B)(6); and

c. The complaint was filed within 360 days following the date on which the underlying Charge was filed.

2. Upon motion of respondent and a showing that any one or more of the foregoing conditions has not been satisfied, the Commission shall dismiss the complaint; provided, however, that no complaint shall be dismissed under (b) above as to any allegation of a pattern of conduct or practice in violation of the Act to the extent such pattern or practice continued to persist during the time limits prescribed in § 610(B)(6); and provided further that, in the absence of dismissal or conclusion of Commission proceedings on the merits, nothing herein shall be construed as prohibiting the refiling of a Charge alleging the same or comparable pattern or practice violations of the Act which continued to persist during the time limits prescribed in § 610(B)(6) for refiling such Charge.

K. Preliminary Relief. Prior to the initiation of Commission proceedings on a Charge and notwithstanding the failure to satisfy any precondition to such proceedings, either ONLR, an individual charging party or aggrieved person may, upon notice to respondent, petition the Commission for appropriate temporary or preliminary relief in the form of an injunction or other equitable remedy on the ground that prompt action is necessary to carry out the purposes of the Act, including the preservation and protection of rights thereunder. Nothing herein shall be construed as foreclosing a petition which seeks comparable relief subsequent to the commencement of Commission proceedings.

L. Intervention in Commission Proceedings. Within three business days after the date on which any complaint, or petition pursuant to § 610(K), is filed with the Commission, other than a complaint or petition filed by ONLR, the Commission shall cause copies thereof to be sent to the ONLR Director and the Attorney General of the Navajo Nation. ONLR shall have an unconditional right to intervene in the Commission proceeding initiated by such complaint or petition upon the timely application by motion accompanied by a pleading setting forth the claims for which intervention is sought.

M. Confidentiality.

1. Conciliation. In the absence of written consent of the persons concerned, statements or offers of settlement made, documents provided or conduct by participants in conciliation efforts under § 610(F) shall not be admissible in any Commission or other proceeding relating to the Charge which is the subject of conciliation, to prove liability for or



invalidity of the Charge or the amount or nature of relief therefor; provided, however, that nothing herein shall be construed as requiring the exclusion of such evidence merely because it was presented in the court of conciliation if:

a. The evidence is otherwise discoverable; or

b. The evidence is offered for another purpose, including without limitation, proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

## 2. Charge, Records and Information.

a. Prior to the institution of Commission proceedings thereon, and in the absence of the written consent of the persons concerned, ONLR shall not disclose as a matter of public information any Charge, response thereto, any statements or other information obtained in the course of its investigation of the Charge, except that nothing herein shall prevent earlier disclosure of such information by ONLR in its discretion:

(1) To charging parties or their attorneys, respondents or their attorneys, witnesses or other interested persons where the disclosure is deemed by ONLR to be necessary for securing a resolution of the Charge, including appropriate relief therefor; or

(2) To employees or representatives of the Navajo Nation or employees or representatives of federal, state or local authorities who have a governmental interest in the subject matter of the Charge; or

(3) To persons for the purpose of publishing data derived from such information in a form which does not reveal the identity of charging parties, aggrieved persons, respondents or persons supplying the information.

b. Except as otherwise provided herein, any person to whom a permissible disclosure is made hereunder shall be bound to maintain the confidentiality of such information from further disclosure and shall use the information solely for the purpose for which it was disclosed.

2. Privileged Information. Neither ONLR, charging parties, aggrieved persons, respondents, witnesses or persons supplying information in connection with a Charge shall be compelled, either before or after commencement of Commission proceedings, to disclose any information which represents the opinions or conclusions formed by ONLR during the course of its investigation of a Charge, or any information which is protected by the attorney-client privilege, the informer's privilege referred to in § 610(B)(10), or any other absolute or limited privilege recognized under the laws of the Navajo Nation. To the extent justice requires, the Commission may, balancing the rights of parties and affected persons, prohibit or limit the disclosure of any other information for good cause shown, including a showing that disclosure

would impede enforcement of the Act, jeopardize rights guaranteed thereunder, or cause annoyance, embarrassment, oppression or undue burden or expense to parties or affected persons.

N. Non-retaliation. It shall be unlawful for any employer, labor organization, joint labor-management committee involved in apprenticeship or other matters relating to employment, employment agency or other person to, directly or indirectly, take or attempt to induce another person to take, any action adversely affecting:

1. The terms and conditions of any person's employment or opportunities associated with such employment;

2. An applicant's opportunity for employment;

3. The membership of an employee or applicant for employment in a labor organization; or

4. Any other right, benefit, privilege or opportunity unrelated to employment, because such person has opposed an employment practice subject to this Act or has made a charge, testified, or assisted or participated in any manner in an investigation, proceeding or hearing under the Act.

O. Service of Documents. Service of any notice, determination or other document required to be transmitted under this Section shall be accomplished by personal delivery or certified mail, return receipt requested.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

#### **Cross References**

Navajo Nation Healthy Start Act of 2008, 15 N.N.C. §§ 701-708.

#### **Annotations**

##### **1. Jurisdiction**

"Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

"Upon reconsideration we hold that Dr. Stago's NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup. Ct. August 29, 2002).

##### **2. Ministerial acts**

"The receipt of an employment charge form and its subsequent filing are nothing more than ministerial acts, which the law does not restrict to compliance officers. [...] Presumably, any ONLR employee may receive and file an employment charge form." *Kirk, et al. v. Office of Navajo Labor Relations*, 7 Nav. R. 363, 365 (Nav. Sup. Ct. 1998).

### **3. Filing a charge**

"Under a plain reading of the statutory language, there was no charge with the 'dated signature of an ONLR employee' for purposes of Section 610(B)(4) until ONLR filed its own charge on March 29, 2005. A date stamp is not a signature, and therefore Martinez's charge of February 1, 2005, cannot be considered 'filed' for purposes of the NPEA's timing requirement. ONLR's charge of March 29, 2005, is the charge that is signed and dated by an ONLR employee and therefore is the only one that is 'filed' pursuant to Section 610(B)(4)." *Martinez v. Sage Memorial Hospital*, No. SC-CV-47-06, slip op. at 3 (Nav. Sup. Ct. August 7, 2007).

"According to ONLR's interpretation of the NPEA, if an employee files an individual charge, and ONLR decides later to file its own charge, the time to file a complaint runs from its latter charge, and not the earlier individual charge. This Court agrees. By filing its own charge, ONLR effectively took over the case for Martinez and the other employees. Their individual charges, whether with proper ONLR signatures or not, ceased to exist, and any time was to be calculated from ONLR's new charge." *Martinez v. Sage Memorial Hospital*, No. SC-CV-47-06, slip op. at 4 (Nav. Sup. Ct. August 7, 2007).

"Based on the language of Section 610(B)(6), the Court agrees with the Commission and BHP. That section starts the time to file a charge from the 'accrual' of 'the claim which constitutes the alleged violation of the Act.' Though 'accrual' is not separately defined, the section's language equates the employee's 'claim' with the employer's 'alleged violation,' and therefore the claim occurs when an employer allegedly violates some provision of the NPEA. The Court concludes that this language means that the employee's claim 'accrues,' that is when the time to file a charge starts running, on the date of the employer's action that allegedly violated the NPEA, unless there are special circumstances where the employee was not notified of the action, or for some other reason could not reasonably be expected to know that the action occurred." *Moore v. BHP Billiton*, No. SC-CV-32-05, slip op. at 3 (Nav. Sup. Ct. May 14, 2007).

"The employee's voluntary participation in an employer's internal grievance process does not change the timing. There is simply no reference whatsoever to internal grievance processes in that section, and therefore no indication that the Navajo Nation Council intended to allow extra time if an employee chooses to file a grievance instead of filing a charge." *Moore v. BHP Billiton*, No. SC-CV-32-05, slip op. at 3-4 (Nav. Sup. Ct. May 14, 2007).

"Similarly here, the omission of any reference to internal grievance processes bars an employee from automatically tolling the timing requirement by voluntarily going through such a process." *Moore v. BHP Billiton*, No. SC-CV-32-05, slip op. at 4 (Nav. Sup. Ct. May 14, 2007).

"The choice to file a grievance is not a circumstance beyond Moore's control that prevented him from filing a charge. He voluntarily participated in the grievance process, and nothing prevented him from at the same pursuing his charge." *Moore v. BHP Billiton*, No. SC-CV-32-05, slip op. at 5 (Nav. Sup. Ct. May 14, 2007).

"The NPEA Procedure begins with filing of an employee 'charge,' which must include 'a clear and concise statement of the facts constituting the alleged violation of the Act, including the dates of each violation and other pertinent events and the names of individuals who committed, participated in or witnessed the acts complained of'." *Hood v. Navajo Nation Department of Headstart*, No. SC-CV-11-05, slip op. at 4 (Nav. Sup. Ct. January 5, 2006).

"The Court holds that the ONLR charge process is the only statutory requirement before an employee may file a complaint with the Commission, and therefore there is no implied requirement to exhaust an employer's termination appeal process." *Taylor v. Dilcon Community School*, No. SC-CV-73-04, slip op. at 6 (Nav. Sup. Ct. September 21, 2005).

"The filing of an amended complaint with the Commission does not require the petitioner to return to the ONLR with an amended charge, therefore, 15 N.N.C. § 610(B)(5) does not apply to the amended complaint." *Loley v. Department of Employment and Training*, 7 Nav. R. 406, 411 (Nav. Sup. Ct. 1999).

"We agree with the Commission that telephone calls do not qualify as an attempt to file a charge with the ONLR." *Kirk, et al. v. Office of Navajo Labor Relations*, 7 Nav. R. 363, 364 (Nav. Sup. Ct. 1998).

#### **4. Limitations, generally**

"We do not believe the timing requirements are jurisdictional for purposes of a writ of prohibition. Petitioner relies on a statement in *Harvey v. Kayenta Unified School District* that Section 610(J)(1)(c) 'appears to be a hybrid of a jurisdictional statute and a limitation statute.' 7 Nav. R. 374, 375 (Nav. Sup. Ct. 1999). However, further in the *Harvey* opinion we indicated that equitable tolling may apply, suggesting that Section 610(J)(1)(c) operates as a statute of limitations and not a jurisdictional condition. *Id.* at 375-76. Though our opinion in *Harvey* was not clear, we clarify today that the NPEA timing requirements are not jurisdictional, in that they may be waived by failure of the respondent to plead them as a defense, and may be altered by other considerations such as equitable tolling. We reject any suggestion in *Harvey* to the contrary." *Peabody Western Coal Company, Kayenta Mine v. Navajo Nation Labor Commission*, No. SC-CV-33-04, slip op. at 2-3 (Nav. Sup. Ct. May 24, 2004).

"The NPEA requires the complaint to be filed within 360 days of the charge." *Peabody Western Coal Company, Kayenta Mine v. Navajo Nation Labor Commission*, No. SC-CV-33-04, slip op. at 1-2 (Nav. Sup. Ct. May 24, 2004).

"The statute appears to be a hybrid of a jurisdictional statute and a limitations statute. [....] ... [C]onsiderations of fairness and substantial justice require that parties have ... opportunity to assert equitable tolling before the Commission." *Harvey v. Kayenta Unified School District*, 7 Nav. R. 374, 375 (Nav. Sup. Ct. 1999).

## **5. Consent to application**

"On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, conflicts with the New Mexico Human Rights Act, § 28-1-1, *et seq.* NMSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

## **6. Notice to respondent**

"ONLR then sends a copy of the charge or a notice of its contents to the respondent, the first time the employer is informed of the allegations that it violated the NPEA." *Hood v. Navajo Nation Department of Headstart*, No. SC-CV-11-05, slip op. at 4 (Nav. Sup. Ct. January 5, 2006).

## **7. Probable cause**

"After its investigation, if appropriate, ONLR issues a probable cause determination. The NPEA requires that ONLR in its determination 'identify each violation of the Act for which probable cause has been found'." *Hood v. Navajo Nation Department of Headstart*, No. SC-CV-11-05, slip op. at 4 (Nav. Sup. Ct. January 5, 2006).

## **8. Conciliation; settlement**

"Next, ONLR must make a good faith effort to settle 'any allegations in an individual Charge' for which it found probable cause." *Hood v. Navajo Nation Department of Headstart*, No. SC-CV-11-05, slip op. at 4 (Nav. Sup. Ct. January 5, 2006).

## **9. Right to sue**

"If the employer will not settle all the allegations, ONLR then may issue a right to sue letter, which authorizes the employee to file a complaint with the Commission." *Hood v. Navajo Nation Department of Headstart*, No. SC-CV-11-05, slip op. at 4-5 (Nav. Sup. Ct. January 5, 2006).

## **10. Complaint**

"The complaint is then filed and served on the respondent. The complaint is properly filed, if, among other things, the 'underlying Charge' was timely filed." *Hood v. Navajo Nation Department of Headstart*, No. SC-CV-11-05, slip op. at 5 (Nav. Sup. Ct. January 5, 2006).

## **11. ONLR authority**

"ONLR has the authority to file its own charge and investigate violations of the NPEA, 15 N.N.C. § 610(B)(1) (2005), and may remedy any violation by Basha's through this process. It is ONLR's duty and responsibility, in the absence of

an employee charge that an employer violated the NPEA, to investigate violations of the act, and use its authority to seek a remedy." *Toledo v. Basha's Diné Market*, No. SC-CV-41-05, slip op. at 7 (Nav. Sup. Ct. August 17, 2006).

## **§ 611. Hearings**

A. The Commission shall schedule a hearing within 60 days of the filing of a written complaint by a petitioner with the Commission. The hearing shall be held at a location designated by the Commission.

1. Notice. The Commission shall issue a notice of hearing. The time and place of the hearing shall be clearly described in the notice. The notice shall also set forth in clear and simple terms the nature of the alleged violations and shall state that: (a) the violations may be contested at a hearing before the Commission; and (b) any party may appear by counsel and cross-examine adverse witnesses.

2. Upon application by a party to the Commission or on the Commission's own motion, the Commission may issue subpoenas compelling the disclosure by any person evidence relevant to the Complaint, including a subpoena ordering, under oath as may be appropriate:

- a. The attendance and testimony of witnesses;
- b. Responses to written interrogations;
- c. The production of evidence; and
- d. Access to evidence for the purpose of examination and copying.

3. The Commission is authorized to administer oaths and compel attendance of any person at a hearing and to compel production of any documents.

4. In the event a party does not make an appearance on the day set for hearing or fails to comply with the rules of procedure set forth by the Commission for the conduct of hearings, the Commission is authorized to enter a default determination against the non-appearing and/or non-complying party.

B. Burden of proof. In any compliance review, complaint proceeding, investigation, or hearing, the burden of proof shall be upon the respondent to show compliance with the provisions of this Act by a preponderance of the evidence.<sup>1</sup>

C. Hearing. The Commission shall conduct the hearing in a fair and orderly manner and extend to all parties the right to be heard.

1. The Commission shall not be bound by any formal rules of evidence.

2. The respondent shall have the opportunity to answer the

complaint and the parties shall have the right to legal counsel, to present witnesses, and to cross-examine adverse witnesses.

3. The Commission shall issue its decision by a majority vote of a quorum present which shall be signed by the Chairperson of the Commission.

4. Copies of the decision shall be sent to all parties of record in the proceeding by certified mail, return receipt.

5. Records of the proceeding shall be recorded. Any party may request a transcript of the proceeding at their own expense.

6. The decision of the Commission shall be final with a right of appeal only on questions of law to the Navajo Nation Supreme Court.

### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

**Note.** Slightly reworded for purposes of statutory form.

### **Cross References**

Navajo Nation Healthy Start Act of 2008, 15 N.N.C. §§ 701-708.

### **Annotations**

#### **1. Jurisdiction**

"Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

"Upon reconsideration we hold that Dr. Stago's NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup. Ct. August 29, 2002).

#### **2. Answer**

"The NPEA allows the employer to answer the complaint." *Hood v. Navajo Nation Department of Headstart*, No. SC-CV-11-05, slip op. at 5 (Nav. Sup. Ct. January 5, 2006).

#### **3. Notice**

"The Commission then sets a hearing, and in its notice of hearing must state 'in clear and simple terms the nature of the alleged violations'." *Hood v. Navajo Nation Department of Headstart*, No. SC-CV-11-05, slip op. at 5 (Nav.

Sup. Ct. January 5, 2006).

#### **4. Sufficiency of evidence**

"However, a mere statement by an employer that a layoff was necessary is not sufficient, because the employer has the burden of proof to justify its action under the NPEA." *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 9 (Nav. Sup. Ct. March 23, 2006).

"Therefore, the Commission must review the evidence presented by the employer on the reasons for the layoff, and the employee may challenge the evidence as inaccurate or as pretext to avoid a conduct-based termination." *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 9 (Nav. Sup. Ct. March 23, 2006).

"The prevailing evidentiary standard for employment litigation in the United States, judicial or administrative, is the civil 'preponderance' of the evidence, where the factual question is whether it is 'more likely than not' that an element of the cause of action or statute has been violated." *Manygoats v. Cameron Trading Post*, No. SC CV-50-98, slip op. at 15-16 (Nav. Sup. Ct. January 14, 2000).

"The civil 'more likely than not' standard is easier for the Commission to use." *Manygoats v. Cameron Trading Post*, No. SC CV-50-98, slip op. at 16 (Nav. Sup. Ct. January 14, 2000).

"In the absence of any evidence supporting the governmental interest in the standard, and in light of policy statements which urge the Navajo Nation to do more about employment, we find that there is no governmental interest in support of the use of clear and convincing evidence. The standard at 15 N.N.C. § 611(B) violates due process of law under the Navajo Nation Bill of Rights, 1 N.N.C. § 3, so it cannot survive." *Manygoats v. Cameron Trading Post*, No. SC CV-50-98, slip op. at 17 (Nav. Sup. Ct. January 14, 2000).

"We reverse the Commission's order on the clear and convincing standard of proof, [ ... ]" *Manygoats v. Cameron Trading Post*, No. SC CV-50-98, slip op. at 18 (Nav. Sup. Ct. January 14, 2000).

#### **§ 612. Remedies and sanctions**

A. If, following notice and hearing, the Commission finds that respondent has violated the Act, the Commission shall:

1. Issue one or more remedial orders, including without limitation, directed hiring, reinstatement, displacement of non-Navajo employees, back-pay, front-pay, injunctive relief, mandated corrective action to cure the violation within a reasonable period of time, and/or, upon a finding of intentional violation, imposition of civil fines; provided that liability for back-pay or other forms of compensatory damages shall not accrue from a date more than two years prior to the date of filing of the Charge which is the basis for the complaint.

2. In the case of an individual suit initiated pursuant to § 610(H), award costs and attorneys' fees if the respondent's position was



not substantially justified.

3. Refer matters involving respondent contracts, agreements, leases and permits to the Navajo Nation Attorney General for appropriate action.

B. In the absence of a showing of good cause therefor, if any party to a proceeding under this Act fails to comply with a subpoena or order issued by the Commission, the Commission may impose such actions as are just, including without limitation any one or more of the following:

1. In the case of non-compliance with a subpoena of documents or witnesses:

a. An order that the matters for which the subpoena was issued or any other designated facts shall be deemed established for the purposes of the proceeding and in accordance with the claim of the party obtaining the order;

b. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

c. An order striking pleading or parts thereof, or staying further proceedings until the subpoena is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

2. In the case of non-compliance by a party or non-party with a Commission subpoena of documents or witnesses or with any other order of the Commission:

a. An order holding the disobedient person in contempt of the Commission and imposing appropriate sanctions therefor, including a civil fine; or

b. An order directing the disobedient person to pay the reasonable costs and/or attorneys fees caused by the non-compliance.

C. The person or party in whose favor a Commission's decision providing for remedial action is entered shall have the right to seek legal and/or equitable relief in the District Courts of the Navajo Nation to enforce the remedial action; provided that the Commission itself shall have the right to seek legal and/or equitable relief in the District Courts of the Navajo Nation to enforce civil fines or sanctions imposed by the Commission against a person or party. In both instances the Attorney General of the Navajo Nation shall have an unconditional right to intervene on behalf of the Navajo Nation. Any attempted enforcement of a Commission order or decision directing payment of money by the Navajo Nation or any of its governmental entities shall, with respect to the extent of any liability be governed by the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 et seq., as amended.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

**Note.** Slightly reworded for purposes of statutory form.

#### **Cross References**

Navajo Nation Healthy Start Act of 2008, 15 N.N.C. §§ 701-708.

#### **Annotations**

##### **1. Remedies**

"The Commission misinterpreted Section 612(A)(1). The key phrase is 'without limitation.' Through this language, the Council intended to make the list of remedies in the section examples of possible remedies, not an exhaustive list of all remedies the Commission is empowered to award to an employee." *Yazzie v. Navajo Sanitation*, No. SC-CV-16-06, slip op. at 3 (Nav. Sup. Ct. July 11, 2007).

"Consistent with these principles, the Court holds that the Commission is not restricted to the specific listed remedies in Section 612(A)(1), but is empowered to grant remedies reasonably tied to making an employee whole. What is reasonably tied depends on the circumstances of the case, but certain remedies are not reasonably tied to making a person whole in any circumstance, such as compelling an employer to fire a worker based on a complaint by another employee, as that remedy does not compensate the employee claimant, it simply punishes the other employee." *Yazzie v. Navajo Sanitation*, No. SC-CV-16-06, slip op. at 4 (Nav. Sup. Ct. July 11, 2007).

"... [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).

"Under the NPEA, if the respondent violates the act, the Commission 'shall issue one or more remedial orders, including without limitation ... back pay.'" *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 6 (Nav. Sup. Ct. August 26, 2004).

##### **2. Review**

"On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, conflicts with the New Mexico Human Rights Act, § 28-1-1, *et seq.* NMSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

"We find that there is ample support in the record for the Labor Commission's determination that Cameron's position was not substantially justified. Cameron's legal argument were at best misguided, and its evidence ranged from

thin to lacking credibility. Therefore we affirm the Labor Commission's decision to award Manygoats attorneys' fees and costs." *Manygoats v. Atkinson Trading Company, Inc.*, No. SC-CV-62-00 slip op. at 14 (Nav. Sup. Ct. August 12, 2003).

### **3. Navajo Nation as defendant**

"Once the sovereign protection of relating to answering complaints has been afforded, the NDET, or any other Navajo Nation governmental body, is held to the same standard as a private litigant. We affirm the Commission's entry of default." *Loley v. Department of Employment and Training*, 7 Nav. R. 406, 410 (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).

### **4. Attorneys' fees**

"The Court holds that 1) because, first and foremost, Section 612(A)(2) mandates an exception to the general rule, the employer's defense against the employee's claim alone cannot obviate the mandate—the employer's litigating position alone cannot swallow the mandate; 2) that the overall conduct of a respondent-employer, including pre-litigation conduct, will be considered in the decision whether the employer's litigating position was substantially justified; and 3) that the overall conduct of the employer will be reviewed under a reasonable person standard. To this extent, this Court's interpretation in *Jenson* that respondent's position means employer's litigating position is clarified." *Goldtooth v. Naa Tsis'Aan Community School, Inc.*, No. SC-CV-12-06, slip op. at 5–6 (Nav. Sup. Ct. April 16, 2009).

"The Court holds that the employer's overall conduct will be weighed against the statutory mandate; i.e., does the employer's overall conduct justify nullifying the mandate that a prevailing employee shall be paid costs and attorney's fees? The Court further holds that because this exercise is a weighing of the reasonableness of each party's conduct, the award of costs and attorney's fees is not an all or nothing proposition." *Goldtooth v. Naa Tsis'Aan Community School, Inc.*, No. SC-CV-12-06, slip op. at 6 (Nav. Sup. Ct. April 16, 2009).

"We hereby hold an employer shall be deemed 'substantially justified' as that term is used in 15 N.N.C. § 612(A)(2) when the respondent-employer shows 1) that the employee's pleading or document was not submitted in good faith, or that it contains material misstatement of fact or law; or that it is not made upon adequate investigation or research or 2) that the employee failed to participate in the proceedings. We emphasize that such exceptions and the substantial justification decision must be established by specific findings by the NNLC." *Goldtooth v. Naa Tsis'Aan Community School, Inc.*, No. SC-CV-12-06, slip op. at 6–7 (Nav. Sup. Ct. April 16, 2009), citing, *Largo v. Gregory & Cook*, 7 Nav. R. 111, 119 (Nav. Sup. Ct. 1995).

"The NNLC has the duty to decide how to handle costs and attorney's fees whenever the employer is found to have violated NPEA, regardless of whether the party has raised it as a claim or not. It is an affirmative obligation by the NNLC to consider costs and attorney's fees." *Goldtooth v. Naa Tsis'Aan Community School, Inc.*, No. SC-CV-12-06, slip op. at 7 (Nav. Sup. Ct. April 16, 2009), citing, *Largo v. Gregory & Cook*, 7 Nav. R. 111, 118 (Nav. Sup. Ct. 1995).

### **§ 613. Appeal and stay of execution**

A. Any party may appeal a decision of the Commission to the Navajo Nation Supreme Court by lodging a written notice of appeal, in the form prescribed by the Navajo Rules of Civil Appellate Procedure and within 10 days after receipt of the Commission's decision.

B. In the absence of a stipulation by the parties approved by the Commission, a stay of execution of the decision from which the appeal is taken shall only be granted upon written application of the appellant to the Commission and an opportunity for response by appellee. The application for a stay shall be filed within the period prescribed for appeal in Subsection (A) hereof. No stay shall be issued unless the appellant presents a clear and convincing showing that each of the following requirements have been satisfied:

1. Appellant is likely to prevail on the merits of the appeal;
2. Appellant will be irreparably harmed in the absence of a stay;
3. Appellee and interested persons will not be substantially harmed by a stay;
4. The public interest will be served by a stay; and
5. An appeal bond or other security, in the amount and upon the terms prescribed by Subsection (C) below, has been filed with and approved by the Commission; provided that no appeal bond shall be required of ONLR, the Navajo Nation or any governmental agency or enterprise of the Navajo Nation.

C. The appeal bond shall be issued by a duly authorized and responsible surety which shall obligate itself to pay to appellee, or any other person in whose favor an award is made by the Commission decision, the amounts specified or described in the bond upon conclusion of the appeal and failure of appellant, following written demand by appellee, to satisfy the foregoing obligations.

1. The amount or nature of liability assumed by the surety shall be specified in the bond and shall include:
  - a. The total amount of all monetary awards made in the Commission decision, together with such interest thereon as may be prescribed in the Commission's decision;
  - b. Costs of appeal and attorneys' fees incurred by appellee in defending the appeal and which may be awarded to appellee by the

Navajo Nation Supreme Court;

c. Damages sustained by appellee or other recipients of a Commission award for delay in satisfaction of the Commission decision caused by the appeal; and

d. Such other amount or liability reasonably required to be secured to protect the interests of the appellee or other award recipients.

2. The bond shall provide that the surety submits to the jurisdiction of the Commission and the Courts of the Navajo Nation, and irrevocably appoints the Commission as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served. The surety's liability may be enforced on motion of the appellee filed with the Commission, with copies thereof served on the surety and appellant.

3. In lieu of posting an appeal bond, appellant may, with the approval of the Commission, post a cash bond and undertaking in the amount and upon the terms which are required above with respect to an appeal bond.

4. No appeal bond or cash bond and undertaking, nor the liabilities of the surety or appellant thereunder, shall be exonerated or released until all amounts and liabilities prescribed therein have been fully paid and satisfied.

D. Within three business days following the filing with the Navajo Nation Supreme Court of any appeal from a Commission proceeding, the Clerk of such Court shall, in all cases other than those in which ONLR is not either the appellant or appellee, cause copies of the notice of appeal and all other documents filed in connection therewith to be sent to the ONLR Director and the Attorney General of the Navajo Nation. ONLR shall have an unconditional right to intervene and participate as amicus in the appeal proceedings upon timely application therefor by motion lodged with the Navajo Nation Supreme Court. ONLR's right of participation shall be coextensive with that of the parties to the appeal, including the right to file opening, answering and reply briefs, and the right to present oral argument to the Court.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

#### **Cross References**

Navajo Nation Healthy Start Act of 2008, 15 N.N.C. §§ 701-708.

#### **Annotations**

##### **1. Exhaustion of remedies**

Exhaustion requirement was met by consideration of dispute between Navajo

Nation and electric utility over application of Navajo Preference in Employment Act (NPEA) to employment practices at power plant on leased tribal trust land and Navajo Nation Supreme Court's determination of tribal jurisdiction was thus properly the subject of federal review. *Arizona Public Service Co. v. Aspaas*, 77 F.3d 1128 (9th Cir.(Ariz.) 1995).

#### **§ 614. Non-Navajo spouses**

A. When a non-Navajo is legally married to a Navajo, he or she shall be entitled to preference in employment under the Act. Proof of marriage by a valid marriage certificate shall be required. In addition, such non-Navajo spouse shall be required to have resided within the territorial jurisdiction of the Navajo Nation for a continuous one year period immediately preceding the application for Navajo preference consideration.

B. Upon meeting the above requirements, such consideration shall be limited to preference in employment where the spouse would normally be in a pool of non-Navajo workers. In this instance, Navajo preference would place the non-Navajo spouse in the applicant pool of Navajos for consideration. However, preference priority shall still be given to all Navajo applicants who meet the necessary job qualifications within that pool.

C. Non-Navajo spouses having a right to secondary preference under this Section shall also have and enjoy all other employment rights granted to Navajos under the Act, it being understood that Navajos retain a priority right with respect to provisions of the Act concerning preferential treatment in employment opportunities.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

#### **Annotations**

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

"This responsibility is to all people within the Nation, whether Navajo or non-Navajo. Consistent with this view, the Court interprets the NPEA to protect all employees within the Nation, including non-Indians." *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-footnote 1 (Nav. Sup. Ct. October 19, 2007), citing *Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05, slip op. at 3 (Nav. Sup. Ct. March 23, 2006); and *Staff Relief, Inc. v. Polacca*, No. SC-CV-86-98, slip op. at 4-5 (Nav. Sup. Ct. August 18, 2000).

#### **§ 615. Polygraph test**

A. No person shall request or require any employee or prospective employee to submit to, or take a polygraph examination as a condition of obtaining employment or of continuing employment or discharge or discipline in any manner an employee for failing, refusing, or declining to submit to or take a polygraph examination.

B. For purposes of this Section, "polygraph" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question individuals for the purpose of determining truthfulness. This provision shall not apply to federal or state government employees.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

**Note.** The words "lie detector" were changed to "polygraph".

#### **§ 616. Rules and regulations**

The Human Services Committee of the Navajo Nation Council is authorized to promulgate rules and regulations necessary for the enforcement and implementation of the provisions of this Act. The Commission is hereby delegated the authority to adopt and implement, on its own initiative and without any approval, rules of procedure and practice governing the conduct of proceedings under § 611 of the Act, provided that such rules are consistent with the provisions of the Act.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

**Note.** Slightly reworded for purposes of statutory form.

#### **Annotations**

##### **1/2. Construction and application**

"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).

##### **1. Pro se representation**

"If the Criminal Code prohibits corporate pro se representation, the Commission cannot allow it under its rules. Though the Labor Commission is authorized to create rules to govern its proceedings, 15 N.N.C. § 616 (2005), its rules cannot violate provisions of the Navajo Preference in Employment Act." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 9 (Nav. Sup. Ct. August 7, 2006).

##### **2. Criminal code**

"Similarly, the Commission may not, through its rules, allow parties or their representatives to violate other statutes, particularly prohibitions in the Criminal Code." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 9-10 (Nav. Sup. Ct. August 7, 2006).

### **3. Privacy and Access to Information Act**

"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 Commission has discretion to adopt rules to govern its own proceedings, 15 N.N.C. § 616 (2005), and therefore may decide whether to close a particular hearing due to the revelation of potentially sensitive information through witness testimony. The Act does not bar that discretion. If the Navajo Nation Council wishes to control access to Commission hearings, it may do so by amending the Act of the Navajo Preference in Employment Act or by passing separate legislation. 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).

### **§ 617. Prior inconsistent law repealed**

All prior Navajo Nation laws, rules, regulations, and provisions of the Navajo Nation Code previously adopted which are inconsistent with this Act are hereby repealed.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

### **§ 618. Effective date and amendment of the Act**

A. The effective date of this Act shall be 60 days after the passage of the Act by the Navajo Nation Council and shall remain in effect until amended or repealed by the Navajo Nation Council.

B. Any amendment or repeal of the Act shall only be effective upon approval by the Navajo Nation Council, and shall not be valid if it has the effect of amending, modifying, limiting, expanding or waiving the Act for the benefit or to the detriment of a particular person.

C. Any amendment to the Act, unless the amendment expressly states otherwise, shall be effective 60 days after the passage thereof by the Navajo Nation Council.



D. The time limits prescribed in § 610 relating to filing a Charge and subsequent proceedings thereon were added by amendment adopted by the Navajo Nation Council subsequent to the effective date of the original Act. Notwithstanding an actual accrual date for any alleged violation of the Act which is prior to the effective date of the amendment which added the time limits in § 610 hereof, such alleged violation shall be deemed to accrue on the effective date of the foregoing amendment for purposes of all time limits set forth in § 610.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

#### **§ 619. Severability of the Act**

If any provision of this Act or the application thereof to any person, association, entity or circumstances is held invalid, such invalidity shall not affect the remaining provisions or applications thereof.

#### **History**

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

### **Chapter 8. Navajo Nation Healthy Start Act**

#### **§ 701. Short Title**

This Act shall be known as the "Navajo Nation Healthy Start Act."

#### **History**

CO-40-08, October 22, 2008. Navajo Nation Healthy Start Act of 2008.

#### **§ 702. Purpose**

The purpose of this Act is to provide for opportunities for working mothers to obtain the health benefits of breast-feeding for their infant children, themselves, and the Navajo Nation, through provision for breast-feeding or use of a breast pump, or both, within workplaces on the Navajo Nation.

#### **History**

CO-40-08, October 22, 2008. Navajo Nation Healthy Start Act of 2008.

#### **§ 703. Definitions**

A. "Breast-feeding" means the practice of allowing a working mother, with privacy and dignity, to feed her child milk from her breasts.

B. "Breast-pump" means any electric or manual device used to mechanically remove milk from a human breast.

C. "Commission" shall mean the Navajo Nation Labor Commission.

D. "Employer" shall have the same meaning as set forth in the Navajo Preference in employment act, 15 N.N.C. § 603(C).

E. "Infant child" means a child between birth and the age of twelve (12) months, who is being breast-fed by a working mother.

F. "ONLR" means the Office of Navajo Labor Relations.

G. "Working mother" means an employee, as defined in the Navajo Preference in employment Act, at 15 N.N.C. § 603 (L), who is the natural mother engages in the provision of services to an employer for compensation, whether as an employee, agent or servant.

H. "Workplace" means the place in which a working mother engages in the provision of services to an employer for compensation, whether as an employee, agent, or servant.

#### **History**

CO-40-08, October 22, 2008. Navajo Nation Healthy Start Act of 2008.

#### **§ 704. Provision for breast-feeding or use of a breast pump in the workplace**

A. All employers doing business within the territorial jurisdiction of the Navajo Nation, or engaged in any contract with the Navajo Nation, shall provide to each working mother opportunities to engage in breast-feeding of their infant child, or use of a breast pump at the workplace.

B. The provision of an opportunity to engage in breast-feeding or use of a breast pump shall consist of the following:

1. A. clean and private area or other enclosure near the employee's workspace, and not a bathroom, to allow a working mother to engage in breast-feeding or use of a breast pump; and

2. A sufficient number of unpaid and flexible breaks within the course of the workday to allow a working mother to engage in breast-feeding or use of a breast pump.

C. All employers shall, within 90 days after the effective date of this § 704, or the date on which an employer commences business within the territorial jurisdiction of the Navajo Nation, whichever is later, file with the ONLR a written plan that provides to working mothers opportunities for breast-feeding or use of a breast pump in the workplace.

D. The failure of an employer to comply with this section shall be deemed to be an adverse action against the employee, a failure of the employer to provide a safe and clean working environment, and a failure to provide

employment conditions which are free of prejudice, intimidation and harassment, for purposes of the Navajo Preferences in employment Act, 15 N.N.C. § 604 (B).

#### **History**

CO-40-08, October 22, 2008. Navajo Nation Healthy Start Act of 2008.

#### **§ 705. Enforcement**

Compliance with this Act shall be monitored and enforced by the ONLR in the same manner as set forth in the Navajo Preference in Employment Act, 15 N.N.C. § 610.

#### **History**

CO-40-08, October 22, 2008. Navajo Nation Healthy Start Act of 2008.

#### **§ 706. Hearings**

The Navajo Nation Labor Commission is authorized to conduct hearings involving allegations of violation of this Act, in the same manner as set forth in the Navajo Preference in Employment Act, 15 N.N.C. § 611.

#### **History**

CO-40-08, October 22, 2008. Navajo Nation Healthy Start Act of 2008.

#### **§ 707. Remedies and sanctions**

If, following notice and hearing, the Commission finds that an employer has violated this Act, the Commission is authorized to enter one or more remedial orders, in the same manner as set forth in the Navajo Preference in Employment Act, 15 N.N.C. § 612.

#### **History**

CO-40-08, October 22, 2008. Navajo Nation Healthy Start Act of 2008.

#### **§ 708. Appeal and stay of execution**

Any party may appeal a decision of the Commission to the Navajo Nation Supreme Court in the same manner as set forth in the Navajo Preference in Employment Act, 15 N.N.C. § 613.

#### **History**

CO-40-08, October 22, 2008. Navajo Nation Healthy Start Act of 2008.

### **Chapter 9. Child Labor**

#### **§ 801. Adherence to child labor laws of states**

The Navajo Nation shall adhere as nearly as may be possible to the

applicable child labor laws of the states of Arizona, New Mexico and Utah on work projects within those portions of the Navajo Nation lying within each respective state.

#### **History**

CA-53-58, § 1, August 29, 1958.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 802. Authority to promulgate additional regulations**

The President of the Navajo Nation is authorized to promulgate such additional protective regulations with respect to child labor on the Navajo Nation as he or she deems necessary and proper to protect the best interests of the Navajo Nation.

#### **History**

CA-53-58, § 2, August 29, 1958.

#### **Cross References**

The Human Services Committee of the Navajo Nation Council has the authority to promulgate regulations for the enforcement and implementation of the labor laws and policies of the Navajo Nation. See 2 N.N.C. § 604(B)(1).

### **Chapter 11. Workers' Compensation**

#### **History**

**Note.** All reference to "Workmen's Compensation" in this Chapter have been changed to "Workers' Compensation". Previous references in this Section to the "Comprehensive Employment and Training Act" ("CETA") have been deleted.

#### **§ 1001. Establishment of Workers' Compensation Act**

A. There shall be a program for workers' compensation for all employees of the Navajo Nation, including all enterprise and chapter employees, Council Delegates, chapter officials, and others as set out in 15 N.N.C. § 1002(A)(13). This program shall be known as the Navajo Nation Workers' Compensation Program.

B. This Act shall apply to all worker's compensation claims arising from an accident which occurred after the effective date of this Act and all occupational disease disablement claims arising from a last injurious exposure which occurred after the effective date of this Act.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 101, August 22, 1978.

**§ 1002. Definitions; exclusion of coverage; coverage and premium determinations**

A. Definitions. In this Act, unless the context otherwise requires:

1. "Accident" means an unforeseen event occurring without the will or design of the person whose mere act causes it; a sudden, unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause or, the cause, being known, an unprecedented consequence of it, provided, however, that no incident shall be considered an accident that does not involve a sudden and discernable physical trauma or event.

2. "Act of God" means an act occasioned exclusively by forces of nature without the interference of human agency.

3. "Administrative cost" means operational expenses associated with claims process through the Navajo Nation Workers' Compensation Program.

4. "Adoption" shall include cases where persons are treated as adopted as well as those of legal adoption.

5. "Artificial member" means a fabricated substitute replacing a diseased or missing part of the body, to include eye(s) and/or other teeth.

6. "Average weekly wage" means the earnings of the claimant in the employment in which he or she was working at the time of the injury during the period 91 days immediately preceding the date of the injury, divided by 13 weeks.

7. "Award" means the findings or decision of the Workers' Compensation Program of the amount of compensation due a claimant.

8. "Child" includes dependent natural children, step-children, adopted children and acknowledged children born out of wedlock, but does not include married children unless they are dependents.

9. "Claimant" means the injured covered worker or dependents of same in the event of death of the covered worker.

10. "Compensation" means indemnity benefits, payments for medical expense, mileage and other expenses associated with medical treatment, and death benefits.

11. "Controlled substance" means any drug so designated or defined by Navajo Nation and other applicable laws where availability or possession of such substance is restricted or prohibited.

12. "Course and scope of employment" shall mean the time, place and circumstances under which the accident occurred. An injury must arise out of and be in the course and scope of employment in order that a claim be compensable.

13. "Covered person," "covered employee," and "covered worker"

means:

a. Every person in the service of the Navajo Nation, elected, appointed or hired, and carried on the payroll of the Navajo Nation, including all enterprise and chapter employees, Council Delegates, and chapter officials;

b. Members of duly constituted committees, boards and commissions recognized by the Navajo Nation may be deemed to be covered persons and entitled to the benefits provided by the Act, provided:

(1) Such committee, board or commission member is injured or killed in the course and scope of committee, board or commission duties and is acting at the direction of the committee, board or commission; and

(2) Premium has been paid for compensation benefits for the committee, board or commission member; and

(3) The committee, board or commission has submitted documentation to the Workers' Compensation Program defining the nature and type of committee, board or commission work and the members entitled to such benefits.

c. Volunteer workers for the Navajo Nation, a tribal enterprise or a chapter may be deemed to be covered persons and entitled to the benefits provided by this Act, provided:

(1) Such volunteer is injured or killed in the course and scope of employment and is working under the direction and control of an employer; and

(2) Premium has been paid for compensation benefits for the volunteer; and

(3) The supervising employer has submitted documentation to the Workers' Compensation Program defining the nature and type of volunteer work and workers to be entitled to such benefits.

d. Consultants, independent contractors and all other persons not directly employed by the Navajo Nation, its enterprises or chapters are excluded from the coverage of the Workers' Compensation Act.

e. The determination of whether or not an individual is a "covered worker" and determination of the premium to be assessed shall be made by the Workers' Compensation Program. Premium assessment shall be governed by rules adopted by the Workers' Compensation Program with the approval of the Navajo Nation Insurance Commission.

14. "Death" is any fatality caused by an injury that occurred in the course and scope of employment.

15. "Dependents" are the following persons, and they only shall be deemed dependents under the provisions of this Act:

a. The widow/widower, if living with the deceased at the time of his or her death, or legally entitled to be supported by him or her as a dependent;

b. A child under 21 years of age, unmarried and dependent upon the deceased; or a child incapable of self-support and dependent upon the deceased;

c. A parent or grandparent, if actually dependent upon the deceased;

d. A grandchild, brother or sister, only if under 21 years of age, unmarried and dependent upon the deceased, or incapable of self-support and dependent upon the deceased;

e. A person is considered to be a dependent upon a showing of proof that a relation of dependency existed at the time of death.

16. "Disability" means the temporary or permanent inability to work.

17. "Employer" means an employer of one or more covered workers.

18. "Health care provider" means a person licensed to practice medicine by any state within the United States, or foreign country if the injury occurs outside of the United States, including a pharmacy dispensing prescribed medication, a hospital or other accredited medical facility, licensed or certified chiropractors and other recognized, properly licensed or certified medically related practitioners recognized by the Navajo Nation including traditional healing practitioners approved pursuant to the Workers' Compensation Program's rules.

19. "Impairment" means an anatomical or functional abnormality existing after the date of maximum medical improvement as determined by a medically or scientifically demonstrable finding and based upon the most recent edition of the American Medical Association's guide to the evaluation of permanent impairment or comparable publications of the American Medical Association.

20. "Indemnity benefits" means payments awarded pursuant to 15 N.N.C. § 1033 or 15 N.N.C. § 1048.

21. "Injury" or "injuries" means disability resulting from an accident or occupational disease.

22. "Maximum medical improvement" means the date after which further recovery from or lasting improvement to an injury can no longer be reasonably anticipated based upon reasonable medical probability as determined by a health care provider selected by the Workers' Compensation Program.

23. "Minor employee" shall mean a minor working at an age and at an occupation legally permitted. Such minor shall be deemed at the age of

majority for the purpose of this Act.

24. "Occupation" means any vocation for which the claimant is or becomes reasonably fitted to by education, training, or experience.

25. "Occupational disease" means a bodily disease which results directly from the employment or the conditions under which work was performed, which is shown to a reasonable degree of medical certainty to be as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the hazard to which the worker would not have been equally exposed to outside of the employment. The disease need not have been foreseen or expected but after its contraction must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence.

26. "Parent or grandparent" means the natural or adoptive father or mother or the natural or adoptive grandfather or grandmother of the deceased employee.

27. "Permanent partial disability" means a condition whereby a claimant, by reason of injury arising out of and in the course and scope of employment, suffers a permanent impairment.

28. "Permanent total disability" means complete incapacity to engage in an occupation as a result of an occupational injury. Independent of any other provision, the entire and irrecoverable loss of sight of both eyes, or the loss by actual severance through and above the wrist or ankle joint of both hands or feet, shall be considered permanent total disability even if the employee shall engage in an occupation.

29. "Preexisting condition" means anatomical or functional abnormality, whether physical or mental.

30. "Settlement" means the execution of a release of all claims and an agreement concerning compensation.

31. "Temporary total disability" means the inability of the claimant, by reason of an injury arising out of and in the course and scope of his or her employment, to perform his or her duties prior to the date of his or her maximum medical improvement.

32. "Week" means seven calendar days.

B. The Workers' Compensation Program may promulgate additional definitions by rule pursuant to 15 N.N.C. § 1009.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 113, August 22, 1978.

**Note.** Slightly reworded for purposes of statutory form. Previous Subsection



(13) or (M) pertaining to the use of masculine pronouns throughout this Chapter has been deleted. Previous references in this Section to the "Comprehensive Employment and Training Act" ("CETA") have been deleted.

#### **Annotations**

##### **1. Exclusive jurisdiction**

" ... [W]hen a Navajo Nation employee is injured accidentally during the course and scope of his or her employment, and files a workers' compensation claim, the jurisdiction of the Workers' Compensation Program becomes exclusive. 15 N.N.C. § 1013. Workers fall within this exclusive jurisdiction when their injuries 'arise out of and [are] in the course and scope of employment.' " *George v. Tsosie and the Navajo Nation*, No. SC-CV-30-98, slip op. at 5 (Nav. Sup. Ct. March 15, 2001).

##### **§ 1003. Acknowledgment of Act**

A. All covered workers shall be conclusively presumed to have elected workers' compensation in accordance with the terms, conditions and provisions of this Act, including acknowledgment that the Navajo Nation is a sovereign Nation for the purposes of workers' compensation, governed by the laws set forth by the Navajo Nation Council and no other workers' compensation law is applicable to injuries or death sustained by the covered workers.

B. The employer, including personnel offices of the Navajo Nation, the processing units for the employment and training programs, or the management of the enterprises and chapters shall be responsible for explaining the provisions of the Act to their workers and shall post in a conspicuous location a notice as follows:

#### NOTICE TO WORKERS

*All covered workers are hereby notified that the Navajo Nation is a sovereign Nation for the purposes of workers' compensation, governed by the laws set forth by the Navajo Nation Council and that no other workers' compensation law is applicable to injuries or death sustained by a covered worker. If you do not fully understand the terms, conditions and provisions of the Navajo Nation Workers' Compensation Act, contact your supervisor or the Workers' Compensation Program office for further details.*

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 102, August 22, 1978.

**Note.** Slightly reworded for purposes of statutory form. Previous reference in this Section to the "Comprehensive Employment and Training Act" ("CETA") have been deleted.

#### **Annotations**

##### **1. Presumption of election of coverage**

"Navajo Nation government employees are 'presumed to have elected to take workers' compensation' coverage when hired. 15 N.N.C. § 1003(A) (1995). Thus, when a Navajo Nation employee is injured accidentally during the course and scope of his or her employment, and files a workers' compensation claim, the jurisdiction of the Workers' Compensation Program becomes exclusive. 15 N.N.C. § 1013. Workers fall within this exclusive jurisdiction when their injuries 'arise out of and [are] in the course and scope of employment.' " *George v. Tsosie and the Navajo Nation*, No. SC-CV-30-98, slip op. at 5 (Nav. Sup. Ct. March 15, 2001).

#### **§ 1004. Workers' Compensation Fund—Purpose; administration**

A. There shall be a fund maintained for the sole purpose of payment for workers' compensation and administrative costs as provided herein.

B. The Fund shall be part of the Workers' Compensation Program Account maintained on the records of the Navajo Nation Financial Services Department, Window Rock, Arizona.

C. Funding shall be obtained by assessment of a percentage of that amount recovered for employee benefits, in conjunction with the Financial Services Department, and/or by assessment of charges to the Navajo Nation, its enterprises and chapters based on a specified rate adjusted annually at the beginning of each Navajo Nation fiscal year based on the loss experience of the previous fiscal year. Collection shall be made by the Financial Services Department in conjunction with assessments approved by the Navajo Nation Insurance Commission pursuant to 2 N.N.C. § 931 *et seq.*

D. Failure of an employer to pay the assessed amount within 60 days from the date of billing shall subject that employer to monthly interest payments determined by the Financial Services Department.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 104, August 22, 1978.

#### **§ 1005. Rates**

A. The rates charged shall be determined by the Insurance Commission and adjusted in accordance with the loss experience of each employer on an annual basis. Adjusted rates shall become effective at the beginning of the succeeding fiscal year following the announced adjustments.

B. The Insurance Commission, in setting rates, shall provide for reserves adequate to meet anticipated and unexpected losses, and other necessary reserves and surplus. The amount of surplus and reserves shall not be less than the sum of current incurred loss reserves, an actuarially reasonable reserve for incurred but not yet reported claims and an actuarially reasonable reserve for claims anticipated during the next 18 months, and shall not be used for any other purpose. Any unnecessary reserves and surplus shall be returned to each participating employer on a pro rata basis.

C. The Insurance Commission may, in its discretion, apply tentative assessment to new employers subject to modification in accordance with their loss experience.

D. Any employer who misrepresents to the Insurance Commission the amount of payroll upon which the premium to be paid to the Workers' Compensation Fund is based shall be liable to a penalty of 10 times the amount of the difference in premium paid and the amount the employer should have paid. The penalty shall be assessed by the Insurance Commission and payment shall be made within 30 days thereafter to the Financial Services Department and placed into the Workers' Compensation Fund.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 105, August 22, 1978.

#### **§ 1006. Custodian; duties**

A. The Financial Services Department shall be custodian of the Workers' Compensation Fund; and shall record authorized disbursements processed and paid by the Workers' Compensation Program Account.

B. Internal control procedures will be established by the Financial Services Department.

C. The Fund shall be subject to an annual audit.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 106, August 22, 1978.

#### **Cross References**

The Budget and Finance Committee of the Navajo Nation Council is authorized 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. See 2 N.N.C. § 374(B)(8).

#### **§ 1007. Payment of benefits**

The Workers' Compensation Program shall administer this Act in accordance with the terms and conditions as described herein, and shall process properly approved payments of compensation as provided for in this Act.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 107, August 22, 1978.

**§ 1008. Workers' Compensation Program—Powers and duties**

A. The Workers' Compensation Program shall be empowered to request medical reports, records and notes, police reports, autopsy reports and special investigations, engage the services of adjusters and consultants, and perform other activities as may be needed to process any claim for compensation or to further the intent of this Act. Payments for expenses associated with these activities shall be made at the direction of the Workers' Compensation Program.

B. Complete and accurate administrative records and claim files shall be maintained on all activities relating to the Workers' Compensation Program. All closed files shall be preserved for six years.

**History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 108, August 22, 1978.

**Note.** Slightly reworded for purposes of statutory form.

**§ 1009. Promulgation of rules**

A. The Workers' Compensation Program, subject to approval by the Insurance Commission and Government Services and Budget and Finance Committees of the Navajo Nation Council, shall promulgate rules necessary to implement the provisions of this Act.

B. The Program Director shall hold such hearings as may be necessary to gather information relating to the purposes of the Navajo Nation Workers' Compensation Act, compel attendance at such hearings, and shall refer violations of this Act or the Program's rules to the Navajo Nation Department of Justice for enforcement action.

C. It is unlawful to violate the provisions of the Workers' Compensation Act or any of the rules adopted to implement it. Violations shall be punishable by fines, or injunctive relief or any other remedy provided for in the rules or other remedies authorized by the laws of the Navajo Nation.

**History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 109, August 22, 1978.

**Note.** Slightly reworded for purposes of statutory form.

**§ 1010. Administration conference/hearing process**

A covered person, aggrieved by any final written decision of the Workers' Compensation Program, may request an administrative conference and hearing as applicable, regarding his or her claim subject to the provisions of this

Section. The covered person's right to be heard is contingent upon compliance with all requirements, including filing deadlines of the Workers' Compensation Program's Administrative Conference/Hearing Process.

A. Administrative Conference

1. A covered person disputing a decision rendered by the Program must, within 30 calendar days after the issuance of the Program's written decision, request, in writing, that an administrative conference be scheduled among the covered person, the Workers' Compensation Program Director and the Insurance Services Department Director. The request for a conference shall be sent to the Workers' Compensation Program Director.

2. The covered person's signed request for an administrative conference must include:

- a. The name and mailing address of the covered person;
- b. A brief summary of the relevant facts;
- c. A brief statement of the disputed issues; and
- d. A brief statement of the relief sought.

3. Within 10 working days of receiving a request for an administrative conference, the Program and the covered person will attempt, in good faith, to schedule a mutually satisfactory time and place for the conference.

4. The conference is designed to give the covered person and the Program an opportunity to identify the disputed issues and attempt to reach a mutually satisfactory agreement. In light of the intent and purpose of the conference, no legal representation, of the covered person, the Program, or the Insurance Services Department will be allowed at the conference.

5. If the covered person and the Program reach a mutually satisfactory agreement, the Program will present a written document outlining the terms of the agreement to the covered person for signature. Any agreement reached by the parties shall constitute an administrative resolution of the covered person's claim.

6. If the covered person and the Program fail to reach a mutually satisfactory agreement, the Program will present a written document summarizing the administrative conference to the covered person. Upon receipt of the document, the covered person may file a request for a hearing with the Navajo Nation Office of Hearings and Appeals. No other means of review of the Program's decision shall be permitted.

7. Failure of the covered person to file a written request for a hearing with the Office of Hearings and Appeals, within 30 calendar days of receipt of the summary of the administrative conference, shall result in forfeiture of his or her right to a hearing before the Navajo Nation Office of Hearings and Appeals.

## B. Hearing Request

1. Before any hearing may be scheduled by the Office of Hearings and Appeals, the covered person must satisfy the following conditions:

a. The covered person and the Program must have failed to reach a mutually satisfactory agreement at the conference; and

b. The covered person must have filed a written request for hearing with the Office of Hearings and Appeals within 30 calendar days as provided for in § 1010(A)(6).

2. The written request for hearing must include:

a. The name and mailing address of the covered person;

b. A brief summary of the relevant facts;

c. A brief statement of the disputed issues; and

d. A brief statement of the relief sought.

3. The Office of Hearings and Appeals, within 10 working days of receiving the request for a hearing, shall schedule a time and place for the hearing and shall inform the covered person, or his or her legal representative and the Program, of the time and place of the hearing. The notice of hearing shall be sent by first class mail.

4. The covered person may be represented by any individual licensed to practice law in the Courts of the Navajo Nation.

5. A full and complete record, by way of a recording device or a stenographer, shall be kept of all proceedings held before the Office of Hearings and Appeals.

6. The hearing officer shall render a written decision within 30 calendar days after the close of the hearing and shall send a written copy of the decision to the covered person and the Program, by first class mail.

7. Any decision rendered by the Office of Hearings and Appeals, shall be subject to review only by the Supreme Court of the Navajo Nation as set forth in 15 N.N.C. § 1011.

### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 110, August 22, 1978.

### **§ 1011. Final appeal to the Navajo Nation Supreme Court**

The decision of the hearing officer shall be final, with a right of

appeal only to the Supreme Court of the Navajo Nation.

A. Upon receipt of a written decision from the Office of Hearings and Appeals, either the Program or the covered person may appeal the decision to the Supreme Court of the Navajo Nation.

B. The party challenging the hearing officer's decision shall file a written notice of appeal, in the form prescribed by the Navajo Rules of Civil Appellate Procedure, within 30 calendar days after the Office of Hearings and Appeals issues its written decision to the parties.

C. The Navajo Rules of Civil Appellate Procedure shall govern the appeal process.

D. Any appeal filed with the Supreme Court of the Navajo Nation shall be decided on the appellate record, and the Supreme Court shall limit its review to questions of law.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 111, August 22, 1978.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1012. Annual report**

A. Prior to the end of each Navajo Nation fiscal year the Workers' Compensation Program shall make a report to the Insurance Commission and Government Services and Budget and Finance Committees of the Navajo Nation Council for the preceding fiscal year. The report shall include:

1. A statement of the number of claims filed and awards made;
2. A general statement of the causes of reported accidents or occupational disease;
3. A detailed statement of disbursements from the Workers' Compensation Program Fund Account; and
4. Other matters which the Program deems proper to call to the attention of the Insurance Commission, including recommendations.

B. The Workers' Compensation Program shall provide each employer a quarterly "Experience Report" providing information as to workers injured, amounts paid for compensation, and an annual explanation of the rate-setting formula.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 112, August 22, 1978.

### **§ 1013. Compensation as exclusive remedy**

The right to receive workers' compensation pursuant to the provisions of this Act for injuries or death sustained by a claimant shall be the exclusive remedy against employers.

#### **History**

CJA-18-00, January 28, 2000. Navajo Nation Council affirmed that the statutory workers' compensation laws provide the exclusive remedy within the Navajo Nation for employee injuries occurring in the work place.

CO-83-97, October 22, 1997.

ACAU-94-78, § 114, August 22, 1978.

#### **Annotations**

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

"A claimant who initially invokes the jurisdiction of the Program should be required to exhaust all remedies before that forum." *George v. Tsosie and the Navajo Nation*, No. SC-CV-30-98, slip op. at 5 (Nav. Sup. Ct. March 15, 2001).

### **§ 1014. False statement or representation**

If, in order to obtain any compensation under the provisions of this Act, any claimant who knowingly makes a false statement or representation, such claimant shall forfeit all rights to such compensation upon proof that the offense was committed, and may be referred to the appropriate prosecutorial or law enforcement agency.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 116, August 22, 1978.

**Note.** Previously numbered § 1015.

### **§ 1015. Medical information**

A. Information obtained by the attending physician, surgeon, hospital or other medical facility or personnel while in attendance of the injured worker shall not be a privileged communication if such information is determined by the Workers' Compensation Program to be necessary for a proper understanding and evaluation of the claim.

B. The Workers' Compensation Program shall have the right to request a full and complete report from the physician, surgeon, hospital or other medical facility or personnel at times and in the form and details as deemed necessary and shall have a right to present specific questions required to evaluate the claim.



C. The covered worker acknowledges the right of the Workers' Compensation Program to obtain such information by the covered worker's election of the Workers' Compensation Act

D. The Workers' Compensation Program shall maintain all information obtained pursuant to this Section as confidential information, except as to the claimant.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 117, August 22, 1978.

**Note.** Previously numbered § 1016.

#### **§ 1016. Report of accident**

A. When an accident occurs, the injured worker shall immediately, or as soon as possible thereafter, report the accident and the injury resulting therefrom to his or her immediate supervisor, who in turn shall report it to the employer.

B. All accidents resulting in injury or death must be reported upon an approved Workers' Compensation Injury Report form to the Workers' Compensation Program within five working days of notice of the occurrence to the employer. In no event will an employer retaliate against an employee for reporting an accident or giving notice of such an occurrence.

C. The Navajo Nation Safety/Loss Control Program shall cooperate with employer-based safety programs in the identification of accident trends, recommendation of sound safety practices, and enhancement of safety education.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 118, August 22, 1978.

**Note.** Previously numbered § 1017.

#### **Cross References**

Notice to employees, see ACAU-94-78, Exhibit "A", August 22, 1978.

#### **§ 1017. Disclosure of preexisting condition**

A. All covered workers shall disclose to the employer any preexisting condition at the time of hire and before commencing employment.

B. Any claim for aggravation of a preexisting condition which was not disclosed may be denied by the Workers' Compensation Program under this Act if that person had knowledge of the preexisting condition and intentionally failed

to disclose the preexisting condition.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 103, August 22, 1978.

**Note.** Previously numbered § 1018.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1018. Right to compensation and medical treatment benefits**

A. Every claimant coming within the provisions of this Act who is killed or injured while in the course and scope of his or her employment, wherever the injury or death occurred, unless the injury or death was purposely self-inflicted or otherwise limited or excluded by the terms and conditions of this Act, shall be entitled to receive, and shall be paid compensation as provided in this Act.

B. The Workers' Compensation Program shall pay for treatment by a health care provider reasonably required at the time of the injury, and during the period of disability attributable thereto, provided that such treatment is medically necessary and reasonable and is not covered by any other valid and collectible insurance or other benefit program to which the claimant is otherwise entitled.

C. In no event shall the Workers' Compensation Program be liable for expenses or reimbursement for medical, surgical, hospital or related services to which the injured worker may be entitled to receive from or through the United States Public Health Service or any federally funded or sponsored Indian Health Service program, including referrals; nor in any event shall the Workers' Compensation Program be considered or understood to be an "alternative source" for payment of the expense of such services.

#### **History**

CO-83-97, October 22, 1997.

CF-2-82, February 3, 1982.

ACAU-94-78, § 119, August 22, 1978.

**Note.** Previously numbered § 1019.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1019. Time limit for filing of claims**

A. No claims for injury or death shall be allowed unless filed with the Workers' Compensation Program within one year from the date of occurrence.

B. Claims for occupational disease shall be made within one year from

date of diagnosis by a physician accepted by the Workers' Compensation Program; but in no event, longer than three years from the date a covered worker terminates his or her employment.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 143, August 22, 1978.

**Note.** Previously numbered § 1020.

#### **§ 1020. Burden of proof**

The burden of proof, except as set forth in 15 N.N.C. § 1021, shall rest upon the covered claimant to prove:

A. That the injury complained of or death was a result of an accident or occupational disease; and

B. That it arose in the course and scope of his or her employment.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 120, August 22, 1978.

**Note.** Previously numbered § 1021.

#### **Annotations**

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

See generally, *George v. Tsosie and the Navajo Nation*, No. SC-CV-30-98, (Nav. Sup. Ct. March 15, 2001).

#### **§ 1021. Presumptions**

When a covered worker is found dead by accident under circumstances indicating that the accident took place within time and place limits of employment and no clear and convincing evidence is present to exclude coverage as provided herein, it shall be presumed that death arose out of employment and compensation shall be paid.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 121, August 22, 1978.

**Note.** Previously numbered § 1022.

#### **Annotations**

## **1. Off-duty injuries**

"... [E]mployment [of an off-duty Ranger] does not arise out of the emergency." *Tso, et al. v. The Workmen's Compensation Employee Benefit Review Board of the Navajo Nation*, 5 Nav. R. 89, 92 (Nav. Sup. Ct. 1986).

### **§ 1022. Acting under employer's directions**

Any covered person who is injured or killed while following the directions of his or her employer shall be considered to have been in the course and scope of his or her employment in furtherance of the employer's interest and shall be entitled to compensation.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 122, August 22, 1978.

**Note.** Previously numbered § 1023.

### **§ 1023. Going to and returning from work**

An accident occurring to a covered worker while on the way to or from work is within the course and scope of his or her employment if such traveling is in connection with his or her work from the time his or her travel starts or ends either at his or her place of work or his or her home. An accident will not be considered to be in the course and scope of employment if the worker deviates from a reasonably direct route of travel, not in the interest of the employer, or during other activities within the travel, not necessitated by the employment activity and not in the interest of the employer.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 124, August 22, 1978.

**Note.** Previously numbered § 1025.

#### **Annotations**

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

See generally, *George v. Tsosie and the Navajo Nation*, No. SC-CV-30-98, (Nav. Sup. Ct. March 15, 2001).

### **§ 1024. Aggravation of preexisting condition**

A. If a covered worker is suffering from a preexisting condition at the time an accident occurs and the preexisting condition is aggravated thereby, the worker is eligible for compensation, subject to the provisions of 15 N.N.C. § 1017.

B. For the purpose of settlement for permanent partial or permanent total disability, the amount of the award for that disability as set forth in 15 N.N.C. § 1048 may be reduced or denied in its entirety by the Workers' Compensation Program in consideration of the following:

1. A prior settlement from any source for the same preexisting condition;

2. The difference between the degree of disability of the covered worker before the accident or occupational disease and the worker's present degree of disability.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 123, August 22, 1978.

#### **§ 1025. Occupational disease**

An occupational disease, as defined in 15 N.N.C. § 1002(A)(25), shall be eligible for compensation only if there is a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 125, August 22, 1978.

**Note.** Previously numbered § 1026.

#### **§ 1026. Unsanitary or injurious practices or refusal of a claimant to submit to treatment**

A. No compensation shall be payable for the death of a covered worker if his or her death is caused by an unreasonable refusal to submit to any reasonable surgical treatment or medical aid.

B. The Workers' Compensation Program may reduce or suspend the compensation of a claimant who persists in unsanitary or injurious practices tending to imperil or retard his or her recovery, or who refuses to submit to medical or surgical treatment reasonably necessary to promote his or her recovery.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 126, August 22, 1978.

**Note.** Previously numbered § 1027.

**§ 1027. Substance abuse related injury or death**

No compensation of any kind shall be paid for any injury or death substantially related, as defined in 15 N.N.C. § 1028, to the intentional use or abuse, by the covered worker, of alcohol, controlled substances or chemicals.

**History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 144, August 22, 1978.

**Note.** Previously numbered § 1028.

**§ 1028. Determination of substance abuse**

The use or abuse of alcohol, controlled substances or chemicals shall be deemed substantially related to an injury or death if:

A. Objective testing of the breath, blood or urine of the covered worker demonstrates the use or abuse of alcohol, controlled substances or chemicals and any competent evidence establishes that it is more probable than not that the use or abuse of alcohol, controlled substances or chemicals contributed to the occurrence of the accident that caused the injury or death to the covered worker; or

B. Subjective observations of the covered worker, by co-workers, supervisors, medical or emergency personnel or other witnesses, the statements, behavior or actions of the covered worker or other direct or circumstantial evidence establishes by clear and convincing evidence that the covered worker's use or abuse of alcohol, controlled substances or chemicals contributed to the occurrence of the accident that caused the injury or death to the covered worker; or

C. Such use or abuse of alcohol, controlled substances or chemicals, by the covered worker resulted in a criminal conviction by any lawful jurisdiction.

**History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 149, August 22, 1978.

**Note.** Previously § 1029. Intoxication. All new language.

**§ 1029. Injury or death by act of God or natural causes**

A. Injury or death deemed an "Act of God" which arises within the course and scope of employment shall be considered compensable.

B. Injury or death which results from natural causes, i.e., heart attack, stroke, or other natural body function failures, not incidental to the circumstances or conditions of employment, is not compensable.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 148, August 22, 1978.

**Note.** Previously numbered § 1030.

#### **§ 1030. Periodic medical examination of claimant; effect of refusal or obstruction of examination or treatment**

A. A claimant entitled to compensation shall submit himself or herself for medical examination selected and paid for by the Workers' Compensation Program from time to time at a place reasonably convenient for the worker, if and when requested by the Workers' Compensation Program.

B. The request for the medical examination shall fix a time and place having regard to the convenience of the claimant, his or her physical condition and ability to attend. The claimant may have a physician present at the examination if procured and paid for by the claimant.

C. If the claimant refuses to submit to the medical examination or obstructs the examination, his or her right to compensation shall be suspended until the examination has been made, and no compensation shall be payable during or for such period.

D. Any physician who conducts or is present at the medical examination may be requested by the Workers' Compensation Program to testify as to the result thereof; and the reasonable cost of this appearance shall be at the expense of the Workers' Compensation Program.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 127, August 22, 1978.

**Note.** Previously numbered § 1031.

#### **§ 1031. Liability of third person to claimant; subrogation powers**

A. If a claimant entitled to compensation under this Act is injured or killed by the negligence or wrong doing of another, such claimant may pursue his or her remedy against such other person while receiving compensation under this Act.

B. The Navajo Nation shall have the right of subrogation for the amount of compensation and administrative costs paid or incurred under this Act.

C. If the claimant entitled to compensation under this Act does not pursue a remedy against such other person by instituting an action within one year after the cause of action accrues, the claim against such other person may be brought by the Navajo Nation. Such a claim shall be controlled by the Navajo Nation and shall be limited to the compensation and administrative costs paid or incurred.

D. If a claimant proceeds against such other person, compensation shall be paid as provided in this Act and the Navajo Nation shall have a lien on the amount actually collectable from such other person to the extent of such compensation and administrative costs paid or incurred.

E. Compromise of any claim by the claimant at an amount less than the compensation paid shall be made only with written approval of the Workers' Compensation Program.

### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 128, August 22, 1978.

**Note.** Previously numbered § 1032.

### **Annotations**

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

"Therefore we hold that an injured employee is not barred from seeking *nalyeeh* from a third-party tortfeasor merely because he or she received workers' compensation from his or her employer. *Nalyeeh* is not satisfied merely by receipt of workers' compensation from the employer when a third party has some responsibility for the accident." *Benally v. Mobil Oil Corporation, nka ExxonMobil Corporation*, No. SC-CV-05-01, slip op. at 9 (Nav. Sup. Ct. November 24, 2003).

"In *Largo* we recognized the right of a tribal employee to seek *nalyeeh* from a third-party under certain procedural requirements set out in 15 N.N.C. § 1032 [now 15 N.N.C. § 1031]. ...Therefore, an injured party could seek *nalyeeh* from a third-party, and receipt of workers' compensation would not be a bar." *Benally v. Mobil Oil Corporation, nka ExxonMobil Corporation*, No. SC-CV-05-01, slip op. at 9 (Nav. Sup. Ct. November 24, 2003).

"Section 1032(D) [now Section 1031(C)] was amended in 1997. Navajo Nation Council Res. No. CO-83-97 (October 22, 1997). The amendments do not affect the ruling in this case because the injury here happened in 1996. The only substantive change made to Section 1032(B) [now Section 1031(C)] is that the statute now expressly states that a claim is in the 'control' of the Navajo Nation once it has been assigned the claim. ...[T]he Navajo Nation maintains control of the claim, but even such control would not limit or terminate an injured worker's interest in the claim." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 11-12 (Nav. Sup. Ct. April 11, 2001).



"The stated policy is in accord with Navajo common law principles. ... 'If a Navajo was injured by the act of another, the victim could demand *nalyeeh*, which is a form of compensation or reparation.' ... This means the injured person has a personal right to seek *nalyeeh* for physical injuries contracted." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 5 (Nav. Sup. Ct. April 11, 2001).

"While Section 1032(B) [now Section 1031(C)] does not expressly permit the Navajo Nation to reassign a claim to the injured worker, we believe that sound public policy demands that personal injury suits be brought by the injured parties themselves." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 5 (Nav. Sup. Ct. April 11, 2001).

"The Navajo Nation Workers' Compensation Program provides a procedure for the fair and orderly resolution of injury claims. A worker may bring an action in court against a third-party for a covered injury without compromising receipt of workers' compensation benefits. 15 N.N.C. § 1032(A) (1978)." Note: Section 1032(A) is now Section 1031(C). *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 2-3 (Nav. Sup. Ct. April 11, 2001).

See generally, *George v. Tsosie and the Navajo Nation*, No. SC-CV-30-98, (Nav. Sup. Ct. March 15, 2001).

## **2. Limitations**

"Section 1032(B) [now Section 1031(C)] is an assignment statute. Its function is to assign an individual's claim to the Navajo Nation, while [7 N.N.C.] Section 602(a)(1) controls the time period for bringing a personal injury action. Thus, Section 1032(B) [now Section 1031(C)] is not a statute of limitations and our courts cannot use it to bar an injured worker's suit." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 4 (Nav. Sup. Ct. April 11, 2001).

## **3. Assignment, generally**

"We hold that an injured worker may initiate a lawsuit against a third-party tortfeasor after the claim has been assigned, as long as the worker files the lawsuit and joins the Navajo Nation, as the real party in interest, before the statute of limitations expire. Such a procedure is allowed by Rule 17(a), Navajo Rules of Civil Procedure.... " *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 10 (Nav. Sup. Ct. April 11, 2001).

"While Section 1032(B) [now Section 1031(C)] does not expressly state that the Navajo Nation may reassign a claim to an injured worker, we find that Navajo Nation public policy and Navajo common principles require reassignment of a claim ..... Accordingly, we hold that Section 1032(B) permits the Navajo Nation to reassign a claim to an injured worker." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 6 (Nav. Sup. Ct. April 11, 2001).

"After one year, Section 1032(B) [now Section 1031(C)] assigns the worker's right to sue to the Navajo Nation, but the tortfeasor's liability to the injured party is not extinguished by the statutory assignment. Thus, the Navajo Nation can sue the tortfeasor, recover damages, deduct its lien, and release

the remainder to the injured worker." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 4 (Nav. Sup. Ct. April 11, 2001).

#### **4. Remedies**

"We realize that Section 1032(B) [now Section 1031(C)] does not expressly state what happens to the worker's interest in recovery beyond the amount of benefits paid, such as claims for pain and suffering and emotional distress. We again tap into the Navajo common law principle of *nalyeeh* to conclude that the injured worker keeps an interest in such claims for the duration of the statute of limitations." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 9 (Nav. Sup. Ct. April 11, 2001).

#### **§ 1032. Waiting period**

Indemnity benefits shall be paid under the provisions of this Act only for an injury which results in the claimant's disability for more than seven consecutive days. If the period of the claimant's disability lasts for more than 28 consecutive days from the date of his or her injury, indemnity benefits shall be paid from the date of disability. A claimant may not recover indemnity benefits for the period of time that he or she is compensated by paid leave. No employer shall allow a claimant to collect more than one hundred percent (100%) of his or her regular earnings. Paid leave time taken shall apply against the waiting period for indemnity payments.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 129, August 22, 1978.

**Note.** Previously numbered § 1033.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1033. Temporary total disability**

A. Temporary total disability shall be paid at sixty-six and two-thirds percent (66 2/3%) of the "average weekly wage" to a maximum of four hundred dollars (\$400.00) per week.

B. Persons defined in 15 N.N.C. § 1002(A)(13), without other regular employment covered by this Act, shall be deemed to be compensated at the prevailing Navajo Nation minimum wage, subject to the formula established in 15 N.N.C. § 1002(A)(6).

C. When considering the average weekly wage, as defined in 15 N.N.C. § 1002(A)(6), where for exceptional reasons the method would be unfair, either to the claimant or the employer, such other method of computing average weekly wage may be resorted to as will most nearly approximate the amount which the claimant would be earning were it not for the disability.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 146, August 22, 1978.

**Note.** All new language replaces previous § 1034.

**Note.** Slightly reworded for purposes of statutory form.

**§ 1034. Condition permanent, stationary and rateable; termination of benefits**

When a claimant's injury reaches maximum medical improvement as defined in 15 N.N.C. § 1002(A) (22):

A. The claimant's injury shall be considered permanent, stationary and rateable;

B. The claimant shall be notified in writing that his or her injury is permanent, stationary and rateable and that all benefits, if being claimed at that time, shall cease 30 days from date of notice;

C. The claimant shall be advised of the amount payable to him or her in accordance with the terms, conditions, provisions and Benefits for Total Loss of Use of this Act;

D. The Workers' Compensation Program shall tender the payment to the claimant at the end of the 30 day termination period.

**History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 145, August 22, 1978.

**Note.** Previously numbered § 1035.

**§ 1035. Notice by claimant of absence from locality**

Any claimant leaving the locality in which he or she is receiving medical treatment without written approval from the Workers' Compensation Program may forfeit his or her right to compensation during such time.

**History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 138, August 22, 1978.

**Note.** Previously numbered § 1036.

**§ 1036. Death benefits**

If an injury or occupational disease sustained by a covered worker proximately results in his or her death within two years following his or her injury or diagnosis of occupational disease, compensation shall be paid to the

persons entitled thereto, as follows:

A. If there are eligible dependents at the time of the covered worker's death, payment shall consist of first, a lump sum, or at the claimant's election a structured settlement, as set forth in 15 N.N.C. § 1048(A)(5) and the direct payment of funeral expenses not to exceed five thousand dollars (\$5,000); or

B. If there are no eligible dependents, compensation shall be limited to direct payment of funeral expenses, not to exceed five thousand dollars (\$5,000), and the compensation benefits due up to the time of his or her death, payable to the estate of the deceased.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 130, August 22, 1978.

**Note.** Previously numbered § 1037.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1037. Line of dependency; payment of benefits**

A. The line of dependency for payment of death benefits shall be in the order set out below, provided each qualifies as a dependent under the terms and conditions as defined in 15 N.N.C. § 1002(A)(15):

1. First to the surviving widow or widower, if there are no children. If dependent children exist at time of covered worker's death, payment is to widow or widower, subject to the provisions of 15 N.N.C. § 1038;

2. If no surviving widow or widower, to a dependent child, one hundred percent (100%) of death benefit; or if more than one dependent child, to be equally distributed among such dependent children;

3. To a parent or parents, if no surviving widow or widower or eligible children, if dependent upon the deceased covered worker, one hundred percent (100%) of death benefit if only one parent; to be divided equally between both parents if both are dependent upon the deceased covered worker; or

4. If there are no eligible dependent widow or widower, children or parents, the death benefit shall be equally distributed among all other eligible dependents.

B. If a minor covered worker has no other dependents, his or her parent(s), guardian(s), or adoptive parent(s) are entitled to death benefits as defined in 15 N.N.C. § 1036(A).

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 131, August 22, 1978.

**Note.** Previously numbered § 1038.

#### **§ 1038. Apportionment of compensation**

Compensation to a dependent widow or widower shall be for the use and benefit of the widow or widower and the dependent children; and the Workers' Compensation Program may, at the time of award, apportion the compensation between them in such a way as it deems best for the interest of all dependents.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 132, August 22, 1978.

**Note.** Previously numbered § 1039.

#### **§ 1039. Artificial members**

In all cases where the injury is such as to permit the use of artificial members, including teeth and eyes, the Workers' Compensation Program shall pay all reasonable expenses connected with the artificial member.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 133, August 22, 1978.

**Note.** Previously numbered § 1040.

#### **§ 1040. Replacement of artificial members**

The Workers' Compensation Program shall, during the life of a claimant, replace or repair any artificial member or members, including dentures and artificial eyes, that were originally provided to the claimant by the Workers' Compensation Program. Replacement or repair shall not be made if the claimant fails to use reasonable care in the maintenance of his or her artificial member(s) or knowingly abuses his or her artificial member(s).

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 147, August 22, 1978.

**Note.** Previously numbered § 1041.

#### **§ 1041. Hernia; operations**

A. A claimant, in order to be entitled to compensation for a hernia, must prove:

1. That the hernia is of recent origin;
2. That this appearance was accompanied by pain;
3. That this was immediately preceded by some accidental strain suffered in the course and scope of employment; and
4. That it did not exist prior to the date of the alleged injury.

B. If the claimant, after establishing his or her right to compensation for a hernia, as provided above, elects to be operated upon, the operating fee and reasonable hospital expenses shall be paid by the Workers' Compensation Program. If the claimant elects not to be operated upon and the hernia becomes strangulated, the results of the strangulation shall not be subject to compensation.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 134, August 22, 1978.

**Note.** Previously numbered § 1042.

#### **§ 1042. Disfigurement benefits**

An additional sum not to exceed two thousand five hundred dollars (\$2,500), may be paid to a claimant for serious permanent disfigurement resulting from an injury. The application of the claimant will be reviewed by the Workers' Compensation Program and an award made as the Workers' Compensation Program deems just. Disfigurement benefits shall not be paid in the event of the claimant's death.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 135, August 22, 1978.

**Note.** Previously numbered § 1043.

#### **§ 1043. Vocational rehabilitation services**

In addition to the compensation provided, a claimant who is unable to return to his or her former job because of his or her injury may receive reasonable vocational rehabilitation services, including counseling and training, as the Workers' Compensation Program deems necessary to restore him or her to suitable employment. Such additional benefits shall not exceed five thousand dollars (\$5,000) and direct payments to service providers shall be made wherever possible.

### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 136, August 22, 1978.

**Note.** Previously numbered § 1044.

### **§ 1044. Eyewear**

The Workers' Compensation Program shall pay for frames and/or lenses of a like kind and quality which were damaged as a result of an accident which results in a compensable injury to the claimant during the course and scope of his or her employment, but shall not pay for eye examinations unless there is a potential injury to the claimant's eye(s) from the accident.

### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 140, August 22, 1978.

**Note.** Previously numbered § 1045.

### **§ 1045. Clothing**

A claimant who incurs damages to an article of clothing worn during an accident which results in a compensable injury shall be paid for replacement clothing of a like kind and quality.

### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 141, August 22, 1978.

**Note.** Previously numbered § 1046.

### **§ 1046. Travel for treatment**

A. A claimant shall be compensated for travel, meals and lodging to receive authorized treatment at a rate consistent with the travel allowance authorized by the established Navajo Nation travel policies in effect at the time of the travel.

B. Actual mileage shall be paid based on mileage shown on mileage charts and maps recognized by rules adopted by the Program, plus reasonable local mileage, not to exceed 20 miles per trip, upon presentation of a signed statement by the claimant showing date or dates and points traveled.

C. Meals and lodging shall be paid or reimbursed for claimant only, unless his or her condition warrants a relative or other person to assist; payment or reimbursement for this additional person shall be at the discretion of the Workers' Compensation Program.

D. Land or air ambulance charges for claimant shall be recognized and payable under this Act only if approved by the Workers' Compensation Program.

E. All claims for payment or reimbursement must be supported by documentation consistent with the Navajo Nation travel policies.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 142, August 22, 1978.

**Note.** Previously numbered § 1047. New language added.

#### **§ 1047. Indemnity benefits exempt from creditors and writs**

A. Except for amounts due, pursuant to a Navajo Nation court order for child support, indemnity benefits shall be exempt from claims of creditors and from any writs of attachment, garnishment or execution.

B. Indemnity benefits shall be paid only to a claimant or his or her personal representative or such other person(s) as the Workers' Compensation Program may, under the terms of this Act, appoint to receive or collect the same, or an individual designated by a Navajo Nation court for collection of child support.

C. Indemnity benefits shall be diverted for payment of child support only to a maximum of fifty percent (50%) of the claimant's weekly indemnity benefit, or twenty-five percent (25%) of the claimant's weekly indemnity benefit if the claimant is legally required to support minor dependents other than those for whom child support is sought.

#### **History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 137, August 22, 1978.

**Note.** Previously numbered § 1048. All new language.

#### **§ 1048. Permanent partial disability; permanent total disability**

##### **A. Scheduled Benefits**

1. A schedule of benefits is hereby established.

2. A total loss of use of a member exists whenever, by reason of injury, such member no longer possesses any substantial utility as a member of the body.

3. Permanent partial disability benefits are measured by multiplying the gross average weekly wage times the number of weeks reflected in the Benefits for Total Loss of Use.



4. Benefits for Total Loss of Use:

a. ARM

(1) Dextrous

(a) At or near shoulder.....180 weeks

(b) At elbow.....150 weeks

(c) Between elbow and wrist.....141 weeks

(2) Nondextrous

(a) At or near shoulder.....159 weeks

(b) At elbow.....141 weeks

(c) Between elbow and wrist.....132 weeks

b. HAND

(1) Dextrous.....111 weeks

(2) Nondextrous.....99 weeks

c. THUMB

(1) Total.....51 weeks

(2) At proximal joint.....30 weeks

(3) At distal joint.....21 weeks

d. FIRST FINGER

(1) Including metacarpal.....24 weeks

(2) At proximal joint.....18 weeks

(3) At second joint.....15 weeks

(4) At distal joint.....12 weeks

e. SECOND FINGER

(1) Including metacarpal.....21 weeks

(2) At proximal joint.....15 weeks

(3) At second joint.....12 weeks

(4) At distal. Joint.....9 weeks

f. THIRD FINGER

- (1) Including metacarpal.....15 weeks
- (2) At proximal joint.....12 weeks
- (3) At second joint.....9 weeks
- (4) At distal joint.....9 weeks

g. FOURTH FINGER

- (1) Including metacarpal.....15 weeks
- (2) At proximal joint.....12 weeks
- (3) At second joint.....9 weeks
- (4) At distal joint.....9 weeks

h. ALL FINGERS-pertaining to one hand, except

- thumb.....57 weeks

i. LEG

- (1) At or near hip joint.....180 weeks
- (2) At or above knee.....141 weeks
- (3) Between knee and ankle.....120 weeks

j. FOOT

- (1) At ankle.....99 weeks

k. GREAT TOE

- (1) Including metatarsal.....36 weeks
- (2) At proximal joint.....15 weeks
- (3) At second joint.....9 weeks

l. ONE TOE

- (1) Including metatarsal.....12 weeks
- (2) At proximal joint.....9 weeks
- (3) At second joint.....9 weeks

m. ALL TOES, same foot.....36 weeks

n. EYE-ONE	
(1) Total Blindness.....	111 weeks
o. EYE-BOTH	
See permanent total disability	
p. EAR	
(1) Total deafness, one ear.....	36 weeks
(2) Total deafness, both ears.....	135 weeks
q. PERMANENT TOTAL DISABILITY.....	375 weeks
5. LOSS OF LIFE.....	375 weeks

**B. Permanent Partial Disability**

1. For other nonscheduled permanent impairments, a calculation of percentage of permanent partial disability is made.

2. If an injury has left a claimant with a nonscheduled permanent bodily impairment, indemnity benefits for a specified number of weeks is payable, without regard to presence or absence of wage loss in the future, and such benefits shall not be paid as a lump sum.

3. Permanent partial disability benefits for an injury to a scheduled member, are calculated by multiplying the gross average weekly wage times the number of weeks provided for in the Benefits for Total Loss of Use times the percentage of permanent impairment.

4. Permanent partial disability benefits for injury to the body as a whole are calculated by multiplying the gross average weekly wage times the number of weeks provided in the Benefits for Total Loss of Use times the percentage of permanent impairment.

C. Permanent Total Disability. An award of permanent total disability shall be in lieu of all lesser indemnity benefits that may be applicable to the injury that created the condition of permanent total disability.

**History**

CO-83-97, October 22, 1997.

ACAU-94-78, § 150, August 22, 1978.

**Note.** Previously numbered § 1049. All new language.

**Chapter 13. Navajo Technical College**

**§ 1201. Establishment; name; place; duration; seal**

A. There is established by the Navajo Nation Council of the Navajo Nation, a corporation to be known as Navajo Technical College.

B. The principal place of business of the Corporation shall be at Crownpoint, New Mexico. The Corporation may establish such other places of business as the Board may determine.

C. The duration of the Corporation shall be perpetual.

D. The Corporation shall have a corporate seal approved by the Corporation's Board of Trustees.

#### **History**

CN-58-06, November 1, 2006. The Navajo Technical College Act of 2006.

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

**Note.** Navajo Technical College was formerly known as, Crownpoint Institute of Technology, Inc., and before that, Navajo Skill Center.

#### **§ 1202. Status**

A. This Corporation is organized as a non-profit, nonmembership corporation, wholly owned by the Navajo Nation, and organized exclusively for educational, charitable and governmental purposes.

B. The Corporation is a non-profit vocational technical educational institution of the Navajo Nation government, and is to be considered part of the "Navajo Nation" for purposes of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*

#### **History**

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1203. Purposes and powers**

A. The Corporation is organized as an institution of higher learning for

the primary purpose of providing post-secondary education programs that serve both the vocational/technical and academic needs of the Navajo Nation and its citizens. These purposes incorporate appropriate related educational objectives, including on-the-job training, experiential education, student and faculty technology and scientific research programs appropriately approved by the Navajo Nation, and other socially beneficial programs to promote health care, adult education, economic development, environment preservation and enhancement, and any other activities that strengthen the Diné people or their government, or both. The Corporation is authorized to do all things appropriate to the furtherance of these purposes, including the awarding of higher education degrees appropriate to the fields of study established by the Corporation's Board of Trustees, establishing an appropriate administrative structure; establishing core values and missions; employing qualified faculty and staff essential to meeting the Corporation's purposes; establishing policies; constructing, leasing and operating buildings and other physical facilities adequate for carrying out its programs; acquiring necessary equipment, technology, and materials; and entering into intergovernmental, interagency and partnership agreements.

B. Notwithstanding any other provision of Navajo Nation law pertaining to contracting with the federal government, the Corporation is authorized to secure funds from and enter into contracts with the federal government under the Indian Self Determination and Education Assistance Act of 1975, 25 U.S.C. § 450 *et seq.*, and provided that the Corporation remains in good standing. The Corporation is further organized for the purposes of securing funds from public and private sources for support and maintenance of its educational programs, and all related purposes, and developing and implementing programs and all related purposes, and developing and implementing programs and activities not inconsistent with its status as an educational institution of the Navajo Nation, its purposes as stated herein, or with the allowable activities of organizations qualified as charitable or educational within the meaning of § 501(c)(3) or any successor section of the Internal Revenue Code,<sup>1</sup> that generate income to the Corporation to carry out its purposes.

C. The Corporation shall have the power to receive and administer funds, take and hold by bequest, devise, gift, grant, purchase or otherwise, either solely or jointly with another, any property, real, personal or otherwise or any interest therein, without limitation as to amount or value; to sell, convey or otherwise dispose of such property, and to invest, reinvest or deal with the principal and income thereof in such manner as, in the judgment of the Board, will best promote and serve the interests of the Corporation; to enter into contracts and to incur debts and liabilities up to the amount of the Corporation's assets; to sue and be sued, subject to and in conformity with the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, and provided that the Corporation shall have no power to waive the sovereign immunity of the Navajo Nation; and to do any and all other acts or things, within or without the Navajo Nation, appropriate or convenient to achieve the purposes for which it is organized or for any other lawful purposes not inconsistent therewith.

D. No substantial part of the activities of the Corporation shall consist of disseminating any political propaganda or attempting to influence legislation, nor shall the Corporation participate or intervene in any political campaign on behalf of any candidate for public office.

E. No part of the income of the Corporation shall inure to the benefit of any trustee or officer of the Corporation, or of any private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to reimburse expenses incurred in the course of such services, and to make payments and distributions in furtherance of its purposes and above-described.

F. Notwithstanding any other provision hereof, the Corporation shall have no power to engage in any activity prohibited to organizations described in § 501(c)(3) of the Internal Revenue Code <sup>1</sup> or its successor, except that so long as the Corporation is determined to be a political subdivision of the Navajo Nation within the meaning of 26 U.S.C. § 7871, it shall have the power to do any acts or things permitted of such political subdivisions.

### **History**

CN-58-06, November 1, 2006. The Navajo Technical College Act of 2006.

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

**Note.** Slightly reworded for purposes of statutory form.

### **§ 1204. Board of Trustees**

A. The Corporation shall be governed by a Board of Trustees composed of six members. There shall be one member of the Board appointed from each of the five agencies of the Navajo Nation. These five Board members shall have experience in the fields of education, business, science or technology. The President of the Student Senate of the Navajo Technical College shall serve as a member of the Board by virtue of his/her office and shall be a voting member of the Board.

B. The President of the Navajo Nation shall appoint the five members of the Board who represent the five agencies of the Navajo Nation, subject to confirmation by the Government Services Committee of the Navajo Nation Council.

C. Board members shall serve terms of four years each, with the exception of the President of the Student Senate, who shall serve as a Board member by virtue of his/her office. The terms shall be staggered. A Board member shall continue to serve after the formal expiration of the term until a successor has been confirmed by the Government Services Committee. The appointed Board members' terms of office shall begin upon their confirmation by the Government Services Committee. The Board shall notify the President of the Navajo Nation of an approaching vacancy and may recommend to the President of the Navajo Nation persons to fill vacancies on the Board. Present Board members shall serve their present terms of office prior to the extension of their terms by appointment to subsequent terms of office.

D. A Board member who resigns shall submit a written resignation to the full Board 30 days before the effective date of the resignation. The Board shall accept the resignation at its next subsequent meeting and notify the President of the Navajo Nation of the resignation.

E. No action of the Board shall be of any validity unless taken at a duly called meeting of the Board, or unless subsequently ratified by a majority vote of the Board at a duly called meeting. No individual Board member shall have the authority to act for or bind the Board unless the Board has expressly authorized such action in advance. Each member of the Board shall abide by the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.*

F. The Board shall elect officers consisting of a chairperson, a vice-chairperson, and a secretary-treasurer at its annual meeting to be held in January of each year. The chairperson shall call and conduct meetings, and prepare the agenda in consultation with the president of the Corporation, and shall execute all official documents on behalf of the Board as the Board directs. The vice-chairperson shall act in the place of the chairperson in the event of the latter's absence or disability. The secretary-treasurer shall maintain the records of the Board and shall work closely with the President of the Corporation on the financial affairs of the Corporation. The Board may from time to time delegate additional duties to its officers. Officers of the Board shall serve until their successors are elected.

#### **History**

CN-58-06, November 1, 2006. The Navajo Technical College Act of 2006.

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1205. Powers and duties of the Board of Trustees**

The Board of Trustees of the Corporation shall have the following powers and duties:

A. To report annually to the Education Committee of the Navajo Nation Council on the operation of the Corporation and at such other times as the Committee determines on matters of interest to the Committee;

B. To review and approve the annual operating budget of the Corporation and all requests and proposals for funding, whether by contract, grant or otherwise;

C. To establish, and review, approve and revise as appropriate, the program priorities of the Corporation and to ensure that budget and funding

proposals are consistent therewith;

D. To review and approve course curricula, assessment structures and program plans, including research, in accordance with established program priorities;

E. To ensure that the Corporation maintains full accreditation of its instructional programs by recognized accreditation agencies;

F. To issue appropriate certificates, diplomas, and degrees to students who satisfactorily complete their training or academic programs of the Corporation and to confer appropriate certificates and degrees. Such certificates, diplomas, or degrees shall be executed by the chairperson of the Board;

G. To review and approve all administrative and instructional policies and procedures, and all publications setting forth such policies and procedures;

H. To review and approve monthly reports from the various administrative branches of the Corporation, including financial reports;

I. To review and approve admission standards, student tuition and fees;

J. To ensure that the Corporation remains in compliance with all applicable federal and Navajo Nation laws and regulations, including but not limited to health and safety standards;

K. To ensure that approved Corporation policies and procedures are being enforced consistently by the administrative staff;

L. To ensure that the Corporation's facilities are kept in good and usable condition, and covered by adequate insurance at all times;

M. To ensure that the Corporation is in full compliance with grants or contracts by requiring quarterly fiscal and performance reports;

N. To select and employ by contract the President and such other executive officers of the Corporation as the Board may determine. The Board shall establish by contract their scope of work, salaries, benefits, disciplinary process, and such other terms as the Board deems necessary;

O. To review and approve on an annual basis the salary scale and position classification for employees of the Corporation;

P. To review and approve all contracts and contract amendments, with the exception of contracts for the purchase and sale of equipment for less than \$25, 000, which may be acquired and sold in accordance with the Corporation's procurement policies;

Q. To review and approve transactions to be entered into by the Corporation affecting any interest in real property;

R. To accept (or reject) any gift, grant, bequest or devise to or on



behalf of the Corporation;

S. To review, update, and approve on an annual basis the financial accounting policies of the Corporation. The Board shall have the Corporation's finances audited annually by an independent auditing firm;

T. To defend litigation initiated against the Corporation or against any Board member, officer or employee thereof for an act committed in the course of his or her official duties, subject to and in conformity with the provisions of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*;

U. To delegate, in accordance with specific guidelines, the execution of any of the foregoing duties and powers to the President or other appropriate administrative officers of the Corporation, or to consultants engaged for that purpose; provided that the Board shall remain ultimately responsible for all matters set forth in this Chapter; and

V. To adopt and amend bylaws to govern the conduct of its meetings and establish procedures for the orderly transaction of business. Such bylaws may further define the duties and authority of officers of the Board, and such other matters as are appropriate.

#### **History**

CN-58-06, November 1, 2006. The Navajo Technical College Act of 2006.

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

**Note.** Slightly reworded for purposes of statutory form.

#### **Cross References**

Education Committee of the Navajo Nation Council, see 2 N.N.C. § 484(B)(4).

#### **§ 1206. Chief Executive Officer of the Corporation**

A. The President of the Corporation shall serve as its chief executive officer with responsibility for the following duties:

1. The day-to-day administration of the affairs of the Corporation shall be vested in a President, who shall be hired by the Board.

2. The President shall be responsible for all aspects of the Corporation, including, but not limited to, operations, administration, facilities and property management, and other such activities, and such other duties as the Board may delegate from time to time.

3. The President shall attend all Board meetings. The President

shall prepare the proposed Board meeting agenda with the Board chairperson.

4. The President shall report to the Board on all matters of the Corporation.

5. The President shall execute and implement all actions and policies of the Board.

6. The President and the Board chairperson shall represent the Corporation in dealings with funding agencies and other public and private entities, as delegated by the Board.

7. The President shall exercise such other powers as the Board may delegate to him or her, consistent with Corporation policies.

B. The Corporation may have such other officers as the Board shall determine.

#### **History**

CN-58-06, November 1, 2006. The Navajo Technical College Act of 2006.

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1207. Board meetings**

A. The regular meeting of the Board shall be held monthly, at a place and time to be determined at the previous meeting.

B. Special meetings of the Board shall be called at the request of the chairperson, or on the written request of at least two members of the Board, delivered to the Board's secretary-treasurer.

C. Unless otherwise determined by the Board, meetings shall be open to interested persons, provided, that all official action of the Board shall be taken in open meetings. Public notice of all Board meetings shall be provided five days prior to the meeting date. Board members shall receive written notice of all meetings of the Board.

D. Four members of the Board shall constitute a quorum to conduct official business. Attendance at Board meetings shall be in person.

E. The Board shall adopt its own rules for the conduct of business.

F. The Board shall ensure that minutes of all meetings are taken and are

kept on file at the offices of the President.

#### **History**

CN-58-06, November 1, 2006. The Navajo Technical College Act of 2006.

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1208. Dissolution**

In the event the Corporation is dissolved, all of its property and other assets shall revert to the Navajo Nation government, and shall be used for charitable, educational, or other governmental purposes of the Navajo Nation.

#### **History**

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

**Note.** Slightly reworded for purposes of statutory form.

#### **§ 1209. Amendments**

This enabling legislation may be amended upon recommendation by a two-thirds (2/3) vote of the Board, subject to the concurrence of the Education and Government Services Committees of the Navajo Nation Council. No amendment shall be effective except upon the final approval of the Navajo Nation Council.

#### **History**

CN-58-06, November 1, 2006. The Navajo Technical College Act of 2006.

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

**Note.** Slightly reworded for purposes of statutory form.

## **Cross References**

Education Committee of the Navajo Nation Council, see 2 N.N.C. § 484(B)(4).

Government Services Committee of the Navajo Nation Council, see 2 N.N.C. § 343.  
See CD-68-89, Resolved Clause 10.

## **Chapter 15. Navajo Nation Occupational Safety and Health Act**

### **History**

Former Title 13, Chapter 55 was repealed in its entirety by CAP-39-00, April 20, 2000.

### **Subchapter 1. General Provisions**

#### **§ 1401. Title**

This Act shall be cited as the Navajo Nation Occupational Safety and Health Act of 2000.

#### **History**

CAP-39-00, April 20, 2000.

#### **§ 1402. Purpose**

A. The Navajo Nation hereby asserts its inherent sovereign authority of self-government to promulgate, prescribe and enforce this Occupational Safety and Health Act and regulations to assure every working person safe and healthy working conditions by providing for:

1. The establishment of Occupational Safety and Health regulations applicable to all workplaces within the territorial jurisdiction of the Navajo Nation including, but not limited to, the Navajo Nation Government, its enterprises, entities, agencies, chapters, and any contractors with the Navajo Nation.

2. Effective enforcement of the Occupational Safety and Health standards, rules and regulations.

3. Education and training programs for employers and employees to address their responsibilities under the Navajo Nation Occupational Safety and Health Act, and advise and assist about the effective means of preventing occupational injuries and illnesses.

4. The development and maintenance of appropriate job-related accident and illness reporting procedures that will ensure compliance with the objectives of the Occupational Safety and Health Act.

B. The administration and enforcement of the Navajo Safety and Health Act shall use appropriate measures to foster sensitivity and respect for Navajo

Indian cultural beliefs and practices in achieving harmony and fulfilling the challenge of providing safe and healthy working conditions for Navajo employees.

#### **History**

CAP-39-00, April 20, 2000.

#### **§ 1403. Applicability**

The Navajo Nation Occupational Safety and Health Act shall apply to all workplaces within the territorial jurisdiction of the Navajo Nation in accordance with purposes set forth in § 1402.

#### **History**

CAP-39-00, April 20, 2000.

### **Subchapter 2. Definitions**

#### **§ 1411. Definitions**

Except as specifically defined herein, the terms used in this Act shall be given the same meaning as the identical terms set forth in P.L. 91-596, the Occupational Safety and Health Act of 1970, 29 U.S.C. § 654 *et seq.*, and other federal regulations promulgated pursuant to such Act.

A. "Act" means the Navajo Nation Occupational Safety and Health Act of 2000.

B. "Agency" means the Navajo Occupational Safety and Health Administration (NOSHA).

C. "Committee" means any Occupational Safety and Health Advisory Committee established under the Navajo Nation Occupational Safety and Health Administration.

D. "Court" means the system of the Navajo Nation (District and Supreme Court).

E. "Director" means the director of the Navajo Occupational Safety and Health Administration.

F. "Employee" means any individual who is employed by an employer, but does not include a domestic employee engaged in household domestic labor.

G. "Employer" means any individual or organization, including the Navajo Nation and all its political subdivisions, which has in its employ six or more individuals performing services for it, but does not include employers of household domestic labor.

H. "Hazards" means any toxic materials or harmful physical agents at a level in excess of those prescribed by the Federal Occupational Safety and

Health Standards, or any applicable national consensus standard, or any level hereby prescribed by NOSHA.

I. "Hearing officer" means the Administrative/Judicial Officer assigned by the Navajo Nation Office of Hearings and Appeals to hear, review and decide administrative matters and disputes which arise under the Act.

J. "Interested party" means an employer or employee that is affected by any standard, regulation, or order issued under this Act.

K. "Label" means any written, printed or graphic material displayed on or affixed to containers of chemicals or other products which identifies the chemicals or other products.

L. "Navajo" means any enrolled member of the Navajo Nation as defined by 1 N.N.C. Chapter 7, § 701, *et seq.*

M. "Nation" means the Navajo Nation as defined by 1 N.N.C. Chapter 5, § 501.

N. "Person" means any individual partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or their legal representatives, agents or assigns.

O. "Safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

P. "Petitioner" means a person who files a petition seeking to initiate a hearing proceeding under the Act.

Q. "Territorial jurisdiction" means the territory within which the Navajo Nation has authority to interpret and apply its laws, as defined in 7 N.N.C. Chapter 3, § 254.

R. "Workplace" means a location or site wherein work, either temporary or permanent is being conducted in connection with an industry, trade or business.

### **History**

CAP-39-00, April 20, 2000

**Note.** The citations in Subsections 1411(L), (M) and (Q) were corrected to properly correspond to the 1995 edition of the Navajo Nation Code in the following manner: § 1411(L)—"1 N.N.C. Chapter 7, Section 501 *et seq.*" corrected to "Section 701 *et seq.*"; § 1411(M)—"1 N.N.C. Chapter 5, Section 301" corrected to "Section 501"; and § 1411(Q)—"7 N.N.C. Chapter 3, Section 54" corrected to "Section 254".

### **Subchapter 3. Notice of Enactment**

#### **§ 1421. Adoption of standards by reference**

A. The Agency hereby adopts the federal occupational safety and health standards as currently promulgated or hereafter amended (including, but not limited to, those for general, construction, agricultural, and maritime industries) as its interim standards for occupational safety and health purposes, including the standards for training of employers and employees. Those substantive standards to address working conditions will be given to the extent practicable, the adoption and/or interpretation of any such regulations will be in harmony with traditional Navajo cultural beliefs and practices.

B. The Agency shall promulgate regulations that are and will continue to be at least as stringent as standards promulgated pursuant to the federal occupational safety and health of employees. In adopting, amending or repealing its regulations, the Agency shall provide an opportunity for representatives of employers and employees affected by the regulations to be heard and shall weigh all relevant facts and circumstances presented at the public hearing, including but not limited to:

1. Character and degree of injury to or interference with the safety and health of employees proposed to be abated or prevented by the regulations.

2. Technical practicability and economic reasonableness of the regulation and the existence of alternatives to the prevention or abatement of detriment to the safety and health of employees proposed by the regulation; and

3. The public interest, including, but not limited to, the social and economic effects of work-related accidents, injuries and illnesses.

#### **History**

CAP-39-00, April 20, 2000.

#### **§ 1422. Development of standards and regulations**

A. Safety and health standards, rules and regulations shall be formulated in the following manner:

1. The Agency shall either propose adoption of national consensus standards or federal standards or draft such regulations, as it considers necessary after conducting sufficient investigations and consulting with the appropriate committee and other persons knowledgeable in the business for which the standards or regulations are being formulated.

2. Proposed standards or regulations, or both, shall be submitted to the Human Services Committee of the Navajo Nation Council for its approval. Upon approval of the proposed standards or regulations, or both, the standards or regulations will take effect as provided in the regulation or standards. In the event, the Human Services Committee fails to take any action on the proposed standards or regulations within 90 days of submittal, the proposed standards or regulations shall automatically become effective at the expiration of that time.

B. The Agency shall not propose standards and regulations for products distributed or used in interstate commerce which are different from federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.

C. Any standards or regulations promulgated under this Section shall prescribe the use of labels or other appropriate forms of warning necessary to ensure that employees are apprised of all recognized hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and proper conditions and precautions of safe use or exposure. Where appropriate, such standards or regulations shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such locations and intervals and in such manner as may be necessary for the protection of employees. In addition, where appropriate any such standards or regulations shall prescribe the type of frequency of medical examination or other test which shall be made available, by the employer at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. Any standards or regulations promulgated pursuant to this Section shall assure, as far as possible, that no employee will suffer material impairment of health or functional capacity even if such standard is for the period of his working life.

D. In case of conflict between standards and regulations, the regulation shall take precedence.

E. Any person who may be adversely affected by a standard or regulation issued under this Act may, at any time prior to the expiration of 60 calendar days after such standard or regulation is promulgated, file a complaint challenging the validity of such standard or regulation with the Agency hearing officer for an administrative review of such standard or regulation. The filing of such a complaint shall not, unless otherwise ordered by the hearing officer, operate as a stay of the standard or regulation. The determination of the hearing officer shall be conclusive if supported by substantial evidence in the record considered as a whole.

#### **History**

CAP-39-00, April 20, 2000.

### **Subchapter 4. Administration**

#### **§ 1431. Designation of agency**

Navajo Occupational Safety and Health Administration (NOSHA) is hereby designated as the regulatory agency to administer the Navajo Nation Occupational Safety and Health Act, and authorized to take all actions necessary to secure to the Navajo Nation the benefits of federal Occupational Safety and Health Administration consultation services and federal legislation related to the Occupational Safety and Health Act of 1970.<sup>1</sup>

#### **History**



CAP-39-00, April 20, 2000.

**§ 1432. Duties and responsibilities of the Agency**

A. Navajo Occupational Safety and Health Administration (NOSHA) is hereby established within the Division of Human Resources and delegated to administer the Navajo Nation Occupational Safety and Health Act of 2000.

B. The Director is authorized to exercise all authority necessary to implement this Act, in a manner consistent with applicable law. Specifically, the Director, or his designee, shall:

1. Recommend to the Human Services Committee all standards, regulations or changes to the Act, pursuant to § 1422.

2. Enforce all standards or regulations, after promulgation by the Human Services Committee, pursuant to the procedures and requirements of the Act.

3. Implement Navajo Nation Occupational Safety and Health Administration programs and execute associated duties and responsibilities that shall include, but not be limited to, the following:

a. Develop an occupational safety and health education and training program to acquaint employers and employees with the Act, and the most modern and effective techniques of accident prevention and occupational health control.

b. Institute legal proceedings to compel compliance with the Act.

c. Plan, organize, and conduct occupational safety and health seminars, conferences and meetings designed for management, supervisory personnel, employees and employers and establish working relationships with other safety and health groups as may be necessary.

d. Accept, receive and administer grants and other funds or gifts from public or private agencies, including the federal government.

4. Develop and maintain an effective program of collection, compilation and analysis of occupational safety and health statistics. The Agency shall compile statistics on work injuries and illnesses, which shall include all disabling, serious or significant injuries and minor injuries which require more than first aid treatment.

5. Coordinate the responsibilities and functions of other government agencies and political subdivisions of the Nation with regard to occupational safety and health in order to develop a comprehensive Navajo Nation program.

6. Perform any and all duties not inconsistent with the purposes of this Act.

## **History**

CAP-39-00, April 20, 2000.

### **§ 1433. Advisory Committee**

A. The Agency may create an Occupational Safety and Health Advisory Committee to assist the Agency in developing the proposed standards and regulations. Such Advisory Committee shall be appointed by the Agency Director and shall be comprised of persons with knowledge and expertise concerning the particular aspect of occupational safety and health for which they are appointed to assist the Agency. Such persons shall fairly represent a variety of regulated industries, including agriculture whenever applicable, and include persons with general knowledge of occupational safety and health issues.

B. The Director shall be an ex officio member of the Advisory Committee.

C. Persons appointed to serve on a committee(s) shall not be entitled to compensation for their services.

D. Service on any particular committee will continue until such time as the standards and regulations being developed by that committee have been submitted to the Agency Director. Thereafter, the Agency Director for consultation purposes, will disband the committee, subject to recall.

## **History**

CAP-39-00, April 20, 2000.

### **§ 1434. Administrative hearing officer**

A. The Office of Hearings and Appeals shall hear cases arising from the Act.

B. Every official act of the hearing officer shall be recorded and such records shall be open to the public. The hearing officer is empowered to make such rules as are necessary for the orderly transaction of administrative proceedings.

C. NIOSH shall provide the administrative support and personnel to the hearing officer as necessary for the efficient administration of the activities. All personnel assigned to the hearing officer shall be under the supervision of the Director.

## **History**

CAP-39-00, April 20, 2000.

## **Subchapter 5. Responsibilities**

### **§ 1441. Employer and employee**

A. Employer.

1. Every employer shall furnish to each employee a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm.

2. Every employer shall comply with the safety and health standards and the regulations and orders issued pursuant to this Act.

3. Until such safety and health standards and/or regulations and/or orders are issued pursuant to this Act, every employer shall comply with all relevant regulations issued pursuant to P.L. 91-596, the Occupational Safety and Health Act of 1970, 29 U.S.C. § 654 *et seq.* After any such safety and health standards and/or regulations and/or orders are issued pursuant to this Act (15 N.N.C. § 1401 *et seq.*), to the extent they are inconsistent with the federal regulations, the Navajo regulation will prevail.

4. Every employer shall, through posting of notices at the place or places where notices to employees are normally posted, or other appropriate means, keep employees informed of the obligations under the Occupational Safety and Health Act, including provisions of applicable regulations.

B. Employee. Each employee shall comply with the provisions of the occupational safety and health standards and any regulations and orders promulgated which are applicable to employee actions and conduct in the course of employment.

#### **History**

CAP-39-00, April 20, 2000.

### **Subchapter 6. Inspection**

#### **§ 1451. Right of entry and inspection of place of employment**

A. In order to carry out the purpose of the Act, the Director or his authorized representative, upon presentation of credentials shall be permitted to inspect places of employment, question employees, and investigate conditions, practices or matters in connection with issues of employee safety and/or health. Such inspections must take place at reasonable times, as determined by the Director or his authorized representative, for the purpose of determining whether any person has violated any provisions of the Act, or any rule or regulation issued thereunder. No employer or other person shall refuse to admit the Director or his authorized representative to any such place or refuse to permit any such inspection if the proper credentials are presented and the inspection is made at a reasonable time.

B. Any person, including any employee may file a written complaint with the Agency concerning any alleged violation of a regulation or any hazardous condition. A copy of the complaint shall be provided to the employer at the time of the inspection. However, upon the request of the complainant, the complainant's name shall not appear on the copy. The Agency shall investigate

the complaint and notify the complainant and employer in writing of the result of the investigation and any action to be taken. If no action is contemplated, the Agency shall notify the complainant and include an informal review of any decisions not to take compliance action at the request of the complainant. The person who investigated the complaint shall not make the review.

C. In order to aid inspections, the employer or his representative and a representative of the employees shall be given an opportunity to accompany the Agency inspector during the physical inspection of the workplace. If there are no authorized employee representatives, the Agency inspector shall consult with a reasonable number of employees.

D. Prior to and during any inspection of a workplace, any persons employed in such workplace may notify the Agency or the Agency inspector in writing of any violation of the Act, which they have reason to believe exists in such workplace. The Agency shall establish procedures for informal review of the decision made by the inspector and if no citation is issued with respect to the alleged violation, the Agency shall furnish the employee requesting such review a written statement of the reason for the Agency's final disposition of the case.

E. If an inspection reveals that employees are exposed to toxic materials or harmful physical agents at levels in excess of those prescribed by regulations of the Act, the Agency shall provide the employees with access to the results of the inspection. The employer shall promptly notify those employees who are exposed to the agents or materials in excess of the applicable regulations and inform them of the corrective action being taken, or that review has been requested in accordance with § 1471(E).

F. It is unlawful for any person to give advance notice of any inspection to be conducted under the Act without the written approval of the Director.

G. The Director, in addition to initiating an investigation under Subsection (B) of this Section, may file in the District Court where the inspection was refused a complaint against an employer who violates Subsection (A) of this Section and request an injunction against continued refusal to permit an inspection, or a writ of assistance or enforcement order to implement the requested action.

### **History**

CAP-39-00, April 20, 2000.

**Note.** Subsection (C) slightly reworded for clarity.

**Note.** Reworded for purposes of statutory form.

## **Subchapter 7. Citation**

### **§ 1461. Citation**

A. If the Director, in performing an inspection or investigation, determines that there is reasonable belief that a violation exists, he shall

with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall contain the following:

1. A particular description of the nature of the violation, including a reference to the particular provision of the standard or regulation alleged to have been violated.

2. A reasonable time for the abatement of the violation.

3. A notice that the employer may request a hearing pursuant to § 1491 if he is aggrieved by the citation.

B. A certified mail delivery receipt or a signed verification of delivery in person shall be prima facie evidence of receipt of a citation.

### **History**

CAP-39-00, April 20, 2000.

## **Subchapter 8. Enforcement**

### **§ 1471. Enforcement procedures**

A. If the Director, following an inspection or investigation, issues a citation pursuant to § 1461 of the Act, he shall, within reasonable time, notify the employer by certified mail of any penalty proposed to be assessed pursuant to § 1481 of the Act. Each citation issued, or a copy thereof, shall be promptly and prominently posted by the employer, as prescribed in regulations issued by the Agency, at or near the place where the violation occurred. No citation may be issued under this Section after six months following occurrences of any violation. The Agency may issue an advisory notice setting forth de minimis violations of standards or regulations which shall carry no penalty, unless the employer willfully and repeatedly violated such standard or regulation, in which case the Agency may refer the matter to the hearing officer for appropriate action pursuant to § 1481 of the Act.

B. If the Agency issues a citation under Subsection (A) of this Section, it shall, within a reasonable time after issuance of said citation, notify the employer by certified mail of the penalty, if any, proposed to be assessed and that the employer has 15 working days within which to notify the Agency in writing that he wishes to contest the citation or proposed penalty. If, within 15 working days from the receipt of this citation, notification of intent to contest is not given by an employer as provided in Subsection (E) of this Section within such time, the citation and the assessment of penalty, if any, as proposed, shall be deemed the final order of the Agency and not subject to review by the hearing officer or Court.

C. If the Agency has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the abatement period permitted (which period shall not begin to run until the entry of a final order by the hearing officer in the case of any review proceedings under this Section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Agency shall notify the employer by certified

mail of such failure to correct and of the penalty proposed to be assessed by reason of such failure, and that the employer has 15 working days within which to notify the Agency that it intends to contest the proposed assessment of penalty, the notification and assessment shall be deemed a final order of the Agency, and not subject to review by the hearing officer or Court.

D. Any employer that corrects violations for which a citation was issued within the period permitted shall so notify the Director in writing.

E. When an employer notifies the Agency in writing that it intends to contest the citation issued to it under Subsection (A) or notification is issued under Subsection (B) or (C) of this Section, and any employee of any employer so cited files a notice with the Agency alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Agency shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the petitioner may request a hearing before the hearing officer within 15 days after the informal administrative review. The hearing officer shall afford an opportunity for a hearing within 30 days after receipt of such petition. In any such hearing, the employer shall be the respondent. The burden of proof shall be on the Agency (or the petitioner) to prove by substantial evidence non-compliance on the part of the employer. The hearing officer shall thereafter issue an order, based on findings of fact, affirming, modifying or vacating the Agency's citation proposed penalty or directing other relief. Such order shall become final 15 days after its issuance.

F. At any time prior to the expiration of an abatement period, an employer may notify the Agency in writing that it is unable to take the corrective action required within the period of abatement. The Agency shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the employer may request a hearing before the hearing officer. The hearing officer shall afford prompt opportunity for a hearing after receipt of such petition. The only grounds for modifying an abatement period under this Subsection are a showing by the employer of a good faith effort to comply with the abatement requirement of a citation, and that abatement has not been completed because of factors beyond the employer's control.

G. Affected employees shall be provided an opportunity to participate as parties at informal Agency administrative reviews and hearings under this Section.

H. Any person adversely affected by an order of hearing officer issued under this Section may, after exhausting his administrative remedies, obtain a review.

#### **History**

CAP-39-00, April 20, 2000.

**Note.** Reworded for purposes of statutory form.

**§ 1472. Emergency procedures**

A. The Director shall have authority to restrict any conditions or practices in any place of employment that could create an imminent risk of death or serious physical harm. Any order issued under this Section may require such steps as may be necessary to avoid, correct or remove such danger or to maintain the capacity of a continuous operation up to the time that normal operations can be resumed, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

B. When the Director determines that an emergency exists, he shall immediately inform the employee and employer of the hazards and take steps to obtain immediate abatement of the hazards by the employer.

C. The Director may file a petition in the District Court for a temporary restraining order or preliminary injunction pending the outcome of an enforcement proceeding pursuant to the Act.

#### **History**

CAP-39-00, April 20, 2000.

#### **§ 1473. Confidentiality of trade secrets**

All information reported to or otherwise obtained by hearing officer or Agency in connection with any inspection or investigation under this Act which contains or which might reveal a trade secret shall be considered confidential for purposes set forth in this Act, except that such information may be disclosed to representatives of the Navajo Nation regulatory agency administering this Act or when relevant in any proceeding under this Act. The Director or hearing officer shall issue orders as may be appropriate to protect the confidentiality of trade secrets.

#### **History**

CAP-39-00, April 20, 2000.

### **Subchapter 9. Penalties**

#### **§ 1481. Penalties**

A. Any employer who willfully or repeatedly violates any provisions of the Act or any regulation or order promulgated pursuant thereto may be assessed a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.

B. Any employer who has received a citation for a serious violation of any provision of the Act or any regulation or order promulgated pursuant thereto shall be assessed a civil penalty not to exceed five hundred dollars (\$500.00) for each such violation.

C. Any employer who has received a citation for a violation for any provision of the Act or any regulation or order promulgated pursuant thereto which is determined not to be of a serious nature, may be assessed a civil penalty of up to five hundred dollars (\$500.00) for each such violation.

D. Any employer who fails to correct a violation for which a citation has been issued within the period permitted for its correction, which period shall be suspended in the case of a review proceeding before the hearing officer initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty not to exceed five hundred dollars (\$500.00) for each day during which such failure or violation continues.

E. Any employer who violates any of the posting requirements, as prescribed by the Act, shall be assessed a civil penalty not to exceed five hundred dollars (\$500.00) for each violation.

F. Any employer who willfully violates any provision of the Act or any regulation or order promulgated pursuant thereto which results in death to any employee by violation shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than six months or both; except that if the conviction is for a violation committed after a first conviction of such employer, punishment shall be by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than one year, or both.

G. Any person who gives advance notice of any inspection to be conducted under this Act, without authority of the Director shall, upon conviction be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than six months, or both.

H. Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000) for each such violation or by imprisonment for not more than six months, or both.

I. A person who reveals a trade secret in violation of § 1473 may, upon conviction be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than six months, or both.

J. The hearing officer shall have authority to assess all civil penalties provided in this Section, giving due consideration to the appropriateness of the penalty with respect to the number of employees employed by the employer being charged, the gravity of the violation, the good faith of the employer and the history of previous violations. If the Agency prevails, the hearing officer shall award reasonable attorney fees incurred pursuant to this Section. Otherwise, no award of attorney's fees shall be made.

K. Civil penalties imposed under this Section shall be paid into the Agency general fund account and expended in accordance with the general fund account and pursuant to an approved budget.

#### **History**

CAP-39-00, April 20, 2000.



## Subchapter 10. Appeals

### § 1491. Appeal procedures

A. Any interested party adversely affected by the standards, regulations or orders issued under this Act may appeal in accordance with the following procedures:

1. A request for a hearing shall be made in writing, signed by the interested party and include his address, a statement that a hearing is desired, and be mailed to the hearing officer. The request shall state with particularity the violation, abatement period or penalty which is protested. Any violation, abatement period or penalty not protested within the time limit specified on the citation or penalty notice will be deemed admitted.

2. The hearing officer shall schedule a hearing as expeditiously as possible, but in no event more than 30 days after an interested party requests a hearing.

3. At least five calendar days prior to any hearing, notice of the time and place of such hearing shall be given to all interested parties by mail at their last known address. The hearing shall be held in the district where the violation occurred or such other place as selected by the hearing officer.

4. The burden of proof shall be on the Agency. The standard of proof will be by substantial evidence.

5. A record shall be kept of all proceedings at the hearing but need not be transcribed unless a party requests a review of the decision of the hearing officer. The hearing record shall be transcribed at the expense of the party requesting review. The hearing officer shall certify the record to be true and accurate.

6. The decision of the hearing officer shall be filed with the Agency and a copy thereof mailed to the parties.

a. All decisions of the hearing officer shall be in writing.

b. A decision of the hearing officer is binding upon the Director and the Agency with respect to the parties involved in the particular case. The Director shall have the right to seek judicial review of the hearing officer's decision, regardless of whether he appeared or participated in the hearing itself.

B. Any interested party adversely affected by the hearing officer's decision may, after exhausting his administrative remedies as set forth in § 1491(A), obtain a review thereof in the Supreme Court of the Navajo Nation by filing in such court, timely and required documents consistent with its rules praying that the order be modified or set aside. The findings of the hearing officer with respect to questions of fact, if supported by substantial evidence, shall be conclusive. Upon appeal, the Court may set aside an action

or ruling of the hearing officer only if found to be:

1. Arbitrary, capricious or an abuse of discretion;
2. Not supported by substantial evidence; or
3. Beyond the scope of legal authority.

#### **History**

CAP-39-00, April 20, 2000.

#### **§ 1492. Variances**

##### A. Temporary Variances.

1. Any employer may apply to the hearing officer for a temporary variance from a standard or regulation or any provision thereof promulgated under § 1421 and/or § 1422 of this Act.

2. Such temporary variance shall be granted only if the employer files an application which meets the requirements of § 1492(A)(4) and establishes all of the following:

a. Employer is unable to comply with a standard or regulation by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or regulation or because necessary construction or alteration of facilities cannot be completed by the effective date.

b. Employer is taking all available steps to safeguard his employees against the hazards covered by the standard or regulation.

c. Employer has an effective plan of coming into compliance with the standard or regulation as quickly as practicable.

3. Any temporary variance issued under this Section shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his plan for coming into compliance with the standard or regulation. Such a temporary variance may be granted only after notice to employees and an opportunity for a hearing before the hearing officer. A hearing must be requested within 20 days of such notice to employees. The hearing officer may issue one temporary variance to be effective until a decision is made on the basis of the hearing. No temporary variance may be in effect for longer than the period needed by the employer to achieve compliance with the standards and regulations, or 90 days, whichever is shorter, except that such a variance may be renewed one time so long as the requirements of the Section are met and an application for renewal is filed at least 30 days prior to the expiration date of the underlying variance. No temporary variance, including any renewals thereof, may remain in effect for longer than 180 days.

4. An application for a temporary variance under this Section shall contain all of the following:

a. The standard or regulation or portion thereof from which the employer seeks a variance.

b. A statement by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or regulation or portion thereof and a detailed statement of the reasons therefor.

c. A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard or regulation.

d. A statement of when the employer expects to comply with the standard or regulation and what steps have been taken and what steps will be taken, with dates specified, to come into compliance with the standard or regulation.

e. A certification that the employer has informed his employees of the application by giving a copy thereof to the employees, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The notice to employees shall also inform of their right to petition the hearing officer for a hearing.

5. The Director is authorized to grant an experimental variance from any standards or regulation or portion thereof whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by the Director and designed to demonstrate or validate new and improved techniques to safeguard the safety or health of the workers. An employer applying for an experimental variance must comply with the requirements of § 1492(A)(4)(a), (c) and (e).

#### B. Permanent variances.

1. Any affected employer may apply to the Director for a permanent variance from a standard or regulation promulgated under § 1421 and/or § 1422 of this Act. The affected employers shall give notice to its employees of each such application and an opportunity to participate in a hearing. The Director shall issue such variance if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthy as those which would prevail if the employer complied with the standard or regulation from which the variance is being sought. The variance so issued shall prescribe the conditions the employer must maintain, the practices, means, methods,

operations and processes that he must adopt and utilize, to the extent they differ from the standard or regulation in question. Such a rule or order may be modified or revoked upon application by an employer, employees or by the hearing officer on his own motion, in the manner prescribed for its issuance under this Section, at any time after six months from its issuance.

2. A petition for a permanent variance must be filed with the Director in the manner prescribed by § 1492(A)(4)(a), (c) and (e).

C. The Agency shall keep an appropriately indexed record of all variances granted under this Section. The record shall be open for public inspection.

#### **History**

CAP-39-00, April 20, 2000.

**Note.** Reworded for purposes of statutory form.

### **Subchapter 11. Record Keeping**

#### **§ 1501. Employer record keeping**

A. Every employer shall make, keep and preserve records and submit reports of occupational injuries and illnesses as prescribed by the Agency.

B. The Agency shall publish annually a detailed summary of the statistical data received from employers. The Agency shall make a copy of such summary available on request to any person having any interest in the report. In the preparation, publication or release of the statistical summary, the Agency summary shall not be released, revealed or otherwise disclosed to any person other than the department of the Navajo Nation designated as responsible for labor statistics, without prior permission of the employer, unless pursuant to an administrative hearing or an order of the Navajo Nation Courts.

#### **History**

CAP-39-00, April 20, 2000.

### **Subchapter 12. Consultation**

#### **§ 1511. Consultation services**

A. For the purpose of carrying out the provisions of the Act, the Agency shall coordinate, to the greatest extent practicable, the occupational safety and health activities of all Navajo Nation and local agencies. It shall consult and cooperate with other agencies of the state, federal government, and interstate agencies, and with affected public and private organizations.

B. The Agency shall develop a consulting program, which will include visits to the workplace of employers to provide consultation and advice to such employers. Such visits:

1. May be conducted only upon request by an employer for consultation and advice on the interpretation or applicability of standards, possible alternative ways of complying with applicable standards or other matters related to accident prevention, occupational health or obligations pursuant to this Act.

2. Shall be limited to matters specified in the request.

C. If, after evaluating such request, the Director determines an alternative means of providing consultation is more appropriate and equally effective, he may provide such alternative assistance in lieu of consultation at the workplace.

D. The Director shall make recommendations regarding solutions to matters within the scope of the workplace consultation.

E. No visit pursuant to this Section is regarded as an inspection or investigation pursuant to § 1451. No citation shall be issued nor shall any civil penalty be proposed relative to the subject of the consultation upon such visit, except that nothing in this Section shall affect in any manner any provision of this Act, purpose of which is to eliminate dangerous violations.

#### **History**

CAP-39-00, April 20, 2000.

### **Subchapter 13. Limitation of the Act**

#### **§ 1521. Exclusion of applicability of the Act**

A. Nothing in this Act shall be construed to supersede or in any manner limit the Navajo Nation Mining Safety Code, 18 N.N.C. Chapter 5, § 401 *et seq.*, or the Navajo Nation Worker's Compensation Code, 15 N.N.C. Chapter 11, § 1001 *et seq.*, or any other common law or statutory rights, duties or liabilities of employers and employees under any law with respect to injuries, occupational disease, or death of employees arising out of, or in the course of employment.

B. The Navajo Nation Occupational Safety and Health Act and regulations promulgated under it do not apply to activities of any federal agency.

#### **History**

CAP-39-00, April 20, 2000.

### **Subchapter 14. Political Subdivision**

#### **§ 1531. Political subdivision jurisdiction**

A. Consistent with the Local Governance Act (Resolution No. CAP-34-98), any political chapter of the Navajo Nation which at any time desires to assume responsibility for development or enforcement of occupational safety and health issues with respect to which the Nation's standards or regulations has been promulgated under § 1421 and/or § 1422 shall submit to the Director a plan for

the development or enforcement of such standards and regulations.

B. The Director may approve any plan submitted under this Section, if such plan satisfies the intent of the Act, does not conflict with the requirements of the Occupational Safety and Health Act of 1970,<sup>1</sup> and otherwise, within the Director's discretion is found to be acceptable.

C. The Director shall periodically review any development or enforcement program approved under this Section, and shall reassume all responsibility for the development and enforcement of such occupational safety and health standards and regulations if, in the opinion of the Director, it is determined that the program of any such political subdivision does not satisfy the intent of the Act.

#### **History**

CAP-39-00, April 20, 2000.

**Note.** Reworded for purposes of statutory form.

### **Subchapter 15. Discrimination**

#### **§ 1541. Discrimination**

A. No employer shall discharge or in any manner discriminate or retaliate against any employee because said employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to the Act, or has testified or is about to testify in any such proceeding, or because of the exercise by said employee on behalf of himself or others of any right afforded by the Act.

B. Any employee who believes that he has been discharged or otherwise discriminated or retaliated against by the employer or his representatives in violation of this Section may, within 30 days after such alleged violation occurs, file a complaint with the Director, in writing and acknowledged by said employee, alleging such discrimination or retaliation. Upon receipt of the complaint, the Director shall initiate such investigation as it deems appropriate. Within 60 days of the receipt of a complaint filed under this Section, the Director shall notify the complaining party of his determination. If, upon such investigation, the Director determines that the provisions of this Section have been violated, he shall file a petition with the Hearing Office against such employer or his representative to enjoin the violation of Subsection (A) of this Section and for other appropriate relief to make the employee whole, including rehiring or reinstatement of the employee to his former position with back pay, interest and reinstatement of all benefits and consequential damages.

#### **History**

CAP-39-00, April 20, 2000

**Note.** Reworded for purposes of statutory form.

## **Subchapter 16. Civil Liability**

### **§ 1551. Civil liability**

Notwithstanding any contrary provisions of the Act, neither the Navajo Nation nor its authorized representatives shall be subject to civil liability for any acts or omissions which occur in the course of any inspection or investigation if the Navajo Nation or its representative is acting in a reasonable manner, considering the activity in which it is engaged.

#### **History**

CAP-39-00, April 20, 2000.

## **Subchapter 17. Appropriations**

### **§ 1561. Use of civil penalty funds**

Funds derived from civil penalties under § 1481 of this Act shall be available to the Agency solely for the administration and enforcement of the Act. Such funds shall be deposited into a duly established general fund account and used in accordance with the general fund account plan of operation pursuant to an approved budget. Any funds contained in said general fund account at the end of the fiscal year shall revert to the general fund but shall remain available for appropriation as provided in this Section. The Executive Director, Division of Human Resources, must first authorize any expenditure from the general fund account.

#### **History**

CAP-39-00, April 20, 2000.

## **Subchapter 18. Other Provisions**

### **§ 1571. Legal representation**

A. The Office of the Attorney General of the Navajo Nation may represent the Agency on any civil litigation brought under the Act.

B. In any criminal proceeding initiated under this Act, the Office of the Prosecutor, Attorney General of the Navajo Nation may represent and prosecute in the name of the Navajo Nation.

#### **History**

CAP-39-00, April 20, 2000.

### **§ 1572. All prior inconsistent law is repealed**

A. All prior Navajo Nation safety laws, rules, regulations, and provisions of the Navajo Nation Safety Code previously adopted which are inconsistent with this Act, unless otherwise specifically excluded under § 1521 of the Act, are hereby repealed.

B. This Act supersedes the safety and health responsibilities previously given to the Navajo Occupational Safety and Health Administration and provides broad new duties and responsibilities in an attempt to meet the requirements of the federal Occupational Safety and Health Act of 1970.<sup>1</sup>

#### **History**

CAP-39-00, April 20, 2000.

#### **§ 1573. Severability of the Act**

If any provision of this Act or the application thereof to any person, employer, association, entity or circumstances is held invalid, such invalidity shall not affect the remaining provisions or applications of the Act.

#### **History**

CAP-39-00, April 20, 2000.

#### **§ 1574. Effective date and amendment of the Act**

A. The effective date of this Act shall be March 1, 2000 after the passage of the Act by the Navajo Nation Council and shall remain in effect until amended or repealed by the Navajo Nation Council.

B. Any amendment or repeal of the Act shall only be effective upon approval of the Navajo Nation Council, and shall not be valid if it has the effect of amending, modifying, limiting, expanding or waiving the Act for the benefit or the detriment of a particular individual.

C. Any amendment to the Act, unless expressly stated otherwise, shall become effective 60 days after the passage thereof by the Navajo Nation Council.

D. The Human Services Committee of the Navajo Nation Council will make amendments to the Navajo Nation Council from time-to-time or deemed appropriate and applicable with Navajo Nation laws.

#### **History**

CAP-39-00, April 20, 2000.

### **Title 16**

#### **Land**

#### **History**

**Note.** Office of Tribal Land Administration previously codified as Chapter 1, Subchapter 3, §§ 201-204, has been deleted from this Code pursuant to Navajo Nation Attorney General's advice on Plans of Operation for Navajo Nation Divisions dated January 4, 1991.



### **Cross References**

Navajo Nation Cultural Resources Protection Act, 19 N.N.C. § 1001 *et seq.*

### **Annotations**

See annotations under Allotted Lands in digest.

## **Chapter 1. Navajo Nation Policy on Acquisition of Lands**

### **§ 1. Major purposes**

A. The Navajo Nation's major purposes in acquiring new lands shall be to:

1. Consolidate Indian holdings in "checkerboard" areas wherever the best interests of the Navajos residing in the area and the welfare of the Navajo Nation are served thereby;

2. Provide grazing lands for members of the Navajo Nation who do not have grazing permits;

3. Provide additional or substitute lands for members of the Navajo Nation who reside in overcrowded areas of the Reservation;

4. Relieve Reservation land resources from excessive use; and

5. Provide land necessary for approved Navajo Nation enterprises.

### **History**

ACJN-117-68, June 13, 1968.

CAP-49-68, April 23, 1968.

ACJ-8-55, January 11, 1955.

CJ-23-54, June 9, 1954.

ACM-14-54, March 23, 1954.

### **Cross References**

Industrialization program, acquisition of land, 5 N.N.C. § 5.

Labor policy of Navajo Nation, provisions in leases to obey, 15 N.N.C. § 609.

Navajo Nation Business Site Leasing Act of 2000, 5 N.N.C. § 2301 *et seq.*

School purposes, withdrawal of land, 10 N.N.C. § 1201.

### **United States Code**

Allotment of Indian lands generally, see 25 U.S.C. §§ 331 and 461 *et seq.*

Homesteads to Indians located on public lands, 43 U.S.C. §§ 190, 190(a); 25 U.S.C. § 337(a).

Lease of restricted lands for public, religious, educational, recreational, residential, business, grazing and farming purposes, with maximum term of ninety-nine (99) years, 25 U.S.C. §§ 415, and 635(a).

Lease, sale, or other disposition of land owned in fee simple by Navajo Tribe, 25 U.S.C. § 635(b).

Rights-of-way through Indian lands, 25 U.S.C. § 311 *et seq.*

Title to certain lands held in trust for Canoncito Navajo Indians, 25 U.S.C. §§ 621 and 622.

Transfer to corporation owned by Tribe or municipal corporation of legal title or leasehold interest in any unallotted lands held for Navajo Nation, 25 U.S.C. § 635(c)

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

Indian allotments, see 43 CFR § 2530.0-3 *et seq.*

Land acquisitions, see 25 CFR § 151.1 *et seq.*

Leases and permits, see 25 CFR § 162.100 *et seq.*

#### **§ 2. Methods of acquisition**

The Navajo Nation may acquire new lands by exchange, gift, or purchase.

#### **History**

ACJ-8-55; January 11, 1955.

#### **§ 3. Land acquisition program; code of use; priorities**

The Resources Committee of the Navajo Nation Council is authorized and directed to: (1) Formulate a land acquisition program; (2) Develop a code of use for land acquired; and (3) Establish areas to be given priority attention.

#### **History**

ACJ-8-55, January 11, 1955.

#### **Cross References**

Resources Committee generally, 2 N.N.C. § 691 *et seq.*

#### **§ 4. Management of agricultural and range lands**

It is the policy of the Navajo Nation to manage agricultural and range

lands in accordance with principles of sound and practical use, developing such lands to their maximum and preventing practices which damage or deteriorate them.

#### **History**

ACJ-8-55, January 11, 1955.

#### **§ 5. Unrestricted lands; taxes and fees**

Except as the United States may otherwise determine, the Navajo Nation shall, in acquiring unrestricted lands, assume responsibility for the payment of taxes lawfully imposed, and of all established fees for the use of federally or state-owned lands.

#### **History**

ACJ-8-55, January 11, 1955.

#### **§ 6. Scope of land acquisition**

Land acquisition includes agricultural and range lands and land for business or industrial purposes.

#### **History**

ACJ-8-55, January 11, 1955.

#### **§ 7. Land acquisition proposals; plans for use**

The Resources Committee of the Navajo Nation Council is authorized and directed to consider and investigate land acquisition proposals and to report findings and recommendations to the Navajo Nation Council. Proposals for land acquisition shall not be considered by the Navajo Nation Council unless the lands and the possible uses thereof conform to this land acquisition policy. Following acquisition thereof, a specific plan shall be prepared showing in detail the proposed use and operation of said land, which plan shall conform to the land use code and shall be strictly complied with. No deviation therefrom shall be permitted without the consent of the Navajo Nation Council based upon the recommendation of the Resources Committee.

#### **History**

CN-72-92, November 4, 1992.

CD-68-89, December 15, 1989.

ACJ-8-55, January 11, 1955.

#### **Cross References**

Land acquisition recommendations, 2 N.N.C. § 695(B)(3).

#### **§ 8. Cost of purchased lands**

Purchased lands shall be acquired within a total cost calculated to yield to the Navajo Nation sufficient income from such land to pay taxes, land use fees, cost of administration, and to amortize the Navajo Nation investment over a period not to exceed 50 years. Provided, however, that the cost of range lands purchased by the Navajo Nation in New Mexico may be amortized for a period not to exceed 99 years.

#### **History**

CMY-46-70, May 20, 1970.

ACJ-8-55, January 11, 1955.

#### **§ 9. Appraisal of land**

All acquisition of land shall be based on a comprehensive appraisal thereof, to be secured by the Navajo Nation and approved by the Navajo Nation Council and authorized officials of the Bureau of Indian Affairs. No Navajo Nation monies shall be expended for the purchase in excess of the appraisal value plus an amount equal to ten percent (10%) in excess of such appraised value unless fully justified. Purchases must conform to the limitations established in 16 N.N.C. § 8, as indicated by the approved appraisal report.

#### **History**

ACJ-8-55, January 11, 1955.

#### **§ 10. Procedure for acquisition of land**

A.<sup>1</sup> The procedure for acquisition of land shall be as follows:

1. Sufficient indication to Navajo Nation representatives that a property owner would consider sale of his or her property to the Navajo Nation, an instrument granting Navajo Nation representatives access to the property for the purpose of conducting preliminary investigations of the property will be secured.

2. When a preliminary investigation disclosing that the property is desirable when adjudged by the standards stated in the Navajo Nation land acquisition program, an appraisal report will be secured. After review by the Resources Committee, the appraisal report will be submitted to designated Bureau of Indian Affairs officials for approval.

3. After approval of the appraisal report by the Bureau of Indian Affairs, authorized Navajo Nation representatives may enter into negotiations with the property owner. Negotiations will be governed by the estimates in the approved appraisal report, and the principles of the Navajo Nation Land Purchase Program.

4. If negotiations are carried on longer than six months, the appraisal report will be supplemented to bring value estimates in line with current market conditions.

### **History**

ACJ-8-55, January 11, 1955.

CM-37-53, May 21, 1953.

## **Chapter 3. Land Acquisition Trust Fund**

### **History**

CAP-41-94, April 20, 1989.

**Note.** Office of Tribal Land Administration previously codified as Chapter 1, Subchapter 3, §§ 201-204, has been deleted from this Code pursuant to the Navajo Nation Attorney General's advice on Plans of Operation for Navajo Nation Division dated January 4, 1991. Slightly reworded for purposes of statutory form.

### **§ 201. Establishment**

There is hereby established, the Navajo Nation Land Acquisition Trust Fund (hereinafter referred to as the "Fund"). Each year, and during the appropriation of the Navajo Nation Operation Budget, the Navajo Nation Council shall budget a sum equal to at least two percent (2%) of any and all projected revenues of the Navajo Nation, including, but not limited to revenues received from taxes, oil and gas mining and minerals, timber, land rentals, interest and dividends, gain on sale of securities and other revenue producing activities for transfer to the Fund. Supplemental appropriations may be added to the Fund at any time. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter.

### **History**

CJY-54-94, July 20, 1994.

### **§ 202. Investment of the Fund**

A. All monies deposited in the Fund shall be invested to purchase land for the Navajo Nation in accordance with the Land Acquisition Policies and Procedures adopted by the Resources Committee of the Navajo Nation Council.

B. Pursuant to 16 N.N.C. § 1, the major purposes of acquiring new lands are:

1. To consolidate Indian holdings in the "checkerboard" area wherever the best interests of the Navajos residing in the area and the welfare of the Navajo Nation are served thereby;
2. To provide grazing lands for members of the Navajo Nation who do not have grazing permits;
3. To provide additional or substitute lands for members of the Navajo Nation who reside in overcrowded areas of the Reservation;

4. To relieve Reservation land resources from excessive use; and

5. To provide land necessary for approved Navajo Nation enterprises.

C. Pursuant to 16 N.N.C. § 6, land acquisition may include agricultural and range lands and land for business or industrial purposes.

D. The administrative management of the Fund shall be entrusted with the Navajo Land Department. Pursuant to CN-72-92, the Resources Committee of the Navajo Nation Council serves as the Legislative Oversight Committee over the Navajo Land Department and has (certain authority and function in the land acquisition process). All investment objectives shall be approved in accordance with 16 N.N.C. § 1, *et seq.*, and other applicable Navajo Nation laws.

#### **History**

CJY-54-94, July 20, 1994.

#### **§ 203. Definition of principal and income**

The following definitions shall apply:

A. "Fund Principal" shall consist of the initial appropriation plus two percent (2%) annual contribution from any and all projected revenues of the Navajo Nation, including, but not limited to revenues received from taxes, oil and gas mining and minerals, timber, land rentals, interest and dividends, gain on sale of securities and other revenue producing activities for transfer to the Fund. The Fund principal shall include the supplemental appropriations that may be added to the Fund at any time.

B. "Fund Income" shall consist of all earnings, including interest, dividends, etc., generated by the principal of the Fund.

#### **History**

CJY-54-94, July 20, 1994.

#### **§ 204. Expenditure of Fund principal**

Fund principal shall not be expended except pursuant to a two-thirds (2/3) vote of the full membership of the Navajo Nation Council.

#### **History**

CJY-54-94, July 20, 1994.

#### **§ 205. Expenditure of Fund income**

Ninety percent (90%) of the Fund income shall be used for land acquisition(s). Ten percent (10%) of the Fund income shall be reinvested in the Fund to cover the rate of inflation.

### **History**

CJY-54-94, July 20, 1994.

### **§ 206. Annual audited report**

The Fund shall be audited annually by the Navajo Nation Auditor General. The audit report shall be made available to the Resources Committee, the Budget and Finance Committee, the Office of the Speaker, and the President and Vice-President of the Navajo Nation and members of the Navajo Nation Council.

### **History**

CJY-54-94, July 20, 1994.

### **§ 207. Expenses**

Expenses to hire licensed land appraiser may be paid from the fund income until the Navajo Land Department has employed a full-time licensed appraiser.

### **History**

CJY-54-94, July 20, 1994.

### **§ 208. Amendments**

Sections 201, 202, 203, 205, 206, and 207 may be amended by the Navajo Nation Council upon the recommendation of the Resources Committee of the Navajo Nation Council and the Navajo Land Department; § 204 shall be amended only by two-thirds (2/3) vote of the full membership of the Navajo Nation Council.

### **History**

CJY-54-94, July 20, 1994.

## **Chapter 5. Acquisition of Lands**

### **Subchapter 1. Acquisition of Public Lands**

#### **§ 401. Purchases under Isolated Tract Law**

The Resources Committee and Navajo Nation Council are instructed to include the purchase of public land under the Isolated Tract Law (43 U.S.C. § 1171) or other applicable law in the Navajo Land Acquisition Program, and the President of the Navajo Nation, in accordance with such procedures as the Committee may approve, is authorized to submit applications, present bids, and assert preference rights, on behalf of the Navajo Nation, to purchase any tract of public land pursuant to applicable law.

### **History**

CM-19-56, May 22, 1956.

**Note.** 2 N.N.C. § 695(B)(3) gives the Navajo Nation Council final authority to acquire lands. "Government Services Committee" was not inserted in lieu of "Advisory Committee".

#### **§ 402. Applications, bids and preference rights under Isolated Tract Law**

A. The President of the Navajo Nation, upon and with approval of the Resources Committee is authorized to submit applications and bids and assert preference rights on all lands available for purchase under the applicable public law as, in his or her discretion, would be desirable for the Navajo Nation to acquire in the "checkerboard" area of New Mexico and in the States of Arizona and Utah.

B. The President is further authorized to take any action necessary for the completion of these acquisitions including, but not limited to, perfecting appeals from adverse decisions of the Bureau of Land Management.

#### **History**

CO-68-89, December 15, 1989.

ACD-174-59, December 14, 1959.

ACJ-8-58, January 16, 1958.

#### **Cross References**

Resources Committee Authority, 2 N.N.C. § 695(B)(3).

### **Subchapter 3. Gifts of Lands**

#### **§ 451. Gifts of lands within Reservation**

A. The President of the Navajo Nation is authorized to accept, on behalf of the Navajo Nation, gifts of unimproved lands within the exterior boundaries of the Navajo Indian Reservation, and of other lands within the exterior boundaries containing improvements not in excess of the value of one thousand dollars (\$1,000).

B. The President of the Navajo Nation with the consent of the Government Services Committee is authorized to accept gifts of lands within the exterior boundaries of the Navajo Indian Reservation containing improvements in excess of the value of one thousand dollars (\$1,000).

#### **History**

CJ-34-58, July 21, 1958.

#### **Cross References**

Gifts of property, 2 N.N.C. § 1010.



Resources Committee Authority, 2 N.N.C. § 695(B)(3).

**§ 452. Gifts of lands outside Reservation**

A. The President of the Navajo Nation with the consent of the Government Services Committee is authorized to accept gifts of lands not exceeding the value of ten thousand dollars (\$10,000), including the value of improvements thereon, outside the exterior boundaries of the Navajo Indian Reservation.

B. Gifts of lands outside the exterior boundaries of the Navajo Indian Reservation of a value exceeding ten thousand dollars (\$10,000), including the value of improvements thereon, shall be accepted by the President of the Navajo Nation only pursuant to special authorization of the Navajo Nation Council.

**History**

CJ-34-58, July 21, 1958.

**Cross References**

Gifts of property, 2 N.N.C. § 1010.

Resources Committee Authority, 2 N.N.C. § 695(B)(3).

**§ 453. Lands defined**

The term "lands", as used in 16 N.N.C. §§ 451 and 452 shall mean land or any parcel thereof, or any interest in land or in any parcel thereof, including leasehold interests.

**History**

CJ-34-58, July 21, 1958.

**§ 454. Funds for taxes, rents or other charges**

Before the President shall accept any gifts of lands on behalf of the Navajo Nation he or she shall ascertain what taxes, rents, or other charges will become due thereon during the remainder of the fiscal year in which such gift is to be accepted, and shall not accept any such gift unless sufficient funds are provided in the Navajo Nation budget currently in force to pay such charges during such fiscal year.

**History**

CJ-34-58, July 21, 1958.

**Chapter 6. Navajo Land Consolidation Plan**

**§ 501. Purpose of Plan**

The purpose of the Navajo Land Consolidation Plan is to provide additional authority to consolidate and augment the Navajo land base, in

accordance with the provisions of the Indian Land Consolidation Act, 25 U.S.C. §§ 2201, *et seq.* (ILCA). The Indian Finance Act (April 12, 1974; P.L. 93-262, Title 1); 88 Stat. 78 (codified at 25 U.S.C. § 1466 [1983], 25 U.S.C. 463(a)); 25 U.S.C. 465, the Federal Property and Administration Services Act of 1949, as amended (codified at 40 U.S.C. § 483(a) [Supp. 1987]), and § 5 of the Navajo and Hopi Indian Rehabilitation Act of 1950, as amended (codified at 25 U.S.C. § 635) provide further authority for taking land and improvements into trust for the Navajo Nation under this Plan. Acquisitions of land under this Plan shall conform to the policies, priorities, and procedures of Chapter 1, Title 16 of the Navajo Nation Code, unless otherwise expressly stated in this Plan or any amendment thereto approved by the Navajo Nation Council or a duly authorized committee. Lands so acquired will be administered for economic, industrial, residential, recreation, and other purposes as set forth by the Navajo Nation Council and its duly authorized committees.

### **History**

CMY-23-88, May 4, 1988.

### **§ 502. Land consolidation area**

A. The land acquisition and consolidation area includes all lands, including federally administered and public domain lands, within:

1. The boundaries of the Navajo Reservation;
2. Navajo "Indian Country" as defined by 18 U.S.C. § 1151;
3. The aboriginal land area of the Navajo Tribe of Indians, as established by the Indian Claims Commission;
4. The Counties of McKinley, San Juan, Sandoval, Cibola, Bernalillo, Socorro, and Valencia in the State of New Mexico; and
5. Such other lands as designated on the map attached as Figure "A" to Navajo Nation Council Resolution CMY-23-88.

B. Any land consolidation plans approved previously by the Bureau of Indian Affairs for the satellite Reservations of Alamo, Canoncito, and Ramah shall be deemed to be incorporated herein, and may be amended by the Navajo Nation Council or its duly authorized committees.

### **History**

CMY-23-88, May 4, 1988

**Note.** Canoncito is now referred to as Tóhajiilee.

### **§ 503. Operational policy and procedure**

A. Tracts and properties within the land consolidation area will be continually monitored to identify available acquisitions. Close contact will be maintained with the Bureau of Indian Affairs, Navajo Area Branch of Realty personnel for identification of individual allotted and restricted heirship

lands or minerals or water rights, with the Navajo Nation's preferential rights being exercised during the sale process.

B. Specific proposals for acquisition and consolidation will be developed by the Resources Committee of the Navajo Nation Council, with the assistance of the Navajo Division of Natural Resources and the Department of Justice of the Navajo Nation. The Resources Committee will recommend to the Navajo Nation Council resolutions for final action, and to authorize the Bureau of Indian Affairs to accomplish any federal actions needed to effect such transaction.

C. An interest bearing trust account shall be established by the Secretary of the Interior or his or her delegate pursuant to 25 U.S.C. § 2203(a)(4). All proceeds derived from transactions of tribal land consolidations shall be deposited into this account and utilized only for the purposes of land consolidation.

D. An appraisal of value will be developed in accordance with the established standards of the appraisal profession by the Navajo Land Department and utilized as a guide in all acquisitions, disposals, exchanges, and other proposals for land consolidation. The Navajo Nation Code and all applicable provisions of the Code of Federal Regulations (25 C.F.R. Part 151-Land Acquisitions) shall be followed.

#### **History**

CO-43-88, October 25, 1988.

CMY-23-88, May 4, 1988.

#### **§ 504. Purchase, sale or exchange of interests**

The Navajo Nation Council upon recommendation of the Resources Committee, may sell, exchange, purchase, or acquire any Navajo trust or restricted or unrestricted lands, or interests in such lands for the purpose of eliminating undivided fractional interests in Navajo Nation trust or restricted lands, or consolidation of Navajo Nation land holdings. Any such purchase, sale, or exchange shall conform to the following conditions:

A. The sale price paid or exchange value received by the Navajo Nation for land or interests in land covered by this Section shall deviate by no more than ten percent (10%) of the fair market value;

B. If the Navajo Nation land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the Navajo Nation may accept the land exchange or give or receive cash in such exchange to equalize the values of the property exchanged;

C. Proceeds from the sale of land or interests in land or proceeds received by the Navajo Nation to equalize an exchange made pursuant to this Section shall be deposited into the account established pursuant to § 503(C) above, and additional monies may be deposited in said account as authorized by the Navajo Nation Council;

D. The Navajo Nation may reserve the mineral and water rights to such

sold or exchanged land; and

E. The Navajo Nation may purchase less than the whole estate.

#### **History**

CO-43-88, October 25, 1988.

CMY-23-88, May 4, 1988.

#### **§ 505. Purchase of undivided fractional interests**

A. The Navajo Nation may purchase at no less than the fair market value all of the surface interests of any tract of trust or restricted land within the land consolidation area described in § 502 above with the consent of the majority of the owners of such tract or allotment as required by 25 U.S.C. § 2204, under the following conditions:

1. Any Navajo person owning an undivided interest, and in actual use and possession of such tract for at least three consecutive years preceding the Nation's offer may purchase such tract by matching the Navajo Nation's offer;

2. If at any time within five years following the date of acquisition of such land by an individual under § 505(A)(1), such property is offered for sale or a petition is filed with the Bureau of Indian Affairs for removal of the property from trust or restricted status, the Navajo Nation shall have 90 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value.

B. The Navajo Nation may purchase at no less than fair market value part of all of the interests in any tract of trust or restricted land from willing sellers and shall acquire pursuant to the Indian Land Consolidation Act any *de minimis* undivided fractionated interests in allotments subject to the escheat provision of the Indian Land Consolidation Act (25 U.S.C. § 2206).

C. All sales which comply with federal law shall be approved by the Bureau of Indian Affairs. Appeals of Bureau of Indian Affairs actions shall be pursuant to Title 25 Code of Federal Regulations, Part 2.

#### **History**

CMY-23-88, May 4, 1988.

#### **§ 506. Public purpose; U.S. acceptance of trust allotments**

A. It is hereby declared that the acquisition by the Navajo Nation of trust allotments or of interests in trust allotments within the land consolidation area described in § 502 above is required in the public interest and constitutes a public purpose under Navajo law and under this Act.

B. Upon the approval of the President of the Navajo Nation or his or her duly authorized delegate and notwithstanding any provision of Navajo law to the

contrary, the United States is authorized and directed to accept deeds of trust allotments or interest in trust allotments from any allottee or heir who owns any interest in such allotment and who has deeded such allotment or interest in such allotment or portion thereof to the United States in trust for the Navajo Nation.

C. No taxes shall be paid by the Navajo Nation on any lands to this Section, and the requirements of §§ 5 and 7-10 (inclusive) of Title 16 of the Navajo Nation Code.

#### **History**

CMY-23-88, May 4, 1988.

#### **§ 507. Administrative rules and regulations**

The Director of the Navajo Land Department may, subject to the approval by the Resources Committee of the Navajo Nation Council, promulgate regulations governing the implementation of the provisions of this Navajo Land Consolidation Plan.

#### **History**

CMY-23-88, May 4, 1988.

### **Chapter 7. Use and Disposition of Lands Generally**

#### **Subchapter 1. General Provisions**

#### **§ 601. Use By non-Navajos**

Grants of land-use to non-Navajo traders, religious organizations, and other non-Navajo individuals or organizations should be carefully considered and kept to a minimum. The approval of these matters by the Navajo Nation Council and the Assistant Secretary of the Interior for Indian Affairs is required.

#### **History**

1922-1951, Res. p. 167, June 23, 1942.

#### **Cross References**

Committee authority-

Economic Development Committee, 2 N.N.C. § 724(B).

Resources Committee, 2 N.N.C. § 695(B)(2).

Transportation and Community Development Committee, 2 N.N.C. § 423 *et seq.*

#### **§ 602. Leases, licenses or easements on unrestricted lands**

A. The Resources Committee of the Navajo Nation Council is authorized to grant easements, leases, and licenses on lands owned by the Navajo Nation in fee simple where the best interests of the Nation are served thereby, provided, however, that in no case shall any lease or license be granted for a period in excess of five years, except upon specific authorization by the Navajo Nation Council.

B. However, the Resources Committee may grant homesite leases according to established Navajo Nation policy for a term not to exceed 65 years, and may provide for the encumbrance of the leasehold interest to secure capital for the construction or modification of improvements.

#### **History**

CJY-75-71, July 29, 1971.

CJ-56-53, July 23, 1953.

#### **Cross References**

Authority of the Resources Committee at 2 N.N.C. § 695(B)(2) and (4);

#### **§ 603. Approval of rights-of-way; damages**

The President of the Navajo Nation and the Navajo Area Director are authorized to approve all applications for rights of way over Navajo Nation lands, and to assess proper damages therefor; all payments for damages shall be credited to Navajo Nation funds.

#### **History**

1922-1951 Res. pp. 177, 178, November 5, 1947.

**Note.** This Section requires rescission by the Navajo Nation Council due to its inconsistency with current law despite the "null and void" provision of Navajo Nation Council Resolution CD-68-89, Resolved Clause 4.

#### **Cross References**

Navajo Nation Committee Authority-Resources Committee, see 2 N.N.C. § 695(B)(2).

Transportation and Community Development Committee, see 2 N.N.C. § 423(C)(2), (3), and (4).

#### **Annotations**

##### **1. Jurisdiction of state**

Authority under which state was permitted to construct a highway through and over Navajo Reservation failed to extinguish title to the Navajo Tribe to such lands in view of the fact that state has no jurisdiction over Indian lands until title of Indian *certiorari denied* has been extinguished. *State v. Begay* 63 N.M. 409, 320 P.2d 1017 (1958), *certiorari denied* 357 U.S. 918, 78 S.Ct.

1359, 2 L.Ed.2d 363.

**§ 604. Trees and shrubs**

All living trees and shrubs shall not be moved, cut, or injured without written permission of the Superintendent for legitimate purposes.

**History**

1922-1951 Res. p. 526, July 12, 1934.

**Cross References**

Authority of the Resources Committee, 2 N.N.C. § 695 (B) (6) (1992).

**Subchapter 3. Permits for Exploration, Mapping, Prospecting, and Other Surface Activities**

**Cross References**

CD-68-89, December 15, 1989, limited the powers of the Navajo Nation President and re delegated powers to Navajo Nation Council standing committees. Generally see 2 N.N.C. *et seq.*

**§ 651. Surveys, mapping and other surface activities**

The President of the Navajo Nation with the approval of the Navajo Area Director may grant permission on any Navajo Nation lands for surveying, mapping and other surface activities which do not cause damage to the land.

**History**

CF-22-58, February 20, 1958.

**Cross References**

Sketch or diagram of land, survey and legal description necessary for business leases of land, see 5 N.N.C. § 2304.

Authority of Resources Committee, 2 N.N.C. § 695 (B) (2).

**§ 652. Oil and gas prospecting permits**

Oil and gas prospecting permits without preference to lease may be issued for areas requested, but in no case for a larger area than a land management district. These permits may be granted by the President of the Navajo Nation Council with the consent of a majority of the district council delegates from the district concerned and the approval of the Navajo Area Director.

**History**

CF-22-58, February 20, 1958.

### **Cross References**

Authority of the Resources Committee with regard to prospecting permits, 2 N.N.C. § 695(B) (2) (1992).

#### **§ 653. [Repealed]**

##### **History**

CMY-19-88, May 3, 1988.

#### **§ 654. Other permits**

The Resources Committee shall consider all other requests for permits and the President of the Navajo Nation, with approval of the Resources Committee, shall have authority to grant permits for exploration, prospecting, and other activities not otherwise provided for by Council action, with the approval of the Navajo Area Director.

##### **History**

CF-22-58, February 20, 1958.

### **Cross References**

Resources Committee authority, 2 N.N.C. § 695(B) (2).

#### **§ 655. [Rescinded]**

##### **History**

ACN-310-70, November 20, 1970.

ACMY-65-68, May 15, 1968.

##### **History**

This Section was based on ACMY-65-68, May 15, 1968 and established permit fees.

#### **§ 656. Fees for non-Navajo prospecting permits**

A. Geophysical permit. Includes but is not limited to seismic, gravimetric, and magnetic methods, requiring vehicular or airborne support. Applicant must post not less than five thousand dollars (\$5,000) bond.

Period	12 months
Fee	One hundred dollars (\$100.00) per district

B. Geological permit. Designed for surface geologic studies, including mapping, outcrop examination, hand sampling, and the use of portable instruments carried by hand. (Does not include drilling, coring, trenching or other types of excavating). Applicant must post not less than five thousand dollars (\$5,000) bond.



Period	12 months
Fee	Fifty dollars (\$50.00) per district

C. The permits as described above are applicable on Navajo Nation lands, regardless of the minerals ownership.

#### **History**

ACN-310-70, November 20, 1970.

#### **Cross References**

Authority of the Resources Committee, 2 N.N.C. § 695(B).

### **Chapter 9. Homesites**

#### **Subchapter 1. Homesite Permits Within Townsites**

##### **§ 801. Powers of Resources Committee**

A. The Resources Committee of the Navajo Nation Council is authorized to act for and in lieu of the Navajo Nation Council to approve withdrawals, set-asides, or make allocations of Navajo Nation lands in or near communities and Government or Navajo Nation installations for homesite purposes.

B. The District Council Delegates of districts in which lands are proposed for such purposes shall consent thereto before approval may be granted by the Resources Committee.

C. The Area Director is requested to take such steps as may be necessary to cause any such areas withdrawn to be surveyed, plotted, and staked into lots for assignment to individual Navajo families or individuals for homesites under such procedures as shall be prescribed by the Resources Committee and approved by the Area Director.

#### **History**

CN-72-92, November 11, 1992.

CD-68-89, December 15, 1989.

CN-52-87, November 17, 1987.

ACF-20-70, February 11, 1970.

CJ-14-53, 1953, January 16, 1953.

**Note.** References to the "Advisory Committee" have been changed to "Resources Committee".

#### **Cross References**

Tables showing specific withdrawals of land for homesites or housing purposes, see Table 7d (Land Tables) at end of this Code.

Powers of the Resources Committee, 2 N.N.C. § 695(B).

Powers of Transportation and Community Development Committee, 2 N.N.C. § 423(C) (2) and (3).

#### **§ 802. Procedure for granting homesite permits**

A. The following procedures are prescribed for the making of applications and the granting of homesite permits on Navajo Nation lands which have been withdrawn for that purpose under authorization of the Navajo Nation Council and which have been surveyed, platted and subdivided:

1. Applications shall be submitted on forms approved by the President of the Navajo Nation and Navajo Area Director;

2. The applications shall be referred to the District Council Delegate and the field representative of the Bureau in the area in which the lands are located;

3. The District Council Delegate and the field representative shall submit such applications to the Superintendent of the Navajo Agency with recommendations;

4. The President of the Navajo Nation and the Superintendent of the Navajo Agency are authorized to consider and take final action on the applications, and in the case of applications which are approved, grant to the applicant, a homesite permit on a form approved by the President and Superintendent of the Navajo Agency.

B. The foregoing prescribed procedures shall continue in effect as interim procedures until development and adoption of a land code for the Navajo Reservation.

#### **History**

RCN-255-95, November 9, 1995.

RCD-289-93, December 22, 1993.

CD-68-89, December 15, 1989.

RCJ-6-88, January 13, 1988.

CN-52-87, November 17, 1987.

ACM-13-54, 1954, March 23, 1954.

**Note.** Reference to "Chairman of the Tribal Council" changed to "President of the Navajo Nation".

## **Cross References**

Powers of the Resources Committee of the Navajo Nation Council, 2 N.N.C. § 695(B) (1992).

Homesite Lease/Certificate Guidelines.

### **Subchapter 3. Homesite Leases Outside Townsites**

#### **§ 851. Powers of Resources Committee**

A. The Resources Committee of the Navajo Nation Council is authorized and empowered, with the approval of the Area Director, to set aside and assign for homesite purposes any Navajo Nation lands, rent-free or at a nominal rent.

B. The Resources Committee is further authorized to adopt procedures and forms to govern the granting of homesite assignments and leases to individual applicants.

C. The President of the Navajo Nation, with the approval of the Navajo Area Director, is authorized to enter into lease of assignment agreements upon approval of the Resources Committee on behalf of the Navajo Nation.

D. Sections 852-854 of this title are confirmed, ratified and approved and any and all actions taken by the Resources Committee or President of the Navajo Nation pursuant to the procedures and authorities therein contained are ratified and confirmed.

#### **History**

CD-68-89, December 15, 1989.

CN-52-87, November 17, 1987.

CO-58-58, October 8, 1958.

**Note.** References to "Advisory Committee" have been changed to "Resources Committee", 2 N.N.C. § 695(B).

Reference to "Chairman of the Tribal Council" changed to "President of the Navajo Nation".

#### **§ 852. Procedure for granting homesite leases outside townsites**

A. The following procedures are prescribed for the making of applications and the granting of homesite leases on Navajo Nation lands which have not been withdrawn for that purpose, nor surveyed, subdivided, or plotted:

1. Applications shall be on forms approved by the Resources Committee of the Navajo Nation Council and the Navajo Area Director.

2. The applications shall be referred to at least two district Council Delegates, the District Grazing Committee, and the subagency

Superintendent for the area in which the lands are located, for their recommendations.

3. The Resources Committee shall make the final decision on each application.

4. The President of the Navajo Nation with the approval of the Navajo Area Director shall grant a homesite lease to approved applicants, on a lease form approved by the Resources Committee of the Navajo Nation Council and the Navajo Area Director.

B. The foregoing procedures shall continue in effect as interim procedures until the development and adoption of a land code for the Navajo Nation.

### **History**

RCN-255-95, November 9, 1995.

RCD-289-93, December 22, 1993.

CN-72-92, November 4, 1992.

CD-68-89, December 15, 1989.

CN-52-87, November 17, 1987.

ACJ-7-58, January 16, 1958.

**Note.** Previously codified § 852(C) has been deleted pursuant to § 852(A) (1).

§ 852(A) (3). This authority has been delegated to the Navajo Land Department pursuant to CN-72-92, 2 N.N.C. § 695(B) (4).

### **Annotations**

#### **1. Grazing areas**

"Proximity alone of a homesite to a grazing area is not sufficient to prevent approval of a homesite lease application." *Begay v. King*, No. SC-CV-51-06, slip op. at 4 (Nav. Sup. Ct. April 13, 2009).

#### **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).

**§ 853. [Reserved]**

**History**

**Note.** Form deleted. Current forms are available from the Division of Natural Resources.

**§ 854. [Reserved]**

**History**

**Note.** Form deleted. Current forms are available from the Division of Natural Resources.

**Subchapter 5. Homesite Leases Not to Exceed 99 Years**

**§ 901. Authority of Resources Committee**

The Resources Committee is authorized and directed to negotiate and grant leases of Navajo Nation lands for homesite purposes for terms not to exceed 99 years, subject to the following conditions:

A. In order to encourage individual home ownership and community development, including local housing authorities, annual rentals shall be nominal.

B. No assignment of leasehold interests shall be permitted without the approval of the Resources Committee of the Navajo Nation Council.

C. No leases granted under this Section shall be made to nonmembers of the Navajo Nation except to such individuals whose presence on the Reservation may be determined by the Government Services Committee to be of indefinite duration and beneficial to the Navajo Nation.

D. Each leasing instrument shall contain a provision permitting the Navajo Nation to reenter the premises upon the violation of any of its provisions, together with an option to acquire housing property equities whenever an individual defaults and foreclosure and sale is instituted.

E. Each leasing instrument shall contain a legal description of the leased premises prepared by a registered civil land surveyor and acceptable to the Land Investigations Department of the Navajo Nation, the Federal Housing Administration, and any other federal housing agency involved.

F. Each leasing instrument shall contain provisions binding the lessee to compliance with all ordinances of the Navajo Nation as they may relate to housing developments on Navajo Nation-owned land.

**History**

CN-52-87, November 17, 1987.

CAU-46-61, August 31, 1961.

**Note.** "Advisory Committee" changed to "Resources Committee", 2 N.N.C. § 695.

Section 901(A)(3) "Advisory Committee" was changed to Government Services Committee as the Resources Committee lacks specific authority to grant Homesite Leases to non-Navajo members.

#### **Cross References**

Approval of leases to non-Navajos by the Navajo Nation Council, see 16 N.N.C. § 601.

Navajo Nation Cultural Resources Protection Act, see 19 N.N.C. § 1001 *et seq.*

#### **United States Code**

Congressional authority to lease Tribal lands for terms not to exceed ninety-nine (99) years, see 25 U.S.C. § 415, in Appendix, Part 2, Acts of Congress, of Navajo Nation Code.

### **Chapter 11. Land for Public, Charitable and Religious Purposes**

#### **Subchapter 1. [Reserved]**

§ 1101. [Reserved]

#### **History**

CD-68-89, December 15, 1989.

**Note.** CD-68-89 redelegated authority of the standing committees of the Navajo Nation Council including the Transportation and Community Development Committee and the Resources Committee codified at 2 N.N.C. § 420 *et seq.*, and 2 N.N.C. § 691 *et seq.* respectively.

#### **Subchapter 3. Mission Sites**

§ 1151. **Permits for religious activities; applications for lands**

A. The Navajo Nation Council adopts 16 N.N.C. §§ 1151-1164 for the issuance of permits to missionaries and mission bodies to conduct religious and other related activities on the Navajo Nation.

B. No missionary or mission group shall construct, commence construction, install or otherwise effect any improvements upon Navajo Nation lands, or use existing improvements upon Navajo Nation lands, for the purpose of using such improvements for the conduct of religious services or ceremonies at intervals of twice per month or more in frequency, without possessing a valid mission site permit. Any missionary or mission group violating the provisions of this Section shall be, if such missionary or mission group is subject to the civil jurisdiction of the Navajo Nation, liable for reasonable rental fees for lands used, or, if such missionary or mission group is not subject to the civil

jurisdiction of the Navajo Nation, subject to the provisions of 17 N.N.C. §§ 1901-1906, or to the exercise of any other applicable remedies exercisable by the Navajo Nation.

C. The Resources Committee of the Navajo Nation Council is authorized to act for the Navajo Nation Council in considering all applications of missionaries and mission bodies for Navajo Nation lands, in approving or disapproving such applications, and in transmitting them to the Secretary of the Interior.

D. All persons and entities occupying lands withdrawn pursuant to this Subchapter and all programs operated on lands withdrawn pursuant to this Subchapter are subject to the laws of the Navajo Nation.

#### **History**

CN-61-84, November 14, 1984.

ACM-53-70, March 13, 1970.

Tribal Council Res. 1922-1951, Res. p. 184, § 1, March 15, 1950.

**Note.** "Advisory Committee" changed to "Resources Committee", 2 N.N.C. § 695(B) (2) (1992).

#### **§ 1152. Revocation of permits**

No mission site permit may be renewed or issued except on a revocable basis; provided that such permit shall be cancelled by the Secretary for failure to carry out the purpose or purposes for which it was renewed or issued within a reasonable time.

#### **History**

Tribal Council Res. 1922-1951, Res. p. 184, March 15, 1950.

#### **§ 1153. Contents of applications**

A. No permit to enlarge the area of Navajo Nation land presently under permit to a missionary or mission body, and no permit to grant Navajo Nation land for a new mission site will be granted by the Resources Committee unless the application for such permit has first been reviewed by the Navajo Land Department of the Navajo Nation.

B. Such application shall contain the following information and documentation:

1. An exact description of the Navajo Nation land for which application is made.

2. A detailed statement of the purpose or purposes for which the said Navajo Nation land shall be used. If a missionary or mission body proposes to establish facilities for educational, medical, or other non-religious activities, the application shall set forth fully the

extent and character thereof.

3. A signed petition of a substantial number of Navajos residing in the vicinity of the proposed site endorsing the proposed permit.

4. An endorsement of Navajo Nation Council Delegates of the District in which the proposed site is located.

5. A description of buildings and improvements to be placed on Navajo Nation lands and an estimate of the cost thereof.

#### **History**

ACM-53-70, March 13, 1970.

Tribal Council Res. 1922-1951, Res. p. 184, March 15, 1950.

#### **§ 1154. Report by Navajo Area Director**

The Navajo Area Director shall, within 60 days from the receipt of a permit application, submit to the Resources Committee a report thereon, containing a statement of the proposed withdrawal of Navajo Nation lands on:

A. The water resources of the Reservation area concerned;

B. The use rights to the Navajo Nation lands covered by a permit which are claimed by any Navajo or Navajo family; and

C. Any other interest of the Navajo Nation.

#### **History**

**Note.** "Advisory Committee" changed to "Resources Committee", 2 N.N.C. § 695 (1992).

Tribal Council Res. 1922-1951, Res. p. 184, March 15, 1950.

#### **§ 1155. Number of missions in area**

The Resources Committee is authorized to deny or grant, on behalf of the Navajo Nation, any permit with special consideration to the establishment of too many missions in any one area or at any one point.

#### **History**

**Note.** "Advisory Committee" changed to "Resources Committee", 2 N.N.C. § 695(B) (2).

Tribal Council Res. 1922-1951, Res. p. 184, March 15, 1950.

#### **§ 1156. Transfer of permits**

No permit issued in accordance with 16 N.N.C. §§ 1151-1156 shall be transferable, except with the consent of the Resources Committee and of the



Secretary of the Interior.

#### **History**

**Note.** "Advisory Committee" changed to "Resources Committee", 2 N.N.C. § 695(B) (2).

Tribal Council Res. 1922-1951, Res. p. 184, March 15, 1950.

#### **§ 1157. Rental fees; exemption**

The Resources Committee of the Navajo Nation Council hereby establishes a minimum rental fee of fifteen dollars (\$15.00) per acre per year for all mission sites in the Navajo Nation. Notwithstanding the above, any mission in the Navajo Nation, which is actively conducting either substantial medical programs or state, Navajo Nation, or federally accredited educational programs upon its site shall be exempt from the above rental fee.

#### **History**

ACM-53-70, March 13, 1970.

#### **Cross References**

Resources Committee authority, 2 N.N.C. § 695(B) (4).

#### **§ 1158. Expansion of sites**

It shall be the policy of the Navajo Nation that requests for expansion of present mission sites shall be granted only in those cases where an expansion of a mission site is required for the construction of permanent facilities for community use or for the conduct of substantial medical or accredited educational programs.

#### **History**

ACM-53-70, March 13, 1970.

#### **Cross References**

Resources Committee authority, 2 N.N.C. § 695(B) (2).

#### **§ 1159. Acreage limitations—Generally**

A. It shall be the policy of the Navajo Nation that acreage used for each mission site shall be the minimum acreage required for the conduct of mission programs thereon.

B. The following acreage limitations shall apply to all applicants for permits:

1. Mission site for purely religious activities: one and one-half acres (1 1/2);

2. Mission site for religious activities and community services facilities: three and one-half acres (3 1/2);

3. Mission site for religious activities and either substantial medical or accredited educational programs: eight acres (8); and

4. The Resources Committee may, in the case of applications for mission sites in or near areas withdrawn for townships in the Navajo Nation, limit site acreage to less than two and five-tenths acres (2 5/10), and may set rental fees with due regard for present or future competing demands for land use in such areas.

C. For the purposes of this Subchapter, "community service facilities" shall be deemed to include only those permanent improvements upon the permitted site which are for the purpose of providing recreational programs, non-religious educational programs, including adult education, and other non-religious programs of benefit to the community.

#### **History**

ACM-53-70, March 13, 1970.

#### **§ 1160. Waiver**

A. The acreage limitations established by 16 N.N.C. § 1159 may be waived by the Resources Committee upon a showing by the applicant that planned programs will be of sufficient benefit to the Navajo People to justify waiver of acreage limitations. No waiver of acreage limitations shall be granted unless the applicant has complied with 16 N.N.C. §§ 1153 and 1161, and all other procedures provided by law.

B. No waiver of acreage limitations shall be granted in cases of applications subject to acreage limitations established by 16 N.N.C. § 1159(B) (1).

#### **History**

ACM-53-70, March 13, 1970.

#### **§ 1161. Applications for mission sites and waiver of acreage limitations**

No application for a mission site permit for an area of Navajo Nation land in excess of the limitations established in 16 N.N.C. § 1159 shall be granted by the Resources Committee unless the application for such permit has been reviewed and approved by the Division of Community Development of the Navajo Nation, and by the Navajo Land Department of the Navajo Nation.

#### **History**

ACM-53-70, March 13, 1970.

#### **§ 1162. Permits for excess acreage**

No mission site permit shall be granted for an area in excess of the

acreage limitations established by 16 N.N.C. § 1159, unless the permit includes the following conditions:

A. That the permit is revocable at the will of the Resources Committee;

B. That the permit, as to acreage in excess of that provided in 16 N.N.C. § 1159, shall automatically terminate upon the discontinuance of non-religious programs for the benefit of the Navajo People;

C. That the missionary or mission group permittee submit yearly written reports describing in detail the community service programs carried on by the permittee, such reports to be submitted to the Navajo Land Department of the Navajo Nation no later than January 31 of the following year. The Navajo Land Department shall review such reports, and make recommendations as are appropriate to the Resources Committee. The failure to submit such a report shall result in automatic revocation of the mission site permit, as to the entire permitted area; and

D. That the permittee pay in accordance with this Subchapter such additional rental fees as the Resources Committee may establish.

#### **History**

ACM-53-70, March 13, 1970.

#### **§ 1163. Lapse of present permits**

Three years from the date 16 N.N.C. §§ 1157-1164 becomes effective, all mission site permits granted prior to said date shall automatically terminate. The Navajo Land Department is authorized and directed to take such steps as are necessary to notify present permittees of the contents of this Section. Present permittees may reapply for mission site permits under the provisions of this Subchapter.

#### **History**

ACM-53-70, March 13, 1970.

#### **§ 1164. Termination of permits**

If any missionary or mission group shall fail to pay yearly rental fees due, by December 30, prior to the year for which such fees are due, the mission site permit granted such missionary or mission group shall automatically terminate.

#### **History**

ACM-53-70, March 13, 1970.

### **Chapter 13. Compensation for Improvements and Customary Use Rights Upon Adverse Disposition of Land**

#### **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. Sup.Ct. 1974).

### **2. Legislative approval**

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. Sup. Ct. 1974).

### **3. Just compensation**

Where the 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 this Chapter, and the defense of sovereign immunity from suit was not available to the Tribe in plaintiffs' suit for damages. An injunction was obtained against further trespass and cancellation of the allegedly fraudulently obtained consent to the taking. *Dennison v. Tucson Gas and Electric Co.*, 1 Nav. R. 95 (Nav. Sup. Ct. 1974).

### **§ 1401. Damages to improvements of individual Navajo Indians**

A. Whenever the Navajo Nation disposes of land containing any improvement belonging to a Navajo Indian who will not donate the same, whether the disposition is made by surface lease, permit, consent to grant of right-of-way or consent to commencement of construction on a proposed right of way, or in any other manner that gives the grantee or proposed grantee exclusive use of the surface of the land containing such improvement, or authorizes the grantee or proposed grantee to use the surface of the land in such manner that said improvement or improvements must be removed, damaged, or destroyed, the Navajo Nation will pay damages to the rightful claimant of such improvement or improvements.

B. As used in this Chapter "improvement" means house, hogans, sunshades, stables, storage sheds and dugouts, and sweathouses; sheep and horse corrals, lamb pens, and fences lawfully maintained; irrigation ditches, dams, charcos, development work on springs, and other water supply developments; any and all structures used for lawful purposes and other things having economic value. Where any improvement of a Navajo Indian is readily removable and such person has an opportunity to remove the same, damages payable on account of said improvement shall be limited to the reasonable cost of removal, if any, even though the claimant thereof may have failed to remove such improvement and it may have been destroyed or damaged in the authorized course of use of the land on which it is located.

C. No damages shall be paid to any person for any improvement, when such person at the time of building or acquiring said improvement knew or with reasonable diligence ought to have known that the area in which it was located was proposed to be disposed of by the Navajo Nation adversely to such person's interest.

D. Damages to be paid to individual Navajo Indians under this Section shall be fixed by negotiation and consent between the President of the Navajo Nation or his or her authorized representative and the individual involved. If no agreement satisfactory to the President or his or her representative can be reached within a reasonable time, the President of Navajo Nation shall appoint one appraiser, the individual shall appoint one appraiser, and the two appraisers so appointed shall appoint a third appraiser; but if they cannot agree upon the third appraiser within ten days, the President may appoint him or her. The three appraisers shall examine the improvement alleged to be damaged and shall appraise and determine the damages. Their determination shall be submitted to the Resources Committee and when, if, and as approved by said Committee the amount thereof shall be final. The Navajo Nation shall pay the fees of said appraisers, except where they are regular Navajo Nation employees, in which case they shall not be entitled to any fees. In addition the Navajo Nation shall pay the reasonable and necessary expenses of said appraisers, whether or not such appraisers are Navajo Nation employees.

#### **History**

CN-101-72, November 30, 1972.

CJA-18-60, January 22, 1960.

#### **Cross References**

Damages for improvements to specific highways, 14 N.N.C. § 1023.

#### **Annotations**

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

"Nowhere in the statute is there an express or implied allowance for the creation of customary use ownership from the mere act of fixing up an already existing or currently owned building." *Hood v. Bordy*, 6 Nav. R. 349, 356 (Nav. Sup. Ct. 1991).

##### **§ 1402. Economic damage to intangible interests of Navajo Indians**

A. Whenever as a result of the granting of any lease or permit embracing Navajo Nation land, or of granting permission by the Navajo Nation for the use of Navajo Nation land, or as a result of the use of Navajo Nation land under such lease, permit or permission, the value of any part of such land for its customary use by any Navajo Indian formerly lawfully using the same is destroyed or diminished, the Navajo Nation will compensate the former Navajo Indian user in the manner hereinafter specified.

B. When the livelihood of the former Navajo Indian user is gravely

affected by the new use, such user shall have first priority in resettling on other lands acquired by the Navajo Nation, except the area acquired pursuant to the Act of September 2, 1958 (72 Stat. 1686); and the Navajo Nation shall pay the expense of removing said person, his or her family, and property to any new land made available for his or her use, and such shall constitute full compensation to such Navajo.

C. In all other cases involving damages under this Paragraph, the amount thereof shall be fixed and determined in the manner specified in 16 N.N.C. § 1401 (D).

D. Where by reseeding, irrigation, or otherwise, the remaining land in the customary use area of any individual damaged by adverse disposition of Navajo Nation land is within a reasonable time made able to provide the same economic return as his or her former entire customary use area, no damages shall be payable to such person, except for the period, if any, between adverse disposition of the land in the customary use area and the time when the productivity of the remaining land achieves equality with the entire former customary use area.

E. Only lawful and authorized use shall be compensated under this Section. Thus, no person shall be compensated for loss of use of land for grazing animals in excess of his or her permitted number, or without a permit.

F. Every person otherwise entitled to damages under Subsection (C) of this Section shall not be entitled to receive any payment thereof until that person has surrendered for cancellation that person's grazing permit as to all animal units in excess of the carrying capacity of the land remaining in that person's customary use area. Persons so surrendering their grazing permits shall be entitled to an immediate lump sum payment of ten dollars (\$10.00) for each sheep unit cancelled.

### **History**

CJA-18-60, January 22, 1960.

### **Annotations**

#### **1. Property interests**

"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).

"The Navajo Tribal Council has recognized that customary usage is a property right for which compensation is available if diminished by the sovereign." *In re: Estate of Wauneka, Sr.*, 5 Nav. R. 79, 81 (Nav. Sup. Ct. 1986).

#### **2. Customary use**

" ... [C]ustomary use area and improvements incident can pass as property under our laws of succession." *In re: Estate of Wauneka, Sr.*, 5 Nav. R. 79, 82 (Nav. Sup. Ct. 1986).

**§ 1403. Adverse disposition of Navajo Nation land not to be made until individual damages are estimated**

Neither lessee, permittee, or the grantee of a right-of-way or other interest in or right to use Navajo Nation lands, shall commence any construction thereon, nor make any change in the grade or contour thereof or remove any surface vegetation thereon until the damages to the improvements thereon or the customary use rights of the individuals affected thereby have been estimated by the Navajo Land Department of the Navajo Nation. Unless the Navajo Nation Council has previously authorized the payment of such damages from nonreimbursable funds of the Navajo Nation, the President shall require the applicant for such lease, permit or grant of a right of way, or other interest in or right to use Navajo Nation lands, to deposit with the Controller of the Navajo Nation an amount equal to at least double the estimate of damage made by the Navajo Land Department. After the lease, permit, or grant of right of way or user has become final and the damages have been determined, either by appraisal, estimate or by consent as herein before provided, the President shall cause the Controller to pay, from and out of this deposit, to the person or persons damaged thereby such sum as he, she or they may be entitled to under the terms of this resolution, and to return to the applicant the excess thereof, except where the individual damaged has not consented to the determination of the amount thereof, it shall be withheld in order to satisfy the excess amount, if any, determined under 16 N.N.C. § 1402(C). Such disbursements shall be made without further appropriation of the Navajo Nation Council. All sums held by the Controller of the Navajo Nation, pursuant to the terms of this Chapter, for a period of more than 30 days shall be deposited in a Federal Savings and Loan Association or invested in bonds of the United States until needed for disbursement.

**History**

CJA-18-60, January 22, 1960.

**Chapter 15. Residential and Use Rights on Lands Added to Reservation**

**§ 1601. Navajos having rights to establish residence and use of area added to the Navajo Reservation; priorities**

A. Navajos desiring to reside in or use the lands added to the Navajo Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), may file applications therefor with the President of the Navajo Nation in the manner herein provided.

B. The President shall refer all applications to the Resources Committee, which may grant residence and use rights or use rights only to such applicants as prove to the satisfaction of the Committee that they fall within one of the following categories. In granting such rights, the Resources Committee shall give preference to applicants in the following order:

1. Navajos having occupancy and/or use of the area prior to September 2, 1958. It is the intention of the Council, in carrying out the purposes of the aforesaid Act of Congress to confirm to Navajos who resided in the area added to the Reservation or to be added to the

Reservation as aforesaid, or who regularly used the said area prior to September 2, 1958, such residence rights and the use of appurtenant grazing lands to the extent practicable, by dividing the area into grazing use areas compatible with the rights of other Navajos and the customs of the Navajo Nation. Navajos whose homes are or were close to the boundary line of the area added to the Reservation and who used other public lands adjacent to this area added to the Reservation, shall be regarded as entitled to preference in this category of applicants, provided that all applicants in this category shall prove to the satisfaction of the Resources Committee that they regularly used or occupied the lands prior to September 2, 1958, for which application is made.

2. Navajos who used or occupied other public land in San Juan County, Utah, prior to September 2, 1958. Navajo Indians who have not lived upon or otherwise made use of the said lands added to the Navajo Reservation, but who have used other public lands in San Juan County, Utah, not in the said Navajo Reservation prior to September 2, 1958, may receive residence and grazing permits in the same manner as herein above specified; provided that the said applicant abandon his or her residence elsewhere in the public domain in San Juan County and establish his or her residence within said land added to the Navajo Reservation.

3. Navajos who did not reside in or use areas added to the Reservation or other public lands in San Juan County, Utah. After January 1, 1963, the Resources Committee may, in its discretion, grant residence and use rights or use rights only to other Navajos making applications for settlement within the area added to the Reservation by said Act of Congress, provided that at the time of granting such rights there is unused range carrying capacity available in said area.

#### **History**

CN-56-59, November 5, 1959.

**Note.** "Advisory Committee" changed to "Resources Committee", 2 N.N.C. § 695(B) (2).

Throughout this Chapter, the citation of the Act of Congress has been changed to a uniform style: "Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686)".

#### **§ 1602. Families of applicants**

The permission granted by the Resources Committee to any Navajo to establish residence on land added to the Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), shall include permission for all persons, related by blood or marriage, who regularly reside with such Navajo as members of his or her family to reside on such land in the same camp with such Navajo.

#### **History**

CN-56-59, November 5, 1959.



### **§ 1603. McCracken Mesa area as part of Land Management District 12**

All areas which have been or may hereafter be added to the Navajo Indian Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), shall be a part of Land Management District 12, and shall constitute a new Range Management Unit of said district, to be known as the McCracken Mesa Unit. Notwithstanding any other provision of law or regulation, livestock permittees within the McCracken Mesa Unit may elect one member to the District 12 Grazing Committee, and the membership of said committee is hereby increased by one.

#### **History**

CN-56-59, November 5, 1959.

### **§ 1604. Procedure on applications to use or reside on lands added or to be added to Reservation**

A. The Director of the Natural Resources Division shall provide forms for applying for permission to use or reside in the area to be added to the Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), to all Navajo Indians who said Director has reason to believe may be eligible to use or reside in said area under the terms of this Chapter. Said Director shall give all reasonable assistance to such persons in properly filling out and signing their applications, and in conjunction with the Navajo Land Department shall make a thorough investigation of all applicants' claims and report thereon to the Resources Committee.

B. Hearing, action on disputes. The Resources Committee or a subcommittee thereof shall hold a hearing on each application to use or reside on any land added to the Navajo Indian Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686); and whenever it grants an application shall, with the advice and assistance of the District 12 Grazing Committee, designate the approximate area the applicant may use; and if the applicant desires to reside on such lands, the place or places he or she may establish a home or seasonal camp. Such areas and places shall be as nearly as conveniently possible the same as the areas or places within the added lands that the applicant or his or her ancestors previously lived on or used. Insofar as customary grazing use areas are not defined by the Resources Committee, they shall be determined by consent of the grazing permittees involved, and any dispute shall be decided by the District 12 Grazing Committee, subject to the right of appeal to the Central Grazing Committee. No grazing permittee who has been permitted by the Resources Committee to use any of the lands added to the Reservation shall be subject to civil or criminal action in the District Court of the Navajo Nation under 3 N.N.C. § 710(A) (5) for any alleged trespass occurring on such lands until after his or her customary use area has been defined by the District 12 Grazing Committee, or in case of an appeal, by the Central Grazing Committee; and the final decision of the District or Central Grazing Committee as to what constitutes any permittee's customary use area shall be conclusive on the Navajo Nation Courts in all such cases.

#### **History**

CN-56-59, November 5, 1959.

#### **Cross References**

Resources Committee authority, 2 N.N.C. § 695(B)(1).

#### **§ 1605. Resettlement of Navajos displaced from areas eliminated from Reservation**

Inasmuch as the Lichee Range Management Unit in District 1 of the Navajo Reservation is currently stocked to only part of its carrying capacity, all persons required to remove from the area eliminated from the Navajo Indian Reservation by the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), which is within the Lichee Range Management Unit, shall be permitted to resettle in said unit until said Lichee Unit is stocked to one hundred percent (100%) of its actual carrying capacity. Persons displaced from the area eliminated from the Reservation shall resettle at such place or places in the Lichee Unit as the District 1 Grazing Committee may designate. Any such person aggrieved by any action of the District 1 Grazing Committee may appeal to the Office of Hearing and Appeals, and shall be entitled to a hearing before said committee upon such appeal. The Resources Committee shall make provision for resettlement of any Navajos remaining displaced after full stocking of the Lichee Unit.

#### **History**

CN-56-59, November 5, 1959.

**Note.** Reference to "Central Grazing Committee" changed to "Office of Hearing and Appeals" pursuant to CO-59-03, October 21, 2003. See Resolved Clause 2 and 6.

#### **Cross References**

Resources Committee authority, 2 N.N.C. § 695(B)(1).

#### **§ 1606. Determination of carrying capacity of McCracken Mesa Range Management Unit**

The Director of the Natural Resources Division of the Navajo Nation, in cooperation with the Navajo Agency personnel, is hereby directed as soon as possible to secure qualified range technicians to ascertain the carrying capacity of all lands included in the McCracken Mesa Range Management Unit or proposed for inclusion therein, in the manner provided in 3 N.N.C. § 706(C), and to submit his or her conclusions to the Superintendent, the Area Director, and the Commissioner of Indian Affairs, as a basis upon which the Commissioner may make a final determination of the authorized carrying capacity of such unit.

#### **History**

CN-56-59, November 5, 1959.

**§ 1607. Issuance of grazing permits to persons permitted by Resources Committee to use McCracken Mesa Unit**

The Superintendent of the Shiprock subagency shall promptly issue grazing permits to each Navajo permitted by decision of the Resources Committee to use land added to the Reservation pursuant to the Act of September 2, 1958, Public Law 85-868 (72 Stat. 1686), for a number of sheep units, determined by the formula given below, so that the total permitted numbers will not exceed the carrying capacity of the McCracken Mesa Range Management Unit, less ten percent (10%) reserved for range management and other Navajos entitled to preference. When the Resources Committee shall have determined that the reoccupation and resettlement of the lands added to the Reservation pursuant to the Act of September 2, 1958, is substantially complete, or on January 1, 1963, whichever date is later, the remaining capacity reserved above shall be added to the permits regularly issued. The regular grazing permits shall allow each permittee a number of sheep units determined by the following formula:

$$x = b(c/a)$$

Where:

x = number of sheep units to be allowed by permit.

a = total sheep units of all persons entitled to use McCracken Mesa Unit, as determined by the Resources Committee.

b = sheep units to which individual is entitled, as determined by the Resources Committee.

c = ninety percent (90%) of carrying capacity of McCracken Mesa Unit as determined by the Commissioner of Indian Affairs.

**History**

CN-56-59, November 5, 1959.

**Chapter 17. Forcible Entry and Detainer**

**§ 1801. Definitions**

A. A person is guilty of forcible entry and detainer, or of forcible detainer, as the case may be, if he or she:

1. Makes an entry into any lands, tenements or other real property, except in cases where entry is given by law, and such an entry is by force.

2. Willfully holds over any lands, tenements or other real property after termination of his or her right to possession, after demand made in writing for the possession thereof by the person entitled to such possession.

B. A "forcible entry", or an entry where entry is not given by law within

the meaning of this article, is:

1. An entry without the consent of the person having the actual possession.

2. As to a landlord, an entry upon the possession of his or her tenant, without the tenant's consent.

C. There is a forcible detainer if:

1. A tenant at will or by sufferance, after termination of his or her tenancy or after written demand of possession by his or her landlord, or a tenant from month to month or a lesser period whose rent is due and unpaid, fails or refuses for five days after demand in writing to surrender and give possession to his or her landlord.

2. The tenant of a person who has made a forcible entry refuses for five days after written demand to give possession to the person upon whose possession the forcible entry was made.

3. A person who has made a forcible entry upon the possession of one who acquired such possession by forcible entry refuses for five days after written demand to give possession to the person upon whose possession the first forcible entry was made.

4. A person who has made a forcible entry upon the possession of a tenant for a term refuses to deliver possession to the landlord for five days after written demand, after the term expires. If the term expires while a writ of forcible entry applied for by the tenant is pending, the landlord may at his or her own cost and for his or her own benefit, prosecute it in the name of the tenant.

### **History**

CN-100-69, November 21, 1969.

### **Annotations**

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

"The Court holds that the FED statute does not apply to mutual help homebuyers. The FED statute sets up a process for a 'landlord' to remove someone who has no right of possession or for a 'tenant' to remove someone who is interfering with his or her right of possession." *Navajo Housing Authority v. Clark*, No. SC-CV-53-05, slip op. at 3-4 (Nav. Sup. Ct. April 4, 2006).

"As the Clarks observe, the statute authorizes, among other claims, an action by a 'landlord' to evict a 'tenant' for not paying 'rent'." *Navajo Housing Authority v. Clark*, No. SC-CV-53-05, slip op. at 4 (Nav. Sup. Ct. April 4, 2006).

"However, by its plain language the FED does not cover disputes between two parties who each claim a property interest." *Navajo Housing Authority v. Clark*, No. SC-CV-53-05, slip op. at 4 (Nav. Sup. Ct. April 4, 2006).

"That Alonzo is not a successor means that the Navajo Nation incorrectly filed a forcible detainer action against Arviso to remove him from its property. Based on Alonzo's status, he cannot be subject to a forcible detainer action under the forcible entry and detainer statute." *Navajo Nation v. Alonzo Arviso*, No. SC-CV-14-05, slip op. at 4 (Nav. Sup. Ct. August 11, 2005).

## **2. Actual possession**

"Although the Nation filed the wrong type of action, a different sub-section of Section 1801 is applicable using a 'forcible entry' action. Under Section 1801(B)(1), a 'forcible entry' occurs when an entry is made 'without the consent of the person having the actual possession.' In this case, the Nation has 'actual possession' and the Nation has not consented for Arviso to use its land for business purposes." *Navajo Nation v. Alonzo Arviso*, No. SC-CV-14-05, slip op. at 4 (Nav. Sup. Ct. August 11, 2005).

### **§ 1802. Time of possession by tenant**

It is not material whether a tenant received possession from his or her landlord or became his or her tenant after obtaining possession.

#### **History**

CN-100-69, November 21, 1969.

### **§ 1803. Complaint, summons and answer; service and return**

A. When a party aggrieved files a complaint of forcible entry or forcible detainer, in writing and under oath, with the clerk of the Navajo Nation Court or Navajo Nation Judge of the Navajo Nation Court in the district where the property is situated, summons shall immediately issue commanding the person against whom the complaint is made to appear and answer the complaint at a time and place named, not more than six nor less than three days from the date of service of the summons.

B. The complaint shall contain a description of the premises of which possession is claimed in sufficient detail to identify them, and shall also state the facts which entitle plaintiff to possession and authorize the action.

C. The summons shall be served at least two days before the return day, and return made thereof on the day assigned for trial.

D. The summons shall be served by a person duly authorized by law.

#### **History**

CN-100-69, November 21, 1969.

#### **Annotations**

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

"The disposition of this case depends on our interpretation of the forcible

entry and detainer statute, 16 N.N.C. § 1801 *et seq.*, and Rule 23 of the Navajo Rules of Civil Appellate Procedure." *Fort Defiance Housing Corporation v. Allen*, No. SC-CV-32-03, slip op. at 3 (Nav. Sup. Ct. June 7, 2004).

"Evictions on the Navajo Nation are governed by the forcible entry and detainer statute, 16 N.N.C. § 1801 *et seq.*" *Fort Defiance Housing Corporation v. Lowe*, No. SC-CV-32-03, slip op. at 2 (Nav. Sup. Ct. April 12, 2004).

## **2. Jurisdiction**

A non-Indian may be sued in the Navajo courts if he or she is found within the Tribe's territorial jurisdiction; a defendant corporations may be sued for forcible entry and detainer. *Navajo Tribe v. Orlando Helicopter Airways, Inc.*, 1 Nav. R. 40 (Nav. Sup. Ct. 1972).

### **§ 1804. Suit brought in adjoining district**

If there be no judge of the Navajo Nation Court in the district where the premises are situated, able or qualified by law to act, suit may be brought before a judge of the Navajo Nation Court in any adjoining district.

#### **History**

CN-100-69, November 21, 1969.

### **§ 1805. Trial and issue; postponement of trial**

A. On the trial of an action of forcible entry or forcible detainer, the only issue shall be the right of actual possession and the merits of title shall not be inquired into. An action for forcible entry or forcible detainer may not be brought in connection with any other action, nor may it be made the subject of any setoff or counterclaim.

B. The action shall be tried by the court.

C. For good cause shown, supported by affidavit, the trial may be postponed for a time not to exceed ten days.

#### **History**

CN-100-69, November 21, 1969.

#### **Annotations**

### **1. Due process**

" ... due process in the context of taking away a person's home through the use of the forcible entry and detainer statute requires that a district court include in its eviction order (1) notice of the appeal bond requirement, (2) the timing for submission of the bond or waiver request, and (3) the conditions the district court will require for the bond." *Fort Defiance Housing Corporation v. Lowe*, No. SC-CV-32-03, slip op. at 7-8 (Nav. Sup. Ct. April 12, 2004).

**§ 1806. Judgment; writ of restitution; limitation on issuance**

A. If defendant is found guilty, the court shall give judgment for plaintiff for restitution of the premises and for costs and, at plaintiffs option, for all rent found to be due and unpaid at the date of judgment, and shall grant a writ of restitution putting plaintiff in possession of the premises, and a warrant of removal shall issue accordingly which shall command the Navajo Police Department to immediately remove the defendant, to use such force as is necessary to effect removal if the defendant resists, and which shall further command such Department to levy damages and costs as fixed by the court.

B. If defendant is found not guilty, judgment shall be given for defendant against plaintiff for costs, and if it appears that plaintiff has acquired possession of the premises since commencement of the action, a writ of restitution shall issue in favor of defendant.

C. No writ of restitution or warrant shall issue until the expiration of five days after the rendition of judgment.

**History**

CN-100-69, November 21, 1969.

**§ 1807. Appeal; notice; bond**

A. Either party may appeal from the decision to the Supreme Court of the Navajo Nation by giving notice as in other actions and filing with the court within five days after rendition of the judgment a bond in an amount equal to double the yearly value or rental of the premises in dispute, with sureties to be approved by the Navajo Nation Court judge, payable to the adverse party and conditioned that he or she will prosecute the appeal to effect and pay all costs and damages which may be adjudged against him or her.

B. The yearly value or rental of the premises in dispute shall be determined by the Navajo Nation Court judge for the purpose of fixing the amount of the bond.

**History**

CN-100-69, November 21, 1969.

**Annotations**

**1. Filing of notice of appeal**

This Section means that the notice of appeal is to be filed within the five day period. *Navajo Housing Authority v. Benally*, 3 Nav. R. 55 (Nav. Ct. App. 1981).

Where notice of appeal was filed some 22 days after the judgment was rendered, the Court of Appeals did not have jurisdiction over the appeal since it was filed well beyond the five day period mandated by this Section. *Navajo Housing Authority v. Benally*, 3 Nav. R. 55 (Nav. Ct. App. 1981).

## **2. Bonding requirements**

"An appellant complies with Section 1807 when he or she submits a bond within five (5) days of the district court's order, or when the district court waives the bond on request." *Fort Defiance House Corporation v. Lowe*, No. SC-CV-32-03 slip op. at 3 (Nav. Sup. Ct. April 12, 2004).

"The Court herein declares that 16 N.N.C. § 1807 requiring bond in an amount equal to double the yearly value or rental is in violation of the equal protection clause and as such, any bond required is to be approved by the Navajo Nation Court judges as to the amount and as to when it is to be paid. This Court rules that in order to accomplish the intent of posting adequate security, which are to preserve the property at issue, to guard an awarded damage, or to insure a landlord against loss of rent if the tenant remain in possession, the Navajo Nation judge can waive the requirement that the bond be posted before an appeal is granted provided that the judge is satisfied that the appellant made an earnest attempt to comply with the statute by providing documents showing such attempts." *Navajo Townsite Community Development Corporation v. Sorrell*, No. SC-CV-19-00, slip op. at 6-7 (Nav. Sup. Ct. January 28, 2002).

## **3. Construction and application**

"Therefore, we instruct that the following procedures be followed in forcible entry and detainer cases when the court orders the eviction of a tenant from his or her residence. The judge must include explicit language in the eviction order alerting the tenant that he or she has five (5) working days to submit an appeal bond to properly appeal the order. Also, the trial judge must include the conditions for the bond in the order. Tenants who wish to appeal must file the bond with the court within five (5) working days, or, within that time, file a waiver request setting out why they cannot comply with the conditions set forth in the order. Consistent with previous opinions, the trial court has discretion to grant or deny the waiver." *Fort Defiance Housing Corporation v. Lowe*, No. SC-CV-32-03, slip op. at 2 (Nav. Sup. Ct. April 12, 2004).

"While under a strict interpretation of the statute we must dismiss this appeal, we are compelled to inquire whether or not a dismissal would violate a fundamental right of Appellants under Navajo law. We will interpret Section 1807 in the light of the Navajo Bill of Rights, as informed by *Diyin Nohookáá Dine'é Bi Beehaz'áanii* (Navajo Common Law), to decide whether we must dismiss this case." *Fort Defiance House Corporation v. Lowe*, No. SC-CV-32-03 slip op. at 3 (Nav. Sup. Ct. April 12, 2004).

"Section 1807 is jurisdictional, and failure to comply with its conditions requires that this Court dismiss the appeal." *Fort Defiance House Corporation v. Lowe*, No. SC-CV-32-03 slip op. at 3 (Nav. Sup. Ct. April 12, 2004).

## **4. Due process**

"We therefore hold that in order to assure due process, a district court's eviction order must give tenants notice of the appeal bond requirement, the timing requirements, and the specific conditions for the bond set by the court. We also interpret the five (5) days in the statute to be five (5) working days, to give tenants additional time to comply with the judge's conditions." *Fort*



*Defiance House Corporation v. Lowe*, No. SC-CV-32-03 slip op. at 7 (Nav. Sup. Ct. April 12, 2004).

#### **5. Time of appeal**

"Based on the above, we hold that the time to file a notice of appeal in a forcible entry and detainer case is the same as the time to file the appeal bond, five (5) working days from the receipt of the order. This Court must dismiss any appeals when a notice of appeal is untimely filed, as we cannot extend the time for a notice of appeal. NRCAP 5(b)." *Fort Defiance Housing Corporation v. Allen*, No. SC-CV-32-03, slip op. at 5 (Nav. Sup. Ct. June 7, 2004).

"The thirty (30) day period of Rule 23 therefore cannot override the five (5) day period mandated by 16 N.N.C. § 1807. We therefore cannot apply Rule 23, and we instruct practitioners to disregard its timing requirement." *Fort Defiance Housing Corporation v. Allen*, No. SC-CV-32-03, slip op. at 4 (Nav. Sup. Ct. June 7, 2004).

"This Court previously interpreted Section 1807 to require an appellant to file both the appeal bond and the notice of appeal within five (5) days of the order. *Benally v. Navajo Housing Authority*, 3 Nav. R. 55, 55 (Nav. Ct. App. 1981). In residential cases the five (5) days is working days from receipt of the order. *Fort Defiance Housing Corporation v. Lowe*, No. SC-CV-32-03. slip op. at 7 (Nav. Sup. Ct. April 12, 2004)." *Fort Defiance Housing Corporation v. Allen*, No. SC-CV-32-03, slip op. at 3 (Nav. Sup. Ct. June 7, 2004).

#### **§ 1808. Stay of proceedings on judgment; record on appeal**

When the appeal bond is filed and approved, the judge shall stay further proceedings on the judgment and immediately prepare a transcript of all entries on his or her docket in the action and transmit it, together with all original papers, to the Clerk of the Supreme Court of the Navajo Nation.

#### **History**

CN-100-69, November 21, 1969.

#### **§ 1809. Trial on appeal**

The Supreme Court of the Navajo Nation on the trial on appeal shall proceed to hear the case as a new case. The Appellee, if out of possession and the right of possession is adjudged to him or her, shall be entitled to damages for loss of possession of the premises during pendency of the appeal in addition to the other judgment previously rendered in the lower court, and the judgment shall be against the appealing party and the sureties on his or her bond for the damages proved and costs.

#### **History**

CN-100-69, November 21, 1969.

#### **Annotations**

## **1. Construction and application**

"This opinion concerns whether the Judicial Reform Act repealed a provision in the Forcible Entry and Detainer statute mandating treating an appeal as a 'new case.' The Court holds it did not, and therefore will review a district court's factual finding de novo consistent with the procedures announced in this opinion." *Allen v. Fort Defiance Housing Corporation*, No. SC-CV-05-05, slip op. at 1 (Nav. Sup. Ct. December 14, 2005).

### **§ 1810. Proceedings no bar to certain actions**

The proceedings under a forcible entry or forcible detainer shall not bar an action for trespass, waste, rent or mesne profits, or any other action at law or equity.

#### **History**

CN-100-69, November 21, 1969.

## **Chapter 19. Navajo Nation Deeds of Trust Act**

### **§ 2001. Purpose of Act**

The purpose of this Act is to enable the Navajo Nation to assist enrolled members of the Navajo Nation to obtain adequate, decent, safe and sanitary housing, or to repair, improve, or modernize existing dwellings on the Navajo Nation, by serving as loan agent on the deed of trust for federal and Navajo Nation home loan programs.

#### **History**

CO-80-93, October 28, 1993.

### **§ 2002. Definitions**

A. "Borrower" (or "Trustor") means an enrolled member or members of the Navajo Nation conveying loan property by a deed of trust as security for the performance of an obligation, or the successor(s) in interest of such person or persons.

B. "Contract" means an agreement between an enrolled member of the Navajo Nation who is the borrower and a federal or Navajo Nation agency to secure a loan pursuant to federal and Navajo Nation law enabling the construction or improvement of housing in Navajo Indian Country, as defined by 7 N.N.C. § 254, as amended.

C. "Credit Bid" means a bid made by the lender in full or partial satisfaction of a contract which is secured by the trust deed.

D. "Deed of Trust" or "Trust deed" means a deed executed in conformity with this Chapter and conveying an encumbrance of a leasehold interest to the loan agent to secure the performance of an obligation of the borrower, or other person named in the deed, to a lender.

E. "Lender" means a federal or Navajo Nation agency which is lending funds for housing construction, repair or improvement. The Lender (or "Beneficiary") is the entity for whose benefit a deed of trust is given, or the Lender's successor in interest.

F. "Loan Agent" (or "Trustee") means the Navajo Nation, to whom title to the loan property is conveyed by trust deed, or the Navajo Nation's successor in interest.

G. "Loan Property" (or "Trust Property") means an encumbrance of a leasehold interest in the loan property which is capable of being transferred.

H. "Waste" means spoilage or destruction of the loan property which results in substantial injury to the property.

#### **History**

CO-80-93, October 28, 1993.

#### **§ 2003. No waiver of Navajo Nation sovereign immunity**

Nothing herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

#### **History**

CO-80-93, October 28, 1993.

#### **Cross References**

Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*

#### **§ 2004. Description of loan property; mailing addresses**

A. In deeds of trust the legal description of the loan property shall be given by one of the following methods:

1. By the use of lot, block, tract or parcel as set forth within a recorded subdivision plat;

2. By the use of a metes and bounds or course and distance survey,  
or

3. By the use of the governmental rectangular survey system with specific identification of the location within any section or sections, tract or tracts, of a township and range.

B. The mailing address of each borrower, lender, and loan agent shall be specified in each deed of trust.

#### **History**

CO-80-93, October 28, 1993.

**§ 2005. Deeds of Trust as security**

Deeds of Trust may be executed as security for the performance of a contract. Statutes of the Navajo Nation which may refer to mortgages as security instruments are deemed to also include deeds of trust, unless the context otherwise requires.

**History**

CO-80-93, October 28, 1993.

**§ 2006. Transfers of loan property; uses**

A. Transfers of the loan property may be made to secure the performance of the contract by the borrower or any other person, subject to appropriate approvals by the lender, the loan agent and the BIA. An interest in the loan property acquired by the borrower subsequent to the execution of the trust deed shall become additional security for the contract for which the loan property is conveyed as if the interest of claim had been acquired before execution of the deed.

B. The loan agent or lender shall have a right to maintain an action in the courts of the Navajo Nation against any person, including the borrower, for a claim for relief where damage or injury occurs or may occur to the loan property or interests therein, including but not limited to, actions for damages or to prevent:

1. Physical abuse to or destruction of the loan property or any portion thereof;
2. Waste;
3. Impairment of the security provided by the deed of trust.

C. In any such action under § 2006(B), the loan agent or lender, or both, shall also be entitled to recover reasonable costs of bringing the action and shall be entitled to all remedies available. Recovery of damages under this Section shall be limited to damages or injuries incurred during the time the borrower is in possession or control of the loan property.

**History**

CO-80-93, October 28, 1993.

**§ 2007. Borrower's right to transfer; no transfer fee; Interest rate increase limit**

A. Nothing in this Chapter shall be construed to prevent or limit the right of a borrower to transfer his or her interest in the loan property, subject to approval of such transfer by the loan agent, the lender and the BIA.

B. When a borrower transfers his or her interest in the loan property, no lender or loan agent shall charge a fee on the transfer.

C. When a borrower transfers his or her interest in the loan property, no lender or loan agent shall increase the interest rate on the obligation secured by the trust deed unless the transferring borrower is released from all liability, and in no event shall the amount of such increase exceed one-half of one percent (1%) per annum more than the interest rate paid by the transferring borrower.

D. This Chapter shall be applicable only to loan property which is not used for commercial purposes and which is limited to and utilized for dwelling units.

#### **History**

CO-80-93, October 28, 1993.

#### **§ 2008. Sale of loan property; power of loan agent; foreclosure of trust deed**

A. A power of sale is hereby conferred upon the loan agent of a deed of trust under which the loan property may be sold in the manner provided in this Chapter, after a breach or default in performance of the contract, for which the loan property is conveyed as security, or a breach or default of the trust deed.

B. If the loan agent fails to exercise the power of sale within 90 days of receipt of a copy of the formal letter of acceleration from the lender, the lender may file and maintain an action to foreclose a deed of trust in the courts of the Navajo Nation.

C. The power of sale of trust property conferred upon the loan agent shall not be exercised before the expiration of 90 days from the recording of the notice of intent to sell.

#### **History**

CO-80-93, October 28, 1993.

#### **§ 2009. Notice of land agent's sale**

A. The loan agent shall give written notice of the time and place of sale legally describing the loan property to be sold by methods which shall include the following:

1. Publication of such notice in *The Navajo Times*, or such other publication of general circulation on or near the Navajo Nation, once a week for four consecutive weeks;

2. Posting of such notice, at least 21 days before the date of sale, at places provided for posting public notices in Window Rock, at the local BIA Agency, and at the chapter house where the loan property is to be sold;

3. Recording of such notice with the BIA, at the BIA address as specified in the deed of trust;

4. Giving notice as provided in § 2011, to the extent applicable.

B. The sale shall be held at the time and place designated in the notice of intent to sell at a special place on the loan property, at the chapter house, or at a specified location at a place of business of the loan agent, in any agency in which part of the loan property to be sold is situated.

C. The notice of sale shall contain:

1. An identifiable location, including directions from the nearest chapter house, as well as the legal description of the loan property;

2. The original principal balance as shown on the deed of trust;

3. The names and addresses of the lender and the loan agent, the name and address of the original borrower as stated in the deed of trust and the signature of the loan agent; and

4. The borrower's right to reinstate according to § 2010.

D. Any error or omission in the information required by Subsection (C) of this Section, other than an error in the legal description of the loan property, or failure to include notice of right to reinstate, shall not invalidate a loan agent's sale. Any error in the legal description of the loan property shall not invalidate a loan agent's sale if, considered as a whole, the information provided is sufficient to identify the loan property being sold.

### **History**

CO-80-93, October 28, 1993.

### **§ 2010. Right of reinstatement**

A. The borrower may, before 5:00 p.m. on the last business day before the date of sale, reinstate the deed of trust by paying to the lender the arrearage on the contract or deed of trust, any reasonable amount advanced by the lender as provided in the contract or deed of trust for protection or maintenance of the loan property, and for reasonable loan agent's costs.

B. Upon performance of the conditions under Subsection (A), the contract of deed of trust shall be reinstated and in force as if no breach or default had occurred. The lender shall notify the loan agent in writing of the reinstatement before the loan agent's sale, and shall forward the payment to the loan agent for costs.

C. The loan agent and the lender shall provide to the borrower, or upon request, to any person entitled to notice pursuant to § 2011, a good faith estimate of the sum which is necessary to reinstate the trust deed. A reinstatement based on a good faith estimate shall be effective.

D. Upon receipt of notice of reinstatement, the loan agent shall cancel the proceedings, and shall record a cancellation of the notice if sale was

recorded.

### History

CO-80-93, October 28, 1993.

**§ 2011. Request for copies of notice of intent to sell; mailings by loan agent; disclosure of information regarding loan agent sale; opportunity for hearing**

A. A person desiring notice of intent to sell under a trust deed shall, at any time after the recording of the trust deed and before the recording of a notice of intent to sell, record with the recording office of the Navajo Nation or with the office to which the Navajo Nation has given authority to record title, a duly acknowledged request for a copy of the notice of intent to sell.

B. Not later than 30 days after recording the notice of intent to sell, the loan agent shall mail by certified or registered mail a copy of such notice with the recording date shown, together with any notice required to be given by § 2009, addressed as follows:

1. To each person whose name and address are set forth in a request for notice, which has been recorded before the recording of the notice of intent to sell;

2. To each person who, at the time of recording of the notice of intent to sell, appears on the records of the BIA or the Navajo Nation to have an interest in the loan property. Such copy of the notice shall be addressed to the person whose interest so appears at the address set forth in the document; and

3. To each person who was a party to the trust deed.

C. A return, self-addressed, postage paid postcard shall be enclosed with notice to the borrower. If the borrower desires a hearing, this postcard shall be returned by mail to the loan agent within 14 days, who shall direct the request for hearing to the Navajo Nation Office of Hearings and Appeals. The hearing shall be subject to rules and regulations as defined by the Office of Hearings and Appeals. If no postcard is returned, the power of sale will be exercised without a hearing.

D. No request for a copy of a notice recorded pursuant to this Section, nor any statement or allegation in any such request, nor any record thereof, shall affect the title to the loan property or be deemed notice to any person that a person requesting a copy of notice of intent to sell has or claims any interest in, or claim upon the loan property.

E. Not sooner than 30 days after recordation of the notice of loan agent's sale, the loan agent shall upon receipt of a written request, provide, if actually known to the loan agent, the following information relating to the agent's sale and the loan property:

1. The unpaid principal balance of the note or other obligation which is secured by the deed of trust;

2. The name and address of record of the owner of the loan property as of the date of recording the notice of loan agent's sale; and

3. A list of the liens and encumbrances recorded on the trust property as of the date of recording the notice of loan agent's sale.

F. At any time during the day of sale but before the sale begins, or on the last business day preceding the day of sale, the loan agent shall provide to any person who requests it, a good faith estimate of the maximum credit bid the lender shall be entitled to make at the sale.

G. In providing information pursuant to Subsections (E) and (F) of this Section, the loan agent may, without obligation or liability for the accuracy or completeness of the information, respond to oral requests, respond orally or in writing or provide additional information not required by such Subsections. With respect to loan property which is the subject of a loan agent's sale, the lender or the holder of any prior lien may provide information concerning such deed of trust or any prior lien which is not required by Subsections (E) or (F) of this Section. The providing of such information by any lender or holder of a prior lien shall be without obligation or liability for the accuracy or completeness of the information.

#### **History**

CO-80-93, October 28, 1993.

#### **§ 2012. Sale at public auction; postponement of sale**

A. On the date and at the time and place designated in the notice of intent to sell, the loan agent shall sell the loan property at public auction to the highest qualified bidder. A representative of the loan agent may conduct the sale, and act at such sale as the auctioneer. Any qualified person, including the loan agent or lender may bid at the sale. Only the lender may make a credit bid, in lieu of cash, at such sale. The sale shall not be deemed completed until the purchaser pays the price bid in a form satisfactory to the loan agent.

B. The person conducting the sale may, for any cause deemed in the interest of the lender or borrower, or both, postpone or continue the sale from time to time, or change the place of the sale to any other location authorized pursuant to this Chapter by giving notice of the new date, time and place by public declaration at the time and place last appointed for the sale. Any new sale date shall be a fixed date within 90 calendar days of the date of the declaration.

C. A sale shall not be complete if the sale as held is contrary to or in violation of any federal statute in effect because of an unknown or undisclosed bankruptcy.

#### **History**

CO-80-93, October 28, 1993.



**§ 2013. Payment of bid; loan agent's deed**

A. The purchaser at the sale, other than the lender to the extent of a credit bid or the loan agent, shall pay the price bid within five working days. If the sale is continued, the loan agent shall provide notice of the continuation of the sale, by registered or certified mail with postage prepaid, to all bidders who provide their names, addresses and telephone numbers in writing to the party conducting the sale. A purchaser who fails to pay the amount bid by him or her is liable to any person who suffers loss or expenses as a result. In any subsequent sale of the loan property, the loan agent may reject any bid of a purchaser who fails to pay the amount bid.

B. The price bid shall be paid at the office of the loan agent or his or her representative. The payment of the bid price may be made at a later time if agreed upon in writing by the loan agent. Upon receipt of payment, in a form satisfactory to the loan agent, the loan agent shall execute and deliver his or her deed to the purchaser.

C. The loan agent's deed shall operate to convey to the purchaser the title, interest and claim of the loan agent, the borrower, the lender, their respective successors in interest and of all persons claiming the loan property sold by or through them, including all interest or claim in the loan property acquired subsequent to the recording of the deed of trust and prior to delivery of the loan agent's deed. Such conveyance shall be absolute, without right of redemption and clear of all liens, claims or interests having a priority subordinate to the deed of trust.

**History**

CO-80-93, October 28, 1993.

**§ 2014. No right to recover deficiency; disposition of proceeds of sale**

A. The proceeds of the sale shall be deemed to be in full satisfaction of the obligation and no right to recover a deficiency in any action shall exist.

B. The loan agent shall apply the proceeds of the sale of the loan property as follows:

1. To the costs and expenses of exercising the power of sale and of the sale itself;
2. To payment of the contract secured by the trust deed;
3. To the payment of all other obligations provided in or secured by the trust deed; and
4. To the junior lienholders, or encumbrancers in order of their priority. After payment in full to all junior lienholders and encumbrancers, payment shall be made to the borrower.

**History**

CO-80-93, October 28, 1993.

**§ 2015. Transfer of secured contract**

The transfer of any contract secured by a trust deed, subject to proper approvals, shall operate as a transfer of the security for such contract.

**History**

CO-80-93, October 28, 1993.

**§ 2016. Notice from instruments recorded; assignment of a beneficial interest**

Except as otherwise provided in this Section, a trust deed, substitution of loan agent, assignment of a beneficial interest under a trust deed, notice of intent to sell, loan agent's deed, deed of release, and any instrument by which a loan agent is subordinated or waived as to priority, if acknowledged as provided by law, shall from the time of being recorded impart notice of the content to all persons, including subsequent purchasers and encumbrancers for value. The recording of an assignment of the beneficial interest in a trust deed shall not be deemed notice of such assignment to the borrower, his or her heirs or personal representatives, so as to invalidate any payment made by them to the person previously holding the note, or other instrument evidencing the contract secured by the trust deed.

**History**

CO-80-93, October 28, 1993.

**§ 2017. Loan agent's right to rely**

In carrying out duties under the provisions of this Chapter or any deed of trust, the loan agent shall have the absolute right to rely upon any written direction or information furnished by the lender.

**History**

CO-80-93, October 28, 1993.

**§ 2018. Recordation with the BIA**

The loan agent shall provide the BIA with a certified copy of any assignment of lease or deed of trust.

**History**

CO-80-93, October 28, 1993.

**§ 2019. Development of rules, regulations and guidelines; effective date**

The department or entity responsible for acting on behalf of the loan agent shall have authority to develop rules, regulations and operating guidelines to further the purpose of and otherwise implement this Chapter. This Chapter shall become effective upon the approval of these rules, regulations, and guidelines by the Transportation and Community Development

Committee after consultation with the Resources Committee, the Human Services Committee, and any other appropriate standing committee of the Navajo Nation Council.

#### **History**

CO-80-93, October 28, 1993.

#### **§ 2020. Severability**

Should any provision of this Chapter or its applicability be found to be invalid by the courts of the Navajo Nation, the remaining provisions which can be implemented without the invalid provision shall be given full force and effect. To this extent, the provisions of this Chapter are severable.

#### **History**

CO-80-93, October 28, 1993.

### **Chapter 21. Navajo Nation Civil Trespass Act**

#### **Subchapter 1. General Provisions**

#### **§ 2201. Short title**

This chapter may be cited as the "Navajo Nation Civil Trespass Act."

#### **History**

CJY-26-07, July 20, 2007. Added "Short title" at § 2201 and renumbered previous § 2201 to § 2202, "Findings; purpose."

#### **§ 2202. Findings; purpose**

A. The Navajo Nation Council finds:

1. The Navajo Nation is comprised of over 27,000 square miles of land, the vast majority of which is Navajo Nation Lands as defined in this Chapter;

2. The Navajo Nation also owns lands and interests in lands outside the territorial boundaries of the Navajo Nation, all of which are Navajo Nation Lands as defined in this Chapter;

3. The Navajo Nation has approved, issued or granted, and continues to approve, issue or grant, numerous leases, easements, rights-of-way, and permits for the use of Navajo Nation Lands to Navajo Nation residents and non-residents, Navajo Nation tribal members and nonmembers, corporations, and other legal entities;

4. Unauthorized possession of, holding over upon, entry upon and use of Navajo Nation Lands causes significant harm to Navajo Nation resources and causes substantial economic and other damage to the Navajo

Nation as sovereign and landowner;

5. The Navajo people possess the inherent right of self-government and self-determination, which rights are recognized, secured and protected by Treaties between the Navajo Tribe of Indians and the United States of America of September 9, 1849, 9 Stat. 974, and of June 1, 1868, 15 Stat. 667, and other federal laws;

6. The rights of the Navajo Nation as landowner and as sovereign include the power to exclude nonmembers from Navajo Nation Lands within the Navajo Nation; the power to place conditions on the entry upon, the acquisition of rights to or interests in, or the use of Navajo Nation Lands; and the power to regulate such use in accordance with applicable Navajo and federal law and with any applicable contracts;

7. The authority of the Secretary of the Interior to issue and approve business site leases has been delegated to the Navajo Nation pursuant to the Navajo Nation Trust Land Leasing Act of 2000, Pub. L. 106-568, 114 Stat. 2933; the Energy Policy Act of 2005 provides that the Secretary's authority to grant certain rights-of-way and leases of Navajo lands will also be delegated to the Navajo Nation upon the Nation's compliance with certain conditions; and federal policy since 1934 has encouraged greater tribal control over reservation resources generally;

8. The United States of America has treaty-based, statutory, and trust duties to manage lands held in trust for the Navajo Nation, but the Bureau of Indian Affairs, which must shoulder the task of doing so, has such staggering responsibilities that federal assistance to the Navajo Nation to prevent or remedy trespasses on Navajo Nation Lands has been and is expected to be limited;

9. Acquisition of interests in, the possession or use of, trespasses on, and other local actions involving Navajo Nation Lands within the Navajo Nation are subject to the laws and regulations of the Navajo Nation;

10. The Navajo Nation does not have any criminal laws regarding trespass on Navajo Nation Lands applicable to non-members, and the Navajo Nation has historically favored resolution of all allegations of trespass on Navajo Nation Lands through the civil law, rather than through criminal sanctions.

B. The purposes of this Chapter are:

1. To state the terms on which the Navajo Nation will give its consent to persons to obtain an interest in, enter upon, or otherwise use Navajo Nation Lands;

2. To define administrative responsibility within the Navajo Nation government for addressing trespasses on Navajo Nation Lands;

3. To provide appropriate notice, opportunity to be heard, and other administrative procedures to determine whether a person or entity is trespassing on Navajo Nation Lands, and, if so, to establish

guidelines and factors for setting civil administrative trespass assessments and the enforcement of the same;

4. To provide for judicial review of such civil administrative trespass assessments;

5. To compensate for lost revenues, interest, costs, opportunity costs, attorney fees, costs of administration, and other tangible and intangible costs and damages, if a person or entity is determined to have been or to be trespassing on Navajo Nation Lands;

6. To ensure that the ability of the Navajo Nation and the United States of America as trustee to address and remedy trespasses on Navajo Nation Lands is not limited or compromised in any way by the operation of this chapter.

### **History**

CJY-26-07, July 20, 2007. Renumbered and amended previous § 2201-"Findings; purpose," as § 2202.

CO-92-94, October 26, 1994.

**Note.** Slightly reworded at subsection (B) for clarity.

### **§ 2203. Definitions**

As used in this Chapter:

A. "Director" means the Executive Director of the Navajo Nation Division of Natural Resources, or its successor agency, or his or her designee.

B. "Easement" and "Right-of-Way" means any valid, duly authorized grant of, or agreement relating to, an easement or right-of-way in, over, under, through or to Navajo Nation Lands. Where the context requires, "Easement" and "Right-of-Way" refer to the interest created by a grant of easement or right-of-way, or by any agreement with the Navajo Nation relating to the same. As applied to Navajo Nation Lands held in trust for the Navajo Nation by the United States of America, "Easement" and "Right-of-Way" include all interests in land held in accordance with the provisions of 25 U.S.C. §§ 311-328 and regulations at 25 C.F.R. Part 169; Title 5 of the Energy Policy Act of the 2005, 25 U.S.C. § 3501 *et seq.*, as amended; any other federal law authorizing easements or rights-of-way in Indian lands; any amendments to such laws or regulations; and any future federal or Navajo Nation legislation permitting the grant or easements or rights-of-way in, over, under, through or to such Navajo Nation Lands.

C. "Land" or "Lands" means any and all land and interests in land, including land held by original title, land held in trust by the United States, land owned in fee simple, land held under lease, easement, permit or otherwise, whether restricted or otherwise, and includes all rights and incidents appurtenant to any land or interests in land, including without limitation rights to water and minerals, whether surface or subsurface, and to airspace.

D. "Lease" means any valid, duly authorized lease or lease agreement conveying a leasehold interest in or to, and authorizing the possession or use of, Navajo Nation Lands. Where the context requires, "Lease" refers to the interest created by a lease or lease agreement with the Navajo Nation. As applied to Navajo Nation Lands held in trust for the Navajo Nation by the United States of America, "Lease" includes all permits and leases issued in accordance with the provisions of the Navajo and Hopi Rehabilitation Act of 1950, 25 U.S.C. §§ 631-638; the Indian Long-Term Leasing Act of 1955, 25 U.S.C. §§ 415-415d; the Navajo Nation Trust Land Leasing Act of 2000, 25 U.S.C. § 415(e); the Indian Mineral Leasing Act of 1938, 25 U.S.C. §§ 396a-396g; the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101-2108; Title 5 of the Energy Policy Act of 2005, 25 U.S.C. § 3501 *et seq.*, as amended; regulations implementing any federal law permitting the leasing of Indian lands, including without limitation regulations at 25 C.F.R. Parts 162, 166, 167, 211, 212, 221, 225 and any Navajo Nation regulations relating to such leasing; any other federal law authorizing the leasing or permitting of Indian Lands; any amendments to such laws or regulations; and any future federal or Navajo Nation legislation authorizing the leasing of Navajo Nation Lands.

E. "Navajo Customary Law" means the usages or practices of the Navajo people which, by common acquiescence, governs and has governed their traditional activities and relationships among themselves from time immemorial, whether or not later interpreted by the courts of the Navajo Nation or other courts of competent jurisdiction.

F. "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 territorial jurisdiction, the same meaning as set forth in 7 N.N.C. § 254(A) and 18 U.S.C. § 1151, including without limitation all lands within the boundaries of Navajo chapters listed in 11 N.N.C. § 10, any other land over which the Navajo Nation may exercise governmental authority in accordance with Navajo and federal law.

G. "Navajo Nation Council" means the governing body of the Navajo Nation as set forth in 2 N.N.C. § 101.

H. "Navajo Nation Lands" means any Land or any interest in Land owned or held by the Navajo Nation, or held in trust in whole or in part by the United States of America for the Navajo Nation, whether within or outside the boundaries of the Navajo Nation.

I. "Navajo Regional Director" means the Regional Director of the Navajo Regional Office of the United States Bureau of Indian Affairs or its successor agency, or his or her duly authorized representative.

J. "Permit" means any document or agreement granting, authorizing or relating to any duly authorized usufruct or permissive use of Navajo Nation Lands, including without limitation sand and gravel, borrow material, surveying, and drilling or other exploration permits. When the context requires, "Permit" refers to the usufruct or permissive use granted or

authorized thereby or any agreement with the Navajo Nation related thereto.

K. "Person" means any individual, group of individuals, corporation, partnership, association, company, state, municipality, commission, political subdivision of a state, interstate body, and the federal government or any agency thereof, but does not include the Navajo Nation.

L. "Resources Committee" means the Resources Committee of the Navajo Nation Council established and authorized as a standing committee thereof by 2 N.N.C. § 691 *et seq.*, or its successor.

M. "Resources Enforcement Agency" means the enforcement arm of the Navajo Nation Division of Natural Resources, as established by Navajo Nation Council Resolution No. ACJY-139-88, as amended, or its successor.

N. "Secretary" means the Secretary of the United States Department of the Interior or his or her authorized representative.

O. "Trespass" means the unauthorized interest in, possession of, holding over upon, entry upon, the accidental spilling or intentional dumping of petroleum products or any hazardous waste as defined by Navajo or federal law on, or other use of (including without limitation the disposal of industrial wastes, mine wastes, tailings, and other contamination on and/or the failure to remove such materials from) Navajo Nation Lands.

#### **History**

CJY-26-07, July 20, 2007. Renumbered and amended previous § 2202—"Definitions," as § 2203.

CO-92-94, October 26, 1994.

#### **§ 2204. Effective date**

A. The effective date of this amended Navajo Nation Civil Trespass Act shall be thirty days after the date of enactment.

B. Trespasses occurring and terminating before such effective date shall be governed by the provisions of the Navajo Nation Civil Trespass Act in effect prior to such effective date.

C. In the case of any trespass commencing or occurring before such effective date but continuing after such effective date, the provisions of the Navajo Nation Civil Trespass Act in effect prior to such effective date shall apply to each violation before such effective date and the provisions of this amended Navajo Nation Civil Trespass Act shall apply to each violation after such effective date.

#### **History**

CJY-26-07, July 20, 2007. Added "Effective date" at § 2204 and renumbered previous § 2204, "Applicability," to § 2205.

**Note.** Resolution CJY-26-07 was signed into law by President Joe Shirley, Jr. on

July 30, 2007.

#### **§ 2205. Applicability**

A. Except as otherwise provided in Subsection (B) of this Section, this Chapter shall apply to all Navajo Nation Lands and to all persons holding or claiming an interest in, possessing, holding over upon, entering upon, burdening, or otherwise using Navajo Nation Lands.

B. This Chapter shall not apply to enrolled members of the Navajo Nation holding or claiming an interest in, possessing, entering upon, burdening, or otherwise using Navajo Nation Lands pursuant to and in accordance with Navajo Customary Law.

#### **History**

CJY-26-07, July 20, 2007. Renumbered and amended previous § 2203 "Applicability."

CO-92-94, October 26, 1994.

#### **§ 2206. Rules and regulations**

A. The Director shall promulgate such rules and regulations from time to time as may be deemed necessary or desirable to carry out the provisions of this Chapter. Such regulations may include without limitation:

1. Regulations governing administration of this Chapter by the Director;
2. Regulations governing the determination of civil trespass assessments under this Chapter; and
3. Rules and procedures governing appeals provided for under this Chapter.

B. Proposed rules and regulations shall be published for public review and comment 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.

C. The effectiveness and enforceability of this Chapter shall not be dependent on the adoption of regulations under Subsections (A) and (B) of this Section.

#### **History**

CJY-26-07, July 20, 2007. Renumbered and amended previous § 2204-"Rules and regulations," as § 2206.

CO-92-94, October 26, 1994.

#### **§ 2207. Construction**



A. The provisions of this Chapter shall be liberally construed to fulfill the purposes of this Chapter and consistent with its findings, as set forth in § 2202, and so as not to conflict with applicable federal law.

B. Nothing in this Chapter shall be construed to diminish, limit or otherwise adversely affect any right or remedy otherwise available to the Navajo Nation or its members under other applicable law.

C. Nothing in this Chapter shall be construed to affect the application to any person of otherwise applicable Navajo Nation laws, nor to prohibit the Navajo Nation from enforcing other laws against members of the Navajo Nation or nonmember Indians, including without limitation laws concerning intentional and knowing trespasses on lands or property of another, criminal entry, trespass with force or violence, or burglary under 17 N.N.C. §§ 350-354.

#### **History**

CJY-26-07, July 20, 2007. Renumbered and amended previous § 2205-  
"Construction," as § 2207.

CO-92-94, October 26, 1994.

#### **§ 2208. Severability**

If any provision of this Chapter, or its application to any person or class of persons, or to any lands or in any particular circumstance, is held invalid or unlawful 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-26-07, July 20, 2007. Renumbered and amended previous § 2206-  
"Severability," as § 2208.

CO-92-94, October 26, 1994.

#### **§ 2209. Condition of consents, grants and agreements**

A. As matters of both contract and of applicable Navajo Nation law, acknowledgment and acceptance of the provisions and applicability of this Chapter shall be a term and condition of the consent or grant by the Navajo Nation to or of each and every Lease, Easement or Right-of-Way, Permit, or agreement relating thereto, made or entered into from and after the enactment of this Chapter.

B. Subsection (A) of this Section is not intended to, nor shall it be construed to, diminish, limit, or otherwise adversely affect the application of this chapter to any person or lands or to any existing Lease, Easement or Right-of-Way, Permit, or agreement relating thereto.

C. By accepting the rights and privileges of entering and using Navajo Nation Lands under any Lease, Easement or Right-of-Way, or Permit, the lessee, grantee, or permittee, as the case may be, shall have consented and shall be

deemed to have consented to be governed by this Chapter, and to the full legislative, judicial (including subject matter, personal, and *in rem* jurisdiction), regulatory, and administrative jurisdiction of the Navajo Nation and its courts as may be necessary or convenient for the full application and enforcement of this Chapter in accordance with its provisions. However, this Paragraph shall not apply to the United States or any State or political subdivision thereof, to the extent inconsistent with applicable federal or State law.

D. The Navajo Nation Council or any duly authorized Committee thereof may exempt particular lessees, grantees, or permittees from the provisions of this Section for one transaction or a class of transactions by legislation explicitly stating its intent to do so.

E. Nothing in this Section is intended, nor shall it be construed, to diminish any prior existing contract or property right of any person or entity.

### **History**

CJY-26-07, July 20, 2007. Renumbered and amended previous § 2207—"Chapter condition of future consents, grants and agreements," and § 2209—"Amendments," combined as § 2209.

CO-92-94, October 26, 1994.

### **Subchapter 3. Prohibitions; Unlawful Acts; Penalties; Damages**

#### **§ 2251. Prohibition on possession or use of Navajo Nation Lands without permission**

A. Except as otherwise provided in Subsection B of this Section, no person shall have an interest in or to, or possess, enter upon, burden, or use Navajo Nation Lands except pursuant to and in strict compliance with the terms and conditions of a valid Lease, Easement, Right-of-Way or Permit, duly issued, approved, or consented to by the Navajo Nation, or by the United States with the express, valid and contemporaneous consent of the Navajo Nation.

B. Notwithstanding the provisions of Subsection A of this Section, it shall be lawful and permissible for an enrolled member of the Navajo Nation to have an interest in, possess, enter upon or otherwise use Navajo Nation Lands pursuant to and in substantial compliance with Navajo Customary Law, and to possess and use land under a validly issued homesite lease or grazing permit which has expired but where a timely and sufficient application for renewal thereof has been made in good faith and remains pending.

C. Any person trespassing on or otherwise entering, using, possessing, holding over on, claiming an interest in, or otherwise burdening Navajo Nation Lands within the Navajo Nation without lawful authority shall have consented, and shall be deemed to have consented, by its presence and use of such lands within such jurisdiction, to the full legislative, judicial (including subject matter, personal and *in rem* jurisdiction), regulatory, and administrative jurisdiction of the Navajo Nation and its courts as may be necessary or convenient for the full application and enforcement of this Chapter in

accordance with its provisions.

#### **History**

CAP-14-09, April 22, 2009. Amended Subsection C.

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

#### **§ 2252. Unlawful acts**

It shall be unlawful to possess, hold over upon, enter upon, burden, trespass upon, or otherwise use Navajo Nation Lands in violation of any provision of § 2251. Each day that a person shall so violate any provision of § 2251 shall constitute a separate violation. Each violation with respect to a separate parcel of land shall constitute a separate violation. A parcel shall be considered separate for purposes of this Section where rights to or interests in it are created by a separate instrument, is physically noncontiguous, or is used, in whole or in part, for additional, other, or distinct purposes. The Director may further define "separate parcel" in regulations adopted in accordance with § 2205.

#### **History**

CAP-14-09, April 22, 2009.

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

#### **§ 2253. Civil trespass assessments**

A. Any person who commits any unlawful act under § 2252 shall be subject to a civil assessment not to exceed twenty-five thousand dollars (\$25,000) for each violation.

B. In determining the amount of such civil assessment, the Director, hearing officer, or the court, as the case may be, shall consider the seriousness of the violation or violations, the economic or other benefits to the trespasser resulting from the violation, any opportunity costs, any actual damages to Navajo Nation Lands attributable to the trespass, whether the trespasser had actual or constructive notice of the trespass, any history of other violations by the trespasser, any costs to the Navajo Nation attributable to the trespasser's attempts to avoid its responsibilities to the Navajo Nation including without limitation costs of enforcement and attorney fees for any and all related proceedings, any relevant contractual provisions, any good-faith efforts to comply with applicable requirements, and such other factors as justice may require. In no event shall the amount of the assessment be less than the costs of enforcement, the opportunity costs to the Navajo Nation, the damage to Navajo Nation Lands attributable to the trespass, and any other direct, consequential or special harm suffered by the Navajo Nation attributable to the trespass, unless extraordinary circumstances require otherwise.

### **History**

CJY-26-07, July 20, 2007. Amended previous § 2253 "Penalties."

CO-92-94, October 26, 1994.

**Note.** Previous § 2254 "Damages," deleted by CJY-26-07, July 20, 2007.

### **§ 2254. Damages**

A. Any person who violates any provision of § 2252 of this Chapter shall be liable to the Navajo Nation for all damages proximately caused by such violation.

B. Damage proximately caused by a violation shall be determined by the Director or the court, as the case may be, based upon:

1. The higher of the economic benefit to the violator or the detriment to the Navajo Nation (including, but not limited to, lost opportunity costs);
2. The costs of enforcement; and
3. All other consequential or special damages proximately flowing from the violation.

### **History**

CO-92-94, October 26, 1994.

## **Subchapter 5. Enforcement**

### **§ 2281. Information and investigation**

A. Any person may provide information to the Director in writing concerning facts which indicate a trespass upon Navajo Nation Lands.

B. Any employee or official of the Navajo Nation with knowledge of facts which indicate a trespass upon Navajo Nation Lands shall promptly report such information to the Director in writing.

C. Upon receipt of information indicating a trespass upon Navajo Nation Lands, the Director shall:

1. Notify affected divisions, departments or programs of the Navajo Nation; and
2. Undertake such investigation as may be necessary to determine whether a trespass has occurred and how to proceed in case a trespass is found.

D. The Director shall consult with affected divisions, departments or

programs prior to determining how to proceed in case a trespass is found.

E. If the lands involved are within the Navajo Nation, the Director shall proceed in accordance with § 2282. If the lands involved are outside the Navajo Nation, the Director shall proceed in accordance with § 2290.

#### **History**

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

#### **§ 2282. Enforcement within the Navajo Nation**

Whenever on the basis of information available to him or her the Director finds that any person has violated any provision of § 2252 on Navajo Nation Lands within the Navajo Nation, the Director shall notify the Attorney General and, after such consultation with the Attorney General as the Director deems appropriate, may take any of the following actions or combination of actions:

A. Issue a Notice of Trespass and Order to Comply in accordance with § 2283;

B. Issue a Civil Trespass Assessment in accordance with § 2284;

C. Request the President of the Navajo Nation to initiate exclusion proceedings pursuant to 17 N.N.C. §§ 1901 and 1902;

D. Enforce the Lease, Easement or Right-of-Way or Permit in accordance with § 2292.

E. Request assistance from the Secretary or other appropriate agency of the United States to address the trespass and to assist in the enforcement of this Navajo Nation Civil Trespass Act and any other applicable Navajo or federal law;

F. If any property or equipment of the trespasser has reverted to or is otherwise owned by the Navajo Nation under the provisions of any applicable law or agreement, determine, after consultation with the Attorney General, if such property or equipment should be retained by the Navajo Nation, sold or otherwise conveyed by the Navajo Nation, or leased or otherwise conveyed to a person able and willing to continue to operate or use such property or equipment in conformity with applicable Navajo and federal law and on such terms and conditions as the Director deems appropriate, subject to any required approvals of the Navajo Nation Council or any standing committee thereof; and/or

G. Take any other reasonable and necessary steps to address and remedy the trespass in conformity with this Navajo Nation Civil Trespass Act and any other applicable Navajo or federal law.

#### **History**

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

**§ 2283. Notice of trespass and order to comply**

A. A Notice of Trespass and Order to Comply ("Notice") shall be in writing, shall identify the person who is trespassing and the location and date of each known trespass, shall include a short statement of facts indicating the nature and circumstances of the trespass, and shall include a copy of this Navajo Nation Civil Trespass Act as it may be amended from time to time.

B. The Notice shall specify the action needed to be taken by the trespasser to remedy the trespass. Such action may include without limitation:

1. Removal of persons or property from the premises;

2. Compliance with the terms, conditions, covenants or restrictions of any applicable Lease, Easement or Right-of-Way, or Permit or any agreement related thereto; and/or

3. Such other action as may be necessary to cure a violation.

C. The notice and order shall specify a reasonable period of time within which to comply.

D. The Notice shall not require any action or specify any time period inconsistent with any provision of an applicable Navajo or federal law or any term of the Lease, Easement or Right-of-Way, or Permit at issue or any agreement related thereto.

E. The Notice shall advise the person identified therein of the rights of appeal available under § 2287.

F. The Notice shall be served upon the person identified therein in a manner reasonably calculated to provide actual notice of the matter to such person, including without limitation personal delivery, service by certified mail, return receipt requested, service to such person at the address given in any relevant agreement, and any manner of service authorized under Rule 4 of the Navajo Rules of Civil Procedure or Rule 4 of the Federal Rules of Civil Procedure, or as otherwise specified in any agreement related to the Lease, Easement or Right-of-Way, or Permit at issue, or any combination of these means.

G. Nothing in this Section shall prohibit the imposition of civil trespass assessments for trespasses occurring prior to service of a Notice or prior to the completion of any compliance period provided by a Notice or prior to the completion of any administrative and/or judicial proceedings related to such assessments.

**History**

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

#### **§ 2284. Service of Civil Trespass Assessment**

A. The Director may serve a Civil Trespass Assessment ("Assessment") in the manner specified in § 2283(F), either with or without a Notice.

B. The Assessment shall be in writing, shall identify the person who is trespassing and the location and date of each known trespass, and shall include a short statement of facts indicating the nature and circumstances of the trespass.

C. The Assessment shall state:

1. The dollar amount of the Assessment in accordance with § 2253; and

2. The time period for which each Assessment is made.

D. Each Assessment shall reference the provisions of this Chapter or of any regulations adopted pursuant to this § 2205 which govern the calculation of the assessment amount, shall include a short description of the method by which such amount was determined, and shall include a copy of this Navajo Nation Civil Trespass Act, as it may be amended from time to time.

E. The Assessment shall specify the date by which payment is due to the Nation under § 2285.

F. The Assessment shall advise the person identified therein of the rights of appeal available under § 2287.

#### **History**

CJY-26-07, July 20, 2007. Amended previous § 2284—"Notice of assessment of penalty and damages."

CO-92-94, October 26, 1994.

#### **§ 2285. Payment of assessment**

A. Any Assessment under § 2284 shall be due and payable upon receipt thereof and shall become delinquent 25 days thereafter.

B. Payments shall be made by certified check payable to the order of the Navajo Nation, Division of Natural Resources.

C. Interest on any delinquencies shall accrue from the date of the Assessment until paid in full. Interest shall be calculated using a rate five percent (5%) above the highest prime rate listed on the date of the Assessment by any bank operating within the Navajo Nation, and said rate shall continue in effect until such Assessment is paid in full or otherwise discharged.

D. Monies collected through payment of Assessments and any interest thereon shall be deposited in the Navajo Nation General Fund.

### **History**

CJY-26-07, July 20, 2007. Amended previous § 2285—"Payment of penalties and damages."

CO-92-94, October 26, 1994.

### **§ 2286. Notice to divisions, departments and programs**

The Director shall deliver a copy of any Notice and/or Assessment, and any subsequent notices, pleadings, orders, or other documents or materials filed with or by the Director, or by any party to any appeal, to:

- A. The Office of the President of the Navajo Nation;
- B. The Office of the Attorney General of the Navajo Nation;
- C. The Resources Enforcement Agency;
- D. The Director of the Minerals Department, if the trespass involves mineral resources, sand and gravel, geology, and/or energy related Leases, Easements, Rights-of-Way, or Permits;
- E. The Executive Director of the Division of Economic Development, if the trespass involves a business site Lease, Easement, Right-of-Way, or Permit; and
- F. The director of the division, department or program that issued or approved the Lease, Easement, Right-of-Way, or Permit.

### **History**

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

### **§ 2287. Appeals**

A. Any person who receives a Notice pursuant to § 2283 or an Assessment pursuant to § 2284 may appeal by filing with the Navajo Nation Office of Hearings and Appeals, with a copy to the Director, a notice of appeal within 15 days of the date such Notice or Assessment was served on such person.

B. The notice of appeal shall be in writing and shall:

- 1. Identify the person who is trespassing or alleged to be trespassing and the location and date of the alleged trespass, and shall include a short statement of facts indicating the nature and circumstances of the alleged trespass;
- 2. Specify the Notice or Assessment being appealed;
- 3. Specify the legal basis for the appeal; and
- 4. Include a statement of facts upon which the appellant relies in



support of the appeal and such argument as appellant may care to make in support of the appeal.

C. Within five days after receipt of a notice of appeal, the Navajo Nation Office of Hearings and Appeals shall assign the appeal to a qualified and impartial hearing officer.

D. If a person is properly served with a Notice and/or Assessment and fails to file a notice of appeal within the time permitted under this Section, then such person shall have waived any further right to challenge the Notice and/or Assessment, and the Notice and/or Assessment shall be final and binding on such person.

#### **History**

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

#### **§ 2288. Stay upon appeal**

A. The filing of a notice of appeal with the Navajo Nation Office of Hearings and Appeals shall not stay the enforcement of the Notice or Assessment. However, an appellant may file a motion for stay of enforcement at any time. A stay may be granted by the hearing officer where justice so requires, and upon such terms and conditions (including without limitation the posting of a bond) as the hearing officer may find just and proper. An order granting or denying a stay shall be in writing and shall state the grounds therefore, and an order granting a stay shall state the terms and conditions thereof, if any. The hearing officer may decrease or increase the amount of any bonding requirement to reflect any cessation or continuation of alleged wrongful conduct during the course of proceedings under this Chapter.

B. An order granting or denying a stay, and any terms or conditions of an order granting a stay, shall be final and may be appealed to the Navajo Nation Supreme Court in accordance with the Navajo Nation Rules of Civil Appellate Procedure by filing a notice of appeal with the Clerk of the Navajo Nation Supreme Court within 30 days of the entry and service of such order.

#### **History**

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

#### **§ 2289. Hearing and decision**

A. The hearing officer shall hear the appeal within 30 days of receipt of the notice of appeal by the Navajo Nation Office of Hearings and Appeals. Upon request by either the Navajo Nation or the appellant, or upon their agreement, and for good cause shown, the hearing officer may grant a continuance of not more than 45 days for the hearing.

B. The hearing officer shall give the parties at least ten days notice of

the date, time and place of the hearing. Each party at the hearing may be represented by counsel and shall have the opportunity to subpoena witnesses, present evidence, and examine witnesses, provided, that nothing in this Chapter shall be construed to amend or affect the operation of the Navajo Sovereign Immunity Act.

C. After the hearing, each party shall have ten days to submit in writing proposed findings of fact and conclusions of law. The hearing officer may uphold, reverse, or modify the decision of the Director or any part thereof.

D. The hearing officer shall issue a decision on the appeal which shall include written findings of fact and conclusions of law.

E. 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 by filing a notice of appeal with the Clerk of the Navajo Nation Supreme Court within 30 days of the entry and service of such decision. The Court shall review the decision of the hearing officer on the administrative record only. The decision of the hearing officer shall be affirmed unless the decision is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; contrary to any right, power, privilege, or immunity protected under the Navajo Bill of Rights; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; without observance of procedure required by law; or unsupported by substantial evidence in the record.

#### **History**

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

#### **§ 2290. Enforcement outside the Navajo Nation**

Whenever on the basis of information available to him or her, the Director finds that any person has violated the provisions of § 2252 on Navajo Nation Lands outside the Navajo Nation, the Director may take any of the following actions or combination thereof:

A. Enforce the Lease, Easement or Right-of-Way, or Permit in accordance with § 2291;

B. Request the Attorney General to bring a civil action in accordance with § 2292; and/or

C. Pursue such other rights and remedies on behalf of the Navajo Nation as may be authorized by the laws of the state in which such Lands are located.

#### **History**

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

**§ 2291. Enforcement of Lease, Easement, Right-of-Way, or Permit**

A. The Director may take any action authorized or allowed under the provisions, terms and conditions, and covenants of an applicable Lease, Easement or Right-of-Way, or Permit, or agreement relating thereto, and may take any other action as may be authorized or allowed under applicable law.

B. The Director may request any government official or agency with jurisdiction to enforce:

1. The provisions, terms and conditions, and covenants of any Lease, Easement or Right-of-Way, Permit, or agreement relating thereto; and

2. Any federal, Navajo, state or local laws applicable to any Lease, Easement or Right-of-Way, Permit, or agreement relating thereto, or relating to the conduct of business or other activity on the Lands involved.

**History**

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

**§ 2292. Judicial enforcement**

At the request of the Director or otherwise, the Attorney General of the Navajo Nation may bring a civil action in any court of competent jurisdiction to enjoin a trespass or to obtain payment or enforcement of any Assessment, or for such other relief as may be authorized or allowed under any applicable law.

**History**

CJY-26-07, July 20, 2007.

CO-92-94, October 26, 1994.

**§ 2293. Reservation of rights**

Nothing in this Chapter is intended, nor shall it be construed, to limit the independent rights or to abrogate any duties of the Attorney General of the Navajo Nation or of the United States of America or any of its agencies, including without limitation the Bureau of Indian Affairs and the Department of Justice, to take any action authorized or required by applicable law to enjoin, redress, and/or seek damages, including without limitation actual, compensatory, consequential, special, and punitive damages, attorney fees and costs of suit, for any trespass on Navajo Nation Lands or any damages or harm related to the actions or omissions of a trespasser.

**History**

CJY-26-07, July 20, 2007.

## **Title 17**

### **Law and Order**

#### **Chapter 1. Enforcement of the Criminal Code**

##### **United States Code**

Indian law enforcement reform, see 25 U.S.C. § 2801 *et seq.*

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

Indian country law enforcement, see 25 CFR § 12.1 *et seq.*

#### **§ 101. Responsibility**

The Navajo Nation assumes responsibility for the enforcement of the Criminal Code, including such amendments thereof and such additions thereto as may hereafter be enacted.

##### **History**

CN-71-77, November 10, 1977.

CJA-1-59, January 6, 1959.

#### **§ 102. Authority to enter into cooperative agreements with federal and state agencies**

The President of the Navajo Nation is authorized to enter into cooperative arrangements and agreements with federal and state law enforcement agencies with the recommendation and approval of the Public Safety Committee, the Judiciary Committee and the Intergovernmental Relations Committee for purposes of mutual assistance and definition of responsibilities.

##### **History**

CN-71-77, November 10, 1977.

CJA-1-59, January 6, 1959.

#### **§ 103. Authority to enter into cooperative agreements for incarceration of Navajo prisoners in Navajo correctional facilities**

The President of the Navajo Nation, with the advice and consent of the Judiciary, Public Safety and Intergovernmental Relations Committees of the Navajo Nation Council, is authorized to enter into agreements with federal, state, military and local authorities for the incarceration of Navajo prisoners in correctional facilities within the Navajo Nation.

##### **History**

CN-71-77, November 10, 1977.

CJA-1-59, January 6, 1959.

## **Chapter 2. General Provisions**

### **Subchapter 1. General Provisions**

#### **§ 201. Title and effective date**

A. This Title shall be known as the "Navajo Nation Criminal Code", and may be cited as 17 N.N.C. § 101 *et seq.*

B. The provisions of this Title shall become effective upon consideration and passage by the Navajo Nation Council and upon certification thereof. Prosecutions for offenses committed prior to the effective date shall be governed, prosecuted, and punished under the laws existing at the time such offenses were committed.

C. If any Section or application of any Section of the Navajo Nation Criminal Code is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

#### **History**

CN-71-77, November 10, 1977.

#### **§ 202. Purpose**

It is declared that the general purposes of this Code are:

A. To proscribe conduct that unjustifiably and inexcusably threatens or inflicts substantial harm to individual or public interests;

B. To give all persons entering into the territorial jurisdiction of the Navajo Nation Courts a fair warning of proscribed conduct and of the sentences authorized upon conviction;

C. To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each;

D. To protect the public interest of the Navajo Nation by defining the act or omission which constitutes each offense, and to apply the provisions of this title equally and unfavorably to all persons within the territorial jurisdiction of the Courts of the Navajo Nation.

#### **History**

CN-71-77, November 10, 1977.

#### **Annotations**

##### **1. Construction of laws**

"The statute means that the courts must construe the plain language of the statute, and resolve any doubt as to the meaning of a penal statute in favor of the defendant." *Navajo Nation v. Platero*, 6 Nav. R. 422, 429 (Nav. Sup. Ct. 1991), concurrence of Chief Justice Tso.

## **2. Court's authority**

" ... [T]he authority of the Navajo courts to order the forfeiture of an automobile used for the illegal delivery of liquor derives from many sources. These sources are: 7 N.T.C. § 253(1) (1985 Cumm. Supp.) which gives the district courts original jurisdiction over 'all violations of laws of the Navajo Nation'; 17 N.T.C. § 202(3) and (4) (1985 Cumm. Supp.) which state the purposes of the Navajo Criminal Code; 17 N.T.C. § 203 (1985 Cumm. Supp.) which gives the Navajo Nation courts jurisdiction over any person who commits an offense within the 'Navajo Indian Country'; and 17 N.T.C. § 220(c) which gives the Navajo courts general sentencing power pursuant to its legal authority to decide criminal matters." *Begay v. Navajo Nation*, 6 Nav. R. 20, 21 (Nav. Sup. Ct. 1988).

## **§ 203. Territorial applicability**

The Navajo Nation Courts shall have jurisdiction over any person who commits an offense by his or her own conduct if the conduct constituting any element of the offense or a result of such conduct occurs within the territorial jurisdiction of the Navajo Nation Courts as defined in 7 N.N.C. § 254, or such other dependent Indian communities as may hereafter be determined to be under the jurisdiction of the Navajo Nation and the Courts of the Navajo Nation. The Navajo Nation Courts shall also have jurisdiction over any member of the Navajo Nation who commits an offense against any other member of the Navajo Nation wherever the conduct which constitutes the offense occurs.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **Annotations**

#### **1. Court's authority**

" ... [T]he authority of the Navajo courts to order the forfeiture of an automobile used for the illegal delivery of liquor derives from many sources. These sources are: 7 N.T.C. § 253(1) (1985 Cumm. Supp.) which gives the district courts original jurisdiction over 'all violations of laws of the Navajo Nation'; 17 N.T.C. § 202(3) and (4) (1985 Cumm. Supp.) which state the purposes of the Navajo Criminal Code; 17 N.T.C. § 203 (1985 Cumm. Supp.) which gives the Navajo Nation courts jurisdiction over any person who commits an offense within the 'Navajo Indian Country'; and 17 N.T.C. § 220(c) which gives the Navajo courts general sentencing power pursuant to its legal authority to decide criminal matters." *Begay v. Navajo Nation*, 6 Nav. R. 20, 21 (Nav. Sup. Ct. 1988).

## **§ 204. Civil prosecutions of non-Indians**

A. Any non-Indian alleged to have committed any offense enumerated in this Title may be civilly prosecuted by the Office of the Prosecutor. In no event shall such a civil prosecution permit incarceration of a non-Indian or permit the imposition of a criminal fine against a non-Indian.

B. Procedure. Civil prosecutions under this Section shall be conducted in accordance with the Navajo Rules of Criminal Procedure, and the non-Indian civil defendant shall be afforded all the heightened protections available to a criminal defendant under those rules including, but not limited to, the more stringent burden of proof beyond a reasonable doubt.

C. Nothing in this Section shall be deemed to preclude exercise of criminal jurisdiction over any person who, by reason of assuming tribal relations with the Navajo people or being an "in law" or hadane or relative as defined by Navajo common law, custom, or tradition, submits himself or herself to the criminal jurisdiction of the Navajo Nation.

D. Civil Penalties. Upon a finding that a non-Indian has committed any of the offenses enumerated in this Title, the Court may impose any of the following civil penalties in any combination deemed appropriate by the Court:

1. A civil fine (fines listed for offenses under Title 17 may serve as a guideline for the calculation of a civil fine, but the criminal fines are not binding upon the calculation of a civil fine);

2. Any civil forfeiture made appropriate by the penalty Sections of Title 17;

3. Restitution, or nályééh, consistent with the traditional principles of nályééh;

4. Exclusion from all lands subject to the territorial jurisdiction of the Navajo Nation courts.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

### **Annotations**

#### **1. Children's Code**

"We believe delinquency jurisdiction over non-Indians, as long as detention is not allowed, is civil in nature, and therefore within the jurisdiction of our courts. Our Children's Code, like those of states, classifies juvenile proceedings as civil." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 6 (Nav. Sup. Ct. May 26, 2005).

"We therefore hold that exclusion of a non-Indian child is not an independent proceeding, but is a possible disposition after the facts have been established in a delinquency proceeding." *In the Matter of A.P., a Minor*, No. SC-CV-02-05,

slip op. at 9 (Nav. Sup. Ct. May 26, 2005).

"We therefore hold that a non-Indian child must have a dispositional hearing before the court may exclude him or her. As no hearing was held, the family court violated A.P.'s due process rights, and we must bar it from excluding her from the Navajo Nation." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 10 (Nav. Sup. Ct. May 26, 2005).

#### **§ 205. Time limitations**

A. A prosecution for embezzlement of Navajo Nation monies or falsification of Navajo Nation records or vouchers may be commenced at any time within five years after discovery of the offense.

B. Except as otherwise provided in this Section, prosecution for other offenses must be commenced within three years from the date of the act or conduct which constitutes the offense.

C. If the offense has as a material element of fraud, forgery or an offense against the Navajo Nation government, prosecution may be commenced after discovery of the offense by an aggrieved party or by a person under a legal duty to represent an aggrieved party and who was not a party to the offense.

D. A prosecution is commenced either when a complaint is filed or when an arrest warrant or other similar process is issued.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 206. Proof**

No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. The innocence of the defendant is presumed.

#### **History**

CN-71-77, November 10, 1977.

#### **Annotations**

##### **1. Sufficiency of evidence**

"We will not sustain a conviction based solely upon an extrajudicial admission. The possibility is great that an alleged admission may be fabricated to establish the defendant's guilt. We doubt that an admission, in of itself, is sufficient to satisfy the law that in every criminal case, the Navajo Nation must prove every element of the offense beyond a reasonable doubt." *Navajo Nation v. Murphy*, 6 Nav. R. 10, 15 (Nav. Sup. Ct. 1988).



## **2. Burden of proof**

"In civil actions, the required degree of proof is generally a preponderance of evidence. The required burden of proof in criminal cases is much higher because liberty interests are at stake. In criminal cases, the prosecution must prove each element of an offense beyond a reasonable doubt." *Apachito v. Navajo Nation*, No. SC-CV-34-02, slip op. at 3 (Nav. Sup. Ct. August 13, 2003).

"Prosecution must prove each element of an offense, including intent, beyond a reasonable doubt." *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 5 (Nav. Sup. Ct. 1992).

## **3. Guilty plea**

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

## **§ 207. Double jeopardy**

No person shall be put twice in jeopardy for the same crime. The defense of double jeopardy may not be waived and may be used by the accused at any stage of a criminal prosecution either before or after judgment. When a complaint charges different offenses and an appeal is granted to the defendant, he or she may not again be tried for an offense greater than the one for which he or she was originally convicted.

### **History**

CN-71-77, November 10, 1977.

### **Annotations**

#### **1. Statutory construction; legislative intent**

"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).

## **2. Criminal complaint**

"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).

### **§ 208. Witness immunity; prosecutor investigations; District Court proceedings**

A. Investigation Proceedings. When a prosecutor has probable cause to believe that an offense has occurred, he or she may require any witness who he or she believes has knowledge of material information to give a sworn statement regarding such offense. If such a witness has been asked to give a sworn statement to produce a record, document or other object in connection with such investigative proceedings, the district court may, upon the written application of the prosecuting attorney, issue a written order granting use immunity and requiring the person to testify or to produce the record document or other object notwithstanding his or her privilege against self incrimination. In any application for such an order, the prosecuting attorney shall state under oath that probable cause exists and that he or she believes such order is in the public interest based on the following factors:

1. The importance of the investigation or prosecution to effective enforcement of the criminal law;
2. The value of the person's testimony or information to the investigation or prosecution;
3. The likelihood of prompt and full compliance with a compulsion order and the effectiveness of available sanctions if there is no such compliance;
4. The person's relative culpability in connection with the offense or offenses being investigated or prosecuted and their history with respect to criminal activity;
5. The possibility of successfully prosecuting prior to compelling them to testify or produce information; and

6. The likelihood of adverse collateral consequences to the person if he or she testifies or provide information under a compulsion order.

B. The District Courts of the Navajo Nation may grant the application and issue a written order if it finds:

1. The testimony or record, document or other object may be necessary to the public interest; and

2. The person has refused, or is likely to refuse, to testify or produce the record, document or other object on the basis of his or her privilege against self-incrimination.

C. Court Proceedings. If a person has been or may be called to testify or produce a record, document or other objects in an official proceeding conducted under the authority of a district court, the district court may, upon the written application of the prosecutor issue an order granting use immunity to that person and requiring the person to testify or produce the record, document or other object notwithstanding his or her privilege against self-incrimination, if it finds:

1. The testimony or the record, document or other object may be necessary to the public interest; and

2. The person has refused, or is likely to refuse, to testify or to produce the record, document or other object on the basis of his or her privilege against self-incrimination.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **§ 209. General definitions**

In this Code, unless a different meaning plainly is required:

A. "Act" or "action" means a bodily movement whether voluntary or involuntary;

B. "Carrying a deadly weapon" means being armed with a deadly weapon by having it on the person or in close proximity thereto so that the weapon is readily accessible for use;

C. "Conduct" means an action or omission and its accompanying state of mind, or, where relevant, a series of acts or omissions;

D. "Control" or "to exercise control" means to act so as to exclude others from using their property except on the defendant's own terms;

E. "Dangerous instrument" means anything that under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily

capable of causing death or serious physical injury;

F. "Deadly weapon" means anything designed for lethal use or any instrument used in a lethal manner; the term includes a firearm;

G. "Deceit" means either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;

3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

4. A promise made without any intention of performing it;

H. "Deface" means any unnecessary act of deforming or blighting any surface or place, whether by mechanical means such as a hatchet, knife or spray paint, or by other means, so as to detract substantially from its visual attractiveness or utility;

I. "Deprive" means to withhold the property interest of another either permanently or for so long a time period that the major portion of its economic value is lost, or to withhold it with the intent to restore it only upon payment of reward or other compensation, or to transfer or dispose of it so that it is unlikely to be recovered;

J. "Explosive" means any dynamite, nitroglycerine or other similar device or material;

K. "Facilitate" means to engage in conduct which knowingly provides another with the means or opportunity for the commission of an offense;

L. "Firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, except that it does not include an antique firearm or a firearm in permanently inoperable condition which is kept as a curio or museum piece or for educational purposes;

M. "Litter" means any rubbish, refuse, waste material, offal, paper, glass, cans, bottles, trash, debris or any foreign substance of whatever kind of description, including junked or abandoned vehicles, whether or not any of these items are of value;

N. "Material misrepresentation" means pretense, promise, representation or statement of fact which is fraudulent and which, when used or communicated, is instrumental in causing the wrongful control or transfer of property or services; the pretense may be verbal or it may be a physical act;

O. "Nályééh" means the traditional, Navajo common law process for open discussions of an offense and the Navajo values which apply to that offense,

the mediation and assignment of liability under this process, and the use of reconciliation, restorative justice and reparation in place of fines and jailing;

P. "Omission" means a failure to perform an act as to which a duty of performance is imposed by law;

Q. "Peace officer" means any person who is a law enforcement officer 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 classes of offenses or offenders;

R. "Person", "he", "she", and "actor" includes any natural person, and where relevant, a corporation, partnership or an unincorporated association, a government or a government authority;

S. "Possess" means to have physical possession or otherwise to exercise dominion or control over property;

T. "Property" means anything of value, tangible or intangible, public or private, real or personal, including documents evidencing value or ownership;

U. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ;

V. "Services" include labor, professional service, transportation, telephone, gas or electrical services, accommodation in hotels, restaurants, leased premises or elsewhere, admission to exhibitions and use of vehicles or other movable property;

W. "Statute" or "law" includes any resolution of the Navajo Nation Council and any local law or ordinance of a political subdivision of the Navajo Nation;

X. "Tamper" means any act of interference;

Y. "Navajo Nation official" means any person who is an officer or employee of the Navajo Nation government, including a peace officer, whether elected, appointed or otherwise employed and any person participating as advisor, consultant or otherwise in performing a Navajo Nation governmental function; the term does not include jurors or witnesses;

Z. "Unlawful" means contrary to law or, where the context so requires, not permitted by law; it does not mean immoral;

AA. "Utility" means any enterprise, public or private, which provides gas, electric, steam water or communications services, as well as any common carrier on land, sea or air.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal

Code.

CN-71-77, November 10, 1977.

## **Annotations**

### **1. Person, generally**

17 N.N.C. § 209(R) [Previously 17 N.N.C. § 208(17), CN-71-77, amended by CJA-08-00]. "We hold, that where a criminal defendant has assumed tribal relations with the Navajo Nation, such defendant will be considered an 'Indian' and thus a 'person' for purposes of 17 N.T.C. § 208(17). In matters of public safety and responsibility for personal conduct, a defendant's personal relations within the Navajo Nation is material." *Navajo Nation v. Hunter*, 7 Nav. R. 194, 198 (Nav. Sup. Ct. 1996).

### **2. Person; corporation**

"Assuming that a corporation is a 'person' under the unauthorized practice of law provision, see 17 N.N.C. § 209( R) (2005) (defining 'person' in the Criminal Code as including a corporation 'where relevant'), an employee may still not represent it without a license if he or she is a separate 'person' under that provision." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 10 (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).

### **§ 210. Definitions—Culpable mental states**

The following definitions apply with respect to an offense set forth in this title:

A. "Intentional", "intentionally". A person's state of mind is intentional with respect to:

1. His or her conduct if it is his or her conscious objective or desire to engage in the conduct;

2. A result of his or her conduct if it is his or her conscious objective or desire to cause the result.

B. "Knowing", "knowingly". A person's state of mind is knowing with respect to:

1. His or her conduct if he or she is aware of the nature of his or her conduct;

2. An existing circumstance if he or she is aware or believes that the circumstance exists;

3. A result of his or her conduct if he or she is aware or believes that his or her conduct is substantially certain to cause the result.

C. "Reckless", "recklessly". A person's state of mind is reckless with respect to:

1. An existing circumstance if he or she is aware of a risk that the circumstance creates but disregards the risk;

2. A result of the his or her conduct if he or she is aware of a risk that the result will occur but disregards the risk. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

D. "Negligent", "negligently". A person's state of mind is negligent with respect to:

1. An existing circumstance if the person ought to be aware of a risk that the circumstance exists;

2. A result of his or her conduct if the person ought to be aware of a risk that the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

#### **History**

CN-71-77, November 10, 1977.

### **Subchapter 2. Liability**

#### **§ 211. Basis of criminal liability**

The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which he or she is physically capable of performing.

#### **History**

CN-71-77, November 10, 1977.

#### **§ 212. Culpability**

A person shall not be guilty of an offense unless he or she acted intentionally, knowingly, recklessly, or negligently as the law may require with respect to each material element of the offense.

#### **History**

CN-71-77, November 10, 1977.

**§ 213. Ignorance or mistake**

Ignorance or mistake as to a matter of fact or law is a defense if:

A. The ignorance or mistake negates the intent, knowledge, belief, recklessness, or negligence required to establish a material element of the offense; or

B. The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

**History**

CN-71-77, November 10, 1977.

**§ 214. Intoxication**

A. Intoxication of the actor is not a defense unless it negatives an element of the offense.

B. When recklessness is an element of the offense, if the actor, due to self induced intoxication, is unaware of a risk of which he or she would have been aware had he or she not been intoxicated, such unawareness is immaterial.

**History**

CN-71-77, November 10, 1977.

**§ 215. Entrapment**

A. A person prosecuted for an offense shall be acquitted if he or she proves by a preponderance of evidence that his or her conduct occurred in response to an entrapment.

B. A public law enforcement official or a person acting in cooperation with such an official perpetuates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he or she induces or encourages another person to engage in conduct constituting such offense by either:

1. Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

2. Employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are previously disposed to commit it.

**History**

CN-71-77, November 10, 1977.

**§ 216. Affirmative defenses**



A. Duress. It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he or she was coerced to do so by the use of, or a threat to use, unlawful force against his or her person or the person of another, which a person of reasonable firmness in his or her situation would have been unable to resist and the actor did not recklessly or negligently place himself or herself in a situation in which it was probable he or she would be subjected to duress.

B. Justification. Conduct which the actor believes to be necessary to avoid a harm or evil to himself or herself or to another is justified and is an affirmative defense provided that the harm or evil sought to be avoided by such conduct is no greater than that sought to be prevented by the law defining the offense charged and the actor did not recklessly or negligently bring about the situation requiring his or her conduct.

C. Public duty. Conduct is justified and an affirmative defense when it is required or authorized by law.

D. Protection of self, property, or other person. The use of reasonable force upon or toward another person is justified and an affirmative defense when the actor believes that such force is immediately necessary for the purpose of protecting himself or herself or a third person against the use of unlawful force by another person or to prevent or terminate an unlawful entry or other trespass upon land or the unlawful carrying away of tangible movable property.

E. Mental disease. A person is not responsible for criminal conduct, and it is an affirmative defense, if at the time of such conduct, as a result of mental disease or defect, he or she lacks substantial capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

#### **History**

CN-71-77, November 10, 1977.

#### **§ 217. Accomplice liability**

A person may be charged with and convicted of an offense as an accomplice if he or she intentionally or knowingly solicits, counsels, commands, facilitates, aids, agrees to aid or attempts to aid in its commission, although he or she did not directly commit the crime and although the principal who directly committed such offense has not been prosecuted or convicted, or has been convicted of a different offense.

#### **History**

CN-71-77, November 10, 1977.

#### **Annotations**

##### **1. Accomplice actions**

"If any person within the Navajo Nation does any act to facilitate ('To make easier or less difficult') or aid ('To support, help, assist or strengthen') the delivery of any beverage which causes alcoholic intoxication, there is criminal liability. [...] It certainly includes the act of providing a place to engage in bootlegging, knowing the activity is being carried on by another." *Stanley v. Navajo Nation*, 6 Nav. R. 284, 286 (Nav. Sup. Ct. 1990).

### **Subchapter 3. Sentencing**

#### **§ 220. Criteria**

A. No person convicted of an offense pursuant to this Title shall be sentenced otherwise than in accordance with this Subchapter. A sentence of incarceration is always considered an extraordinary measure under any offense enumerated in this Title and should be imposed only as a last alternative where a defendant is found to have caused serious injury to a victim or victims, or other serious circumstances warrant a jail sentence. All jail sentences must be supported by a written statement, by the Court, of reasons for imposition of a jail sentence.

B. The court may suspend the imposition of sentence of a person who has been convicted of a crime, may order him or her to be committed in lieu of sentence to a hospital or other institution for medical, psychiatric or other rehabilitative treatment, or may sentence him or her as follows:

1. To pay a fine;
2. To be placed on probation;
3. To imprisonment for a definite period within the term authorized;
4. To fine and probation or fine and imprisonment;
5. To community service.
6. To pay restitution or nályééh.

C. The court may, pursuant to its legal authority, decree a forfeiture of property, suspend or cancel a license, require full or partial restitution, remove a non-elected public servant or Navajo Nation government employee from office, or impose any other civil penalty, and such order or judgment may be included in the sentence.

D. Sex offender registration and reporting.

1. All Navajo Nation court sentences for convictions, guilty pleas, pleas of nolo contendere, and all conditions of probation and parole for violations of sexual offenses shall require that the offender register, and maintain registration, as a sex offender with the Navajo Nation Chief of Police.

2. All persons who have been convicted, or entered guilty pleas or

pleas of nolo contendere to crimes constituting sexual offenses, by Navajo Nation courts or the courts of another jurisdiction, and who reside, work, or attend school within the Navajo Nation shall register, and maintain registration, as a sex offender with the Navajo Nation Chief of Police. This registration shall include:

a. A copy of each judgment of the court finding the person guilty of a sexual offense; and

b. A copy of the probation or parole order relative to each sexual offense committed, including all conditions of probation or parole; and

c. The physical address of the residence of the sex offender; and

d. The physical work address of the sex offender; and

e. The physical address of the school attended by the sex offender.

f. The census number and current photograph of the sex offender.

3. All sex offenders shall maintain their registration with the Navajo Nation Chief of Police by reporting any additional or changed information set forth in Subsection (D)(1) above to the Navajo Nation Chief of Police within ten days of any change affecting such information.

4. The Navajo Nation Chief of Police shall provide written notice to:

a. All District Commanders within the Department of Law Enforcement and all Navajo Nation Chapter(s) in which the offender resides, in addition to all Navajo Nation Chapter(s) in which the offender resides, or works, or attends school; and

b. All print and broadcast media outlets which provide news coverage to all Navajo Nation Chapter(s) in which the offender resides, in addition to all Navajo Nation Chapter(s) in which the offender resides, or works, or attends school.

5. Failure by a sex offender to register, or maintain registration, as a sex offender shall be conclusive evidence of breach of conditions of probation or parole contained within any Navajo Nation court order and require that any such probation or parole be revoked. Any failure to register, or maintain registration, as a sex offender by a sex offender whose sexual offense conviction was issued by the court of another jurisdiction shall be reported, in writing, to that jurisdiction by the Navajo Nation Chief of Police.

#### **History**

CAP-20-06, April 20, 2006. The Sex Offenders Registration Act of 2005. Added

§ 220(D).

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

## **Annotations**

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

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

" ... [T]he authority of the Navajo courts to order the forfeiture of an automobile used for the illegal delivery of liquor derives from many sources. These sources are: 7 N.T.C. § 253(1) (1985 Cumm. Supp.) which gives the district courts original jurisdiction over 'all violations of laws of the Navajo Nation'; 17 N.T.C. § 202(3) and (4) (1985 Cumm. Supp.) which state the purposes of the Navajo Criminal Code; 17 N.T.C. § 203 (1985 Cumm. Supp.) which gives the Navajo Nation courts jurisdiction over any person who commits an offense within the 'Navajo Indian Country'; and 17 N.T.C. § 220(c) which gives the Navajo courts general sentencing power pursuant to its legal authority to decide criminal matters." *Begay v. Navajo Nation*, 6 Nav. R. 20, 21 (Nav. Sup. Ct. 1988).

### **2. Construction with other laws**

"The Tribal Council enacted 17 N.T.C. § 220(c) with knowledge of the express forfeiture penalties in other sections of the Code; thus, the Court must interpret Section 220(c) as giving the Navajo courts power to order a forfeiture of an automobile used in the illegal delivery of liquor." *Begay v. Navajo Nation*, 6 Nav. R. 20, 22 (Nav. Sup. Ct. 1988).

### **3. Due process**

"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).

"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).

#### **4. Review**

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

#### **5. Guilty plea**

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

#### **§ 221. Sentencing considerations**

A. Before imposing sentence the court shall take into consideration the offender's prior record, family circumstances, employment status, and any other circumstances which will aid in imposing a just and fair sentence.

B. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or *nályééh* shall be paid to the victim(s) or the Navajo Nation.

C. The trial court may utilize the services of the Navajo Peacemaker Court to determine *nályééh* and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

D. The trial court may consider the imposition of peace or security bond upon the defendant, including the pledges of family or clan sureties.

E. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

F. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

G. The courts of the Navajo Nation shall establish a fund, to be collected from assessments against persons convicted of any offense under this Title and under Title 14 in addition to any fine to cover the cost of liability insurance for the community service program.

H. Notwithstanding any other provision of this Section or Section 220, the trial court may impose any reasonable condition of sentence which strives to rehabilitate the defendant or serves the reasonable needs of the victims of crime and of society and is not inconsistent with the sentencing terms established for the offense or offenses which the defendant is determined to have committed.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **Annotations**

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

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

#### **2. Review**

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

#### **3. Guilty plea**

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the

meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

## **§ 222. Fines**

A. A person who has been convicted of an offense may be sentenced to pay a fine as designated for that offense.

B. Whether to impose a fine in a particular case, up to the authorized maximum and the method of payment, shall remain within the sound discretion of the court.

C. The court shall be explicitly authorized to permit installment payments of any imposed fine on conditions tailored to the means of the particular offender.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **United States Code**

Indian Civil Rights Act, see 25 U.S.C. § 1302.

### **Annotations**

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

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

## **2. Review**

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

## **3. Guilty plea**

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

## **§ 223. Imprisonment**

A person who has been convicted may be sentenced for a definite term not greater than one year (365 days) per offense.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **United States Code**

Indian Civil Rights Act, see 25 U.S.C. § 1302.

### **Annotations**

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

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).



"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"According to Subchapter 2, every jail sentence imposed must be both definite and limited to one (1) year or less jail time. Any sentence beyond that provision is unlawful and violates the Navajo Nation Bill of Rights." *Martin v. Antone*, No. SC-CV-48-02, slip op. at 2-3 (Nav. Sup. Ct. August 13, 2003).

## **2. Violations**

"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 sentence violates 17 N.N.C. § 223 (2000) in two ways. First, it does not have a definite term. A 'definite' jail sentence must provide a specific number of days or months. Second, Petitioner's sentence violates the one (1) year limit on jail sentences because the Petitioner could be and was held for over a year. We hold that to detain a convicted defendant indefinitely not only violates the sentencing provisions of Title 17 but is also prohibited by the Navajo Nation Bill of Rights as cruel and unusual punishment." *Martin v. Antone*, No. SC-CV-48-02, slip op. at 2-3 (Nav. Sup. Ct. August 13, 2003).

## **3. Review**

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

## **4. Guilty plea**

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*,

No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

## **§ 224. Probation**

The court shall have the discretion in any case except where prohibited by statute to suspend all or part of an offender's sentence and release the defendant on probation. The offender shall sign a probationary pledge, the conditions and limitations of which shall be set forth by the court.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **United States Code**

Indian Civil Rights Act, see 25 U.S.C. § 1302.

### **Annotations**

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

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"17 N.T.C. § 224 gives the courts discretion to suspend a sentence and release the defendant on probation, but it does not allow an original sentence of probation. It is essential that a lawful and clearly-defined sentence be imposed on a defendant in the defendant's presence in open court." *Johnson v. The Navajo Nation*, 5 Nav. R. 152, 153 (Nav. Sup. Ct. 1987).

#### **2. Review**

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

### **3. Guilty plea**

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

### **§ 225. Multiple sentences**

When multiple sentences of imprisonment are imposed on a defendant for more than one crime, such multiple sentences shall run concurrently or consecutively as the court determines at the time of the sentence.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **Annotations**

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

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range

stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"The words of the statute clearly show that the Council intended to give courts discretionary authority to impose either a concurrent or a consecutive sentence for different offenses." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 447 (Nav. Sup. Ct. 1991).

## **2. Review**

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

## **§ 226. De Minimis Infractions**

A. The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

1. Was within a customary license or tolerance, neither expressly negated by the persons whose interest was infringed nor inconsistent with the purpose of the law defining the offense; or

2. Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

3. Presents such other extenuation that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

B. The court shall not dismiss a prosecution under this Section without filing a written statement of its reasons.

## **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

## **Annotations**

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

"For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

"District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court's discretion is necessarily limited to the specific sentence or sentencing range

stated in the Code." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"The words of the statute clearly show that the Council intended to give courts discretionary authority to impose either a concurrent or a consecutive sentence for different offenses." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 447 (Nav. Sup. Ct. 1991).

## **2. Review**

"We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred." *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

## **Chapter 3. Offenses**

### **Subchapter 1. Inchoate Offenses**

#### **§ 301. Solicitation**

A. Offense. A person commits solicitation if, with intent that another person engage in conduct constituting an offense, he or she commands, entreats, induces, or otherwise endeavors to persuade such person to engage in such conduct.

B. Affirmative defense. It is an affirmative defense to a prosecution under this Section that, under circumstances manifesting a complete and voluntary renunciation of his or her criminal intent, the defendant made a reasonable effort to prevent the conduct or result which is the object of the solicitation.

C. Defense precluded. It is not a defense to a prosecution under this Section that the person solicited could not be convicted of the offense because he or she lacked the state of mind required for the commission of the offense, because the person solicited was incompetent or irresponsible, or because he or she was otherwise not subject to prosecution.

D. Sentence.

1. Any person found guilty of solicitation of any offense under Subchapter 2 of Chapter 3 of this Title may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both, but in no case shall the penalty imposed be greater than the penalty imposed for the crime which was the object of solicitation.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo

Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **§ 302. Conspiracy**

A. Offense. A person commits conspiracy if, with the intent to promote or facilitate the commission of an offense, he or she agrees with one or more persons that at least one of them will engage in conduct constituting the offense, and one of the parties commits an overt act in furtherance of the agreement.

B. Affirmative defense. It is an affirmative defense to a prosecution under this Section that the defendant, under circumstances manifesting a complete and voluntary renunciation of his or her criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which was the objective of the conspiracy.

C. Defense precluded. It is not a defense to prosecution under this Section that one or more of the persons with whom the defendant is alleged to have conspired has not been prosecuted or convicted, has been convicted of a different offense, or is immune from or otherwise not subject to prosecution.

D. Duration of conspiracy. Conspiracy is a continuing course of conduct which ends when the offense or offenses which are its object have been committed or when the agreement that they be committed is abandoned by the defendant.

E. Abandonment of conspiracy. A defendant may abandon a conspiratorial agreement and terminate his or her relationship with the conspiracy only if he or she clearly ceases to agree that the conspiratorial objective be committed, takes no further part in the conspiracy, and communicates his or her desire to abandon the conspiracy to other members of the conspiracy.

F. Sentence.

1. Any person found guilty of conspiracy to commit an offense under Subchapter 2 or Subchapter 7 of Chapter 3 of this Title may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both, but in no case shall the penalty imposed be greater than the penalty imposed for the crime which was the object of the conspiracy.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**Annotations**

**1. Evidence**

"Circumstantial evidence may be used to prove conspiracy." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 443 (Nav. Sup. Ct. 1991).

**Subchapter 2. Offenses Against Persons**

**§ 303. Criminal homicide**

A. A person commits criminal homicide if he or she intentionally, knowingly, recklessly, or with criminal negligence, causes the death of another human being, including an unborn child. There shall be no cause of action for criminal homicide against a mother or a physician for the death of an unborn

child caused by an abortion where the abortion was permitted by law and any required consent was lawfully given.

B. Sentence. Any person found guilty of criminal homicide may be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both. This sentence shall apply to any conviction for vehicular homicide under 14 N.N.C. § 703.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

#### **§ 304. Kidnapping**

A. A person commits kidnapping when he or she intentionally or knowingly and without authority of law and against the will of the victim:

1. Detains or restrains another for any substantial period; or
2. Detains or restrains another in circumstances exposing him or her to risk of serious bodily injury; or
3. Holds another in involuntary servitude; or
4. Detains or restrains a minor without consent of his or her parent or guardian.

B. Sentence. Any person found guilty of kidnapping may be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

#### **§ 305. Aggravated Kidnapping**

A. A person commits aggravated kidnapping if the person intentionally or knowingly, without authority of law and against the will of the victim, by any means and any manner, seizes, confines, detains, or transports the victim with intent:

1. To hold for ransom or reward, or as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct; or
2. To facilitate the commission, attempted commission, or flight after commission or attempted commission of an offense; or
3. To inflict bodily injury on or to terrorize the victim or another; or



4. To interfere with the performance of any governmental or political function; or

5. To commit a sexual offense as described in Subchapter 15 of Chapter 3 of this Title.

B. A detention or moving is deemed to be result of force, threat, or deceit if the victim is mentally incompetent or younger than 16 years and the detention or moving is accomplished without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis to the victim.

C. Sentence. Any person found guilty of aggravated kidnapping may be sentenced to imprisonment for a term not exceed 365 days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

#### **§ 306. Child kidnapping**

A. A person commits child kidnapping when the person intentionally or knowingly, without authority of law and against the will of the victim, by any means and in any manner, seizes, confines, detains, or transports a child under the age of 14 with the intent to keep or conceal the child from his or her parent, guardian, or other person having lawful custody or control of the child.

B. A seizure, confinement, detention, or transportation is deemed to be against the will of the victim if the victim is younger than 14 years of age at the time of the offense, and the seizure, confinement, detention, or transportation, is without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis.

C. Sentence. Any person found guilty of child kidnapping may be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

#### **§ 307. Arson**

A. A person is guilty of arson if under circumstances not amounting to aggravated arson, he or she, by means of fire or explosives, unlawfully and intentionally damages:

1. Any property with intention of defrauding an insurer; or
2. The property of another.

B. Sentence. Any person found guilty of arson may be sentenced to imprisonment for a term not to exceed 180 days, or ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

#### **§ 308. Aggravated arson**

A. A person is guilty of aggravated arson if by means of fire or explosives he or she intentionally and unlawfully damages:

1. A habitable structure; or

2. Any structure or vehicle when any person not a participant in the offense is in the structure or vehicle.

B. Sentence. Any person found guilty of aggravated arson may be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

#### **§ 309. Reckless burning**

A. A person is guilty of reckless burning if he or she:

1. Recklessly starts a fire or causes an explosion which endangers human life; or

2. Having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm; or

3. Damages the property of another by reckless use of fire or causing an explosion.

B. Sentence.

1. Any person found guilty of reckless burning may be sentenced to imprisonment for a term not to exceed 90 days, or ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

### **§ 310. Threatening**

A. Offense. A person commits threatening if he or she threatens by word or conduct to cause physical injury to the person of another or causes serious damage to the property of another:

1. With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person; or

2. With intent to cause, or in reckless disregard of the risk of causing, serious public inconvenience, including but not limited to evacuation of a public building or transportation facility.

B. Sentence.

1. Any person found guilty of threatening may be sentenced to imprisonment for a term not to exceed 90 days, or be ordered to pay a fine not to exceed two hundred fifty dollars (\$250.00), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 311. Unlawful imprisonment**

A. Offense. A person commits unlawful imprisonment if without lawful authority he or she intentionally removes, detains, restrains, or confines the person of another without his or her consent.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 312. Interference with custody**

A. Offense. A person commits interference with custody if he or she intentionally or knowingly takes or entices any child under the age of from the custody of its parent, guardian or other lawful custodian, or any legally committed person from lawful custody, when he or she has no privilege to do so.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

**§ 313. Contributing to the delinquency of a minor**

A. Offense. A person commits contributing to the delinquency of a minor if he or she knowingly assists, aids, encourages or advises a minor to commit an offense as defined by the laws of the Navajo Nation, or federal or state law.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo

Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 314. Assault**

A. Offense. A person commits assault if he or she:

1. Attempts to commit a battery upon the person of another; or

2. By any unlawful act, threat or menacing conduct causes an other person to reasonably believe that he or she is in danger of receiving an immediate battery.

B. Sentence. Any person found guilty of assault may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 315. Aggravated assault**

A. Offense. A person commits aggravated assault if he or she:

1. Unlawfully assaults or strikes at another with a deadly weapon;  
or

2. Commits assault by threatening or menacing another while wearing a mask, hood, robe or other covering upon the face or head, or while

disguised in any manner, so as to conceal identity.

B. Sentence. Any person found guilty of aggravated assault may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

#### **§ 316. Battery**

A. Offense. A person commits battery if he or she unlawfully and intentionally strikes or applies force to the person of another.

B. Sentence. Any person found guilty of battery may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 317. Aggravated battery**

A. Offense. A person commits aggravated battery if he or she:

1. Unlawfully applies force to the person of another, or strikes the person with a deadly weapon; or

2. Intentionally or knowingly causes serious physical injury to the person of another.

B. Sentence. Any person found guilty of aggravated battery may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **Annotations**

## **1. Burden of proof**

"The Navajo Nation has the duty to show, by proof beyond a reasonable doubt, that the defendant unlawfully applied force to the person of Wilson Murphy, or that the defendant intentionally or knowingly caused serious physical injury to the person of Wilson Murphy." *Navajo Nation v. Murphy*, 6 Nav. R. 10, 15 (Nav. Sup. Ct. 1988).

## **2. Guilty plea**

"The court merely stated to Morgan's co-defendant, but not to Morgan, that he could plead guilty, not guilty, or no contest, with no explanation of what these terms mean. The Court concludes this omission is inconsistent with *házhó'ógo*, as, in the absence of some explanation, a defendant may not know the meaning of these technical legal terms, and therefore his or her choice to forego trial cannot be 'knowing' and 'intelligent'." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 3-4 (Nav. Sup. Ct. November 8, 2005).

"Second, the transcript shows that the Crownpoint District Court did not accurately state the possible sentence Morgan faced." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

"Third, the Crownpoint District Court did not assure itself that the guilty plea had a factual basis by reviewing the allegations of the complaint with Morgan. Defendants have the right to know what a plea of guilty means, and therefore judges must review the complaint with the defendant and discuss the elements of the crime and the facts supporting them." *Navajo Nation v. Morgan*, No. SC-CR-02-05, slip op. at 4 (Nav. Sup. Ct. November 8, 2005).

## **Subchapter 3. Weapons and Explosives**

### **§ 320. Unlawful carrying of a deadly weapon**

A. Offense. A person commits unlawful carrying of a deadly weapon if he or she carries a loaded firearm or any other type of deadly weapon.

B. Exceptions. Subsection (A) of this Section shall not apply to any of the following:

1. To peace officers in the lawful discharge of their duties;
2. To persons in a private motor vehicle or other means of conveyance, for lawful protection of the person's or another's person or property, while traveling and such weapon is located in a closed trunk, luggage, or glove compartment of a motor vehicle;
3. To a person in his or her residence, or on real property belonging to such person as owner, lessee, tenant, or licensee;
4. To a person or persons carrying or discharging a firearm as an integral part of any traditional Navajo religious practice, ceremony, or service;



5. To persons engaged in the hunting of game or predatory animals.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CAP-9-79, April 18, 1979.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

**§ 321. Unlawful use of a weapon**

A. Offense. A person commits unlawful use of a weapon if he or she:

1. Without lawful authority discharges a firearm in the proximity of a building, or into any building or vehicle so as to knowingly endanger a person or property;

2. Carries a firearm while under the influence of an intoxicant or narcotic; or

3. Handles or uses a firearm or other deadly weapon so as to knowingly or recklessly endanger the safety of another or that person's property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 322. Unlawful sale, possession or transportation of explosives**

A. Offense. A person commits unlawful sale, possession or transportation of explosives if he or she:

1. Knowingly sells or possesses any explosive, or causes such explosive to be transported, without having plainly marked in large letters in a conspicuous place on the box or package containing such explosive, the name and explosive character thereof and the date of manufacture;

2. Knowingly makes, buys, transports, or transfers any explosive either with intent to use such explosive to commit a crime or knowing that another intends to use it to commit a crime.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 323. Dangerous use of explosives**

A. Offense. A person commits dangerous use of explosives if he or she maliciously explodes, attempts to explode or places any explosive with the intent to injure, intimidate or terrify another, or to damage another's property.

B. Sentence.

1. Any person found guilty of dangerous use of explosives may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department

of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 324. Negligent use of explosives**

A. Offense. A person commits negligent use of explosives if he or she negligently explodes, attempts to explode or places any explosive in such a manner as to result in injury to another or to the property of another, or by such action increases the probability of such injury.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 325. Forfeiture of weapons and explosives**

Upon the conviction of any person for the violation of any law of the Navajo Nation in which a deadly weapon, dangerous instrument or explosive was used, displayed or unlawfully possessed by such person, the court shall order the article forfeited to the Navajo Nation and destroyed.

## **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **Subchapter 4. Theft and Related Offenses**

#### **§ 330. Theft**

A. Offense. A person commits theft if, without lawful authority, he or she intentionally or knowingly:

1. Controls property of another with the intent to deprive him or her of such property permanently;

2. Converts to an unauthorized use services or property of another entrusted to the defendant for a limited, authorized use;

3. Obtains property of another by means of any material misrepresentation with intent to deprive him or her thereof;

4. Comes into control of lost, mislaid or misdelivered property of another under circumstances providing means of inquiry as to the true owner and appropriates such property to his or her own or another's use without reasonable efforts to notify the true owner.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **§ 331. Theft of services**

A. Offense. A person commits an offense pursuant to this section if, without lawful authority, he or she obtains services which such person knows are available only for compensation with the intent of avoiding payment for such services.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **§ 332. Unauthorized use of automobiles or other vehicles**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle, without the consent of the owner. The repossession of any such vehicle in violation of the provisions of 7 N.N.C. § 607 *et seq.* shall constitute a violation of this Section.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 333. Receiving stolen property**

A. Offense. A person commits an offense pursuant to this Section if he or she purchases, receives, conceals, or aids in the concealing of any property of another knowing or having reason to know that such property was obtained by theft, extortion, fraud, or other means declared to be unlawful under the provisions of this title.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district

Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **§ 334. Shoplifting**

A. Offense. A person commits shoplifting if he or she obtains the goods of another while in a mercantile establishment in which merchandise is displayed for sale by:

1. Willfully taking possession of any merchandise with the intention of converting it without paying for it;

2. Willfully concealing any merchandise with the intention of converting it without paying for it;

3. Willfully altering any label, price, tag or marking any merchandise with the intention of depriving the merchant of all or some part of the value of it;

4. Willfully transferring any merchandise from the container in or on which it is displayed to any other container with the intention of depriving the merchant of all or some part of the value of it.

B. Detention to effect recovery. A merchant, or his or her agent or employee, upon probable cause, may detain on the premises in a reasonable manner and for a reasonable time any person suspected of shoplifting as defined in Subsection (A) of this Section for questioning or summoning a law enforcement officer. In no event shall such detention exceed one (1) hour. Such detention shall not subject the merchant or his or her agent or employee to criminal or civil liability.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.



3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 335. Fraud**

A. Offense. A person commits fraud if he or she unlawfully obtains the property of another by willful misrepresentation, deceit, false interpreting, or the use of false weights and measures, with the intent of depriving such other person of the property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal

Code.

CN-71-77, November 10, 1977.

**§ 336. Theft by extortion**

A. Offense. A person commits theft by extortion if he or she intentionally or knowingly obtains or seeks to obtain property by means of a threat to do in the future any of the following:

1. Cause physical injury to any other person; or
2. Cause damage to property, or
3. Accuse anyone of a crime or bring criminal charges against anyone; or
4. Expose a secret or an asserted fact, whether true or false, tending to subject anyone to hatred, contempt or ridicule, or to impair his or her credit or business; or
5. Take or withhold action as public servant or cause a public servant to take or withhold action.

B. Sentence.

1. Any person found guilty of theft by extortion pursuant to Sections 336(A)(1) or (5) may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **Subchapter 5. Forgery and Related Offenses**

#### **§ 340. Forgery**

A. Offense. A person commits forgery if, with intent to defraud, he or she:

1. Falsely makes, completes or alters a written instrument; or
2. Offers or presents, whether accepted or not, a forged instrument.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 341. Criminal simulation**

A. Offense. A person commits criminal simulation if, with intent to defraud, he or she makes, alters, or presents or offers, whether accepted or

not, any object so that it appears to have an antiquity, rarity, source, authorship or value that it does not in fact possess.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 342. Obtaining a signature by deception**

A. Offense. A person commits obtaining a signature by deception if, with intent to defraud, he or she obtains the signature of another person to a written instrument by knowingly misrepresenting or omitting any fact material to the instrument or transaction.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan

sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 343. Criminal impersonation**

A. Offense. A person commits criminal impersonation if he or she:

1. Assumes a false identity with the intent to defraud another; or
2. Pretends to be a representative of some person or organization with the intent to defraud.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal

Code.

CN-71-77, November 10, 1977.

## **Subchapter 6. Trespass and Burglary**

### **§ 350. Criminal trespass**

A. Offense. A person commits criminal trespass if he or she intentionally and knowingly, and without consent or permission of the owner, user, or person in lawful possession thereof enters upon, remains or traverses upon private, allocated or allotted lands or other property not his or her own.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CMY-27-06, May 12, 2006. The Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **§ 351. Criminal entry**

A. Offense. A person commits criminal entry if he or she intentionally and knowingly, and without consent or permission of the owner, user, or person in lawful possession thereof:

1. Enters upon any lands or buildings whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with or obstructing any lawful business or occupation therein;

2. Refuses or fails to leave land, real property or structures of any kind belonging to or lawfully occupied by another, and not open to the general public, upon being requested to leave by a police officer, or the owner, user, or the person in lawful possession thereof;

3. Refuses or fails to leave a public building or a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a police officer, a regularly employed guard, watchman or custodian of the public agency owning or maintaining the building or property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 352. Trespass with force or violence**

A. Offense. A person commits trespass with force or violence if he or she uses force or violence in entering upon or detaining lands, real property or structures of any kind belonging to, or lawfully occupied by another, except in cases and the manner allowed by law.

B. Sentence.

1. Any person found guilty of trespass with force or violence may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000) or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 353. Burglary**

A. Offense. A person commits burglary if he or she enters or remains unlawfully in a residential or non-residential structure, or motor vehicle, with the intent of committing an offense therein.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or



security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **Subchapter 7. Bribery and Related Offenses**

#### **§ 360. Bribery in official and political matters**

A. Offense. A person commits an offense pursuant to this Section if:

1. He or she offers, confers, or agrees to confer any benefit upon a Navajo Nation official, Navajo Nation judge or employee with the intention of influencing such person's vote, opinion, judgment, exercise of discretion or other action in his or her capacity as a Navajo Nation official, Navajo Nation judge or employee.

2. While a Navajo Nation official, Navajo Nation judge or employee, he or she solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his or her vote, opinion, judgment, exercise of discretion or other action as a Navajo Nation official, Navajo Nation judge or employee may thereby be influenced.

B. Sentence.

1. Any person found guilty of bribery in official and political matters may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **Annotations**

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

" ... [T]he Council intended that a public official should be punished for each separate act of soliciting a bribe, entering into an arrangement or agreement for a bribe and/or actually accepting the bribe." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 446-447 (Nav. Sup. Ct. 1991).

" ... [T]he Council intended the law to punish solicitation, acceptance and agreement separately, and to authorize separate or multiple punishments for each." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 446 (Nav. Sup. Ct. 1991).

#### **2. Evidence**

"The prosecution may use circumstantial evidence to prove any or all of the elements." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 443 (Nav. Sup. Ct. 1991).

#### **§ 361. Improper influence in official and political matters**

A. Offense. A person commits an offense pursuant to this Section if he or she threatens harm to any person, Navajo Nation official, Navajo Nation judge or employee with the intent of influencing such person's vote, opinion, judgment, or exercise of discretion.

B. Sentence.

1. Any person found guilty of improper influence in official and political matters may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 362. Paying or receiving Navajo Nation Government funds for services not rendered**

A. Offense. A person commits an offense pursuant to this Section if he or she knowingly makes or receives payment or causes payment to be made from Navajo Nation government funds when such payment purports to be for wages, salary or remuneration for personal services which have not in fact been rendered.

B. Authorized expenditures. Nothing in this section shall be construed to prevent the payment of Navajo Nation government funds where such payments are intended to cover lawful remuneration to Navajo Nation officers or Navajo Nation employees for vacation periods or absences from employment because of sickness, or for other lawful authorized purposes.

C. Sentence.

1. Any person found guilty of paying or receiving Navajo Nation funds for services not rendered may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 363. Making or permitting false Navajo Nation voucher**

A. Offense. A person commits an offense pursuant to this Section if he or she knowingly, intentionally or willfully makes, or causes to be made, or permits to be made a material misrepresentation or forged signature upon any Navajo Nation voucher, expense reimbursement form, or invoice supporting a Navajo Nation voucher, with the intent that the voucher, expense reimbursement form, or invoice be relied upon for the unauthorized expenditure of Navajo Nation funds.

B. Sentence.

1. Any person found guilty of making or permitting false Navajo Nation voucher may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan

sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **§ 364. Abuse of office**

A. Offense. A person commits abuse of office if he or she acts or purports to act in an official capacity, or takes advantage of such actual or purported capacity, knowing such conduct is unlawful, and:

1. Subjects another to arrest, detention, search or seizure, mistreatment, or dispossession;
2. Infringes upon the personal or property right of another; or
3. Denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity.

B. Sentence.

1. Any person found guilty of abuse of office may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 365. Forfeiture of Navajo Nation employment or office**

Notwithstanding the provisions regarding sentencing of Chapter 2, Subchapter 2 of this Title, a Navajo Nation employee or non-elected public servant convicted of violating any section of this Subchapter shall permanently forfeit his or her employment or office.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **Subchapter 8. Obstruction of Navajo Nation Administration**

#### **§ 370. Obstruction of justice**

A. A person is guilty of an offense if, with intent to hinder, prevent, or delay the discovery, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he:

1. Knowing an offense has been committed, conceals it from a judge of the Navajo courts;
2. Harbors or conceals the offender;
3. Provides the offender a weapon, transportation, disguise, or other means for avoiding discovery or apprehension;
4. Warns the offender of impending discovery or apprehension;
5. Conceals, destroys, or alters any physical evidence that might aid in the discovery, apprehension, or conviction of the person;
6. Obstructs by force, intimidation, or deception anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of the person; or
7. Having knowledge that a law enforcement officer has been

authorized or has applied for authorization to intercept a wire, electronic, or oral communication, gives notice or attempts to give notice of the possible interception to any person.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 370A. [Repealed]**

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CAP-9-79, April 18, 1979.

**§ 371. Refusing to aid an officer**

A. Offense. A person commits an offense pursuant to this Section if he or she, upon a reasonable command by a peace officer, intentionally or knowingly refuses or fails to aid such officer in:

1. Effectuating or securing an arrest;

2. Preventing the commission by another of an offense as defined in this Title.

B. A person who complies with this Section by aiding a peace officer shall not be held liable to any person for civil damages resulting therefrom, provided he or she acted reasonably under the circumstances known to him or her at the time.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 372. Rescue from lawful custody**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally and without lawful authority rescues or attempts to rescue any person in lawful custody or confinement.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.



3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 373. Escape from lawful custody**

A. Offense. A person commits an offense pursuant to this Section if he or she escapes or attempts to escape from lawful custody or confinement.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

**§ 374. Tampering with a public record**

A. Offense. A person commits tampering with a public record if he or she intentionally or knowingly and without proper authority:

1. Makes or completes a written instrument which purports to be a public record or true copy thereof or alters or makes a false entry in a written instrument which is a public record or a true copy thereof;

2. Presents or uses a written instrument which is or purports to be a public record or a copy thereof, knowing that it has been falsely made, completed or altered or that a false entry has been made therein, with intent that it be taken as genuine;

3. Records, registers or files or offers for recordation, registration or filing in a governmental office or agency a written statement which has been falsely made, completed or altered or in which a false entry has been made or which contains a false statement or false information;

4. Destroys, mutilates, conceals, removes or otherwise impairs the availability of any public record;

5. Refuses to deliver a public record in his or her possession upon proper request of a Navajo Nation official entitled to receive such record for examination or other purposes.

B. Public record, for purposes of this Section, means all official books, papers, written instruments or records created, issued, received or kept by any governmental office, department, division, branch or section or required by law to be kept by others for the information of any governmental office.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community

service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 375. Malicious criminal prosecution**

A. Offense. A person commits an offense pursuant to this Section if he or she maliciously causes or attempts to cause a criminal charge to be preferred or prosecuted against an innocent person, knowing such person to be innocent.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 376. Unsworn falsification**

A. Offense. A person commits unsworn falsification by knowingly:

1. Falsifying, concealing or covering up by any trick, scheme or

device a material fact or making any false, fictitious or fraudulent statements or representations or making or using any false writing or document knowing the same to contain any false, fictitious or fraudulent statement in connection with any matter within the jurisdiction of any Navajo Nation department or agency.

2. Making any false statement or providing any false documents to any prosecutor, special prosecutor or their investigator or agents, or any law enforcement officer, when the person believes the statement or document to be false.

3. Making any statement which he or she believes to be false in regard to a material issue to any Navajo Nation employee in connection with an application for any benefit, privilege, contract, agreement, or license.

**B. Sentence.**

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-60-89, September 15, 1989.

CN-71-77, November 10, 1977.

**Note.** Previously § 479(B) under Subchapter 18 of this Chapter.

**§ 377. Unauthorized Practice of Law**

A. Offense. The unauthorized practice of law is committed when, without

being an active member in good standing of the Navajo Nation Bar Association, a person:

1. Provides legal representation before the Courts of the Navajo Nation, any quasi-judicial, administrative, or legislative body to another person; or

2. Provides legal services within the Navajo Nation or to another person within the Navajo Nation, including but not limited to, the rendering of legal advice to another person, the drafting or completion of legal pleadings for another person, or the legal interpretation of documents for another person.

B. Exception. The acts set forth in Subsection (A) shall not be considered the unauthorized practice of law when legal representation is provided to another person in accord with Navajo Nation Court rules allowing association of lawyers unlicensed in the Navajo Nation with a member of the Navajo Nation Bar Association.

C. Sentence

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

**Annotations**

**1. Purpose**

"As expressed by the Navajo Nation Council through the provision of civil and criminal sanctions, the unauthorized practice of law undermines the integrity

of our legal system." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 5 (Nav. Sup. Ct. August 7, 2006).

## **2. Person; generally**

"The Council went further in Navajo Criminal Code (Criminal Code), by making it a crime for an unauthorized 'person' to practice law within the Navajo Nation, defined as, among other things, a 'person' representing another 'person' before a Navajo administrative body." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 8 (Nav. Sup. Ct. August 7, 2006).

## **3. Person; corporation**

"Assuming that a corporation is a 'person' under the unauthorized practice of law provision, see 17 N.N.C. § 209( R) (2005) (defining 'person' in the Criminal Code as including a corporation 'where relevant'), an employee may still not represent it without a license if he or she is a separate 'person' under that provision." *Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05, slip op. at 10 (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).

# **Subchapter 9. Criminal Damage to Property**

## **§ 380. Criminal damage**

A. Offense. A person commits criminal damage if he or she intentionally or recklessly:

1. Defaces or damages tangible property of another person;
2. Tamper with tangible property of another person so as to substantially impair its function or value;
3. Tamper with the tangible property of a utility;
4. Defaces or damages tangible property of the Navajo Nation, of a political campaign or any public property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo

Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-68-82, September 28, 1982.

CN-71-77, November 10, 1977.

### **Annotations**

#### **1. Factors for restitution**

"Before restitution can be awarded under the criminal code, and specifically Subsection 380(C), the court must be satisfied with these minimal factors: 1) Is the restitution appropriate in the case; 2) Who is the injured party; 3) What is the extent of the loss or injury; 4) What kind of restitution is appropriate; and 5) If money is to be paid, what amount would satisfy the actual damages requirement." *Navajo Nation v. Blake*, 7 Nav. R. 233, 236 (Nav. Sup. Ct. 1996).

#### **2. Elections; sample ballots**

"The rules promulgated by the Board of Election Supervisors and the language of the sample ballot anticipate possible criminal prosecution of the violation under Section 380. That section authorizes several possible remedies after the violator has been found guilty beyond a reasonable doubt through a prosecution under the Criminal Code. 17 N.N.C. § 380(B) (2005). However, nothing states that a candidate's election can be declared invalid, even if the violator was found guilty in a criminal prosecution. Further, OHA nowhere states its authority to take such drastic action and nothing presented to this Court gives OHA such power. [ ... ] Should the Navajo Nation Council wish to empower OHA to invalidate elections for copying or altering sample ballots, it must clearly state that intention." *In the Matter of the Grievance of: Wagner, and concerning, Tsosie*, SC-CV-01-07, slip op. at 5-6 (Nav. Sup. Ct. May 14, 2007).

#### **§ 381. Littering**

A. Offense. A person commits an offense pursuant to this Section if he or she throws, places, drops, or disposes of any litter, destructive or injurious material upon lands within the territorial jurisdiction of the Navajo Nation which is not a lawful waste disposal site or receptacle for the disposal of litter.

B. Sentence. Any person found guilty of littering may be sentenced to serve not less than four hours nor more than 20 hours picking up and clearing litter from the highways, roads, or public places of the Navajo Nation.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 382. [Repealed]**

#### **History**

CN-71-77, November 10, 1977.

#### **§ 383. Desecration of religious or traditional artifacts**

A. Any person, group of persons, organization, association or church, who desecrates or unlawfully destroys any religious artifact or traditional relic belonging to another person, group of persons, organization, association or church, or aids, abets or facilitates such desecration or unlawful destruction shall be deemed guilty of an offense, and upon conviction thereof, may be sentenced to imprisonment for a period not in excess of 365 days for a natural person, or shall be fined an amount not to exceed five thousand dollars (\$5,000), or both.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department



of Public Safety or a public or private organization, including the chapter in which the defendant resides.

B. Each act of desecration or unlawful destruction shall constitute a separate offense.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CF-20-78, February 2, 1978.

CN-71-77, November 10, 1977.

### **Subchapter 10. Controlled Substances**

#### **§ 390. Definitions**

The following definitions apply in this Subchapter:

A. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine or substances from which cocaine or ecgonine may be synthesized or made.

B. "Marijuana" means those Cannabis plants that contain an amount equal to or more than one and four-tenths percent (1.4%) tetrahydrocannabinol.

C. "Opium" includes morphine, codeine and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium, but does not include apomorphine or any of its salts.

#### **History**

CJY-54-00, July 20, 2000. Subsection (B) amended.

CN-71-77, November 10, 1977.

#### **§ 391. Possession of marijuana**

A. Offense. The Navajo Nation has a zero tolerance policy relative to the possession of marijuana. A person commits an offense pursuant to this Section if he or she possesses any amount of marijuana and such marijuana is intended for his or her personal use.

B. Sentence.

1. Any person found guilty of violating this Section and in possession of any amount of marijuana shall be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJY-53-00, July 20, 2000. Subsections (A) and (B) amended.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 392. Production or delivery of marijuana**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly produces, delivers, or possesses marijuana with intent to deliver such marijuana to another.

B. "Deliver" or "delivery" means the actual or constructive transfer of possession of marijuana to another with or without consideration, whether or not there is an agency relationship.

C. Sentence. Any person found guilty of producing, selling or delivering marijuana may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 393. Delivery of marijuana to minors**

A. Offense. A person commits an offense pursuant to this Section if he or she is at least 18 years of age, and violates 17 N.N.C. § 391 by delivering marijuana to a person under 18 years of age.

B. "Deliver" or "delivery" means the actual or constructive transfer of possession of marijuana, with or without consideration, whether or not there is any agency relationship.

C. Sentence. Any person found guilty of delivering marijuana to minors may be sentenced to imprisonment for a term not to exceed 365 days and to pay a fine not to exceed five thousand dollars (\$5,000).

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

#### **§ 394. Possession or sale of controlled substances**

A. Offense. A person commits an offense pursuant to this section if he or she possesses, manufactures, transports, sells, uses, trades or delivers:

1. Opium or coca leaves, or any compound, manufacture, salt, derivative, mixture or preparation thereof, apomorphine and its salts excepted, and including the following:

- a. Acetorphine;
- b. Acetyldihydrocodeine;
- c. Benylmorphine;
- d. Codeine;
- e. Codeine methylbromide;
- f. Codeine-n-oxide;
- g. Cyprenorphine;
- h. Desomorphine;
- i. Dihydromorphine;
- j. Drotebanol;
- k. Ethylmorphine;
- l. Etorphine;

- m. Heroin;
- n. Hydrocodone;
- o. Hydromorphenol;
- p. Hydromorphone;
- q. Methyldesorphine;
- r. Methyldihydromorphone;
- s. Metopon;
- t. Morphine;
- u. Morphine methylbromide;
- v. Morphine methylsulfonate;
- w. Morphine-n-oxide;
- x. Myrophine;
- y. Nalorphine;
- z. Nicocodeine;
- aa. Nicomorphine;
- bb. Normorphine;
- cc. Oxycodone;
- dd. Oxymorphone;
- ee. Pholocodine;
- ff. Thebacon;
- gg. Thebaine;
- hh. Cocaine.

2. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers:

- a. Lysergic acid diethylamide;
- b. Mescaline;
- c. Psilocybin;

- d. Psilocyn;
- e. Hashish;
- f. Peyote;
- g. 4-bromo-2, 5-dimethoxyamphetamine;
- h. Bufotenine;
- i. Diethyltryptamine;
- j. 2, 5-dimethoxyamphetamine;
- k. Dimethyltryptamine;
- l. 5-methoxy-3, 4-methylenedioxyamphetamine;
- m. 4-methyl-2, 5-dimethoxyamphetamine;
- n. Ibogaine;
- o. Lysergic acid amide;
- p. Methoxymethylenedioxyamphetamine (MMDA);
- q. Methylenedioxyamphetamine (MDA);
- r. 3, 4-metyulenedioxymethamphetamine;
- s. 3, 4-methylenedioxy-n-ethylamphetamine;
- t. N-ethyl-3-piperidyl benzilate (JB-318);
- u. N-hydroxy-3, 4-methylenedioxyamphetamine;
- v. N-methyl-3-piperidyl bezilate (JB-336);
- w. N-(1-phenylcyclohexyl) ethylamine (PCE);
- x. Nabilone;
- y. 1-(1-phenylcyclohexyl) pyrrolidine (PHP);
- z. 1-(1-(2-thienyl)-cyclohexyl) pyrrolidine;
- aa. Para-methoxamphetamine (PMA);
- bb. Synhexyl;
- cc. Trimethoxyamphetamine.

3. Any material, compound, mixture or preparation which contains an

amount equal to or more than 1.4% quantity of tetrahydrocannabinol (T.H.C.).

4. Any material, compound, mixture or preparation which contains any quantity of the following substances and their salts, isomers, and salts of isomers having a potential for abuse associated with a stimulant effect on the central nervous system:

- a. Amphetamine;
- b. Benzphetamine;
- c. Cathine ((+)-norpseudoephedrine);
- d. Clorpheniramine;
- e. Clortermine.
- f. Diethylpropion;
- g. Fencamfamin;
- h. Fenethylline;
- i. Fenproporex;
- j. Mazindol;
- k. Mefenorex;
- l. Methamphetamine;
- m. 4-methylaminorex;
- n. Methylphenidate;
- o. N-ethylamphetamine;
- p. N, N-dimethylamphetamine;
- q. Pemoline;
- r. Phendimetrazine;
- s. Phenmetrazine;
- t. Pipradol;
- u. Propylhexedrine;
- v. Pyrovalerone;
- w. Spa ((-)-1-dimethylamino-1,2-diphenylethane).

5. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

a. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, unless specifically excepted;

- b. Alprazolam;
- c. Bromazepam;
- d. Camazepam;
- e. Chloral betaine;
- f. Chloral hydrate;
- g. Chlordiaxepoxide;
- h. Chlorhexadol;
- i. Clobazam;
- j. Clonazepam;
- k. Clorazepate;
- l. Clotiazepam;
- m. Cloxazolam;
- n. Delorazepam;
- o. Diazepam;
- p. Estazolam;
- q. Ethchlorvynol;
- r. Ethinamate;
- s. Ethyl loflazepate;
- t. Fenfluramine;
- u. Fludiazepam;
- v. Flunitrazepam;
- w. Flurazepam;
- x. Gamma hydroxy butyrate;

y. Glutethimide;  
z. Halazepam;  
aa. Haloxazolam;  
bb. Ketamine;  
cc. Ketazolam;  
dd. Loprazolam;  
ee. Lorazepam;  
ff. Lormetazepam;  
gg. Lysergic acid;  
hh. Metabutamate;  
ii. Mecloqualone;  
jj. Medazepam;  
kk. Meprobamate;  
ll. Methaqualone;  
mm. Methylprylon;  
nn. Midazolam;  
oo. Nimetazepam;  
pp. Nitrazepam;  
qq. Nordiazepam;  
rr. Oxazepam;  
ss. Oxazolam;  
tt. Paraldehyde;  
uu. Petrichloral;  
vv. Phencyclidine;  
ww. Pinazepam;  
xx. Praxepam;  
yy. Scopolamine;



- zz. Sulfondiethylmethane;
- aaa. Sulfoethylmethane;
- bbb. Sulfomethane;
- ccc. Quazepam;
- ddd. Temazepam;
- eee. Tetrazepam;
- fff. Tiletamine;
- ggg. Triazolam;
- hhh. Zolazepam.

6. Narcotic drugs, including the following, whether of natural or synthetic origin and any substance neither chemically or physically distinguishable from them:

- a. Acetyl-alpha-methylfentanyl;
- b. Acetylmethadol;
- c. Alfentanil;
- d. Allyprodine;
- e. Alphacetylmethadol;
- f. Alphameprodine;
- g. Alphamethadol;
- h. Alphamethylfentanyl;
- i. Alphamethyllofentanyl;
- j. Alphaprodine;
- k. Amidone (methadone);
- l. Anileridine;
- m. Benzethidine;
- n. Benzylfentanyl;
- o. Betacetylmethadol;
- p. Betahydroxyfentanyl;

q. Betahydroxy-3-methylfentanyl;  
r. Betameprodine;  
s. Betamethadol;  
t. Betaprodine;  
u. Bezitramide;  
v. Buprenorphine and its salts;  
w. Cafentanil;  
x. Clonitazene;  
y. Detropoxyphene;  
z. Diampromide;  
aa. Diethylthiambutene;  
bb. Difenoxin;  
cc. Dihydrocodeine;  
dd. Dimenoxadol;  
ee. Dimepheptanol;  
ff. Dimethylthiambutene;  
gg. Dioxaphetyl butyrate;  
hh. Diphenoxylate;  
ii. Dipipanone;  
jj. Ethylmethyliambutene;  
kk. Etonitazene;  
ll. Etoxeridine;  
mm. Fentanyl;  
nn. Furethidine;  
oo. Hydroxypethidine;  
pp. Isoamidone (isomethadone);  
qq. Isonipecaine;

rr. Ketobemidone;  
ss. Levomethorphan;  
tt. Levoaramide;  
uu. Levophenacetylmorphan;  
vv. Levorphanol;  
ww. Metazocine;  
xx. 3-methylfentanyl;  
yy. 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);  
zz. 3-Methylthiofentanyl;  
aaa. Morpheridine;  
bbb. Noracymethadol;  
ccc. Norlevorphanol;  
ddd. Normethadone;  
eee. Norpipanone;  
fff. Paraflourofentanyl;  
ggg. Pentazocine;  
hhh. Phenadoxone;  
iii. Phenampromide;  
jjj. Phenazocine;  
kkk. 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);  
lll. Phenomorphan;  
mmm. Phenoperidine;  
nnn. Piminodine;  
ooo. Piritramide;  
ppp. Prohepatazine;  
qqq. Properidine;  
rrr. Propiram;

sss. Racemethorphan;  
ttt. Racemoramide;  
uuu. Racemorphan;  
vvv. Sufentanil;  
www. Thenylfentanyl;  
xxx. Thiofentanyl;  
yyy. Tilidine;  
zzz. Trimeperidine.

B. Defense. It is a defense to a prosecution under this section that the controlled substance or narcotic was obtained directly from or pursuant to a valid prescription or order issued by a practitioner acting in the course of his or her professional practice.

C. Peyote. The listing of peyote (more commonly known as azee') in Subsection A does not apply to the use of azee' by an enrolled member of an Indian tribe for bona fide ceremonial purposes in connection with nahaghá. Individuals who use, possess, or transport azee' for use in nahaghá are exempt from this prohibition. Azee' is lawful on the Navajo Nation.

D. Sentence.

1. Any person found guilty of possession or sale of controlled substances shall be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars \$5,000, or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the

Chapter in which the defendant resides.

E. Rehabilitation. At the discretion of the court, any person found guilty of violating this section, and found to be addicted to a controlled substance, may be ordered to receive rehabilitative treatment pursuant to 17 N.N.C. § 220.

#### **History**

CJY-52-05, July 28, 2005. Subsection (C) amended.

CF-12-05, February 11, 2005.

CJY-54-00, July 20, 2000. Subsection (A) amended.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 395. Forfeiture and destruction of controlled substances**

A. Upon the conviction of any person based upon violation of this Subchapter, the court shall order the marijuana, controlled substance or narcotic forfeited to the Navajo Nation and destroyed or otherwise disposed of.

B. A record of the place where such controlled substance or narcotic was seized, the kinds and quantities of the substance or narcotic so destroyed, and the time, place and manner of destruction shall be kept, and a return under oath reporting such destruction shall be made to the court by the officer who destroys such controlled substance or narcotic.

C. The handling and disposition of azee' seized pursuant to this subchapter shall be regulated by administrative order of a district court judge of the Navajo Nation Courts, taking into consideration and accommodating the ceremonial use of azee' and following the guidance of the leaders of those who participate in such ceremony.

#### **History**

CJY-52-05, July 28, 2005. Subsection (C) added.

CN-71-77, November 10, 1977.

**Note.** Subsection (B) slightly reworded.

### **Subchapter 11. Obscenity**

#### **§ 400. Definitions**

The following definitions apply in this Subchapter:

A. "Displays publicly" means the exposing, placing, posting, exhibiting

or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot, or vehicle.

B. "Furnishes" means to sell, give, rent, loan or otherwise provide.

C. "Minor" means a person under eighteen (18) years of age.

D. "Sodomasochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

E. "Sexual conduct" means human masturbation, sexual intercourse, or any direct or indirect touching of the genitals, pubic area or anus of the human male or female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 401. Furnishing sexual materials to minors**

A. Offense. A person commits furnishing sexual materials to minors if, knowing or having good reason to know the character of the material furnished, he or she intentionally or knowingly furnishes to a minor:

1. Any picture, photograph, drawing, sculpture, motion picture, film, electronic or other visual representation or image of a person or portion of a human body that depicts sodomasochistic abuse or sexual conduct; or

2. Any book, magazine, paperback, pamphlet or other written or printed matter, electronic medium however reproduced, or any sound recording which contains matter of the nature described in Subsection (A)(1) of this Section, or explicit verbal descriptions or narrative accounts of sexual conduct or sodomasochistic abuse.

B. Sentence.

1. Any person found guilty of violating this Section shall be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 402. Displaying sexual materials to minors**

A. Offense. A person commits displaying sexual materials to minors if, being the owner, operator or manager of a business or acting in managerial capacity thereof, he or she intentionally, knowingly or recklessly permits a minor who is not accompanied by his or her parent or lawful guardian to enter or remain on the premises, if in that part of the premises where the minor is so permitted to be, there is visibly displayed:

1. Any picture, photograph, drawing, sculpture, film, electronic or other visual representation or image of a person or portion of the human body that depicts sexual conduct or sadomasochistic abuse; or

2. Any book, magazine, paperback, pamphlet or other written or printed matter, electronic medium, however reproduced, that reveals a person or portion of the human body that depicts sexual conduct or sadomasochistic abuse.

B. Sentence.

1. Any person found guilty of violating this Section shall be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo

Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 403. Defenses to prosecution**

It shall be a defense to any prosecution under 17 N.N.C. §§ 401 and 402:

A. That the materials were being used for purely educational, scientific, charitable, or religious purposes by a religious association, library, museum, public school, private school or institution of learning or scientific research; or

B. That the defendant was charged with the sale, showing, exhibition or display of an item, those portions of which might otherwise be contraband forming merely an incidental part of an otherwise non-offending whole, and serving some legitimate purpose therein other than titillation.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 404. Destruction of obscene material upon conviction**

Upon the conviction of any person for a violation of this Subchapter, the materials which were the subject of the conviction may be destroyed.

#### **History**

CN-71-77, November 10, 1977.



## **Subchapter 12. Intoxicating Liquors**

### **§ 410. Possession of liquor**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly possesses, or transports any beer, ale, wine, whiskey or any other beverage which produces alcoholic intoxication, and such alcoholic beverage is intended for his or her personal use.

B. Sentence.

1. Any person found guilty of possession of liquor may for a first offense be ordered to pay a fine not to exceed fifty dollars (\$50.00).

2. Upon subsequent conviction of possession of liquor within a period of 180 days of any previous conviction based upon violation of this Section, he or she may be ordered to pay a fine not to exceed one hundred dollars (\$100.00).

C. Rehabilitation. At the discretion of the court, any person found guilty of violating this Section, and found to be addicted to alcohol, may be ordered to receive rehabilitative treatment pursuant to Section 220 of this Title.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **Annotations**

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

"Through clear provisions of the Navajo Nation Code, the Council has outlawed alcohol on the Nation, 17 N.N.C. §§ 410-412 (2005), has made providers of liquor liable for injuries arising out of consumption of their liquor, 7 N.N.C. § 207 (1995) [\$ 631 in 2005], and, most importantly for this case, asserts personal jurisdiction over liquor sellers located outside the Navajo Nation when their liquor causes injuries on the Nation, 7 N.N.C. § 253a(C)(8) (2005)." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 5-6 (Nav. Sup. Ct. April 30, 2007).

### **§ 411. Manufacture or delivery of liquor**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly manufactures, delivers, or possesses, with intent to deliver, any beer, ale, wine, whiskey, or any other beverage which produces alcoholic intoxication.

B. "Deliver" or "delivery" means the actual or constructive transfer of possession of any alcoholic beverage as described above, with or without

consideration, whether or not there is an agency relationship.

C. Presumption. The possession of 12 or more bottles of beverages with an alcohol content of ten percent (10%) or greater, or the possession of 24 or more bottles or cans of beverages with an alcohol content of less than ten percent (10%) shall give rise to the rebuttable presumption that the person possessed such quantity of alcoholic beverages intending to deliver the same.

D. Sentence.

1. Any person found guilty of violating this Section may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

E. Tort liability. Any person who directly gives, sells, or otherwise provides liquor or any alcoholic beverage to any other person shall be strictly liable for any personal injuries, property damage, means of support to any third person (or to the spouse, child or parent of that third person), or to a person who may bring an action for wrongful death where:

1. The person who obtained the liquor or alcoholic beverage consumed the same;

2. The consumption of the liquor or alcoholic beverage was a proximate cause of the injury, death or property damage.

For the purposes of this Subsection, if it is found that the person who obtained the liquor or alcoholic beverage causes injuries or property damage as a result of the consumption of the liquor or alcoholic beverage within a reasonable period of time following his or her first obtaining the liquor or alcoholic beverage, it shall create a rebuttable presumption that the person

consumed the liquor or alcoholic beverage provided to him or her by the person who gave, sold or otherwise provided the liquor or alcoholic beverage.

If a person having rights or liabilities under this Subsection dies, the rights or liabilities provided by this Subsection survive to or against that person's estate.

An action based upon a cause of action under this Subsection shall be commenced within five (5) years after the date of injury or property damage.

Nothing in this Subsection precludes any cause of action or additional recovery against the person causing the injury.

F. Civil forfeiture. Any personal or real property of any person found liable for an offense under this Section, whether criminally or civilly, is subject to forfeiture to the Navajo Nation if the following conditions are met:

1. A person is found to have committed an offense under this Section;

2. There is proof, by at least a preponderance of the evidence, that the property was used in connection with the manufacture, delivery, possession, or transfer of any liquor or alcoholic beverage;

3. The person liable for an offense under this Section has received notice of the proposed forfeiture and provided an opportunity to be heard on that issue.

For the purposes of this Subsection, notice of a proposed forfeiture shall be deemed adequate if the forfeiture is alleged in a complaint for an offense under this Section and the property to be forfeited is described with particularity.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **Annotations**

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

"Through clear provisions of the Navajo Nation Code, the Council has outlawed alcohol on the Nation, 17 N.N.C. §§ 410-412 (2005), has made providers of liquor liable for injuries arising out of consumption of their liquor, 7 N.N.C. § 207 (1995) [now § 631], and, most importantly for this case, asserts personal jurisdiction over liquor sellers located outside the Navajo Nation when their liquor causes injuries on the Nation, 7 N.N.C. § 253a(C)(8) (2005)." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 5-6 (Nav. Sup. Ct. April 30, 2007).

##### **§ 412. Exceptions**

A. It shall not be unlawful for any person to sell, manufacture, deliver or transport intoxicating liquor if such liquor is intended for scientific, sacramental, medicinal or mechanical purposes.

B. For the purposes of this Subchapter, "Navajo Indian Country" does not include rights-of-way when intoxicating liquor is being transported through Navajo Indian Country in unbroken packages or in containers with unbroken federal tax stamps.

C. It shall not be unlawful for any person, Indian, or non-Indian, to sell, deliver, transport or consume intoxicating liquor in that part of the Navajo Nation covered by the Antelope Point Resort and Marina Business Site Lease provided that:

1. The transportation, sale, delivery and consumption of alcoholic beverages is in conformity with applicable state regulatory liquor law, specifically excluding any state regulatory liquor laws which would require the Navajo Nation and/or its Lessee to be licensed by the State of Arizona, or to be in any way subject to the administrative, executive, judicial or legislative jurisdiction of the State or Arizona; and

2. All sales of alcoholic beverages be at prices no less than the prices charged for similar products in adjoining areas of the State of Arizona.

The Navajo Tax Commission is hereby authorized to approve such rules and regulations as are necessary and appropriate to ensure the proper transportation, sale, delivery and consumption of alcoholic beverages within the area of the Antelope Point Business Site Lease.

D. It shall not be unlawful for any person, Indian, or non-Indian, to sell, deliver, transport or consume intoxicating liquor within a duly authorized Navajo casino facility provided that:

1. The host Navajo Nation chapter approves the sale of the alcoholic beverages;

2. The transportation, sale, delivery and consumption of alcoholic beverages is in conformity with the applicable state gaming compact and with applicable state regulatory liquor laws, specifically excluded are any and all state regulatory liquor laws which would require the Navajo Nation and/or its business site lessee to be licensed by the state, or to be in any way subject to the administrative, executive, judicial or legislative jurisdiction of the state; and

3. The sale of alcoholic beverages shall be within the confines of the dining area of the Navajo casino facility.

The Navajo Tax Commission is hereby authorized to approve such rules and regulations as are necessary and appropriate to ensure the proper transportation, sale, delivery and consumption of alcoholic beverages.

#### **History**

CJA-03-08, January 31, 2008. Authorized the Navajo Tax Commission to exercise regulatory authority and added subsection D. Effective June 1, 2008.

CJY-62-01, July 20, 2001. Subsection (C) added.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

## **Annotations**

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

"Through clear provisions of the Navajo Nation Code, the Council has outlawed alcohol on the Nation, 17 N.N.C. §§ 410-412 (2005), has made providers of liquor liable for injuries arising out of consumption of their liquor, 7 N.N.C. § 207 (1995) [now § 631], and, most importantly for this case, asserts personal jurisdiction over liquor sellers located outside the Navajo Nation when their liquor causes injuries on the Nation, 7 N.N.C. § 253a(C)(8) (2005)." *Navajo Transport Services, et al. v. Schroeder, et al.*, No. SC-CV-44-06, slip op. at 5-6 (Nav. Sup. Ct. April 30, 2007).

## **Subchapter 13. Gambling**

### **§ 420. Definitions**

The following definitions are applicable in this Subchapter:

A. "Gambling" means taking or risking something of value upon the outcome of a contest of chance or a future contingent event, not under his or her control or influence, upon an agreement or understanding that he or she will receive something of value in the event of a certain outcome. Gambling does not include playing of an electromechanical pinball machine. Gambling does not include any authorized bingo, raffles, or lotteries conducted by religious, charitable, or non-profit organizations for the purpose of raising funds.

B. "Unlawful gambling" means any gambling activity not specifically authorized by law. Unlawful gambling does not include lotteries when engaged and conducted under license by the Navajo Nation for purposes of fostering economic initiatives of the Navajo Nation government.

C. "Gambling device" means any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any unlawful gambling activity, whether such activity consists of gambling between persons or gambling by persons involving the playing of a machine. "Gambling device" does not mean within this definition electromechanical pinball machines specially designed, constructed, set-up and kept to be played for amusement. Nonetheless, a pinball machine shall be a gambling device if a person gives or promises to give money, tokens, merchandise, premiums or property of any kind for scores, combinations or free games obtained in playing such pinball machine in which such person has an interest as owner, operator, keeper or otherwise.

D. These terms shall not include any traditional forms of Navajo gambling, including but not limited to shoe games, horse racing, foot racing, Navajo ten and five card games, rodeo calcutta, stick games, chicken pull and pow wows.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJY-51-95, July 19, 1995, Section generally amended.

CN-71-77, November 10, 1977.

#### **§ 421. Promotion of unlawful gambling**

A. Offense. A person commits promotion of unlawful gambling if he or she derives or intends to derive an economic benefit other than personal winnings from gambling and:

1. Induces or aids another to engage in gambling; or
2. Knowingly invests in, finances, owns, controls, supervises, manages, or participates in any gambling.

B. Exceptions. It shall not be unlawful for any person to engage in the activities constituting this offense within the Tóhajiilee Chapter of the Navajo Nation and a Navajo Nation certified chapter that approves gaming within the chapter such as Shiprock Chapter, Manuelito Chapter, Tóhajiilee Chapter, Nahat'ádzill Chapter, Leupp Chapter and Tsé Daak'áán Chapter, if done pursuant to a gaming compact entered into between the Navajo Nation and the applicable states.

C. Sentence. Any person found guilty of violating this Section shall forfeit to the Navajo Nation any and all proceeds and devices obtained through the activities constituting this offense.

#### **History**

CN-59-06, November 1, 2006. Subsection (B) amended to change the name of Hogback Chapter to Tsé Daak'áán Chapter.

CJY-40-04, July 23, 2004, Subsection (B) amended.

CJY-55-00, July 20, 2000, Subsection (B) amended.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJY-51-95, July 19, 1995, Section generally amended.

CN-81-93, November 18, 1993.

CN-71-77, November 10, 1977.

#### **§ 422. Possession of an unlawful gambling device**

A. Offense. A person commits possession of an unlawful gambling device if, with knowledge of the character thereof, he or she manufactures, sells, transports, places or possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody, or use of, a slot machine or any other gambling device knowing it is to be used in promoting unlawful gambling.

B. Exceptions. It shall not be unlawful for any person to engage in the activities constituting this offense within the Tóhajiilee Chapter of the Navajo Nation and a Navajo Nation certified chapter that approves gaming within the chapter such as Shiprock Chapter, Manuelito Chapter, Tóhajiilee Chapter, Nahat'ádzill Chapter, Leupp Chapter and Tsé Daak'áán Chapter, if done pursuant to a gaming compact entered into between the Navajo Nation and the applicable states.

C. Sentence. Any person found guilty of possession of a gambling device shall forfeit to the Navajo Nation any and all proceeds and devices obtained through the activities constituting this offense.

#### **History**

CN-59-06, November 1, 2006. Subsection (B) amended to change the name of Hogback Chapter to Tsé Daak'áán Chapter.

CJY-40-04, July 23, 2004, Subsection (B) amended.

CJY-55-00, July 20, 2000, Subsection (B) amended.

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJY-51-95, July 19, 1995, Section generally amended.

CN-81-93, November 18, 1993.

CN-71-77, November 10, 1977.

#### **§ 423. Forfeiture of gambling device**

Any unlawful gambling device or slot machine which is manufactured, transferred, possessed or used in violation of Section 422 of this Title shall be forfeited and destroyed when so ordered by a court of the Navajo Nation.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJY-51-95, July 19, 1995, Section generally amended.

CN-71-77, November 10, 1977.

## **Subchapter 14. Prostitution**

### **§ 430. Definitions**

The following definitions are applicable in this Subchapter:

A. "Sexual conduct" means sexual contact, sexual intercourse and oral sexual contact.

B. "Sexual contact" means any direct or indirect fondling or manipulating of any part of the genitals, anus, or female breast.

### **History**

CN-71-77, November 10, 1977.

### **§ 431. Prostitution**

A. Offense. A person commits an offense pursuant to this Section if he or she engages in or agrees or offers to engage in sexual conduct with another person under a fee arrangement.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.



#### **§ 432. Promotion of prostitution**

A. Offense. A person commits promotion or prostitution if he or she knowingly finances, compels, manages, supervises or controls either alone or in association with others, prostitution activity.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **Subchapter 15. Sexual Offenses**

#### **§ 440. Definitions**

A. "Sexual contact" means any direct or indirect fondling or manipulating of any part of the genitals, anus or female breast.

B. "Spouse" means a person who is recognized as the husband or wife of another person pursuant to Title 9 of this Code.

C. "Without consent" means:

1. The victim is reasonably coerced by the immediate use or threatened use of force against a person or property; or

2. The victim is incompetent to consent by reason of mental disorder, drugs, alcohol, sleep or any other similar impairment of cognition unless at the time the defendant engaged in the conduct constituting the offense he or she did not know and could not reasonably have known of the facts or conditions responsible for such incompetency to consent; or

3. The victim is intentionally deceived as to the nature of the act; or

4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.

### **History**

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

### **§ 441. Adultery**

A. Offense. A person commits adultery if he or she intentionally or knowingly:

1. If married, engages in sexual intercourse with one other than his or her spouse; or

2. If unmarried, engages in sexual intercourse with a married person.

B. No prosecution for adultery shall be commenced except upon complaint of the husband or wife not committing the offense.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department

of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 442. Public sexual indecency**

A. Offense. A person commits an offense pursuant to this Section if he or she:

1. Exposes his or her genitals to public view under circumstances which he or she should know is likely to offend or alarm others;
2. In a public place, engages in an act of sexual contact; or
3. In a public place, engages in an act of sexual intercourse.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 443. Sexual assault**

A. Offense. A person commits sexual assault if he or she intentionally or knowingly engages in sexual intercourse or sexual contact with any person without consent of that person.

B. Sentence. Any person found guilty of sexual assault may be sentenced to imprisonment for a term not to exceed 180 days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

C. Defense. It is a defense to a prosecution under this Section that the victim's lack of consent is based on incapacity to consent because he or she was 16 or 17 years of age.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 443A. Aggravated sexual assault**

A. Offense. A person commits aggravated sexual assault if he or she intentionally or knowingly in the course of committing sexual assault or attempted sexual assault:

1. Causes bodily injury to the victim;
2. Uses or threatens the victim by use of a deadly weapon;
3. Compels, or attempts to compel, the victim to submit to sexual assault by threat of kidnapping, death, or serious bodily injury to be inflicted imminently upon any person.

B. Sentence. A person found guilty of aggravated sexual assault may be sentenced to imprisonment for a term not to exceed 365 days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

#### **§ 444. Seduction**

A. Offense. A person commits seduction if he or she has sexual intercourse or sexual contact with another person, not his or her spouse, if the other person is less than 16 years old.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **Subchapter 16. Offenses Against the Family**

#### **§ 450. Definition**

The following definition is applicable to this Subchapter:

"Sexual conduct" means sexual contact as that term is defined in Section 440(A) of this Title, or sexual intercourse.

#### **History**

CN-71-77, November 10, 1977.

#### **§ 451. Bigamy**

A. Offense. A person commits bigamy if he or she intentionally or knowingly marries or purports to marry another person at a time when either is lawfully married.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing

recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **§ 452. Incest**

A. Offense. A person commits incest if he or she knowingly engages in sexual conduct with another who is related to such person by whole or half-blood, as an ancestor or descendant, a brother or sister, or an uncle, niece, aunt, nephew or first cousin.

B. Sentence.

1. Any person found guilty of incest may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community

service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 453. Sexual conduct with a foster child or stepchild**

A. Offense. A person commits sexual conduct with a foster child or stepchild if he or she intentionally or knowingly engages in unprivileged sexual conduct with his or her foster child or step-child who is under 18 years of age.

B. Sentence.

1. Any person found guilty of violating this Section shall be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 454. Abandonment of a child**

A. Offense. A person commits abandonment of a child if, as a parent, guardian or other person having custody of a child, he or she intentionally or knowingly abandons a child under 18 years of age.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 455. Persistent nonsupport**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally and persistently fails to provide food, shelter, clothing, medical attention, financial support or other necessary care which he or she can provide and is legally obliged to provide to a spouse, child or other dependent.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require



the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

C. Payment of actual damages. In addition to or in lieu of the sentence described above, the court at its discretion may require the defendant to pay actual damages, plus reasonable interest and costs of collection, for the benefit of the spouse, child or other dependent.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**Note.** Subsection (C) slightly reworded for grammatical purposes.

Navajo Nation Child Support Enforcement Act, see 9 N.N.C. § 1701 *et seq.*

#### **§ 456. Endangering the welfare of a minor**

A. Offense. A parent, guardian or any other person commits endangering the welfare of a minor if he or she intentionally or knowingly contributes, encourages or causes a person under 18 years of age:

1. To be subjected to the infliction of physical or mental injury including failing to maintain reasonable care and treatment thereof; or

2. To be habitually truant from school or a runaway from a parent or guardian or otherwise incorrigible; or

3. To live in a home, which by reason of neglect, cruelty or depravity is an unfit place.

B. Construction to be given this Section. This Section shall be liberally construed in favor of the Navajo Nation for the protection of the minor from neglect or omission of parental duty toward the child, and also to protect children of the Navajo Nation from the effects of the improper conduct, acts or bad example of any person which may be calculated to cause, encourage or contribute to the adverse welfare of minors, although such person is in no

way related to the minor.

C. Any person having cause to believe that a minor has received physical injury as a result of unusual or unreasonable physical abuse or neglect should report or cause reports to be made in accordance with the provisions of this Section.

D. An oral report should be made as soon as possible by telephone or otherwise and may be followed by a report in writing to the local Navajo Nation Police unit. Such report should contain the name and address of the minor, if known by the person making the report, and any other information the person making the report believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator.

E. Any person or institution making report in good faith pursuant to this Section shall have immunity from any liability, civil or criminal, that might be otherwise incurred or imposed. Any person or institution making a report in good faith pursuant to this Section shall have the same immunity with respect to participation in any proceeding resulting from such report.

F. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **Subchapter 17. [Reserved]**

§§ 460 to 466. [Reserved]

### History

**Note.** CMY-27-06, May 12, 2006, the Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006, deleted Subchapter 17, Animals; Livestock, previously enacted by CJA-08-00, January 27, 2000; and CN-71-77, November 10, 1977.

## Subchapter 18. Interference with Judicial Proceedings

### § 470. Definitions

The following definitions are applicable in this Subchapter:

A. "Benefit" means any present or future gain or advantage to a beneficiary or to a third person pursuant to the desire or consent of the beneficiary .

B. "Juror" means any person who is a member of any impaneled jury and includes any person who has been drawn or summoned to attend as a prospective juror.

C. "Official proceeding" means a proceeding heard before any standing committee of the Navajo Nation Council, judicial proceeding or before an official authorized to hear evidence under oath.

D. "Testimony" includes oral or written statements, documents or any other material that may be offered by a witness in an official proceeding.

### History

CN-71-77, November 10, 1977.

### § 471. Influencing a witness

A. Offense. A person commits influencing a witness if he or she threatens a witness, or offers, confers or agrees to confer any benefit upon a witness in any official proceeding, or a person he or she believes may be called as a witness, with intent to:

1. Influence the testimony of that person; or
2. Induce that person to avoid legal process summoning him or her to testify; or
3. Induce that person to absent himself or herself from any official proceeding to which he or she has been legally summoned.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or

nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 472. Receiving a bribe by a witness**

A. Offense. A witness in an official proceeding, or a person who believes he or she may be called as a witness, commits receiving a bribe by a witness if he or she intentionally or knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understanding that:

1. His or her testimony will thereby be influenced; or

2. He or she will attempt to avoid legal process summoning him or her to testify; or

3. He or she will absent himself or herself from any official proceeding to which he or she has been legally summoned.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or

security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 473. Influencing a juror**

A. Offense. A person commits an offense pursuant to this Section if he or she threatens a juror or offers, confers or agrees to confer a benefit upon a juror with the intent to influence the juror's vote, opinion, decision or other action as a juror.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 474. Receiving a bribe by a juror**

A. Offense. A juror commits an offense pursuant to this Section if he or she intentionally or knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his or her vote, opinion, decision or other action as a juror may thereby be influenced.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 475. Jury tampering**

A. Offense. A person commits jury tampering if, with intent to influence a juror's vote, opinion, decision or other action in a case, he or she, directly or indirectly, communicates with a juror other than as part of the normal proceedings of the case.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 476. Tampering with physical evidence**

A. Offense. A person commits tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or which such person knows is about to be instituted, he or she:

1. Destroys, mutilates, alters, conceals or removes physical evidence with the intent to impair its verity or availability; or

2. Knowingly makes, produces or offers any false physical evidence; or

3. Prevents the production of physical evidence by an act of force, intimidation or deception against any person.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan

sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 477. Interfering with judicial proceedings**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly:

1. Engages in disorderly, disrespectful or insolent behavior during the session of a court which directly tends to interrupt its proceedings or impairs the respect due to its authority after being advised by the court to cease; or

2. Disobeys or resists the lawful order, process or other mandate of a court; or

3. Refuses to be sworn as a witness in any court proceeding; or

4. Refuses to serve as a juror; or

5. Fails inexcusably to attend a trial at which he or she has been chosen to serve as a juror.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district



Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **Annotations**

#### **1. Sentences**

"Under DAPA the district court only has jurisdiction to enforce a protection order through prosecution for interfering with judicial proceedings under 17 N.N.C. § 477. See 9 N.N.C. §§ 1651(A)(1); 1663(A). As the respondent is charged under 17 N.N.C. § 477, the district court must follow the Criminal Code's sentencing provisions for that offense, even in DAPA situations. Nothing in DAPA allows the district court the additional authority to reach beyond the sentencing restrictions in Section 477 merely because the offense arose out of the violation of a protection order." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 7 (Nav. Sup. Ct. May 24, 2004).

"The plain language of the revised section concerning the offense of interfering with judicial proceedings only allows the district court to order *nályééh*, a peace or security bond, and/or sentence of labor or community service. 17 N.N.C. § 477(B) (as amended by Resolution No. CJA-08-00)." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

"The issue in this case is whether incarceration for the offense of interfering with judicial proceedings is legal. We agree with petitioner that a jail sentence under 17 N.N.C. § 477 is illegal." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 4 (Nav. Sup. Ct. May 24, 2004).

#### **2. Review**

"The district court's jail sentence was clearly outside of its discretionary boundaries, and amounts to legislating from the bench. That is impermissible. The district court therefore lacked the authority to incarcerate Petitioner under either docket number for interfering with judicial proceedings." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5, 6 (Nav. Sup. Ct. May 24, 2004).

#### **§ 478. Simulating legal process**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly sends or delivers to another any document

purporting to be an order or other document that simulates civil or criminal process, including process which is otherwise proper but which is not authorized by the laws of the Navajo Nation.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 479. Perjury**

A. Perjury.

1. Offense. Perjury consists of making a false statement under oath or affirmation, material to the issue or matter involved in the course of any judicial, administrative, legislative or other official proceeding, knowing such statement to be untrue.

2. Offense. Whoever procures another to commit any perjury is guilty of subornation of perjury.

B. Sentence. Any person found guilty of violating this Section may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal

Code.

CN-71-77, November 10, 1977.

**Note.** For statutory format, subsection on "Unsworn Falsification" enacted by CS-60-89 originally as § 479(2) redesignated at 17 N.N.C. § 376.

### **Subchapter 19. Offenses Against the Public Order**

#### **§ 480. Definitions**

The following definitions are applicable in this Subchapter:

A. "Public" means affecting or likely to affect a substantial group of persons.

B. "Public place" means a place to which the public or a substantial group of persons has access and includes but is not limited to highways, schools, parks, places of business, playgrounds and hallways, lobbies and other portion of motels or hotels not constituting rooms or apartments designed for actual residence. A public place shall include the immediate area, both inside and outside a structure, wherein traditional Navajo religious practices, ceremonies, or services are being held; provided, however, that this Section shall not be construed to authorize the attendance at or participation in such practice, ceremony, or service by any person not otherwise authorized to do so.

#### **History**

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

#### **§ 481. Unlawful assembly**

A. Offense. A person commits unlawful assembly if being present at any assembly of five or more other persons that either has or develops the purpose to engage in conduct constituting a riot as defined in 17 N.N.C. § 482, he or she knowingly remains there and refuses to obey an official order to disperse.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 482. Riot**

A. Offense. A person commits riot if, with five or more other persons acting together, he or she intentionally, knowingly or recklessly uses force or violence or threatens to use force or violence, if accompanied by immediate power of execution, which disturbs the public peace.

B. Sentence.

1. Any person found guilty of rioting may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 483. Disorderly conduct**

A. Offense. A person commits disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or with knowledge of doing so, or recklessly creating a risk thereof, he or she:

1. Engages in fighting, or provokes a fight in a Public or Private place; or

2. In a public place uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or

3. Makes any protracted commotion, utterance or display with the intent of preventing the transaction of the business of a lawful meeting, gathering or procession; or

4. Makes unreasonable noise in a public place.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

### **Annotations**

#### **1. Delinquent child**

"This Court concludes that [17 N.N.C.] Section 483(B)(5) provides no authority to incarcerate a delinquent child for disorderly conduct [under 9 N.N.C. § 1152(A)(2)]." *In the Matter of N.B. v. Greyeyes*, No. SC-CV-03-08, slip op. at 6, (Nav. Sup. Ct. April 16, 2008).

#### **§ 484. Obstructing a highway or other public thoroughfare**

A. Offense. A person commits obstructing a highway or other public thoroughfare when, having no legal privilege to do so, he or she, alone or with other persons, intentionally, knowingly or recklessly interferes with the passage of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 485. False reporting**

A. Offense. A person commits false reporting if he or she initiates or

circulates a report of a bombing, fire, offense or other emergency knowing that the report is false or baseless and intending or knowing:

1. That it will cause action of any sort by an official or volunteer agency organized to deal with emergencies; or

2. That it will place a person in fear of imminent serious bodily injury; or

3. That it will prevent or interrupt the occupation of any building, room, place of assembly, public place or means of transportation.

**B. Sentence.**

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 486. Criminal nuisance**

A. Offense. A person commits criminal nuisance if:

1. By conduct either unlawful in itself or unreasonable under all the circumstances, he or she knowingly or recklessly creates or maintains a condition which endangers the safety or health of others; or

2. He or she knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 487. Abuse of a human corpse**

A. Offense. A person commits an offense pursuant to this Section if without legal privilege he or she intentionally or knowingly physically abuses either by damaging or dismembering or by committing sexual penetration or intercourse upon, disinters, removes or carries away, or performs an autopsy not authorized pursuant to 17 N.N.C. § 1853 upon, a human corpse.

B. Sentence. Any person found guilty of abusing a human corpse may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 488. Public intoxication**

A. Offense. A person commits an offense pursuant to this Section if he



or she appears in a public place under the influence of alcohol, marijuana, or controlled substances which use of or possession of is prohibited under 17 N.N.C. § 394, not therapeutically administered, to the degree that he or she is unable to care for his or her own safety.

B. Safety detention. Any person arrested for public intoxication may be held in a detention facility of the Navajo Nation Department of Public Safety for not more than 24 hours after arrest.

C. Sentence.

1. Any person found guilty of public intoxication may be ordered to attend rehabilitative therapy or perform a term of community service not to exceed five days, or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 489. Inhalation of toxic vapors**

A. Offense. A person commits an offense pursuant to this Section if he or she inhales the vapors or fumes of paint, gas, glue, or any other toxic product for the purpose of becoming intoxicated.

B. Safety detention. A person arrested for inhalation of toxic vapors may be held in a detention facility of the Navajo Nation Department of Public Safety for not more than 24 hours after arrest.

C. Sentence.

1. Any person found guilty of inhalation of toxic vapors may be ordered to attend rehabilitative therapy, or perform a term of community service not to exceed five days, or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**Subchapter 20. Robbery**

**§ 490. Definitions**

The following definitions apply in this Subchapter:

A. "Force" is any physical aggression directed against a person as a means of gaining control of property.

B. "Threat" means a verbal or physical menace of imminent physical harm to a person.

C. "Dangerous instrument" is defined in 17 N.N.C. § 209 (E).

D. "Deadly weapon" is defined in 17 N.N.C. § 209 (F).

E. "Property" is defined in 17 N.N.C. § 209 (T).

F. "In the course of committing" means all the defendant's acts beginning with the initiation and extending through the flight from a robbery.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 491. Robbery**

A. Offense. A person commits robbery if in the course of committing theft, he or she threatens or uses immediate force against any person with intent either to coerce surrender of property or to forestall resistance to his or her taking or retaining of property.

B. Sentence.

1. Any person found guilty of robbery may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 492. Armed robbery**

A. Offense. A person commits armed robbery if in the course of committing robbery as defined in 17 N.N.C. § 491, he or she or an accomplice:

1. Is armed with a deadly weapon; or
2. Uses or threatens to use a deadly weapon or dangerous instrument.

B. Sentence. Any person found guilty of armed robbery may be sentenced to imprisonment for a term not to exceed 365 days and to pay a fine not to exceed five thousand dollars (\$5,000).

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-74-78, October 5, 1978.

CN-71-77, November 10, 1977.

### **Subchapter 21. Fish and Wildlife Violations**

#### **§ 500. Definitions**

The following definitions are applicable to this Subchapter:

A. "Taking" means the hunting, capturing, killing in any manner or the attempt to hunt, capture or kill in any manner, any game animal and quadruped, game bird and fowl, or game fish herein defined.

B. "Game fish". The following are game fish:

1. All of the family Salmonidae (trout);
2. All of the family Esocidae (pike);
3. All of the family Ictaluridae (catfish);
4. All introduced species of the family Serranidae (sea bass and white bass);
5. All of the family Centrarchidae (sunfish, crappie and bass);
6. All of the family Percidae (walleye, pike and perch);
7. All introduced species of the family Pomadasyidae (sargo); and
8. All introduced species of the family Sciaenidae (corvina, barirdiella and redfish).

C. "Game bird". The following are game birds:

1. All of the family Anatidae (waterfowl);
2. All of the family Tetraonidae (grouse and ptarmigans);
3. All of the family Phasianidae (quail, partridges and pheasants);
4. All of the family Meleagridae (wild turkeys) except for the domestic strains of turkeys;
5. All of the family Scolopacidae (shorebirds, snipe, sandpipers and curlews); and
6. All of the family Columbidae (wild pigeons and doves), except for the domestic strains of pigeons.

D. "Game animals". The following mammals are game animals:

1. All of the family Tayassuidae (javelina);
2. All of the family Antilocapridae (American pronghorn);
3. All of the family Cervidae (elk and deer);
4. All of the family Ursidae (bear);
5. All of the species concolor (cougar) of the genus Felis and family Felidae; and
6. All of the genus Ovis (bighorn sheep) except for the domestic species of sheep.

E. "Songbirds". The following species and varieties of birds are songbirds: Any songbird, or birds whose principal food consists of insects, comprising all the species and varieties of birds, represented by the several families of bluebirds, including the western and mountain bluebirds; also bobolinks, catbirds, chickadees, cuckoos, which includes the chaparral bird or roadrunner (*geococcyx novo mexicanus*), flickers, flycatchers, grosbeaks, hummingbirds, kinglets, martins, meadowlarks, nighthawks, or bull bats, nuthatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, waxwings, whippoorwills, woodpeckers, wrens, and all other perching birds which feed entirely or chiefly on insects.

F. "Fur-bearing animals". The following mammals are fur-bearing animals:

1. All of the genus *Lynx rufus* (bobcats and lynx);
2. All of the genus *Castor* (beavers);
3. All of the family Procyonidae (raccoons);
4. All of the genus *Vulpes* (red fox, gray fox, swift fox);
5. All of the species *Ondatra zibethica* (muskrat);

6. All of the genus *Mustela* (weasels);
7. All of the genus *Mephitis* (skunks);
8. All of the species *Taxidea taxus* (badgers)
9. All of the family *Dedilphiidae* (opossums).

G. "Small game animals". The following mammals are small game animals:

1. All of the genus *Sciurus* (squirrels)
2. All of the genus *Eutamias* (chipmunks);
3. All of the genus *Lepus* and *Sylvilagus* (rabbits).

H. "Endangered species" means any species of fish or wildlife whose prospects of survival or recruitment within the Navajo Nation are in jeopardy or are likely within the foreseeable future to become so, due to any of the following factors:

1. The present or threatened destruction, modification or curtailment of its habitat;
2. Overutilization for scientific, commercial or sporting purposes;
3. The effect of disease or predation;
4. Other natural or man-made factors affecting its prospects of survival or recruitment within the Navajo Nation; or
5. Any combination of the foregoing factors. The term may also include any species or subspecies of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 <sup>1</sup> as endangered or threatened species provided that the Resources Committee of the Navajo Nation Council adopts such lists in whole or in part.

#### **History**

CN-71-77, November 10, 1977.

#### **§ 501. Unlawful taking of fish or game**

A. Offense. A person commits unlawful taking of fish or game if he or she takes any game fish, game bird or game animal, and:

1. Such taking occurs in a location not permitted by law or regulations; or
2. The person taking such game fish, game bird or game animal is without a permit or with an improper permit; or
3. Such taking occurs during a time of day not permitted by law or

regulation; or

4. Such taking occurs in a manner not permitted by law or regulations; or

5. Such taking is in excess of the permitted number; or

6. Such taking occurs out of season.

B. Sentence. Any person found guilty of unlawful taking of fish or game may be sentenced as follows:

1. For the unlawful taking of game fish, a person may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

2. For the unlawful taking of game birds, a person may be ordered to pay a fine not to exceed two thousand dollars (\$2,000).

3. For the unlawful taking of game animals, a person may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 502. Unlawful possession of fish or game**

A. Offense. A person commits an offense pursuant to this Section if without lawful authority he or she possesses, trades or barter, offers for sale, sells, offers to purchase or purchases within the territorial jurisdiction of the Navajo Nation and the Navajo Nation Courts, all or any part of any game animal, game bird or game fish taken within said jurisdiction.

B. Sentence. Any person found guilty of unlawful possession of fish or game may be sentenced as follows:

1. For the unlawful possession of game fish a person may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

2. For the unlawful possession of game birds a person may be ordered to pay a fine not to exceed two thousand dollars (\$2,000).

3. For the unlawful possession of game animals a person may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 503. Unlawful taking of songbirds**

A. Offense. A person commits an offense pursuant to this Section if without lawful authority he or she takes any songbird, or bird whose principal food consists of insects.

B. Sentence. Any person found guilty of unlawful taking of songbirds be sentenced to imprisonment for a term not to exceed 30 days, or may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation shall assist any person in securing permits from the Secretary of the Interior for the taking and possession of songbirds. Applications shall be processed without charge to any person for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 504. Unlawful taking or possession of fur-bearing animals**

A. Offense. A person commits an offense pursuant to this Section if without lawful authority he or she takes any fur-bearing animals.

B. Sentence. Any person found guilty of unlawful taking or possession of fur-bearing animals may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation may issue permits to allow any person to take or possess any fur-bearing animal protected by this Section. Permits shall be granted upon application and without charge for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.



**§ 505. Unlawful taking or possession of Bald or Golden Eagles**

A. Offense. A person commits an offense pursuant to this Section if without lawful authority he or she takes or possesses any Bald or Golden Eagles.

B. Sentence. Any person found guilty of unlawful taking or possession of Bald or Golden Eagles may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 506. Unlawful taking and possession of hawks, vultures and owls**

A. A person commits an offense pursuant to this Section if without lawful authority he or she takes or possesses any bird of the order falconiformes, comprising all of the species and varieties of birds represented by the several families of vultures and hawks, and all of the order strigiformes, comprising all of the species and varieties of owls.

B. Sentence. Any person found guilty of unlawful taking or possession of hawks, vultures, or owls may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation shall assist any person in securing permits from the Secretary of the Interior for the taking and possession of any bird protected by this Section. Applications shall be processed without charge to any person for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

**§ 507. Endangered species**

A. On the basis of investigations concerning wildlife, and other available scientific and commercial data, and after consultation with wildlife agencies in surrounding states, appropriate federal agencies, and other interested persons and organizations, not later than one year after the effective date of this criminal code, the Resources Committee of the Navajo

Nation Council shall by regulation develop a list of those species and subspecies of wildlife indigenous to the Navajo Nation which are determined to be endangered within the Navajo Nation giving their common and scientific names by species and subspecies.

B. The Director of the Fish and Wildlife Department shall conduct a review of the Navajo Nation list of endangered species biennially, commencing within two years of the effective date of this criminal code, and may present to the Resources Committee of the Navajo Nation Council recommendations for appropriate additions to or deletions from the list.

C. Except as otherwise provided in this criminal code, it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship any species or subspecies of wildlife appearing on any of the following lists:

1. The list of wildlife indigenous to the Navajo Nation determined to be endangered within the Navajo Nation as set forth by regulations of the Resources Committee of the Navajo Nation Council.

2. The United States lists of endangered native and foreign fish and wildlife, as set forth in Section 4 of the Endangered Species Act of 1973 <sup>1</sup> as endangered or threatened species, but only to the extent that such lists are adopted for this purpose by regulations of the Resources Committee of the Navajo Nation Council.

D. Any species or subspecies of wildlife appearing on any of the foregoing lists, transported into the Navajo Nation from a state of the United States and destined for a point beyond the Navajo Nation may be transported across the Navajo Nation without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of a state of the United States or otherwise in accordance with the laws of a state of the United States.

E. Sentence. Any person found guilty of unlawful taking of endangered species may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 508. Unlawful taking and possession of small game animals**

A. Offense. A person commits an offense pursuant to this Section if without lawful authority he or she takes any small game animals.

B. Sentence. Any person found guilty of unlawful taking or possession of small game animals may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation may issue permits to allow any person to take or possess any small game animal protected by this Section. Permits shall be granted upon application and without charge for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 509. Destruction of posted signs or structures**

A. Offense. A person commits an offense pursuant to this Section if he or she destroys, attempts to destroy, or defaces any sign or marker posted or any structure designed for the purpose of regulating and managing any animal, fish or fowl protected by this title.

B. Sentence. Any person found guilty of destruction of posted signs or structures may be ordered to pay a fine not to exceed one hundred dollars (\$100.00).

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

#### **§ 510. Enforcement of fish and wildlife laws**

A. The Director of the Fish and Wildlife Department, each Wildlife Enforcement Officer, each Navajo Nation Ranger and each member of the Navajo Division of Law Enforcement commissioned shall enforce the provisions of this Title and shall:

1. Seize any game or fish held in violation of this Chapter;
2. With or without warrant, arrest any person whom he or she knows to be guilty of a violation of this Chapter; and
3. Open, enter and examine all camps, wagons, cars, tents, packs, boxes, barrels and packages where he or she has reason to believe any game or fish taken or held in violation of this Chapter is to be found, and seize it.

B. Any warrant for the arrest of a person shall be issued upon sworn complaint, the same as in other criminal cases, and any search warrant shall

issue upon a written showing of probable cause supported by oath or affirmation, describing the places to be searched or the papers or things to be seized.

C. Wildlife Enforcement Officers may, under the direction of the Fish and Wildlife Department of the Navajo Nation and the Director establish from time to time, as needed for the proper functioning of the Fish and Wildlife Department, checking stations at points along established roads.

#### **History**

CN-71-77, November 10, 1977.

#### **§ 511. Forfeiture**

Any person found guilty of an offense pursuant to this Subchapter shall forfeit any fish or game as may be found in his or her possession to the court for the use of any Indian institution.

#### **History**

CN-71-77, November 10, 1977.

#### **§ 512. Authority to establish fees and regulations**

The Resources Committee of the Navajo Nation Council shall have the authority to establish fees and regulations for hunting and fishing activities.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-71-77, November 10, 1977.

### **Subchapter 22. Forests and Woodlands Violations**

#### **§ 520. Definitions**

The following definitions are applicable to this Subchapter:

A. "Harvest" means to cut, take, damage, remove, or transport any living or dead tree or product thereof, or any attempt to commit such act;

B. "Valid permit" means a tree cutting, forest products use or transportation permit issued and signed by an authorized Forest Officer, on which there is no evidence of tampering, mutilation or other such acts that may change the permit.

C. "Authorized contract" or "authorized agreement" means an existing contract or agreement which meets the following conditions:

1. Procedures for obtaining contracts and agreements as defined by

the Code of Federal Regulations, Title 25, Part 163: General Forest Regulations, have been followed and approved;

2. The contract or agreement has been reviewed and approved by the Resources Committee of the Navajo Nation Council.

D. "Timber harvest standards" means a body of guidelines, recommended by the Navajo Forest Manager and approved by the Resources Committee of the Navajo Nation Council, which governs the harvest of forest products under contracts and agreements;

E. "Forest road" means a road wholly or partly within or adjacent to and serving a part of the Navajo forests or woodlands;

F. "Forest trail" means a trail wholly or partly within or adjacent to and serving a part of the Navajo forests or woodlands;

G. "Forest officer" means an employee of the Navajo Forestry Department or Bureau of Indian Affairs Branch of Forestry;

H. "Navajo forest" includes all lands covered with ponderosa pine, Douglas fir, aspen, corkbark fir, Colorado blue spruce, or Engelmann spruce in some combination which together comprises a crown closure of greater than seven percent (7%). Meadows and openings within these lands are also considered within the forest;

I. "Navajo woodland" includes all lands covered with oak, piñon, and/or juniper in some combination which together comprises a crown closure of greater than seven percent (7%). Meadows and openings surrounded by these lands are also considered within the woodland;

J. "Person" means any natural person, corporation, company, partnership, trust, firm, or association of persons;

K. "Unauthorized livestock" means any cattle, sheep, goat, hog, or equine which is not authorized by permit to be upon the land on which the livestock is located; provided, that non-commercial pack and saddle stock used by recreationists, travelers, and other forest and woodland users for occasional trips are exempt.

L. "Forest product" means any tree or shrub, in whole or in part, dead or alive, including but not limited to the stem, branches, and leaves, which was produced on the Navajo forests or woodlands.

### **History**

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

### **§ 521. Resisting or obstructing a forest officer**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly obstructs, impairs, hinders or resists any

forest officer or Navajo Nation Ranger engaged in the lawful exercise of his or her official duties.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

CN-71-77, November 10, 1977.

#### **§ 522. Damage to geologic and man-made improvements on Navajo forests or woodlands**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally, recklessly, or negligently:

1. Mutilates, defaces, removes, disturbs, injures or destroys any geologic feature or formation.

2. Destroys, injures, defaces, or removes any sign, marker, post, container, table, fireplace, or other property placed in Navajo forests or woodlands for management purposes.

B. Sentence. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).

C. Restitution. The court, in addition to or in lieu of the sentence, may require the offender to pay the Navajo Nation for the actual damages or restoration costs of the injured property.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

### **§ 523. Fire violations**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally, recklessly or negligently:

1. Throws or places any burning, glowing or ignited substance within Navajo forests or woodlands which may start a fire;

2. Causes timber, trees, brush, slash or grass to burn, except as authorized by permit issued by BIA Forestry or their delegated agency;

3. Leaves a fire within Navajo forests or woodlands without completely extinguishing it;

4. Allows a fire to get out of control within Navajo forests or woodlands;

5. Within Navajo forests or woodlands, builds a campfire in a dangerous place, or during windy weather without confining it;

6. Operates equipment within the Navajo forest without approved fire safety and spark arresting devices.

B. Sentence.

1. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan

sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

C. Restitution. The court, in addition to or in lieu of the sentence, may require the offender to pay the Navajo Nation the full cost of suppression of the fire and/or the fair market value of the timber and improvements destroyed or damaged as a result of the fire.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

#### **§ 524. [Reserved]**

#### **History**

**Note.** CMY-27-06, May 12, 2006, the Navajo Nation Livestock and Foreign Animal Disease Response Act of 2006, deleted previous § 524, Grazing livestock on withdrawn forest lands, adopted by CJA-08-00, January 27, 2000; CN-83-85, November 1, 1985; and CD-75-82, December 14, 1982.

#### **§ 525. Unauthorized harvesting of timber or forest product**

A. Offense. A person commits an offense pursuant to this Section if, after approval of regulations, he or she intentionally or knowingly:

1. Cuts, kills, destroys, chops, boxes, injures or otherwise damages, or harvests any timber, tree or other forest product, except as authorized pursuant to valid permit, approved contract, or Tribal regulation;

2. Harvests any tree pursuant to a valid permit or approved contract before a forest officer has marked it or has otherwise designated it for harvest;

3. Removes any timber or other forest product cut pursuant to a valid permit or approved contract, except to a location designated for scaling, or removes any timber or forest product from a location designated for scaling before it has been scaled, measured, counted, or otherwise inventoried by a forest officer;



4. Stamps, marks with paint, or otherwise identifies any tree or other forest product in a manner similar to that employed by a forest officer to mark or designate a tree or forest product for harvest or removal;

5. Fails to comply with permit requirements or timber harvest standards;

6. Sells or trades any forest product without a valid permit authorizing the commercial sale of the product.

B. Sentence.

1. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

C. Restitution. The court, in addition to or in lieu of the penalty, may require the offender to pay the Navajo Nation the fair market value of the damaged property and/or restoration costs.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

**§ 526. Unauthorized occupancy and use of Navajo forest lands**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly:

1. Constructs or maintains any road, trail, structure, fence, enclosure, or other improvement upon Navajo forests or woodlands without proper authorization;

2. Abandons a motor vehicle, animal or personal property within Navajo forests or woodlands.

B. Sentence.

1. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

C. Removal costs. The court, in addition to or in lieu of the sentence, may order the offender to remove the unauthorized improvements or to pay the Navajo Nation the full costs of removal.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

#### **§ 527. Unauthorized use of motor vehicles**

A. Offense. A person commits an offense pursuant to this Section if he

or she intentionally or knowingly:

1. Fails to stop a motor vehicle when directed to do so by a forest officer;

2. Blocks, restricts, or otherwise interferes with the use of a road or trail within Navajo forests or woodlands;

3. Operates any motor vehicle off of established roads in a manner which damages or unreasonably disturbs Navajo forests or woodlands or any Navajo vegetative resource.

B. Sentence.

1. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

C. Restitution. The court, in addition to or in lieu of the sentence, may require the offender to pay the Navajo Nation the full cost of restoration of the damaged resource.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

**§ 528. Special closures or use restrictions**

A. Offense. A person commits an offense pursuant to this Section if he or she intentionally or knowingly violates any order issued by the Navajo Division of Resources temporarily closing or restricting the use of Navajo forests or woodlands for the following reasons:

1. Smoking of cigarettes, pipes, cigars, or any other material in areas designated by the order;

2. Use of firearms and/or fireworks in the designated areas;

3. Use of chainsaws, tractors, trucks, and other equipment during designated hours and/or in designated areas;

4. Building, maintaining, attending, or using a fire, in the designated areas;

5. Utilizing or otherwise going upon Navajo forests or woodlands closed by order.

B. Sentence. Any person found guilty of violating the provisions of this Section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

#### **§ 529. Enforcement of Navajo forests and woodlands laws and regulations**

The Navajo Nation Forest Manager, each commissioned forest officer, each Navajo Nation Ranger and each commissioned officer of the Navajo Division of Public Safety are authorized and directed to enforce the provisions of this Subchapter.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-83-85, November 1, 1985.

CD-75-82, December 14, 1982.

#### **Subchapter 23. Curfew Violations**

#### **§ 530. Definitions**

The following definitions apply in this Subchapter:

A. "Abroad" shall mean when a child is in any place in or out-of-doors other than his/her usual place of abode. However, no child shall be considered "abroad" in any of the following circumstances:

1. When accompanied by a parent or guardian; or
2. When returning home without delay or loitering from a community, school or other activity attended with permission or his/her parent or guardian; or
3. During an emergency.

B. "Child" shall mean any person who has not reached his/her eighteenth birthday.

C. "Curfew hours" shall mean for a child who has not reached his/her eighteenth birthday, between the hours of 10:00 p.m.—6:00 a.m. Sunday through Thursday, and 12:00 a.m.—6:00 a.m. Friday and Saturday.

D. "Emergency" shall mean an unforeseen circumstance or a combination of circumstances or the resulting state thereof that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life, or damage to or loss of property.

E. "Establishment" shall mean any place or business to which the public is invited, including but not limited to, any place of amusement, entertainment or traditional ceremony.

F. "Guardian" shall mean a person who is:

1. Assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child; or
2. At least 18 years of age and authorized by a parent to have the care and custody of a child.

G. "Operator" shall mean any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

H. "Parent" shall mean a person who is a natural or adoptive parent but does not include any person whose parental rights have been terminated.

I. "Public place" shall mean any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

J. "Remain" shall mean to:

1. Linger or stay; or

2. Fail to leave the premises when requested to do so by a police officer or the owner, operator, or other persons in control of the premises.

K. "Serious bodily injury" shall mean bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

#### **History**

CO-97-95, October 20, 1995.

#### **§ 531. Curfew**

A. A parent or guardian of a child commits an offense whenever:

1. The child is found or remains abroad in any public place or on the premises of any establishment within the territorial jurisdiction of the Navajo Nation during curfew hours as defined by Section 530 of this Subchapter; or

2. The parent or guardian fails or refuses to take such child into custody after such demand is made upon him/her by a law enforcement officer who has taken custody of said child for committing an offense pursuant to Section 531 of this Subchapter.

B. A child, who has not reached his/her eighteenth birthday, commits an offense if he/she is found or remains abroad in any public place or on the premises of any establishment within the territorial jurisdiction of the Navajo Nation during curfew hours as defined by Section 530(C) of this Subchapter.

C. The owner, operator or any employee of an establishment commits an offense whenever a child is found or remains abroad upon the premises of the establishment during curfew hours as defined by Section 530(C) of this Subchapter.

D. Sentence.

1. Any Indian, other than a child who is found guilty of committing an offense under this Subchapter may be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

2. Any Indian child who commits an offense under Section 531(B) or (C) of this Subchapter shall be deemed to have committed a delinquent act and may be deemed a delinquent child pursuant to 9 N.N.C. § 1001 *et seq.*

3. Any non-Indian child or non-Indian parent or guardian of a child who commits an offense under Section 531 or this Subchapter may be excluded from the territorial jurisdiction of the Navajo Nation pursuant to 17 N.N.C. § 1901 *et seq.*, or be ordered to pay a civil penalty not to

exceed five hundred dollars (\$500.00), or both.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-97-95, October 20, 2000.

#### **Annotations**

##### **1. Children's Code**

"Thus, we hold the juvenile was illegally detained when a petition is filed 31 days after a referral where the Children's Code requires dismissal with prejudice if it is not filed within 30 days from the date of referral." *In the Matter of L.R. v. Greyeyes*, No. SC-CV-39-07, slip op. at 4 (Nav. Sup. Ct. November 21, 2007).

"Section 1113(A)(2) is meant to be applied hand-in-hand with Section 1113(A)(1). Thus, by failing to meet the timeline of Section 1113(A)(1), the Juvenile Presenting Officer also failed to meet Section 1113(A)(2). Thus, the Court holds a finding of delinquency should be vacated where an untimely filing of a petition results in the illegal detention of a juvenile." *In the Matter of L.R. v. Greyeyes*, No. SC-CV-39-07, slip op. at 6 (Nav. Sup. Ct. November 21, 2007).

##### **§ 532. Damages to or destruction of property by child; parents and guardian liable; costs and attorney's fees; provisions for damages and restitution**

A. Notwithstanding the provisions of 9 N.N.C. § 1120(A), any person may recover damages, pursuant to applicable laws, in a civil action in a court or tribunal of competent jurisdiction, from the parent or guardian or a child upon proof by clear and convincing evidence that the child maliciously or willfully injured a person(s) or damaged or destroyed property, real or personal, belonging to the person bringing the action.

B. Recovery of damages under this Section is limited to actual damages proved in the action, court costs, and, in the discretion of the court, reasonable attorney's fees to be fixed by the court or tribunal.

C. Nothing contained in this Section limits the discretion of the court to issue an order requiring damages or restitution to be paid by a child who has been found to be within the provisions of the Navajo Nation Children's Code.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-97-95, October 20, 1995.

## **Subchapter 25. Unauthorized Recording**

### **§ 601. Short title**

17 N.N.C. §§ 601-608 may be cited as the Navajo Nation Unauthorized Recording Act of 2009.

### **History**

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

### **§ 602. Definitions**

As used in the Navajo Nation Unauthorized Recording Act:

A. "Audiovisual recording" means a recording on which images, including images accompanied by sound, are recorded or otherwise stored, including motion picture film, video cassette, video tape, video disc, other recording mediums or a copy that duplicates in whole or in part the original, but does not include recordings produced by an individual for personal use that are commercially distributed for profit.

B. "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the owner, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration.

C. "Live performance" means a recitation, rendering or playing of a series of images, musical, spoken or other sounds, or a combination of images and sounds.

D. "Manufacturer" means any person who actually transfers or causes the transfer of a recording, or assembles and transfers any product containing any recording as a component thereof, but does not include the manufacturer of a cartridge or casing for the recording.

E. "Owner" means a person who owns the sounds or images fixed in a master phonograph record, master disc, master tape, master film or other recording on which sound or image is or can be recorded and from which the transferred recorded sounds or images are directly or indirectly derived.

F. "Person" means any individual, firm, partnership, corporation, association or other entity.

G. "Recording" means a tangible medium on which sounds, images or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio cassette or videocassette, wire, film or other medium now existing or developed later on which sounds, images or both are or can be recorded or otherwise stored, or a copy or reproduction that duplicates in whole or in part the original.

H. "Tangible medium of expression" means the material object on which sounds, images or a combination of both are fixed by any method now known or



later developed, and from which the sounds, images or combination of both can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device.

I. "Transfer" means to duplicate a recording from one tangible medium or expression to another recording.

#### **History**

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

#### **§ 603. Unauthorized recording**

A. It is unlawful for any person to:

1. Knowingly transfer for sale or cause to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;

2. Transport within the Navajo Nation for commercial advantage or private financial gain a recording with the knowledge that the sounds have transferred without the consent of the owner; or

3. Advertise or offer for sale, sell, rent or cause the sale, resale or rental of or possess for one or more of these purposes any recording that the person knows has been transferred without the consent of the owner.

B. Sentence. Any person violating the provisions of this Section shall be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed \$5,000, or both.

#### **History**

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

#### **§ 604. Mislabeling of recordings**

A. It is unlawful for any person for commercial advantage or private, financial gain to advertise, offer for sale or resale, sell, resell, lease or possess for any of these purposes any recording that the person knows does not contain the true name of the manufacturer in a prominent place on the cover, jacket or label of the recording.

B. Sentence. Any person violating the provisions of this Section shall be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed \$5,000, or both.

#### **History**

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

#### **§ 605. Unauthorized recording of live performances; penalties**

A. It is unlawful for any person for commercial advantage or private financial gain to advertise, offer for sale, sell, rent, transport, cause the sale, resale, rental or transportation of or possess for one or more of these purposes a recording of a live performance that has been recorded or fixed without the consent of the owner.

B. Sentence. Any person violating the provisions of this Section shall be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed \$5,000, or both.

C. In the absence of a written agreement or law to the contrary, the performer of a live performance is presumed to own the rights to record or fix those sounds.

D. For the purposes of this Section, a person who is authorized to maintain custody and control over business records that reflect whether the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

#### **History**

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

#### **§ 606. Construction**

Nothing in the Unauthorized Recording Act shall enlarge or diminish the rights of parties in private litigation.

#### **History**

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

#### **§ 607. Exemptions**

The provisions of the Navajo Nation Unauthorized Recording Act do not apply to:

A. Any radio or television broadcaster who transfers any recording as part of, or in connection with, a radio or television broadcaster who transfers any recording as part of, or in connection with, a radio or television broadcast transmission or for archival preservation;

B. Any recording defined as a public record of any court, legislative body or proceedings of a public body, whether or not a fee is charged or collected for copies; or

C. Any person who transfers a recording for his personal use or educational use and who does not derive any commercial advantage or private financial gain from the transfer; or

D. Any recording of traditional Navajo ceremonial songs that has been recorded with the consent of a Navajo traditional religious practitioner for traditional religious purposes and not for entertainment purposes; or

E. Any recording of a song within the public domain.

#### **History**

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

#### **§ 608. Forfeitures; property subject**

The following are subject to forfeiture:

A. All equipment, devices or articles that have been produced, reproduced, manufactured, distributed, dispensed or acquired in violation of the Navajo Nation Unauthorized Recording Act;

B. All devices, materials, products and equipment of any kind that are used or intended for use in producing, reproducing, manufacturing, processing, delivering, importing or exporting any item set forth in, and in violation of, the Navajo Nation Unauthorized Recording Act;

C. All books, business records, materials and other data that are used, or intended for use, in violation of the Navajo Nation Unauthorized Recording Act; and

D. Money or negotiable instruments that are the fruit or instrumentality of the crime.

#### **History**

CO-34-09, October 21, 2009. Navajo Nation Unauthorized Recording Act of 2009.

### **Chapter 5. Procedures**

#### **Subchapter 1. General Provisions**

##### **§ 1801. Complaints generally**

No complaint filed in any Court of the Navajo Nation shall be valid unless it shall bear the signature of a prosecutor employed by the Navajo Office of the Prosecutor.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

CO-69-58, October 16, 1958.

#### **Annotations**

##### **1. Special prosecutor**

"The special prosecutor may execute a criminal complaint, despite the provisions of 17 N.N.C. § 1801, regarding who may sign a complaint." *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 5 (Nav. Sup. Ct. 1992).

#### **§ 1802. Complaints of traffic violations**

A. In cases involving traffic violations, the arresting officer shall issue to the defendant a traffic ticket (uniform traffic citation) and such ticket shall serve as a valid complaint in the courts of the Navajo Nation, upon being properly filed. No other complaint need be filed in such case.

B. A traffic ticket signed by the arresting officer acting in his or her official capacity, and properly filed, is a valid complaint. The signature on a traffic ticket of the arresting officer need not be witnessed, notwithstanding the provision of 17 N.N.C. § 1801 that all complaints be witnessed.

#### **History**

CJA-17-72, January 27, 1972.

ACJN-91-68, June 3, 1968.

#### **§ 1803. Warrants to apprehend**

Every judge of a Court of the Navajo Nation shall have the authority to issue warrants to apprehend, such warrants to issue at the discretion of the court only after a written complaint shall have been filed, bearing the signature of the prosecutor. Service of such warrants shall be made by a duly qualified officer of the Navajo Nation Department of Public Safety. No warrant to apprehend shall be valid unless it shall bear the signature of a duly qualified judge of the Court of the Navajo Nation.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

#### **§ 1804. Arrests**

No member of the Navajo police shall arrest any person for any offense defined by Chapter 3 of this title or by federal law, except when such offense shall occur in the presence of the arresting officer, or he or she shall have probable cause that the person arrested has committed an offense or the officer shall have a warrant commanding him or her to apprehend such person.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

**§ 1805. Detention; commitments**

No person shall be detained, jailed or imprisoned under any law of the Navajo Nation for a longer period than 36 hours, unless there be issued a commitment bearing the signature of a duly qualified judge of the Court of the Navajo Nation; provided, however, that an person arrested on a Friday, Saturday, Sunday, or a day before a holiday, who, having been given an opportunity within 36 hours after arrest to be released on bail does not provide bail, may be held in custody pending commitment for a reasonable additional period not to exceed eight hours following the opening of court on the next day it is in session. There shall be issued for each person held for trial, a temporary commitment and, for each person held after sentence, a final commitment on the prescribed forms.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CF-18-58, February 18, 1958.

**§ 1806. [Repealed]**

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

**§ 1807. Bail**

A. Every person arrested for an alleged offense against the Navajo Nation shall, within a period not to exceed 18 hours from the time of commitment, be given an opportunity to be released on bail.

B. Bail may be by bail agreement, as defined herein, by cash bond, as provided herein, or by recognizance, as provided in 17 N.N.C. § 1816.

**History**

CMY-36-70, May 14, 1970.

**Annotations**

**1. Presumption for release**

"The Court hereby holds that the plain language of 17 N.N.C. § 1807 and Rule 15(a) of the Criminal Rules do support a 'legal presumption' for release of a defendant by personal recognizance unless the government, who has filed the complaint(s) against an individual, objects and a judge makes 'certain findings' on the record against release." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 6 (Nav. Sup. Ct. July 1, 2009).

"With a legal presumption for release by recognizance, the burden is upon the Navajo Nation to prove its denial is justified by clear and convincing evidence. See *Apachito v. Navajo Nation*, 8 Nav. R. 339, 345 (Nav. Sup. Ct. 2003) (adopting the 'clear and convincing evidence' standard for pretrial detention proceedings.) For the Navajo Nation to object and for a judge to enter certain findings, the Navajo Nation prosecutor shall be present at arraignment. The non-appearance of a prosecutor shall be understood to mean that the prosecutor has no objections." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 6 (Nav. Sup. Ct. July 1, 2009).

"As there were no reasons given at arraignment to deny Mr. Wood's release, the judge may not now use a highly-set bail or unilaterally make findings about a defendant as a substitute for finding facts at arraignment. The purpose of bail, as stated previously, is to ensure a defendant's appearance at trial, and the Court notes that there are alternative methods of securing his appearance such as third-party release. The judge's denial of release under these circumstances is also an abuse of a judge's discretion, contrary to 17 N.N.C. § 1807(A), 1807(B), Rule 15 and the legal presumption for release." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 8 (Nav. Sup. Ct. July 1, 2009).

#### **§ 1808. Bail agreement**

One or two reliable members of the Navajo Nation may execute an agreement in compliance with a form approved by the Chief Justice of the Navajo Nation Supreme Court as provided for this purpose. The agreement shall prescribe civil penalties, in an amount which shall not exceed the sum of five thousand dollars (\$5,000) per signatory, which shall become immediately due and owing to the Navajo Nation upon the accused's unexcused failure to appear at the time for hearing or trial. The bail agreement shall be executed before and endorsed by a judge or clerk of District Court of the Navajo Nation, or if the court is not in session, before and endorsed by a Navajo police officer authorized to admit to bail by the Director of the Department of Law Enforcement. Bail agreements executed by an authorized officer shall be promptly filed with the Clerk of the District Court of the Navajo Nation of the Judicial District where the complaint against the bailed person is filed.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CMY-36-70, May 14, 1970.

#### **§ 1809. Cash bail bonds**

A. Each of the judges of the District Court of the Navajo Nation are authorized to establish, in each case, the sum to be required as cash bail bond, provided that in no case shall the bond required exceed the maximum fine specified by applicable law for the offense for which the accused has been charged. A majority of the judges of the District Court of the Navajo Nation, with the concurrence of the Chief Justice of the Supreme Court, are authorized to establish, promulgate, and amend a schedule stating the amount of the cash bond required for the various offenses. Officers of the Navajo Nation Police

Department authorized by the Director of the Department of Law Enforcement to admit persons to bail shall, at times when they are so authorized, admit any person to bail who deposits with the officer the amount of cash required on the schedule as a bond for the offense with which the person is charged.

B. Any police officers clerk of the court, or judge who admits any person to bail upon their payment of the amount of the cash bail deposit required, shall immediately thereupon complete a serially numbered cash bail receipt and shall distribute one copy thereof to the person admitted to bail, and shall retain one copy thereof himself or herself. One copy shall be distributed to the court, or to the Police Department, if a court clerk or a judge admits a person to bail. One copy shall also be distributed to the Controller of the Navajo Nation. Copies of the receipt to be distributed to the court and to the Controller, and the cash deposit shall be delivered either immediately to the clerk of the court or if the bail deposit be accepted by a police officer, immediately on the first following day the court is in session. Voided receipts shall be likewise distributed.

C. The clerk of the court shall transfer all money received as a bail bond deposit, with the Controller's copy of the receipts, to the Controller of the Navajo Nation, at least weekly. The Controller shall hold all such monies in a special account.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CMY-36-70, May 14, 1970.

#### **§ 1810. Forfeiture; application of deposit to fines; refund**

The cash deposit for bail of any accused who fails to meet any conditions of bail shall be forfeited, unless a judge of the District Court, for good cause shown, orders otherwise. Cash bail deposits of any person who pleads guilty, or is found guilty upon trial, shall be applied toward payment of any fine imposed, and any deposit in excess thereof shall be refunded. If the accused is found not guilty, or the case is dismissed, or the bail deposit has not been fully applied to any fine imposed, the court, by the clerk, shall issue a warrant to the Controller, stating the amount of the refund due, which the Controller shall pay upon presentation. The court clerk shall transmit a copy of said warrant to the Controller's Office. The warrant shall be void one year after the date of issuance, if not presented.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CMY-36-70, May 14, 1970.

#### **§ 1811. Disposition of unclaimed or forfeited bail**

No forfeiture of bail may be set aside at any time later than 15 days,

including Sundays and holidays, following the date of such forfeiture. The clerk of the court shall, upon the expiration of such time, transmit notice of such forfeiture to the Controller. The Controller shall redeposit all monies deposited as bail which are forfeited or unclaimed within a year of the date of issuance of a warrant for refund to the credit of the General Fund. All or part of cash bail deposits applied toward any fine levied shall be redeposited in accounts wherein fine monies are deposited.

#### **History**

CMY-36-70, May 14, 1970.

#### **§ 1812. Conditions of bond; refusal to release**

A. The judges and Navajo police officers authorized to admit persons to bail are authorized to refuse to admit persons to bail, in any one of these following circumstances:

1. When the judge or officer has reason to believe that the person is unable to care for his or her personal safety or will be a danger to the public.

2. When the judge or officer has reason to believe that the person will pose a danger to any other person or to the community.

3. When the judge or officer has reason to believe that the person will leave the lands subject to the jurisdiction of the Navajo Nation and fail to appear.

4. When the person charged has allegedly done or committed acts as part of the same design or transaction upon which the alleged offense against the Navajo Nation is charged which would in the officer's or the judge's belief constitute a felonious offense, which shall be for the purposes of this Section, an offense under 18 U.S.C. § 1153.

B. No judge or officer shall be held liable for refusal to admit to bail pursuant to this Section, except upon a finding by the court that there existed no basis for refusal to admit to bail, and upon proof that the refusal to admit to bail was the result of wilful malice.

C. Any officer who refuses to admit a person to bail shall immediately bring such person before a judge of the District Court of the Navajo Nation at the first opportunity to do so. The officer shall thereupon show cause why he or she refused to admit the person to bail. The judge thereupon may order the person held without bail, or admitted to bail. Any such order shall be appealable to the Supreme Court of the Navajo Nation and the Supreme Court shall give any such appeal absolute priority.

#### **History**

CMY-36-70, May 14, 1970.

#### **Annotations**



## **1. Refusal to release**

"The statute and rules also provide that a judge or officer may refuse to admit a person to bail under certain circumstances, including a reason to believe that the person will fail to appear at subsequent proceedings. See 17 N.N.C. § 1812. Where a 'specific finding' is made that a release by personal recognizance will not reasonably assure the appearance of the defendant at trial, Rule 15(b) of the Criminal Rules provides that a judge may permit release under conditions which will reasonable assure the appearance of the defendant for trial. This rule provides that such conditions may include placement of restrictions during the defendant's period of release, or cash bond, or requiring the return of the defendant to custody after specified hours. Nav. R. Cr. P. 15(b). Furthermore, a judge may deny release or order the defendant to abide by any other conditions where there are reasons, for the record, to believe that the defendant is dangerous to others or will commit a crime. See Nav. R. Cr. P. 15(d) (listing reasons to deny release); *Seaton v. Greyeyes*, No. SC-CV-04-06, slip op. at 3 (Nav. Sup. Ct. March 28, 2006) (examining reasons justifying detention). Furthermore, the mere seriousness of the charge will not justify continued detention. *Id.* at 4. Overall, denial of such release must be made at arraignment upon a motion by the Navajo Nation. Reasons for denial of release must be stated for the record. *Dawes v. Eriacho*, No. SC-CV-09-08 (Nav. Sup. Ct. May 5, 2008) (holding that written reasons to deny a criminal defendant's release were not required and that verbal notification was sufficient). This assures the defendant a meaningful appeal of a lower court's order to this Court pursuant to 17 N.N.C. § 1812(C)." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 6-7 (Nav. Sup. Ct. July 1, 2009).

"As there were no reasons given at arraignment to deny Mr. Wood's release, the judge may not now use a highly-set bail or unilaterally make findings about a defendant as a substitute for finding facts at arraignment. The purpose of bail, as stated previously, is to ensure a defendant's appearance at trial, and the Court notes that there are alternative methods of securing his appearance such as third-party release. The judge's denial of release under these circumstances is also an abuse of a judge's discretion, contrary to 17 N.N.C. § 1807(A), 1807(B), Rule 15 and the legal presumption for release." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 8 (Nav. Sup. Ct. July 1, 2009).

## **§ 1813. Conditions of date of appearance**

The judges of the District Court of the Navajo Nation are hereby authorized to impose conditions of a date of appearance and such other conditions upon bail as are necessary or proper.

### **History**

CMY-36-70, May 14, 1970.

### **Annotations**

#### **1. Conditions of release**

"We recognize that judges have a certain amount of discretion, but discretion

must be exercised within the parameters of the law. Particularly, the discretion given to judges under 17 N.N.C. § 1813 authorizes the imposition of conditions of release that bear a reasonable relationship to insuring defendant's appearance. *McCabe v. Walters*, 5 Nav. R. 43, 48 (Nav. Ct. App. 1985)." *Wood v. Window Rock District Court*, No. SC-CV-20-09, slip op. at 7-8 (Nav. Sup. Ct. July 1, 2009).

"The discretion given to the district court judge under Section 1813 authorizes the imposition of condition on release that bear a reasonable relationship to insuring defendant's appearance. [...] The Court fails to see any nexus between the district court's requirement, that Petitioner be relieved of his duties as Chief Justice, as a condition of release from custody, and how this condition in any way insures Petitioner's appearance at a subsequent hearing." *Chief Justice McCabe v. Hon. Walters*, 5 Nav. R. 43, 48 (Nav. Ct. App. 1985).

## **2. Review**

"Generally, the fact that a criminal defendant is employed is a factor justifying release on personal recognizance, and thus, it was an abuse of discretion to require a criminal defendant to leave his employment as a condition of release, as the Respondent has done in Petitioner's case." *Chief Justice McCabe v. Hon. Walters*, 5 Nav. R. 43, 48 (Nav. Ct. App. 1985).

### **§ 1814. Notice of date of appearance**

Officers admitting persons to bail shall inform them in writing that, if they fail to receive notice of a date of appearance within 15 days, they should inquire of the court or the police as to their hearing date. The judges of the District Courts of the Navajo Nation are authorized to forfeit the bail of any person failing to meet the conditions thereof, and to cause warrants to issue for the return of such person. No person shall, in any single case, be admitted to bail after such person has failed to meet prior bail conditions in the same case.

#### **History**

CMY-36-70, May 14, 1970.

### **§ 1815. Admission of persons to bail**

The Director of the Department of Law Enforcement is authorized and directed to authorize officers to admit persons to bail, during those times when the District Court of the Navajo Nation is not in session. The Director of the Department of Law Enforcement is further directed to assure that an officer authorized to admit persons to bail be on duty at each jail facility during said times.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CMY-36-70, May 14, 1970.

**§ 1816. Release on recognizance; warrant on failure to appear for trial**

Any judge or clerk of the Court of the Navajo Nation, or any Navajo police officer duly authorized to admit to bail, may, in his or her discretion, release any person arrested for an offense on such person's own recognizance. If any Indian so released does not appear for trial at the time and place specified, the judge may issue a warrant to apprehend such person, and thereafter such person shall not be released prior to trial except by written order signed by a judge of the Court of the Navajo Nation.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CF-18-58, February 18, 1958.

**§ 1817. [Repealed]**

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

**§ 1818. Probation**

A. The Court of the Navajo Nation may in its discretion suspend any sentence imposed and allow the offender his or her freedom on probation upon his or her signing a pledge of good conduct during the period of the sentence upon the form provided therefor.

B. Any person who shall violate his or her probation pledge shall be required to serve the original sentence.

C. The Courts of the Navajo Nation may establish a program to merge the functions of probation and peace making to promote the rehabilitation of offenders and serve the interest of victims and the program may charge participants reasonable fee or assessment for serious services and expend such funds for probation and peace making functions.

D. Individuals who are convicted of any offense may be sentenced to a term of probation not to exceed two years and individuals convicted of multiple offenses may be sentenced to a term of probation not to exceed five years.

**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

**§ 1819. Parole**

A. Any person committed by a Court of the Navajo Nation who shall have

without misconduct served one-half the sentence imposed by such court may be eligible to parole. Parole shall be granted only by a judge of the Court of the Navajo Nation where the prisoner was convicted after hearing of the issue and upon the signing of the form provided therefor. The Court shall file findings of fact and conclusions of law stating its reasons for granting or denying parole.

B. Any person who shall violate any of the provisions of such parole shall be punished by being required to serve the whole of the original sentence.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

### **Subchapter 3. Coroners; Investigation of Deaths**

#### **§ 1851. Appointment of coroners; compensation**

The President of the Navajo Nation is authorized to appoint at least one coroner within each police district, and to hold office at the President's pleasure. Coroners shall be paid at a rate established by the Navajo Nation Council and may be reimbursed for actual and necessary expenses, upon presenting proper vouchers to the Controller of the Navajo Nation.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

CS-76-57, September 10, 1957.

#### **§ 1852. Investigation of deaths—Generally**

Whenever a coroner is informed that a person on Navajo Nation land has been killed, or has suddenly died under such circumstances as afford reasonable ground to suspect that the death was occasioned by the criminal act or gross negligence of another, the coroner shall go to the place where the body is located and inquire into the cause of death. Unless the coroner is a physician, he or she shall endeavor to have a physician accompany him or her to the place where the body is located.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-76-57, September 10, 1957.

### **§ 1853. Autopsies and exhumations**

A. When the coroner determines that the cause of death cannot be determined without an autopsy, the coroner or district prosecutor may petition the district court of the Navajo Nation to order an autopsy be held. If such an autopsy shall require exhumation of the body, such information shall be included in the petition. Hearings on such petitions shall be held on an expedited schedule upon a showing of exigent circumstances derived from medical necessity or the needs of a criminal investigation.

B. The immediate family of the decedent shall be served with a copy of the petition and shall be allowed to file objections, if their identity and whereabouts can be ascertained and their participation is consistent with the requirements of medical necessity or the needs of a criminal investigation. The petitioner must show what reasonable, good faith efforts have been made to locate and serve the decedent's immediate family.

C. The district court may order an autopsy if it finds that:

1. The cause of death cannot be determined without an autopsy;
2. Such determination is critical to a criminal investigation or required by medical necessity;
3. No less invasive means is available for the investigation.

D. After the district court has ordered an autopsy, the coroner may request the United States Public Health Service perform the autopsy, or may engage a private physician or other licensed health care provider to perform such service.

E. If the ordered autopsy requires exhumation of a body, the coroner shall cause the body to be exhumed for examination and reburial after autopsy. The coroner may call upon the Navajo police for assistance in exhumation and reburial.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-76-57, September 10, 1957.

### **§ 1854. Report**

A. After inspecting the body and conferring with a physician, if the coroner is not himself or herself a physician, the coroner shall make a written report, in quadruplicate, stating the following facts:

1. The name and census number of the dead person.
2. When and where he or she died, and the circumstances of his or her death.

3. What caused the death.

4. Who caused the death, if caused by the act, whether criminal or not, of another person, or by gross negligence.

5. An inventory of the property other than clothing of ordinary value found on the dead person.

6. If the coroner is not a physician, the name and address the physician he or she consulted.

B. The coroner shall submit all copies of his or her report to the Police Captain of the Navajo police district in which the death occurred. The Captain shall retain one copy and forward the remaining three copies to the Chief of the Navajo police.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-76-57, September 10, 1957.

#### **§ 1855. Disposition of property found on body**

It shall be the duty of the coroner to take possession of all property except clothing of ordinary value found on the person of anyone whose death he or she is required to investigate, and to turn property over to the District Police Captain with his or her report containing the inventory thereof. The District Police Captain shall deliver such property to the Court of the Navajo Nation after it has served any purpose it may have as evidence in a criminal prosecution arising out of the death, and the Court shall dispose of the same as part of the estate of the deceased or in such other manner as justice may require.

#### **History**

CS-76-57, September 10, 1957.

#### **§ 1856. Duty of person discovering body**

It shall be the duty of every Navajo police officer upon learning that a person has apparently been killed on Navajo Nation land, or has apparently died on such land because of the criminal act or gross negligence of another, to notify a Navajo coroner of such fact immediately. It shall be the duty of any person other than a police officer making a discovery of a body to notify a Navajo police officer or coroner without delay.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

## **Subchapter 5. Exclusion of Persons from Navajo Nation Land**

### **§ 1901. Exclusionary process**

A. The President of the Navajo Nation, or in his or her absence the Vice-President of the Navajo Nation, is empowered to close any or all of the Navajo Nation to nonmembers whenever the presence of such nonmembers would constitute a danger to life or property. The exclusion order may permit certain named individuals (or classes of individuals) to remain and may provide for a procedure whereby individuals or classes of individuals may seek entry or reentry to closed areas. No such closure may continue for more than 30 days without concurrence by the Government Services Committee of the Navajo Nation Council.

B. A nonmember of the Navajo Nation may be excluded from the Navajo Nation after hearing and the entry of an exclusion order, or, in cases involving danger to the public health or safety, pending such a hearing, on order of a District Court Judge of the Navajo Nation. Such interim exclusion of the nonmember from the Navajo Nation shall only be ordered in cases involving the public health and safety and for a period no longer than necessary for an exclusion hearing to be held.

C. An Order of Exclusion may be entered:

1. When the nonmember is accused of conduct, including traffic offenses, within the Navajo Nation which would be punishable under the laws of the Navajo Nation or the United States if committed by a member of the Navajo Nation, and such nonmember either admits such conduct in the exclusion proceeding, or is found by a preponderance of the evidence in the exclusion proceeding to have committed the act in question; or

2. When the nonmember either admits in an exclusion proceeding or is found by a preponderance of the evidence presented in an exclusion proceeding to have engaged in any of the following acts:

a. Unauthorized prospecting, mining, collecting or gathering of or for oil, gas, coal, uranium and other minerals, water, petrified wood, antiquities or artifacts; or

b. Entry into any Navajo home without the consent of the occupants; or

c. Interference with or unauthorized photographing of any Navajo traditional ceremony or other religious ceremony; or

d. Unauthorized trading or peddling; or

e. Recruiting Navajo labor without permission of the Office of Navajo Labor Relations; or

f. Unauthorized entering of an area of the Navajo Nation

closed to nonmembers; or

g. Removal from the Navajo Nation of any member of the Navajo Nation under the age of 18, or under guardianship, except by Order of the Courts of the Navajo Nation or in conjunction with a nonsectarian program administered by the Navajo Nation or the Bureau of Indian Affairs; or

h. Unauthorized timber cutting or plant gathering; or

i. Unauthorized surveying; or

j. Damaging property of any resident of the Navajo Nation or using such property without permission.

k. Violation of any section of the Navajo Nation code providing for exclusion as a remedy for such violation.

D. An exclusion order entered by a Court of the Navajo Nation shall either be for a definite period, or may, under appropriate circumstances, be permanent. A person excluded may petition the Court for modification of an exclusion order at any time.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CF-17-80, February 13, 1980.

CN-60-56, November 2, 1956.

CO-73-78, October 5, 1978.

CJ-7-40, June 5, 1940.

#### **Annotations**

##### **1. Non Indian children**

"We believe delinquency jurisdiction over non-Indians, as long as detention is not allowed, is civil in nature, and therefore within the jurisdiction of our courts. Our Children's Code, like those of states, classifies juvenile proceedings as civil." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 6 (Nav. Sup. Ct. May 26, 2005).

"We therefore hold that exclusion of a non-Indian child is not an independent proceeding, but is a possible disposition after the facts have been established in a delinquency proceeding." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 9 (Nav. Sup. Ct. May 26, 2005).

"We therefore hold that a non-Indian child must have a dispositional hearing before the court may exclude him or her. As no hearing was held, the family court violated A.P.'s due process rights, and we must bar it from excluding her from the Navajo Nation." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip



op. at 10 (Nav. Sup. Ct. May 26, 2005).

## **§ 1902. Court jurisdiction**

A. The Courts of the Navajo Nation are vested with civil jurisdiction over all persons with respect to exclusion of nonmembers of the Navajo Nation from the Navajo Nation.

B. The Chief Justice of the Navajo Nation with the advice and consent of the Judiciary Committee of the Navajo Nation Council, is empowered to adopt such rules as are deemed appropriate for exclusion proceedings.

### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CO-73-78, October 5, 1978.

### **Cross Reference**

See generally, Title 7, Navajo Nation Code.

### **Annotations**

#### **1. Non Indian children**

"We believe delinquency jurisdiction over non-Indians, as long as detention is not allowed, is civil in nature, and therefore within the jurisdiction of our courts. Our Children's Code, like those of states, classifies juvenile proceedings as civil." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 6 (Nav. Sup. Ct. May 26, 2005).

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## **Subchapter 7. Extradition**

### **§ 1951. Persons committing crime outside Indian Country—Apprehension on Reservation**

Whenever the President of the Navajo Nation is informed and believes that a person has committed a crime outside of Indian Country and is present in Navajo "Indian Country" and using it as an asylum from prosecution by the state, the President of the Navajo Nation may order any Navajo police officer

to apprehend such person and deliver him or her to proper state authorities at the Reservation boundary.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CMY-38-70, May 14, 1970.

CJ-1-56, January 27, 1956.

#### **§ 1952. Hearing; release**

If any person being arrested as provided in 17 N.N.C. § 1951 so demands, he or she shall be taken by the arresting police officer to the nearest Court of the Navajo Nation, where the judge shall hold a hearing, and if it appears that there is no probable cause to believe the Indian guilty of the crime with which he or she is charged off the Reservation, or if it appears that the Indian probably will not receive a fair trial in the state court, the judge shall order the Indian released from custody.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJ-1-56, January 27, 1956.

#### **§ 1953. Office of the Prosecutor**

The Office of the Prosecutor of the Navajo Nation shall represent the interests of the Navajo Nation at the hearing authorized under Section 1952 of this Title.

#### **History**

CAP-9-79, April 18, 1979.

#### **Cross Reference**

2 N.N.C. § 1971 *et seq.*

### **Subchapter 8. Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings**

#### **§ 1970. Definitions**

In this article, unless the context otherwise requires:

A. "Witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or prosecutor or in a criminal action, prosecution or proceeding.

B. "State" includes any territory of the United States and the District of Columbia, or the Navajo Nation.

C. "Summons" includes a subpoena, order or other notice requiring the appearance of a witness.

### **History**

CS-60-89, September 15, 1989.

### **§ 1971. Summoning witness in the Navajo Nation to testify in another state**

A. If a judge of a court of record in any state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within the Navajo Nation is a material witness in such prosecution, or grand jury investigation, and that his or her presence will be required for specified number of days, upon presentation of such certificate to any judge of a court of record in the district in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for a hearing.

B. If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him or her protection from arrest and the service of civil and criminal process, he or she shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

C. If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his or her attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him or her for the hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state.

D. If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars (\$5.00) for each day that he or she is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of a witness who disobeys a summons issued from a District Court of the Navajo Nation.

## **History**

CS-60-89, September 15, 1989.

### **§ 1972. Witness from another state summoned to testify in the Navajo Nation**

A. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or prosecutors investigations commenced or about to commence, in this jurisdiction, is a material witness in a prosecution pending in a district court of the Navajo Nation, or in prosecutorial investigation which is commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate shall be presented to a judge or a court of record in the county in which the witness is found.

B. If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the Navajo Nation to assure his or her attendance in the Navajo Nation, such judge may direct that the witness be forthwith brought before him or her; and the judge being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof, may order that the witness be forthwith taken into custody and delivered to an officer of the Navajo Nation, which order shall be sufficient authority to the officer to take the witness into custody and hold him or her unless and until he or she may be released by bail, recognizance or order of the judge issuing the certificate.

C. If the witness is summoned to attend and testify in the Navajo Nation he or she shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars (\$5.00) for each day that he or she is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within the Navajo Nation a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such witness, after coming into the Navajo Nation, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in the Navajo Nation.

## **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-60-89, September 15, 1989.

### **§ 1973. Exemption from arrest and service of process**

A. If a person comes into the Navajo Nation in obedience to a summons directing him or her to attend and testify in the Navajo Nation he or she shall not while in the Navajo Nation pursuant to such summons be subject to arrest or

the service of process, civil or criminal, in connection with matters which arose before his or her entrance into the Navajo Nation under the summons.

B. If a person passes through the Navajo Nation while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he or she shall not while so passing through the Navajo Nation be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his or her entrance into the Navajo Nation under the summons.

#### **History**

CS-60-89, September 15, 1989.

#### **§ 1974. Uniformity of interpretation**

This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

#### **History**

CS-60-89, September 15, 1989.

### **Subchapter 9. Search and Seizure**

#### **§ 2001. Unlawful search or seizure; trespass**

No police officer shall search or seize any property without a warrant unless he or she shall know, or have reasonable cause to believe, that the person in possession of such property is engaged in the commission of an offense under Chapter 3 of this Title. Unlawful search or seizure will be deemed trespass and punished in accordance with 17 N.N.C. §§ 350 or 351.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

#### **§ 2002. Warrants—issuance; complaint**

Every judge of the Court of the Navajo Nation shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of such court. However, no warrant of search and seizure shall issue except upon a duly signed and written complaint based upon reliable information or belief and charging the commission of some offense against the Navajo Nation.

#### **History**

CJA-1-59, January 6, 1959.

### **§ 2003. Contents**

No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched, describes the articles or property to be seized and bears the signature of a duly qualified judge of the Court of the Navajo Nation.

#### **History**

CJA-1-59, January 6, 1959.

### **§ 2004. Service**

Service of warrants of search and seizure shall be made only by officers of the Navajo Nation police.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJA-1-59, January 6, 1959.

## **Chapter 7. Facilities**

### **§ 2201. Plans and construction; authority**

The President of the Navajo Nation, with approval of the Public Safety Committee is authorized to approve plans for and cause to be constructed law and order facilities, giving employment preference to Navajo workers in all positions for which they qualified.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-79-57, September 18, 1957.

### **§ 2202. Construction sites; approval**

The Public Safety Committee of the Navajo Nation Council, shall approve all construction sites as authorized by 17 N.N.C. § 2201. In so doing, it shall give due consideration to each community's needs, as to where these facilities will best serve the needs of the majority of the people in the area, and, wherever possible, it shall incorporate such facilities with other Navajo Nation-owned improvements in the vicinity.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CS-79-57, September 18, 1957.

**Chapter 9. [Deleted]**

**Chapter 11. Fire Prevention**

**Subchapter 1. Generally**

**§ 2701. Closing of areas**

A. Upon the advice of the Navajo Forestry Department, the President of the Navajo Nation may order any area of Navajo Nation land closed to entry by the general public because of the danger of fire.

B. Such order shall not prohibit persons who regularly reside within the closed area from going to and from their homes and continuing such of their ordinary activities as do not constitute an unreasonable fire hazard.

C. Such order shall not prohibit officers and employees of the United States or of the Navajo Nation from entering such closed areas in the performance of their official duties.

D. Such order shall not prohibit lessees, licensees, or permittees of the Navajo Nation and their officers and agents from entering such closed areas for the purpose of going to or from their leased, licensed or permitted premises.

E. Such order shall not prohibit grantees of rights-of-way from entering such closed areas for the purpose of necessary maintenance of their right-of-way; but such order may prohibit or restrict the use of any road right of way by the general public.

**History**

CJN-41-59, June 12, 1959.

**§ 2702. Campfires and smoking prohibited**

Campfires shall be absolutely prohibited within any area closed to entry by the general public by order of the President. Smoking shall be prohibited in such areas, except inside substantial buildings.

**History**

CJN-41-59, June 12, 1959.

**§ 2703. Posting of closed areas**

Whenever an area is closed to entry by the general public by order of the President of the Navajo Nation, signs so stating, and stating that campfires and smoking are prohibited in such area, shall be posted in a conspicuous place on each road and trail entering the closed area. The validity of any order issued by the President of the Navajo Nation closing an area of Navajo Nation land from entry by the general public, however, shall not be affected if such

signs are not posted.

#### **History**

CJN-41-59, June 12, 1959.

#### **§ 2704. Removal of unauthorized persons from closed areas**

A. It shall be the duty of any Navajo police officer or any employee of the Forestry Department to warn any unauthorized person found in a closed area to leave the closed area at once; and if such person does not comply with such warning without delay, to report such fact to the Chief of Police or any Captain of the Navajo Police.

B. If such person is an Indian, the Chief of Police or Captain shall apply to the District Court of the Navajo Nation for a warrant to apprehend such person. If such person is not an Indian, the Chief or Captain shall apply to the President of the Navajo Nation for an order for the physical removal of such person pursuant to the provisions of 17 N.N.C. § 1901.

C. Where the activities of such person as reported to the Captain or Chief appear to such officer to constitute an unusually grave fire hazard so that irreparable damage to the property of the Navajo Nation will probably occur as a result of the delay, necessary to obtain a warrant to apprehend or order for physical removal, the Chief or Captain may arrest or remove such person without a warrant or order.

D. Where any non-Indian is removed without an order from the President of the Navajo Nation, the officer effecting such removal shall report it as soon as possible to the Chief of Police, who shall report such removal to the President of the Navajo Nation for such further action, under the provisions of 17 N.N.C. § 1901, as the President of the Navajo Nation may deem advisable.

#### **History**

CJN-41-59, June 12, 1959.

#### **§ 2705. Penalties**

A. Any person who shall violate 17 N.N.C. § 2702, or having been warned to leave a closed area pursuant to 17 N.N.C. § 2704 shall willfully fail or refuse so to leave, shall be deemed guilty of an offense and, upon conviction thereof, may be sentenced to labor for not more than 60 days or to a fine of not more than three hundred dollars (\$300.00), or both.

B. Any non-member who shall violate this Chapter may be excluded from Navajo Nation land pursuant to the provisions of 17 N.N.C. § 1901 *et seq.*

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CN-41-58, June 12, 1959.



## **Subchapter 2. Navajo Nation Fireworks Code**

### **§ 2730. Title and establishment**

This enactment shall establish and shall be known as the Navajo Nation Fireworks Code.

#### **History**

CAP-19-86, April 24, 1986.

### **§ 2731. Purpose**

Insofar as it is practicable, it is the intent and purpose of this Act to regulate the manufacture, possession, sale and use of fireworks within the exterior boundaries of the Navajo Nation. With this enactment, it is hereby declared by the Navajo Nation that possession, manufacture, sale and use of fireworks is against the public health, safety, and welfare of the people of the Navajo Nation, when performed outside of these regulations.

#### **History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CAP-19-86, April 24, 1986.

### **§ 2732. Definitions**

A. "Fireworks" mean any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridge toy pistols, toy cannons, toy canes or toy guns in which explosives are used, firecrackers, torpedos, sky-rockets, Roman candles, Daygo bombs, sparklers or other devices of like construction and any devices containing an explosive substance, except that the term "fireworks" shall not include any auto flares, paper caps containing not in excess of an average of twenty-five hundredths (.25) of a grain of explosive content per cap and toy pistols, toy canes, toy guns or other devices for use of such caps, if constructed so that the hand cannot come into direct contact with the cap when in place of explosive.

B. "Person" means individual, firm, corporation, employee, or agent.

#### **History**

CAP-19-86, April 24, 1986.

### **§ 2733. Manufacture, possession, sale or use of fireworks**

It shall be unlawful within the exterior boundaries of the Navajo Nation for any person to manufacture, attempt to manufacture, possess, store, offer or

expose for sale, sell, use or explode any fireworks, except as provided for in Section 2735, of this Code, and other applicable Navajo Nation and federal laws.

#### **History**

CAP-19-86, April 24, 1986.

#### **§ 2734. Illegal and prohibited fireworks**

Manufacture, possession, sale and use of the following types of fireworks are strictly prohibited and in violation of this Code:

- A. Cherry Bomb. Red in color-1" in diameter.
- B. Silver Salute. Silver in color-2" in length.
- C. M-80. Red in color-approximately 1" length.

#### **History**

CAP-19-86, April 24, 1986.

#### **§ 2735. Exemptions, permit and bond**

A. Exemptions. Nothing in this Code shall be construed to prohibit:

1. Public Exhibition shows. A permit shall be required for all such supervised public displays of fireworks by a jurisdiction, fair association, amusement or other organization, or by any artisans in the pursuit of their trade. Every such use or display shall be handled by a competent operator approved by the Navajo Nation Fire Chief, and shall be of such character and location, not to be hazardous to any property or person.

2. Manufacture. Nothing in this Code shall be construed to prohibit a resident manufacturer, jobber, dealer to manufacture, sell (at wholesale only), any fireworks, provided such fireworks are intended for direct shipment out of the Navajo Nation; for supervised displays on the Navajo Nation, or any other uses permitted in Subsection (A) (3) below.

3. Other legitimate uses of fireworks as specifically provided for in accordance with this Code and other applicable federal regulations, such uses including but not limited to wildlife management, agricultural, athletic or sport, blasting or other legitimate industrial purposes on the Navajo Nation. All such use must be properly permitted by the Navajo Nation Fire Department.

B. Permits. Application for a Fireworks Permit shall be made to the Navajo Nation Fire Department offices at least five working days prior to the proposed date of display or use. For manufacture, or wholesale, applicant shall furnish a valid copy of a Business Permit issued by the Business Regulatory Department, prior to said Fireworks Permit application being

accepted by the Fire Chief. After such privilege is granted, it shall be valid only for 48 hours prior to, and 48 hours following the date of display.

C. Bond. Upon application, the Permittee shall furnish proof of a bond or certificate of insurance in an amount deemed adequate by the Navajo Nation Fire Department to satisfy claims for all personal or property damages arising out of any act or omission on the part of such person in connection with the activities permitted.

D. Unfired Fireworks. All such fireworks which are unfired upon expiration of the valid Fireworks Permit, shall be disposed of in a method which is safe for the type of fireworks remaining, under the supervision of the Navajo Nation Fire Department.

#### **History**

CAP-19-86, April 24, 1986.

#### **§ 2736. Enforcement authority**

A. The Navajo Nation Fire Chief shall have the power to carry out the intent and purposes of this Code; and further, the Navajo Nation Fire Department, commissioned Peace Officers of the Navajo Nation shall be charged with the enforcement of all of the provisions of this Code.

B. Seizures. The Navajo Nation Fire Department, or any of the aforementioned commissioned Police and Peace Officers, shall seize, remove, or cause to be removed at the expense of the owner, all stocks of fireworks or combustible offered or exposed for sale, stored or possessed in violation of this Code.

#### **History**

CAP-19-86, April 24, 1986.

#### **§ 2737. Violations of Code**

Any person who is determined to be in violation of the provisions of this Code or the provisions of any ordinance complying with this Code, shall be sentenced as follows:

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the District Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

#### **History**

CJA-08-00, January 27, 2000.

CAP-19-86, April 24, 1986.

### **Title 18**

#### **Mines and Minerals**

##### **Chapter 1. General Provisions**

###### **§ 1. Authority to adopt, amend or repeal regulations**

The Resources Committee is authorized to adopt regulations governing all mining operations on Navajo Nation lands, and from time to time amend, alter, modify or repeal such regulations, or any portions thereof, as in its discretion would be in the best interests of the Navajo Nation and the individual members thereof.

#### **History**

CM-3-51, March 22, 1951.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B).

###### **§ 2. Closing of mines not operated in accordance with regulations**

All mines on the Navajo Nation shall be closed unless operated in accordance with mining laws and regulations.

#### **History**

Executive Committee, Res. 1922-1951, Res. p. 297, July 22, 1937.

#### **Cross References**

Navajo Abandoned Mine Lands Reclamation Code, see 18 N.N.C. § 1601.

Mine Safety, see, 18 N.N.C. § 401 *et seq.*

###### **§ 3. Review of mining material by Navajo Nation Office of the Attorney General**

The Minerals Department may request the Navajo Nation Office of the Attorney General to review any mining material which, in its opinion, is necessary. In submitting mining material for review, the Minerals Department shall specify on what points it desires recommendations. The Office of the Attorney General shall submit its findings to the Minerals Department for appropriate disposition.

### **History**

ACO-75-57, October 8, 1957.

**Note.** The Office of Energy Resources was renamed to Minerals Department pursuant to ACAP-75-88.

## **Chapter 2. Navajo Negotiating Team**

### **§ 101. Establishment; purpose**

A. The Navajo Negotiating Team ("Team") is established as an entity of the Navajo Nation.

B. It is the purpose of the Navajo Negotiating Team to:

1. Make recommendations with respect to mineral leases or other energy agreements which will maximize economic returns to the Navajo Nation, consistent with other relevant Navajo law or policy.

2. Make recommendations for the prudent development of Navajo resources which are consistent with the legal, economic, environmental, cultural, social, labor and resource policies of the Navajo Nation.

3. Represent the Navajo Nation in negotiations with respect to mineral leases, other energy development agreements and energy right-of-ways.

4. Ensure that all proposed mineral leases and energy, related agreements and amendments or modifications thereto, are reviewed by the affected Navajo Nation Divisions and Departments and are carefully considered and analyzed in a deliberate unbiased manner by the Negotiating Team relying on all of the expertise available to the Navajo Nation, and that no lease or agreement is submitted to the Navajo Nation President, Resources Committee or the Navajo Nation Council without complete analysis and a recommendation by the Negotiating Team.

### **History**

ACJN-98-83, June 23, 1983.

### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(3).

## **§ 102. Powers**

A. General. The Team shall have all powers necessary and proper to carry out the purposes set forth in 18 N.N.C. § 101(B).

B. Enumerated powers. The Team is authorized and directed:

1. To propose, negotiate and renegotiate mineral leases or other energy agreements on behalf of the Navajo Nation subject to final approval of the President of the Navajo Nation, and the Navajo Nation Council; such agreements shall include, but not be limited to coal, oil, gas and uranium and shall also include negotiations involving energy-related right-of-ways such as electric power lines other than consumer service lines, gas and oil pipelines, and railways.

2. To review all proposed mineral leases and other energy related agreements prior to their consideration by other Navajo Nation entities and to utilize the assistance and resources of other Navajo Nation entities and to utilize the assistance and resources of other Navajo Nation entities and coordinate the Navajo Nation review process, including review of Chapter and local citizen concerns regarding any proposed lease or energy-related agreement, for such proposals prior to their submission to the President of the Navajo Nation, the Resources Committee or the Navajo Nation Council.

3. To make reports and recommendations regarding all mineral leases and other energy-related agreements to the President of the Navajo Nation. Such recommendations and reports shall be reviewed by the President of the Navajo Nation and the President shall then refer the matter to the Navajo Nation Council, the Resources Committee of the Navajo Nation Council or the Negotiating Team as the President of the Navajo Nation may deem appropriate under the circumstances.

4. To accept and expend such funds as may be appropriated by the Navajo Nation Council and its standing committees which are necessary to carry out the purposes and functions of the Negotiating Team.

### **History**

ACJN-98-83, June 23, 1983.

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

### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(3).

## **§ 103. Meetings; procedures**

A. Meetings shall be held on the call of the Chairperson of the Team or, in his or her absence, on the call of the Vice-Chairperson. A quorum shall consist of six members.

B. Until such time as the Resources Committee or the Navajo Nation

Council shall prescribe otherwise, the Team is empowered to develop its own procedures for the conduct of its meetings and other actions necessary to accomplish its purposes.

#### **History**

ACJN-98-83, June 23, 1983.

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

#### **§ 104. Conflict of interest**

All present and future laws of the Navajo Nation with respect to conflicts of interest shall apply to the Navajo Negotiating Team.

#### **History**

ACJN-98-83, June 23, 1983.

#### **§ 105. Membership; qualifications; selection; Chairperson; term of office**

A. The Team shall consist of ten members including a Team Chairperson and Vice-Chairperson, to be appointed by the President of the Navajo Nation with the approval of the Government Services Committee of the Navajo Nation Council, as follows:

1. Five members of the Team shall be selected from each of the five agencies comprising the Navajo Nation. Team members so selected shall be familiar with natural resources development matters within their respective agencies.

2. Two members of the Team shall be selected from among the membership of the Resources and Economic Development Committees of the Navajo Nation Council.

3. Three members of the Team shall be selected from among Navajo Nation employees who are experienced in natural resources development, economics or the law.

B. All Team members shall serve at the pleasure of the Government Services Committee and the President of the Navajo Nation.

#### **History**

ACJN-98-83, June 23, 1983.

#### **Cross References**

Government Services Committee power, see 2 N.N.C. § 342(B) (3) and (4).

#### **§ 106. Negotiating meetings**

A. In order to promote the efficient discharge of the duties imposed on the Team, the Chairperson of the Team may, from time to time, assign or

designate not less than three Team members to investigate, negotiate, review and make recommendations to the full Team with regard to any matter pending before the Team.

B. All such assignments or designations by the Chairperson of the Team shall include at least one attorney and the Team member from the Agency most affected by the matter under negotiation from among the Team members so assigned or designated with regard to any matter pending before the Team.

#### **History**

ACJN-98-83, June 23, 1983.

### **Chapter 3. Plan of Operation for Minerals Department [Repealed]**

**§§ 201 to 205. [Repealed]**

#### **History**

Plan of Operation for Minerals Department previously codified at 18 N.N.C. §§ 201-205 was repealed and deleted from the Code pursuant to CAP-14-94, April 20, 1994.

### **Chapter 4. Navajo Energy Development Authority**

#### **§ 301. Establishment**

The Navajo Nation Council charters and establishes the Navajo Energy Development Authority (NEDA), for such purposes and with such powers as are set forth in § 303 of this Chapter or as may hereinafter be established for NEDA by the Navajo Nation Council.

#### **History**

CMY-39-80, May 1, 1980.

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

#### **Cross References**

Powers, see 2 N.N.C. § 102(B) and (G).

#### **§ 302. Purposes**

The purposes for which NEDA is established are as follows:

A. To provide an organization owned by the Navajo Nation which can develop and manage energy resources and operate as a profit-making organization of the Navajo Nation pursuant to future agreements between NEDA and the Navajo Nation.

B. To see to it that energy development within the Navajo Nation is consistent with existing and future Navajo Nation environmental, labor, and



resources utilization policies.

C. To optimize financial returns to the Navajo Nation from the development of depletable resources, so that the financial returns may be used by the Navajo Nation (through the Navajo Nation Council) for the development of Navajo renewable resources, productive enterprises, and other long-term needs and goals of the Navajo People and the Navajo Nation.

#### **History**

CMY-39-80, May 1, 1980.

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

#### **§ 303. Powers**

The general powers which NEDA shall have are:

A. To enter into agreements with the Navajo Nation for the development of resources of the Navajo Nation.

B. To borrow money and pledge or otherwise encumber its assets to secure the fulfillment of its obligations.

C. To employ such staff as may be necessary to carry out its operations.

D. To enter into contracts and agreements.

E. To make application to federal, state and local governments for participation in such government programs as may benefit implementation of NEDA activities.

F. To establish offices for the transaction of business.

G. To sue and be sued in the Courts of the Navajo Nation in the name of the Authority.

H. To be governed by a Board of Directors.

I. To have such powers as may be necessary and proper to further the purposes for which NEDA is established, as such purposes may be modified from time to time by the Resources Committee of the Navajo Nation Council.

#### **History**

CMY-39-80, May 1, 1980.

**Note.** Pursuant to CD-68-98, December 15, 1989, and CN-72-92, November 4, 1992, the Resources Committee has oversight authority under this Section instead of the Government Services Committee of the Navajo Nation Council. See 2 N.N.C. § 695(B) (13).

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

**§ 304. Exemption of assets and property of Navajo Nation; sovereign immunity**

Notwithstanding other provisions of this chapter, NEDA shall have no authority to encumber trust or fee land owned or held by the Navajo Nation to satisfy its liabilities out of the assets or property of the Navajo Nation, nor to waive the sovereign immunity of the Navajo Nation.

**History**

CMY-39-80, May 1, 1980.

**Chapter 5. Mine Safety**

**§ 401. Inspection of mines and mining operations**

A. The Navajo Nation Mining Engineer or such other person as the engineer shall designate, shall be the agent of the Navajo Nation for the purpose of inspecting all surface and underground mines and mining operations within the jurisdiction of the Navajo Nation. The Mining Engineer shall have the right at any time to enter and to inspect any such mine or mining operations.

B. The term "mining operation" shall include, but is not limited to, processing plants, sand and gravel operations, and operations of companies transporting minerals mined within the jurisdiction of the Navajo Nation or minerals owned in whole or in part by the Navajo Nation, but shall exclude oil and gas operations.

C. For purposes of this Code, the Navajo Nation Mining Engineer shall mean the Navajo Nation Mining Engineer employed with the Minerals Department of the Navajo Nation, or his or her designate.

**History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 5, 1955.

**§ 402. Warning of unsafe conditions or practice**

A. The Mining Engineer shall call the attention of the persons in charge of the mining activity, or the safety officials, or if they are not available, the attention of the workers affected, to any unsafe condition or practice, or to any inadequate mine safety and health training of the worker(s), which he or she observes.

B. The Mining Engineer shall warn that the unsafe condition or practice or the inadequate training of the worker(s) must be remedied without delay, and he or she shall issue citations to the mine or mining operations for noncompliance with applicable Navajo Nation mine safety and health laws, rules and regulations. Citations shall be posted on bulletin boards of the mine/mining operations.

### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

### **§ 403. Summary closing-order and notices**

A. In the event the Mining Engineer believes the unsafe condition or practice creates an extreme and/or immediate menace to life, limb or health, he or she may order the immediate partial or complete closure of the mine or mining operation. His or her order shall be delivered orally to the person in charge of the mining activity, and a notice of the closure order shall be issued at the same time. In such case, all operations in the area covered by the closing order shall be suspended immediately, and all personnel except those necessary or actually working to remedy the unsafe condition shall be excluded from the area.

B. The mining Engineer shall, within one working day thereafter, send a notice of the closing order by registered or certified mail to the owner of the lease, permit or assignment embracing such mine or mining operation.

C. The area subject to the closing shall remain closed until the Mining Engineer or the Director of the Navajo Nation Minerals Department or the Resources Committee of the Navajo Nation Council lifts the closing order. Such order shall be lifted when the operator of the mine or mining operation proves to the satisfaction of the Engineer or the Committee that the unsafe condition or practice has been corrected.

D. The Mining Engineer, if necessary shall be assisted by the Division of Public Safety and/or the Resource Enforcement Agency of the Navajo Nation to enforce 18 N.N.C. §§ 401-422 of the Navajo Nation Code. Such assistance shall be provided immediately upon request by the Mining Engineer.

### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

**Note.** Section 403 was formerly codified at § 404.

### **§ 404. Failure to suspend mining operations**

Any owner or operator of a mine or mining operation operating a mine or mining operation in violation of a closing order shall have the status of a trespasser on the mine or mining operation.

### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

**Note.** Section 404 was formerly codified at § 405.

#### **§ 405. Hearing**

A. Any operator of a mine or mining operation whose mine or mining operation has been closed in part or in whole by the order of the Mining Engineer may within 30 days of the date of mailing of the closing order, in the event such closing order has not been withdrawn, request a hearing before the Director of the Minerals Department at which time he or she shall be given the opportunity to show that the unsafe condition, upon which the closing order was based, has been remedied or never existed. The Director may continue the closing order if he or she determines that the unsafe condition still exists. If the Director of the Minerals Department does not lift the closing order, the operator shall be given further opportunity to present his or her case before the Resources Committee of the Navajo Nation Council within a reasonable time of the decision of the Director of the Minerals Department.

B. As a result of such hearing the Resources Committee may lift the closing order, may continue it for not more than 90 days pending correction of the unsafe condition or may take such other action as may appear just.

#### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

**Note.** Section 405 was formerly codified at § 406.

#### **§ 406. Penalty for members of the Navajo Nation working in a closed mine or mining operation**

Any member of the Navajo Nation who shall work in an area of a mine or mining operation, while there is an outstanding order of the Mining Engineer requiring that area of the mine or mining operation to be closed, except for the purpose of correcting the unsafe condition which occasioned the closing order, may be charged with a separate criminal offenses for each day of such violation of the closing order, and upon conviction thereof shall be sentenced to a fine not to exceed two hundred fifty dollars (\$250.00) for each such offense.

#### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

**Note.** Section 406 was formerly codified at § 407.

**§ 407. Standards for determining what constitutes an unsafe condition and the training standards for workers**

The Navajo Nation adopts as its interim standards for mine safety and health, including the standards for the training of workers, those substantive standards contained in the regulations promulgated under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.*, as they may be amended, and other applicable federal laws, rules and regulations. More stringent and more specific health and safety standards may be adopted in the future with the approval of the Navajo Nation Council.

**History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

ACD-49-55, December 2, 1955.

**Note.** Section 407 was formerly codified at § 408.

**§ 408. Report of accident, injury, illness and investigation of serious and fatal accidents**

Any accident, injury or illness occurring in the mine or mining operation shall be reported to the Mining Engineer on Mine Safety and Health Administration (MSHA) forms 7000-1 and 7000-2 on a quarterly basis within 15 days following the quarter for which the report(s) is (are) due. If the 7000-1 and 7000-2 forms are revised by MSHA the report(s) shall be submitted on the revised forms. When a fatal accident occurs in or about a mine or mining operation, the operator of the mine or mining operation shall immediately notify the Mining Engineer, who shall inspect the premises to determine whether the accident was caused wholly or in part by unsafe conditions or practices in or about the mine or mining operation. The operator shall not disturb the site of the accident until the inspection is completed by the Mining Engineer. The Mining Engineer shall make a report of any fatal accident and submit it directly to the President of the Navajo Nation and the Resources Committee of the Navajo Nation Council.

**History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

CS-76-57, September 10, 1957.

**Note.** Section 408 was formerly codified at § 409.

#### **§ 409. Assessment of penalty for noncompliance**

The Mining Engineer is authorized to assess civil penalties and administrative costs against the owner or operator of any mine or mining operation for non-compliance with Navajo Nation laws, rules and regulations. The regulations for the assessments of penalties provided in Schedule "A".

##### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

**Note.** Section 409 was formerly codified at § 410.

**Revision note.** The "Regulations for Assessment of Civil Penalties" is attached to CF-20-91 as Schedule "A".

#### **§ 410. Appeals**

A. The owner or operator of any mine or mining operation shall have the opportunity to request a hearing before the Director of the Mineral Department on citation(s) issued by the Mining Engineer. Such requests shall be made in writing to the Director within 30 days of the date of issuance of the citation(s). As a result of the hearing, the Director may let the citation(s) stand, may modify it, or may void it. The assessment of a penalty will be made after the decision of the Director. Any contested assessment must be deposited in an escrow account established by the Nation. This Section shall not relieve the owner or operator of a mine or mining operation of his or her obligation to abate the violation within the time specified by the Mining Engineer. The decision of the Director could be appealed to the Resources Committee within 30 days.

B. Any operator or owner of a mine or mining operation shall further have an opportunity to appeal any such assessment by the Mining Engineer or action taken by the Director or the Resources Committee of the Navajo Nation Council, pursuant to the Navajo Nation Mine Safety Code, to the Navajo District Court, Window Rock District, within 30 days of such assessment or action. Any such action shall be brought against the Mining Engineer in his or her official capacity, and shall be solely for the purpose of determining the validity of the assessment or action. Such proceedings, and appellate review, if any, shall be conducted pursuant to the rules of civil procedure of the appropriate courts of the Navajo Nation. The decision of the Navajo Nation Courts shall be the final decision and the escrowed amount shall be released at that time.

##### **History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

**Note.** Section 410 was formerly codified at § 411.

**§ 411. Union representative(s) of workers may accompany the Mining Engineer**

The Mining Engineer shall inform the employee union representative(s) when he or she arrives at a mine operation for inspection. A union representative shall have the right to join the Mining Engineer during the inspection of the mine or mining operation. If the Union representative is employed by the owner or operator, he or she shall receive his or her normal compensation for the time spent on the inspection.

**History**

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

**Note.** Section 411 was formerly codified at § 412.

**Chapter 7. Permits and Leases**

**History**

**Change of name.** The Minerals Department referred to in this Chapter, is the predecessor to the Office of Minerals Development and the Mining Department.

**Subchapter 1. Generally**

**§ 601. Authority to execute**

The President of the Navajo Nation, pursuant to the provisions of 2 N.N.C. § 222, is authorized and empowered to execute on behalf of the Navajo Nation any and all mining leases or permits granted by the Navajo Nation.

**History**

CO-61-58, October 9, 1958.

**Revision note.** See CD-68-89 amending 2 N.N.C. §§ 222 and 223.

**§ 602. Acreage limitation**

The acreage limitation for mining permits and leases for any one person, firm, or corporation shall be limited to 960 acres, except that such limitation shall not apply to ore processors who have a plant in actual operation upon the Navajo Nation or who have such a plant in actual construction.

**History**

ACJ-55-53, July 31, 1953.

ACS-80-51, September 19, 1951.

ACA-26-51, April 27, 1951.

**§ 603. [Rescinded]**

**History**

Section 603 rescinded by CD-40-83, § 1, December 16, 1983.

**§ 604. [Rescinded]**

**History**

Section 604 rescinded by CD-40-83, § 3, December 16, 1983.

**§ 605. Standards and procedures for transfer of mining interests in Navajo lands**

A. Any transfer of a Navajo Nation mining interest or all rights arising under leases, permits, other agreements including farm-out and operating agreements heretofore approved by the Navajo Nation, or any interest in the aforementioned, including but not limited to any joint venture, operating, production-sharing, service, managerial, lease or other agreement, or any amendment, supplement or other modification of such agreement providing for the exploration for or extraction, processing or other development of oil and gas, uranium, coal, geothermal, or other energy or non-energy mineral resources in which the Navajo Nation owns a beneficial or restricted interests which (a) contains a Navajo Nation consent requirement; (b) was created pursuant to Bureau of Indian Affairs Sale Numbers, 104, 105, and 107; (c) was created after the date hereof; or (d) was created at any time regardless of whether it meets the requirements of clauses (a) and (b) above or either of them, may be done either by assignment, reassignment or by entering into a working agreement or in any other manner, only if the following requirements are fully complied with:

1. The assignor and assignee shall complete and file a Navajo Nation Assignment of Mining Interest form with the Minerals Department. Forms and updated instructions shall be available from the Minerals Department of the Navajo Nation.

2. The full and complete terms of the transfer, including a complete disclosure of the consideration therefore, shall be put in writing and filed with the Minerals Department, the Navajo Nation, accompanied by an affidavit duly subscribed and sworn or affirmed before an officer authorized to administer oaths by the parties in interest or their authorized representatives who have full knowledge of the facts involved, declaring that the information filed is full and complete and that the parties have no other or additional agreement and have not and will not pay, give, or promise any consideration in addition to that disclosed.

3. After full disclosure of the terms as required in Subsection (A)(1), if it is determined by the Minerals Department of the Navajo Nation that the assignment resulted from a merger of the assignor company or the changing of its name or from the merger of a wholly-owned subsidiary into its parent company (or vice versa), then the economic evaluation and review of the assignment(s) may at the discretion of the



Minerals Department, be dispensed with as a prerequisite to Navajo Nation approval of the assignments.

4. The assignor and assignee will be responsible for fulfilling all Department of the Interior's requirements for the assignment of a mining interest.

5. A non-refundable filing fee of two hundred dollars (\$200.00) per assignment shall be deposited with the Navajo Nation. The filing fee may be periodically adjusted by the Minerals Department.

6. No overriding royalty may be created by any transfer authorized hereby without the written consent of the Minerals Department of the Navajo Nation nor shall such overriding royalty be approved if it is determined by the Minerals Department that it will have such an adverse economic impact that it may prevent full recovery of the mineral reserves.

B. The assignment of mineral interests authorized hereby shall not be approved if the Minerals Department determines that it is not in the best economic interest of the Navajo Nation.

C. The Navajo Nation shall have the option of acquiring the mineral interests authorized for transfer hereby within 120 days after the submission of completed assignment application for the same consideration and on the same terms and conditions as are offered to any other proposed assignee.

D. The Designation of an Operator under the Code of Federal Regulations or otherwise shall not constitute an assignment of the lessees' operating rights. Nor shall any such Designation of Operator be valid unless the lessee gives notice in writing to the Navajo Nation 10 days in advance of such designation.

#### **History**

CMY-38-85, May 7, 1985.

CD-40-83, December 16, 1983.

#### **Cross References**

Taxation generally, see 24 N.N.C. § 101, *et seq.*

### **Subchapter 3. Prospecting Permits**

#### **§ 651. Procedure for processing—Generally**

A. Prospecting permits shall originate with the Minerals Department under the Division of Natural Resources. Upon obtaining approval from the office, the permits shall be forwarded to the office of the President of the Navajo Nation.

B. Upon obtaining approval from the Office of the President, the permits

shall be forwarded to the Navajo Land Department with the Division of Natural Resources.

C. Upon obtaining clearance from the Navajo Land Department, the permits shall be forwarded to the Regional Director, Bureau of Indian Affairs.

D. Upon approval by the Bureau of Indian Affairs, Regional Director, the permits shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACO-75-57, § 1, October 8, 1957.

ACJ-6-55, January 7, 1955.

**Note.** Section 651 under this Subchapter is slightly reworded for statutory consistency.

**Note.** The Office of Land Administration has been replaced by the Navajo Land Department.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

#### **§ 652. Renewal**

A. Notices to mining companies that their prospecting permits should be renewed shall be made by the Navajo Land Department.

B. The Navajo Land Department shall proceed to have any prospecting permits not renewed appropriately cancelled.

C. The Navajo Land Department shall originate all prospecting permits requested to be renewed.

D. Upon obtaining clearance from the Navajo Land Department, renewal of a prospecting permit shall be forwarded to the Bureau of Indian Affairs Regional Director for approval.

E. Upon approval by the Bureau of Indian Affairs Regional Director, renewal of the prospecting permit shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACO-75-57, October 8, 1957.

**Revision note.** Slightly reworded for statutory consistency.

**Note.** The Office of Land Administration has been replaced by the Navajo Land Department.

#### **§ 653. Issuance to applicants; specification of District**

Mineral prospecting permits shall be issued to applicants, Navajo and non-Navajo, by the President of the Navajo Nation and the Regional Director upon written request therefor. Applicants must specify the District or Districts of the Navajo Nation in which prospecting permit shall be issued.

#### **History**

ACD-80-53, December 18, 1953.

ACF-4-52, February 12, 1952.

ACS-80-51, September 19, 1951.

**Revision note.** Slightly reworded for statutory consistency.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

#### **§ 654. Rights of permittees; mining permit or lease**

A. Any Navajo discoverer having a prospecting permit may apply to the Resources Committee for a mining permit or mining lease.

B. Any non-Navajo discoverer having a prospecting permit may negotiate for a mining lease with the Resources Committee.

#### **History**

ACD-80-53, December 18, 1953.

ACF-4-52, February 12, 1952.

ACS-80-51, September 19, 1951.

ACA-26-51, April 27, 1951.

### **Subchapter 5. Drilling and Exploration Permits**

#### **§ 701. Procedure for processing**

A. Drilling and exploration permits shall originate with the Minerals Department within the Division of Natural Resources. Upon obtaining approval from the office, the permits shall be forwarded to the Office of the President of the Navajo Nation.

B. Upon obtaining approval from the Office of the President, the permits shall be forwarded to Navajo Land Department.

C. Upon obtaining clearance from the Navajo Land Department, the permits shall be forwarded to the Area Director.

D. Upon the Approval by the Regional Director, the permits shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACO-75-57, October 8, 1957.

ACJ-6-55, January 7, 1955.

**Revision note.** Slightly reworded for statutory consistency.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2) and (6).

#### **§ 702. Application—Persons entitled to apply**

Any person, firm, or corporation holding a valid prospecting permit may apply to the Resources Committee through the Navajo Nation Mining Engineer for a drilling and exploration permit upon any lands for which they hold a prospecting permit.

#### **History**

ACD-80-53, December 18, 1953.

#### **§ 703. Description of land**

The application for a drilling and exploration permit shall describe the land which it is to cover in a manner satisfactory to the Navajo Nation Mining Engineer and the Resources Committee.

#### **History**

ACD-80-53, December 18, 1953.

#### **§ 704. Period of permit; application for mining permit or lease; exclusion of others**

A. A drilling and exploration permit shall be issued for a period not to exceed 120 days, and shall provide that the permittee may apply during such period for a mining permit or lease as provided in the mining regulations.

B. During the period of the drilling and exploration permit no other person, firm, or corporation may prospect or explore in the area covered by the permit, or obtain any rights in said area, or apply for and receive any mining permit or lease on any land in the area.

#### **History**

ACD-80-53, December 18, 1953.

#### **§ 705. Records and information to be furnished on expiration**

The permittee shall furnish to the Navajo Nation complete drill records and all information obtained from exploration upon expiration of the drilling and exploration permit.

#### **History**

ACD-80-53, December 18, 1953.

### **Subchapter 7. Mining Permits and Assignments of Mining Permits**

#### **§ 751. Procedure for processing mining permits—Generally**

A. Mining permits shall originate with the Minerals Department. Upon obtaining approval from this Office, and if there is no dispute over issuance of the permit, the mining permit shall be submitted to the President of the Navajo Nation for consideration and approval.

B. In any case where there is a dispute or question raised as to issuance of the mining permit, such permit shall be submitted to the Resources Committee for consideration and decision before submission to the President of the Navajo Nation for approval.

C. Upon obtaining approval of the President of the Navajo Nation, the mining permit shall be forwarded to the Navajo Land Department.

D. Upon obtaining clearance from the Navajo Land Department, the mining permit shall be forwarded to the Regional Director.

E. Upon approval by the Regional Director, the mining permit shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACMY-80-64, May 7, 1964.

ACO-75-57, October 8, 1957.

ACJ-6-55, January 7, 1955.

**Revision note.** Slightly reworded for statutory consistency.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

#### **§ 752. Members of Navajo Nation**

The President of the Navajo Nation is delegated authority to approve mining permits issued by the Nation to its members in accordance with procedure outlined in 18 N.N.C. § 751.

#### **History**

ACMY-80-64, May 7, 1964.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B) (2).

#### **§ 753. Renewal**

A. Notices to permittees that their mining permits should be renewed shall be made by the Navajo Land Department.

B. The Navajo Land Department shall proceed to have any mining permit not renewed appropriately cancelled.

C. The Navajo Land Department shall originate all mining permits requested to be renewed.

D. Upon receiving clearance from the Navajo Land Department, a renewal of a mining permit shall be forwarded to the Regional Director.

E. Upon approval by the Regional Director, a renewal of the mining permit shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACO-75-57, October 8, 1957.

ACJ-6-55, January 7, 1955.

#### **§§ 754 to 755. [Repealed]**

#### **History**

CD-40-83, December 16, 1983.

**Revision Note.** See 18 N.N.C. § 605 relating to procedure for transfer of mining interests in the Navajo Nation.

#### **§ 756. Authorization; bond for non-Indian contracts**

A. Mining permits, assignments, operating agreements, and subcontracts are authorized, subject to the approval of the Resources Committee and the Secretary of the Interior or his or her authorized representative. All such arrangements shall be reduced to writing and shall not be effective until approved. Navajo Nation mining permits shall be issued only to Navajo members.

B. All non-Indian contract shall require a surety bond to insure performance of all terms of the contract, and the amount of the bond shall conform to Mining Regulations.

#### **History**

ACA-29-53, April 9, 1953.

ACF-4-52, February 12, 1952.

ACS-80-51, September 19, 1951.

Tribal Council Res. 1922-1951, December 8, 1948, granted certain rights and privileges to Navajos who made discoveries of minerals on Tribal lands.

#### **§ 757. Mining development**

Where mining permits are operated exclusively by Navajo there shall be expended by the permittee the equivalent of five dollars (\$5.00) per acre per year in actual mining development. Such development shall consist of road building, prospecting or drilling, and mining operations. Where assignments or other agreements are made to non-Indians the development requirements shall be forty dollars (\$40.00) per acre per year. Certified reports shall be submitted to the Resources Committee regarding development expenditures within 10 days after the yearly anniversary date of the contract. Where permits or leases are assigned or interests are otherwise acquired by non-Indians, an advance annual rental of one dollar (\$1.00) per acre is required and no credit shall be allowed therefor any future production royalties.

#### **History**

ACS-80-51, September 19, 1951.

ACA-26-51, April 27, 1951.

### **Subchapter 9. Mining Leases**

#### **§ 801. Procedure for processing**

A. Mining leases, including the conversion of an assignment of a mining permit to a lease, shall originate with the Minerals Department within the Division of Natural Resources. Upon obtaining approval from the office, the leases shall be forwarded to the Office of the President of the Navajo Nation.

B. Upon obtaining approval of the Office of the President, the leases shall be forwarded to the Navajo Land Department.

C. Upon obtaining clearance from the Navajo Land Department, the leases shall be forwarded to the Regional Director for approval.

D. Upon approval by the Regional Director, the leases shall be returned to the Navajo Land Department for final disposition.

#### **History**

ACO-75-57, October 8, 1957. See, also, note under 18 N.N.C. § 651.

**Revision note.** "Department of Minerals within the Division of Natural Resources" was substituted for the "Office of Energy Resources" pursuant to ACAP-75-88. Slightly reworded for statutory consistency.

### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

#### **§ 802. Negotiation; acreage limitation**

Mining leases, other than oil and gas for tracts of not less than 40 acres nor more than 160 acres, shall be negotiated through the Resources Committee of the Navajo Nation Council and the Regional Director, subject to the approval of the Secretary of the Interior or his or her authorized representative; provided, however, that the Resources Committee and Regional Director may waive the foregoing acreage limitation for justifiable cause, and may also decide to put any mineral lands up for competitive bid with leases to be granted to the highest bidder.

#### **History**

ACI-69-53, October 8, 1953.

ACM-35-53, May 12, 1953.

ACS-80-51, September 19, 1951.

ACA-26-51, April 27, 1961, contained same provision as ACS-80-51.

**Note.** ACN-40-55, November 29, 1955. ACJ-26-55, July 19, 1955.

### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

#### **§ 803. Term**

Mining leases may be issued for a specified term not to exceed 10 years from the date of approval by the Secretary of the Interior, or his or her authorized representative, and as much longer as the substances specified in the leases are produced in paying quantities; provided, however, that leases covering uranium and vanadium shall be for a specified term of two years and so long thereafter as such minerals shall be produced in paying quantities; and said leases shall also provide that exploration or development work shall commence and continue in good faith within six months from date of approval.

#### **History**

ACO-69-53, February 19, 1954.

ACM-35-53, May 12, 1953.

### **Subchapter 11. Royalties**

#### **§ 851. Schedule of payments**

A. The royalties payable to the Navajo Nation on all uranium mining



permits, assignments and permits shall be as follows:

PERCENTAGE ROYALTY SCHEDULE MINE VALUE PER DRY TON	ROYALTY PERCENTAGE OF MINE VALUE PER DRY TON
\$ 0.01 to \$7.50	2 1/2
7.50 to 14.00	5
14.00 to 20.01	11
20.01 to 30.01	12
30.01 to 40.01	13
40.01 to 50.01	14
50.01 to 60.01	15
60.01 to 70.01	16
70.01 to 80.01	17
80.01 to 90.01	18
90.01 to 100.0	19
100.01 or more	20

1. "Mine Value Per Dry Ton", wherever used herein is hereby defined as the dollar value per dry ton of crude ores at the mine as paid for by the Atomic Energy Commission or other government authorized agency before allowance for transportation and development; however, if the government at any time hereafter does not establish and pay for said ore on a fixed or scheduled dollar value per dry ton of crude ores at the mine, or said ores contain salable minerals, some, or all, of which are disposed of to a custom treatment plant or smelter for treatment, and sale, then mine value per dry ton shall be the gross value per dry ton of said crude ore as paid for by the Atomic Energy Commission or other government authorized agency mill or other buyer, less any allowances or reimbursements for the following specific items: (1) transportation of ores, (2) allowances for exploration for, or development of ores, which specific amounts shall in such event be deducted from the gross sales price received from the metal content of said ores by the seller before percentage royalty is calculated and paid.

2. If no allowance or reimbursement is received by the seller for transportation of ores then six cents per ton mile up to and including 100 miles shall be deducted from the gross sales price received from the metal content of said ores by the seller as transportation cost from the mine to the mill before royalty percentage is calculated and paid.

3. Such payment shall be made on or before the 15<sup>th</sup> day of the month next following receipt by lessee of payment for said ores, together with a statement of the mine value of said ores and the amount of royalty due each lot shipped and sold.

B. When crude ore from the mine is upgraded in an upgraded plant before shipment to the mill the royalty payable to the Navajo Nation and the permittee shall be as follows:

PERCENTAGE ROYALTY SCHEDULE ON UPGRADED ORE

GRADE OF CRUDE ORE PERCENTAGES	ROYALTY ON UPGRADED PRODUCT	
In % U <sub>3</sub> O <sub>8</sub>	Tribe	Permittee
0.00 to 0.15	2 ½	1
0.15 to 0.20	5	1
0.20 to 0.29	11	2
0.29 to 0.43	12	2
0.43 to 0.57	13	3
0.57 to 0.71	14	3
0.71 to 0.85	15	4
0.85 to 1.00	16	4

1. The above royalty percentages shall apply to the gross sales price received from the metal content of the upgraded product by the seller from the mill after deducting any allowances or reimbursements for transportation or development. If no allowances or reimbursement is received by the seller for transportation of ores then six cents per ton mile up to and including 100 miles shall be deducted from the gross sales price received from the metal content of said ore by the seller as transportation cost from the mine to the mill before royalty percentage is calculated and paid. And a further deduction of one dollar and fifty cents (\$1.50) per ton of crude ore upgraded, as upgrading cost, may be deducted before royalty is calculated and paid.

2. Such payments shall be made on or before the 15<sup>th</sup> day of the month next following receipt by lessee of payment for said ore, together with a statement of the value of the upgraded product and the amount of royalty due on each lot shipped and sold.

C. When minerals or other products are recovered which are not included in determining mine value per dry ton or included in percentage royalty schedule on upgraded ore as defined in this Section, there shall be paid to the Navajo Nation for such minerals or other products, a royalty of ten percent (10%) of the gross value of such products.

#### **History**

ACO-144-61, October 16, 1961.

ACJN-73-60, June 8, 1960.

ACJ-36-57, June 12, 1957.

ACS-37-55, September 27, 1955.

ACM-5-52, March 11, 1952.

ACS-80-51, September 19, 1951.

ACA-26-51, April 27, 1951.

**§ 852. Uranium royalty schedule**

Lessee shall pay or cause to be paid to the Area Director, Navajo Area, Window Rock, Arizona, for the use and benefit of the Lessor, a royalty, calculated on a monthly weighted average on the basis of dry short tons of ore mined and delivered to a treatment plant.

A. For Uranium-Lessee shall pay to the Lessor a percentage royalty of the value per dry ton based on royalty rates of twelve percent (12%) for ore valued at one cent (1 per ton and increasing to twenty-five percent (25%) for ore valued at one hundred dollars (\$100.00) or more per ton. The royalty rate shall be determined to the nearest one-hundredth of a percent (0.00%) in accordance with the following formula:

$$\text{Percentage Royalty Rate} = 12\% + 0.13\% ((\text{Value per dry ton})/\$1.00)$$

B. "Value per ton" wherever used in this paragraph is hereby defined as the dollar value per dry ton (2,000 pounds) of crude ore, as determined by application to the uranium content of such ore of the following "Value Schedule for Uranium Ore", multiplied by a fraction whose numerator is the weighted average price per pound of U<sub>3</sub>O<sub>8</sub> in uranium concentrate received by the Lessee, or the seller of Lessee's concentrate received by the Lessee, or the seller of Lessee's concentrate, at the mill processing ores derived from the leased lands, during the month for which royalty is being computed and whose denominator is seven dollars and twenty-five cents (\$7.25), except that if no sales have been made during the month for which royalty is being computed, then the numerator shall be the weighted average price per pound of U<sub>3</sub>O<sub>8</sub> received by the Lessee or the seller of Lessee's concentrate during the preceding six months.

VALUE SCHEDULE FOR URANIUM ORES

U <sub>3</sub> O <sub>8</sub> Assay of Ore	Value Per Pound of U <sub>3</sub> O <sub>8</sub> Contained in Ore
0.10 percent or less	\$1.50
0.11	1.70
0.12	1.90
0.13	2.10
0.14	2.30
0.15	2.50
0.16	2.70
0.17	2.90

0.18	3.10
0.19	3.30
0.20 and more	3.50

plus a grade premium of seventy-five cents (75 per pound for each pound of  $U_3O_8$  in excess of four pounds per ton of ore and an additional premium of twenty-five cents (25 per pound for each pound in excess of 10 pounds  $U_3O_8$  per ton of ore. Fractional parts of a pound to be valued on a pro-rata basis to the nearest cent.

C. Whenever vanadium and other minerals associated with uranium are recovered and sold by Lessee, Lessee shall pay to Lessor a royalty of ten percent (10%) of the gross proceeds derived from such sale; and where the Lessee retains possession of the associated mineral products a separate royalty value will be negotiated.

D. Lessee agrees to pay to the Lessor a royalty of ten percent (10%) of the value of uranium recovered from mine waters (whether natural or introduced), from leaching ores in place on the leased lands or by leaching such materials after they have been mined or extracted from the leased lands, or by leaching the waste material resulting from the treatment of ores from the leased lands. The value of uranium, as used herein, shall be the weighted average price per pound for  $U_3O_8$  in uranium concentrate received by the Lessee, or the seller of Lessee's concentrate, at the processing plant producing such concentrate, during the month for which royalty is being computed, except that if no sales have been made during the month for which royalty is being computed, then the value of uranium shall be the weighted average price per pound of  $U_3O_8$  received by the Lessee or the seller of Lessee's concentrate during the preceding six months.

#### **History**

ACF-12-70, February 10, 1970.

**Note.** See ACMA-19-68, ACN-222-67, ACS-75-60, ACS-37-55, ACM-5-52, and ACA-26-51 relating to setting of rates.

#### **§ 853. Payments; statement**

A. Payments of royalties shall be made on or before the 15<sup>th</sup> day of the month next following receipt by the lessee of payment for ore, together with a statement of the mine value of ores and the amount of royalty due on each lot shipped and sold.

B. Remittances for royalties shall be made payable to the Treasurer of the United States and mailed to Window Rock, Arizona, for deposit to the Navajo Nation general funds.

#### **History**

ACO-144-61, October 16, 1961.

ACJN-73-60, June 8, 1960.

**§ 854. Overriding royalties**

A. Subject to approval provided for in the mining permit assignments, operating agreements, and subcontracts may, in addition to other considerations, provide for the retention by and payment to the assignor in an assignment or the grantor in a subcontract or operating agreement, a royalty on all ore produced and sold from the premises (commonly known as an overriding royalty) not to exceed the following percentage based on the mine value per dry ton of ore as defined in 18 N.N.C. § 851:

1. On ore having a mine value per dry ton of thirteen dollars and ninety-nine cents (\$13.99) or less, one percent (1%) of the mine value per dry ton.

2. On ore having a mine value per dry ton of more than thirteen dollars and ninety-nine cents (\$13.99), and not more than thirty dollars (\$30.00), two percent (2%) of mine value per dry ton.

3. On ore having a mine value per dry ton of more than thirty dollars (\$30.00), and not more than sixty dollars (\$60.00), three percent (3%) of the mine value per dry ton.

4. On ore having a mine value per dry ton of more than sixty dollars (\$60.00), and not more than eighty dollars (\$80.00), four percent (4%) of the mine value per dry ton.

5. On ore having a mine value per dry ton of more than eighty dollars (\$80.00), five percent (5%) of the mine value per dry ton.

B. If two or more parties are the assignors or grantors, the royalty may be divided on such basis as such assignors, or grantors may agree upon.

C. The Navajo Nation Council may at any time after five years from the date of the first sale of uranium ore produced from property (as evidenced by records of the processing mill or other buyer) reduce the percentage of royalty retained by the assignor or grantor or entirely eliminate the same if the Resources Committee shall determine that such royalty payments so retained are so burdensome as to make the future operation of the mines on said lease impracticable or unprofitable, it being the intent that the Resources Committee shall at such time take such action as will serve the best interest of the Navajo Nation in assuring the continuous operation of the uranium mining industry on the Navajo Nation.

**History**

ACJN-73-60, June 8, 1960.

ACS-37-55, September 27, 1955.

ACS-80-51, September 19, 1951.

### **Cross References**

Building materials, prohibition of overriding royalty on account of production under extraction permit, see 18 N.N.C. § 1008.

Transfer of assignment of mining permit or lease, prohibition of creation of overriding royalty by, see 18 N.N.C. § 605.

Resources Committee, powers, see 2 N.N.C. § 695(B)(3).

## **Chapter 9. Building Materials**

### **§ 1001. Issuance of extraction permits; delegation of authority**

The President of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative, and upon the recommendation of a majority of the Council delegates from the Land Management District involved, may issue permits for the extraction of sand, gravel, topsoil, building stone, or any combination of such materials, from Navajo Nation lands; provided, however, that the recommendation of Council delegates shall not be required in cases of permits for the extraction of not more than 500 tons of material, where the total royalty is paid in advance; and provided, further, that the President may delegate this authority to issue extraction permits in accordance with rules adopted pursuant to 18 N.N.C. § 1009.

#### **History**

CAN-89-56, November 20, 1956.

ACM-55-56, March 22, 1956.

ACN-87-57, November 20, 1957.

ACN-82-57, November 7, 1957.

### **Cross References**

Resources Committee, powers, see 2 N.N.C. § 695(B)(2).

### **§ 1002. Extraction without permit; trespass**

It shall be a trespass for any person, except a Navajo for his or her own use and not for resale, to extract any material from Navajo Nation lands without holding a valid permit issued as provided in 18 N.N.C. § 1001.

#### **History**

ACM-55-56, March 22, 1956.

### **§ 1003. Eligibility for permit; Indian traders**

All persons engaged in the business of selling general merchandise,

whether licensed as Indian traders or not, shall be ineligible to hold permits for extraction of any material referred to in 18 N.N.C. § 1001; provided, however, that the Resources Committee may waive this prohibition in any individual case.

**History**

ACM-55-56, March 22, 1956.

**§ 1004. Term of permit; limitation**

All permits for the extraction of any material referred to in 18 N.N.C. § 1001 shall be issued for such term as the President of the Navajo Nation shall determine, which shall in no event exceed five years.

**History**

ACM-55-56, March 22, 1956.

**§ 1005. Transfer of permit**

No permit for the extraction of any material referred to in 18 N.N.C. § 1001 shall be transferred either by subleasing, assignment, or the entering into of working agreements, or in any other manner, without the consent of the President of the Navajo Nation and the Secretary of the Interior or his or her authorized representative.

**History**

ACM-55-56, March 22, 1956.

**§ 1006. Employment preference; prevailing wage rates**

All extraction permits shall require the permittee to employ Navajo Indians in all positions for which they are available in connection with operations under such permits, to pay such persons not less often than weekly, in cash, at not less than prevailing wage rates, and to include similar provisions in all subcontracts.

**History**

ACM-55-56, March 22, 1956.

**§ 1007. Royalty rate; waiver**

The President of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative, shall fix a reasonable royalty rate on all materials extracted pursuant to any permit, except that a royalty may be waived on any materials extracted for use in public projects on Navajo Nation land, or extracted in small quantities by a Navajo permittee.

**History**

ACM-55-56, March 22, 1956.

### **§ 1008. Overriding royalty prohibited**

A. No overriding royalty on account of production under an extraction permit shall be created as an incident of a transfer of an extraction permit or otherwise, and the payment of any overriding royalty on account of production under any such permit shall constitute cause for cancellation and forfeiture of such permit.

B. "Overriding royalty" for the purpose of this Section is defined as any payment of any kind whatever, other than payment of a tax or the Navajo Nation royalty, measured by a percentage of the production or of the gross or net value thereof. Payment of a percentage of the net profit of a mining venture shall not be included in the definition of overriding royalty.

#### **History**

ACM-55-56, March 22, 1956.

#### **Cross References**

Overriding royalties generally, see 18 N.N.C. § 854.

Transfer of permit, see 18 N.N.C. § 1005.

### **§ 1009. Rules and regulations; establishment and modification**

The President of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative, shall have authority to establish and modify from time to time rules and regulations to implement or supplement this Chapter.

#### **History**

ACM-55-56, March 22, 1956.

#### **Cross References**

Resources Committee, powers, see 2 N.N.C. § 695(A) and (B)(2).

## **Chapter 11. Coal**

### **§ 1201. Coal mining permits; requirement**

All coal mining operations within the Navajo Nation shall be done under properly issued coal mining permits.

#### **History**

ACJ-70-58, July 7, 1958.

### **§ 1202. Form of coal mining permit—Generally**



### **History**

ACD-163-59, December 2, 1959.

**Note.** See also CM-3-51, ACJ-70-58, and ACD-163-59.

**Revision note.** Proposed Coal Mining Permit form has been deleted from the Code. Such forms are available from the Minerals Department, Division of Natural Resources.

### **§ 1203. Authority to change**

The President of the Navajo Nation is delegated authority to make changes as experience proves necessary in the coal mining permit form.

### **History**

ACD-163-59, December 2, 1959.

### **§ 1204. Coal royalties and other provisions; enforcement**

The payment of coal royalties due, as well as all other provisions affecting coal operations within the Navajo Nation, shall be enforced by the proper agency of the Bureau of Indian Affairs.

### **History**

ACJ-70-58, July 7, 1958.

**Prior law.** Executive Committee, Res. 1922-1951, July 22, 1937, provided for the payment by Indians of a royalty on coal mined or produced when sold.

### **§ 1205. Responsibility of Head of Mining Department**

The Director of the Minerals Department within the Division of Natural Resources shall be charged with the responsibility for:

A. The preparation by the permittee of the reports required by the coal mining permit;

B. Securing the payment by the permittee of the royalties required; and

C. Such assistance and advice as is necessary to enable the permittee to operate the mine with approved methods and practices and with safety both to persons and to property.

### **History**

ACD-163-59, December 2, 1959.

**Revision note.** The "Minerals Department under the Division of Natural Resources" was substituted for the "Office of Energy Resources" pursuant to ACAP-75-88.

## Cross References

Functions of Mining Department generally, see 2 N.N.C. § 3001.

### Chapter 12. Diné Natural Resources Protection Act of 2005

#### § 1301. Findings

A. The Navajo Nation Council finds that the wise and sustainable use of the natural resources in Navajo Indian Country traditionally has been, and remains, a matter of paramount governmental interest of the Navajo Nation and a fundamental exercise of Navajo tribal sovereignty.

B. The Navajo Nation Council finds that the Fundamental Laws of the Diné (*Diné Bi Beenahaz'áanii*), as set forth in the 2002 amendments to Title 1 of the Navajo Nation Code, Resolution No. CN-69-02, support preserving and protecting the Navajo Nation's natural resources, especially the four sacred elements of life—air, light/fire, water and earth/pollen—for these resources are the foundation of the peoples' spiritual ceremonies and the Diné life way, and that it is the duty and responsibility of the Diné to protect and preserve the natural world for future generations.

C. The Navajo Nation Council finds that the Traditional (*Diyin Diné'é Bi Beehaz'áanii Bitsé siléí*), which are codified in Title 1 as §§ 3 and 4 of the Fundamental Laws of the Diné, provide that it is the right and freedom of the people to be respected, honored and protected with a healthy physical and mental environment.

D. The Navajo Nation Council finds that the Diné medicine peoples' interpretation of the Diné Natural Law (*Nahasdzáán d00 Yádi[hi] Bits33d66 Beehaz'áanii*), which is codified in Title 1 as five of the Fundamental Laws of the Diné, mandates respect for all natural resources within the four sacred mountains and is symbolized by the Sacred Mountain Soil Prayer Bundle (*Dahndiilyee*), to maintain harmony and balance in life and a healthy environment, and their recitation of the ceremonies and stories that have been passed down from generation to generation warn that certain substances in the Earth (*doo nal yee dah*) that are harmful to the people should not be disturbed, and that the people now know that uranium is one such substance, and therefore, that its extraction should be avoided as traditional practice and prohibited by Navajo law.

E. The Navajo Nation Council finds that the social, cultural, natural resource, and economic damage to the Navajo Nation from past uranium mining and processing is ongoing due to (i) the continuing need for full monetary compensation of former Navajo uranium workers and their family members for their radiation and mining-induced diseases, (ii) the presence of hundreds of unremediated or partially remediated uranium mines, tailings piles, and waste piles located in Navajo Indian Country, and (iii) the absence of medical studies of the health status of Diné who live in uranium mining-impacted communities.

F. The Navajo Nation Council finds that the mining and processing of uranium ore on the Navajo Nation and in Navajo Indian Country since the mid-

1940s has created substantial and irreparable economic detriments to the Nation and its people in the form of lands lost to permanent disposal of mining and processing wastes, lands left unproductive and unusable because they are the sites of hundreds of abandoned uranium mines that have not been successfully reclaimed, surface water and ground water left unpotable by mining and processing operations, livestock that could not be marketed because they were believed to have been contaminated by uranium. Navajo workers who lost thousands of person-years to gainful economic activity as a result of their mining-induced illnesses and deaths, and the families of Navajo uranium workers whose livelihoods, agricultural lands and homesites were diminished in value because of the illnesses and premature deaths of the workers.

G. The Navajo Nation Council finds that there is a reasonable expectation that future mining and processing of uranium will generate further economic detriments to the Navajo Nation. These economic detriments include, but are not limited to, the potential damage projected to the land, water, vegetation, and other natural resources of the Navajo Nation by uranium mining and processing operations, the forbearance or foreclosure of the Navajo Nation from using these natural resources for other economic purposes, the potential remediation costs for damage projected to the natural resources on lands within the Navajo Nation, the potential injury to livestock from uranium mining, including, but not limited to, losses in livestock production, veterinary and other costs, and the potential injury to human beings from uranium mining, including, but not limited to, loss of wages, loss of consortium, medical costs, loss of access to and use of vegetation used in traditional ceremonies, loss of current and future potable water supplies, and other costs.

H. The Navajo Nation Council finds that uranium is and has been expressly left unregulated by the federal government, and is currently unregulated by any tribal entity within Navajo Indian Country.

### **History**

CAP-18-05, April 19, 2005.

### **§ 1302. Definitions**

For the purposes of this Act, the Navajo Nation Council adopts the following definitions:

A. "Navajo Indian Country" shall mean all lands within the territorial jurisdiction of the Navajo Nation as defined in 7 N.N.C. § 254 and 18 U.S.C. § 1151.

B. "Natural resources" shall have the same meaning as set forth in 2 N.N.C. § 692(A).

C. "Person" shall mean any natural person or any other entity including domestic or foreign corporations, partnership, associations, responsible business or association agents or officers, any of the several states or a political subdivision of the state or agency of the state, department or instrumentality of the United States and any of its officers, agents or employees.

D. "Remediation" shall mean the permanent closure of uranium mining and processing site, waste piles and associated buildings for the purposes of eliminating or substantially reducing releases of radioactive and toxic substances to the air, land and water in such ways as to prevent or substantially minimize human exposure to such substances now and for future generations.

E. "United States" shall mean the federal government of the United States of America and any of its agencies, departments, subdivisions, or instrumentalities or officers, agents, or employees thereof.

F. "Uranium mining" shall mean the extraction of uranium or uranium ores by mechanical means including, but not limited to, surface mining, open pit mining or underground mining. Uranium mining shall not include extraction of uranium or uranium ores by solution mining.

G. "Uranium processing" shall mean the alteration of uranium ores from their natural state by mechanical or chemical including, but not limited to, crushing, grinding, and in situ leach mining or solution mining.

#### **History**

CAP-18-05, April 19, 2005.

#### **§ 1303. Prohibition of Uranium Mining**

No person shall engage in uranium mining and uranium processing on any sites within Navajo Indian Country.

#### **History**

CAP-18-05, April 19, 2005.

#### **§§ 1304 to 1306. [Repealed]**

#### **History**

CAP-18-05, April 19, 2005.

**Note.** Navajo Coal Mining Commission. ACJA-35-87, January 12 1987.

**Note.** Plan of Operation for Navajo Coal Mining Commission previously codified at 18 N.N.C. §§ 1301-1306 was repealed and deleted from the Navajo Nation Code pursuant to CAP-14-94, April 20, 1994.

### **Chapter 13. Oil and Gas**

#### **Cross References**

See Title 16 of this Code generally for previously codified laws concerning trespass and forcible entry and detainer.

#### **Annotations**

## **1. Construction**

Lease by Navajo Nation of "all oil and gas deposits" included helium gas discovered on such leasehold. *Navajo Nation of Indians v. United States* 364 F.2d 320 (1966).

## **2. Damages**

Where United States failed to inform the Navajo Nation, prior to assignment of 1942 oil and gas lease directly to Government, that lessee desired to surrender lease, the Navajo Nation was entitled to recover from the Government damages incurred as a result of such failure. *Navajo Tribe of Indians v. United States* (1966) 364 F.2d 320.

## **3. Presumptions**

Where Navajo Nation could not prove what would have happened if the Nation had been consulted prior to assignment of 1942 oil and gas lease directly to Government is attributable to failure of Government to keep Nation informed, the doubts should be resolved in favor of the Navajo Nation. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

## **4. Forfeiture**

The general rule regarding forfeiture of oil and gas leases is that the sanction of forfeiture will not be imposed unless clearly required by the terms of the lease. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

Where 1923 oil and gas lease by Navajo Nation did not expressly provide for nullification of lessees' right to produce gas in event of their failure to pay shut-in rental, sanction of forfeiture could not be imposed upon lessees failure to pay. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

## **5. Interest**

The Navajo Nation was entitled to interest on amount of damages recoverable from the United States as a result of failure to inform Nation, prior to assignment of 1942 lease directly to Government, that its lessee desired to surrender lease. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

## **6. Just compensation**

The proposition that just compensation does not include enhancement in value resulting from purpose for which Government is taking property did not apply in suit by the Navajo Nation seeking additional compensation for oil and gas rights acquired by United States in an area within the Navajo Nation, where there was not any real prospect of finding a private party who would wish to incur the expense of producing the helium bearing gas included in the oil and gas lease. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

The commissioner was justified in refusing to accept the fair market values submitted by Navajo Nation as a means of computing royalty interest of Nation under the 1945 agreement, considering the nature of the gas and the various

factors relevant to the matter of valuation. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

## **7. Transfer agreement**

Where oil and gas leases transferred to the Navajo Nation rights in certain formations because United States had compensated them for their interests and in order to make possible the receipt by the Government of a new lease of such formations. The Navajo Nation was merely a necessary conduit in the transfer from the lessees to United States, and thus ownership of helium underlying 1923 leasehold was not acquired by the Navajo Nation under transfer agreements. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

## **8. Review**

Navajo Nation seeking additional compensation for oil and gas rights acquired by United States within Indian Reservation failed to establish that the failure of Geological Survey to seek a larger royalty constituted a breach of any obligation to the Navajo Nation, and use of one-eighth royalty was proper. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

Discount factor used by. Bureau of Mines in determining the total potential royalty payable on estimated reserve of helium bearing gas included in oil and gas leases executed by Navajo Nation was appropriate. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

## **Subchapter 1. General Provisions**

### **§ 1401. Regulations; authority**

A. The Navajo Nation Council is authorized and empowered, with the approval of the Secretary of the Interior, when in its opinion the best interests of the Navajo Nation so require, to approve and adopt regulations for the production of oil and gas on the Navajo Nation, and amendments thereto, on a Navajo Nation wide basis; or to adopt at their discretion as the regulations of the Navajo Nation Council, the rules and regulations of any state or states having territorial boundaries which lie within the Navajo Nation, together with any amendments or revisions in such regulations as maybe presented from time to time for consideration of the Resources Committee.

B. The Resources Committee may coordinate the activities and regulations of the Navajo Nation with those of the regulatory bodies of the states and federal government to the end that there may be joint and harmonious development of the resources on Navajo Nation lands as well as on state and federal lands.

### **History**

CD-74-58, December 12, 1958.

CJ-44-58, July 16, 1958.

CA-68-57, August 8, 1957.

### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B) (3).

#### **§ 1402. Conservation; authority**

A. The President of the Navajo Nation is authorized and directed to do any and all things necessary or desirable to reduce and eliminate the wasting and burning of natural gases or other natural resources on Navajo Nation lands.

B. The President of the Navajo Nation is further authorized to seek and formally request the Department of the Interior to shut-in and halt production of oil, gas, or other natural resources from Navajo Nation lands wherever such production is accompanied by waste and loss of any oil, gas, or other natural resource or by-products thereof, and to collaborate with the Secretary of the Interior in taking any and all actions deemed by the President of the Navajo Nation to be necessary, advisable, or incidental to accomplishing the purposes of this Section.

### **History**

CO-56-58, October 6, 1958.

#### **§ 1403. Secondary recovery and pressure maintenance operations in oil fields; policy**

A. The Resources Committee of the Navajo Nation Council declares its approval and support of secondary recovery and pressure maintenance operations in the Navajo Nation's oil fields; provided, however, that patterns of unitization for the areas affected, and other necessary safeguards, satisfactory to the Resources Committee, are established and adhered to by the interested operators.

B. As a general policy, and subject to modification as individual circumstances dictate, where water is to be used in such operations, the Resources Committee favors reinjection of water produced with the oil first, then any other available brackish, non-potable water, as determined under standards of the United States Geological Survey. In all cases where water which is usable for human, stock, or irrigation purposes is to be used, negotiations shall be had with the interested parties to develop a reasonable charge for such water use.

### **History**

ACO-160-59, October 23, 1959.

**Note.** See also CF-44-58 and CD-74-58, regarding oil and gas development on Navajo lands.

### **Cross References**

Navajo Nation Water Code, see 22 N.N.C. § 1001 et seq.

**§ 1404. Minutes; confidential**

The minutes of the Resources Committee when considering matters pertaining to the oil and gas business on the Navajo Nation shall be maintained as strictly confidential in the files of the Navajo Nation for reference by the Navajo Nation officers, Oil and Gas Consultant, and the Office of the Attorney General, and such others as may be duly authorized to examine the minutes by permission of the Resources Committee.

**History**

ACM-25-58, March 5, 1958.

**Subchapter 3. Special Agreements**

**§ 1451. Special leases, joint operating, drilling or other agreements**

A. The Navajo Nation Council is authorized, and empowered, with the approval of the Secretary of the Interior, when in its opinion the best interests of the Navajo Nation so require, to negotiate and conclude on behalf of the Navajo Nation with any responsible person or persons, special leases, joint operating, drilling, or other agreements on such terms and conditions as the Committee shall deem advisable for the drilling and development of oil and gas lands whenever: (1) drainage of Navajo Nation lands is, in the Resources Committee's opinion, either taking place or will be threatened in respect to any tract or area, to such an extent that the protection of Navajo Nation oil and gas resources can be most effectively accomplished through negotiating such agreement or agreements; (2) in the opinion of the Resources Committee, such leases, agreement or agreements would result in stimulating or facilitating higher bidding on surrounding lands to be offered for public bidding, whether the bidding be on the basis of bonuses or on the basis of the amount of royalties to be paid to the Navajo Nation; (3) wherever there are conflicts of title respecting ownership of Utah school land sections or other areas, and the development of such areas is thereby retarded, or their values are being, or will be, in the Resources Committee's opinion, depressed by reason of drainage or title conflicts.

B. The Navajo Nation Council may enter into any such leases or agreements upon whatever terms and conditions the Resources Committee deems advisable to permit the development of such lands, prevent waste, increase the Nation's participation in production or revenues therefrom, and otherwise protect the best interests of the Navajo Nation.

**History**

CD-74-58, December 12, 1958.

CN-65-56, November 2, 1956.

CO-29-55, October 5, 1955.

Geological studies for oil and gas. CO-29-55, Ex. Vol. 1955, p. 329, October 5, 1955, authorized designated geologists to make further geological studies



for oil and gas with a view to development by the Navajo Tribe.

Joint Committee and code of ethics. CN-65-56, 1956 Res. p. 251, November 2, 1956, authorized participation of Navajo Tribe in a joint committee on oil, gas, and mining matters to include representatives of oil, gas, and mining operators, Bureau of Indian Affairs, and United States Geological Survey, and subscription Chairperson of Navajo Nation Council to a joint code of ethics.

#### **Cross References**

Oil and gas leases generally, see 18 N.N.C. § 1501 *et seq.*

#### **Annotations**

##### **1. Supervision of United States**

The United States was responsible for supervision of the affairs of the Navajo Nation, including, in particular, supervision of oil and gas leases on Tribal property. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl.1966).

##### **2. Duty of Department of the Interior**

Since the Department of the Interior had an obligation to safeguard the property of the Navajos when they were dealing with third parties, an even greater duty existed when the Department itself entered into transactions relating to oil and gas leases with the Navajos. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

##### **3. Construction and operation of leases**

Lease by Navajo Nation of all "oil and gas deposits" under described acreage included helium gas discovered on such leasehold. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

Where 1923 oil and gas lease by Navajo Nation did not expressly provide for nullification of the lessee's right to produce gas for nonpayment of shut-in rental, no such sanction should be placed on lessees. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

Where oil and gas lessees transferred to lessor Navajo Nation their rights in designated formations because United States compensated them for their interests and in order to make possible the receipt by government of new lease of such formations, the Navajo Nation was merely a necessary conduit in the transfer from lessees to the United States, and hence ownership of helium underlying leasehold was not acquired by the Navajo Nation under transfer agreements. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

##### **4. Right to recover damages against United States**

The Navajo Nation, as lessor of 1942 oil and gas lease, was entitled to recover damages from United States incurred as result of failure to inform the Navajo Nation, prior to assignment of such lease directly to the United States, that lessee desired to surrender lease. *Navajo Tribe of Indians v. United States*

364 F.2d 320 (Ct.Cl. 1966).

Where inability of Navajo Nation, as lessor of 1942 oil and gas lease, to prove what would have happened if the Navajo Nation had been consulted prior to assignment of lease directly to the government was attributable to failure of government to keep the Navajo Nation informed, doubts would be resolved in favor of Nation. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

Where Navajo Nation was entitled to recover damages against United States, it was also entitled to interest on amount recoverable. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

#### **§ 1452. Agreements for taking delivery of oil and gas in kind**

The Navajo Nation Council is authorized and empowered, with the approval of the Secretary of the Interior, when in its opinion the best interests of the Nation so require, to negotiate and conclude an agreement or agreements for taking delivery of oil or gas in kind, as leases from the Navajo Nation permit, and to dispose of the same on terms deemed by the Resources Committee to serve the best interests of the Nation.

##### **History**

CD-74-58, December 12, 1958.

Tribal Council Res. 1922-1951, Res. p. 318, November 24, 1936.

##### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B) (3).

#### **§ 1453. Communitization and other production agreements**

The President of the Navajo Nation, upon the approval of the Navajo Nation Council, by and with the approval of the Secretary of the Interior, may enter into communitization and other production agreements which are designed to provide for the economical and efficient development of oil and gas resources.

##### **History**

CJ-44-58, July 16, 1958.

##### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B) (3).

#### **§ 1454. Unitization agreements**

A. All proposed agreements for the unitization of oil and gas leases covering Navajo Nation lands shall be referred to the Navajo Nation Council for its consideration and approval.

B. Any unitization agreement for the development and operation of oil and gas leases on Navajo Nation lands which has been approved by the Resources Committee of the Navajo Nation Council shall be executed by the President or Vice-President of the Navajo Nation for and on behalf of the Navajo Nation and the Navajo Nation Council, and the President and Vice-President are authorized to execute such instruments after the agreements have been approved by the Resources Committee of the Navajo Nation Council.

#### **History**

CJ-8-52, January 21, 1952.

#### **Cross References**

Resources Committee powers, see 2 N.N.C. § 695(B)(3).

#### **Subchapter 5. Leases**

#### **Cross References**

Oil and gas prospecting permits, see 16 N.N.C. § 652.

#### **§ 1501. Advertisement of sale; authority of Secretary of Interior**

The Secretary of the Interior, or his or her duly authorized representative, is authorized to advertise the sale of leases for oil and gas mining purposes of Navajo Nation lands pursuant to applicable Department of Interior regulations, upon the request of, or with the consent and approval of, the Navajo Nation Council.

#### **History**

CJ-44-58, July 16, 1958.

#### **§ 1502. Consideration of bids**

The President of the Navajo Nation is authorized, upon receiving recommendation of the U.S. Bureau of Land Management through the Bureau of Indian Affairs, and the Navajo Nation Minerals Department, and within three weeks after the opening of any and all bids for oil and gas leases on Navajo Nation lands, to accept or reject bids on behalf of the Navajo Nation.

#### **History**

CJN-43-71, June 1, 1971.

**Note.** The U.S. Geological Survey is no longer involved in oil and gas operations in Indian lands. The U.S. Bureau of Land Management is the minerals lease management agency on Indian lands.

CJ-44-58, July 16, 1958.

CS-71-57, September 18, 1957.

Tribal Council, Res. 1922-1951, Res. p. 315, July 7, 1923, authorized and requested Secretary of the Interior to advertise certain tracts of land for oil and gas mining leases. This resolution was revoked by Tribal Council, October 31, 1933.

**§ 1503. Recommendations confidential**

Any and all recommendations conveyed to the President of the Navajo Nation by the Oil and Gas Consultant or Office of the Attorney General in respect to the acceptance and rejection of bids for oil and gas leases shall be maintained strictly as confidential documents, and shall be considered by the Navajo Nation Council in executive session only, excluding therefrom members of the public and government employees except as specifically otherwise ordered by the President of the Navajo Nation or the Navajo Nation Council.

**History**

CJN-43-71, June 1, 1971.

ACM-25-58, March 5, 1958.

**§ 1504. Rejection of bids; negotiation of lease**

The President of the Navajo Nation, by declining to accept bids on any tract offered, may withdraw the consent of the Navajo Nation to leasing the particular lands involved, or may, by and with the approval of the Secretary of the Interior negotiate lease on terms and conditions deemed by them to be in the best interests of the Navajo Nation.

**History**

CJN-43-71, June 1, 1971.

CJ-44-58, July 16, 1958.

**§ 1505. Making leases on acceptance of highest bids**

Leases for oil and gas mining purposes may be made pursuant to applicable Department of the Interior regulations on any tracts on which the Navajo Nation Council has accepted the highest bids, on behalf of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative.

**History**

CJ-44-58, July 16, 1958.

CJ-24-54, June 9, 1954.

Tribal Council, Res. 1922-1951, Res. pp. 315 and 317, July 7, 1923.

**§ 1506. Required provisions of lease**

Each lease of Navajo Nation land for oil and gas mining purposes shall contain provisions to the following effect:

A. Navajo grazing rights to the surface of any lands so leased shall be protected, and Navajo rights respecting the use of water shall be unimpaired.

B. Navajos shall be employed in such mining, drilling, exploration, and development operations to the fullest extent that their qualifications and the law permit, and every reasonable effort shall be made to train Navajos in the skills and abilities required in such operations to the end that they may become qualified for such employment.

#### **History**

CJ-44-58, July 16, 1958.

#### **§ 1507. Execution of lease**

Oil and gas mining leases may be executed on behalf of the Navajo Nation by the President or Vice-President.

#### **History**

CJ-44-58, July 16, 1958.

CJ-24-54, June 9, 1954.

Tribal Council, Res. 1922-1951, Res. p. 315, July 7, 1923.

#### **Cross References**

Contracts generally, see 2 N.N.C. § 222.

### **Subchapter 7. Losses and Damages Due to Oil and Gas Activities**

#### **History**

**Change of name.** The Navajo Office of Land Administration, referred to in this Subchapter, is the successor to the Land Investigations Department. Subsequently the Office of Land Administration has been replaced by the Navajo Land Department.

#### **§ 1551. Livestock**

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to restore in kind or at its determined value whatever livestock has been lost by Navajos due to operations by companies in oil and gas development activities upon receiving from the Division of Natural Resources a detailed written report of the incident, or upon satisfying himself or herself that such loss or damage in the amount claimed actually occurred.

#### **History**

CF-19-58, February 18, 1958.

**Revision note.** The Division of Natural Resources was substituted for the "Navajo Nation Oil and Gas Supervisor" pursuant to CD-68-89.

**§ 1552. Hogan or other structures**

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to restore in kind or at its determined value any hogan or other structure including fences damaged due to operations by companies in oil and gas development activities, upon receiving from the Division of Natural Resources a detailed written report of the incident, and upon satisfying himself or herself that such loss or damage in the amount claimed actually occurred.

**History**

CF-19-58, February 18, 1958.

**Revision note.** The Division of Natural Resources was substituted for the "Navajo Nation Oil and Gas Supervisor" pursuant to CD-68-89.

**§ 1553. Assignment of claims**

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to take an assignment of any and all claims sustained by Navajos as a result of oil and gas development, where the Navajo Nation has restored or paid the individual the determined value of the livestock or improvements of other losses or damages sustained by him or her, to the end that the Navajo Nation may make a demand for reimbursement from the offending company for the actual amount of the claim plus any expense that may be incurred in investigating and collecting the claim. The absence of necessary proof in determining what company is the offender shall not prevent of the Navajo Land Department from giving relief to Navajos sustaining the loss or damage as authorized in 18 N.N.C. §§ 1551 and 1552.

**History**

CF-19-58, February 18, 1958.

**§ 1554. Restoration of land and improvements by company**

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to require any company working in the development of oil and gas to fill in any hole or excavation, fence any dangerous area, or do whatever is necessary to restore within reason the land or improvements of the residents of the area and if the required work is not performed by the offending company after being given proper written notice, to perform the work at the expense of the Navajo Nation with notice to the offending company and the Bureau of Indian Affairs that this is being done on behalf and at the expense of such company.

### **History**

CF-19-58, February 18, 1958.

#### **§ 1555. Negotiated settlements with Navajos**

A. The Director of the Natural Resources Division and the Director of the Navajo Land Department of the Navajo Nation are authorized and directed to negotiate settlements with Navajos residing in the Greater Aneth area, who have been damaged by oil producing activities, provided the basis of settlement shall assume reduction of net annual income from land use of not more than six percent (6%) and that such damages will continue and span not more than 25 years.

B. The settlements so negotiated shall be first submitted to and approved by the Resources Committee of the Navajo Nation Council. Upon such approval the amounts agreed upon shall be paid to the person entitled thereto and his or her release of the Nation shall be taken.

### **History**

CS-51-61, September 1, 1961.

## **Chapter 15. Navajo Abandoned Mine Lands Reclamation Act**

### **Subchapter 1. Statement of Findings and Policy**

#### **§ 1601. Establishment**

The Navajo Nation, through the Navajo Nation Council, hereby enacts the Navajo Abandoned Mine Lands Reclamation Act, to provide for the regulation of surface mining operations, for the acquisition and reclamation of abandoned mines, and for other purposes.

### **History**

CAP-42-94, April 21, 1994.

CN-57-87, November 18, 1987.

**Note.** Changed title from "Navajo Abandoned Mine Lands Reclamation Code" to "Navajo Abandoned Mine Lands Reclamation Act."

**Note.** Slightly reworded for statutory form.

Recodified from 4 N.N.C. § 501.

#### **§ 1602. Findings**

The Navajo Nation Council finds and declares that:

A. Surface mining operations have resulted and may result in disturbances of surface areas that burden and adversely affect the Navajo Nation in both its

proprietary and sovereign capacities, and burden and adversely affect the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, cultural, and forestry purposes by causing erosion and landslides, by polluting the water, by destroying vegetation and wildlife habitats, by impairing natural beauty, by damaging the property of citizens and residents of the Navajo Nation, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources.

B. The Federal Office of Surface Mining Reclamation and Enforcement has encouraged, by the terms of its cooperative agreement with the Navajo Nation, the Navajo Nation to develop a Navajo Regulatory Program, including the development and passage of this Navajo Abandoned Mine Lands Reclamation Code. With the support, encouragement, and assistance of the Federal Office of Surface Mining Reclamation and Enforcement, the Navajo Nation has gained significant experience, knowledge, and technical capability for the reclamation of abandoned mine lands within the Navajo Nation.

C. There are a substantial number of acres of land throughout the Navajo Nation disturbed by surface and underground mining operations where little or no reclamation was conducted, and such lack of reclamation has imposed and may impose social (including health) and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality.

D. The health effects of uranium and other mines abandoned are of critical importance to the Navajo Nation, and studies conducted in the Shiprock area demonstrate the lingering effects of these mining activities in birth defects and cancer. Reclamation of these sites is desperately needed.

F. The Navajo Nation is committed to exercising its sovereignty over all lands within the Navajo Nation to the fullest extent. Such sovereign rights include the ability to permit, regulate, and enforce environmental and other standards for surface mining, and the Navajo Nation has developed significant expertise in this regard, as recently recognized by the Federal Office of Surface Mining Reclamation and Enforcement. The Navajo Nation is committed to the exercise of this authority. Therefore, it is in the best interest of the Navajo Nation to enact, at this time, a reclamation code concerning the abandoned mine lands.

### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Recodified from 18 N.N.C. § 1601.

### **Cross References**

Contracts generally, see 2 N.N.C. § 222.

### **§ 1603. Purposes**



Pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"),<sup>1</sup> it is the purpose of this Act to:

A. Provide for the reclamation of mined areas left without adequate reclamation prior to August 3, 1977 and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public; and

B. Provide for the use of Navajo abandoned mine land ("AML") money to reclaim mined areas in a manner consistent with the labor policies of the Navajo Nation and with the desire to encourage the formation and development of Navajo business enterprises.

### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Recodified from 18 N.N.C. § 1602.

**Note.** Slightly reworded for statutory form.

## **Subchapter 2. Abandoned Mine Lands Reclamation Department**

### **§ 1611. Establishment of Department; duties**

A. There is established in the Division of Natural Resources an Abandoned Mine Lands Reclamation Department (hereinafter referred to as the "Department").

B. The Department shall have a Director who shall report to the Executive Director of the Division of Natural Resources. The Director of the Department shall have the responsibilities provided under Subsection (C) of this Section. Employees of the Department shall be recruited consistent with Navajo labor laws, on the basis of their professional competence and capacity to administer the provisions of this Act. The Department may enlist the cooperation of the employees of federal agencies, where authorized by applicable federal law, and of other agencies of the Navajo Nation, where authorized by applicable tribal authority, to administer the provisions of this Act.

C. The Division of Natural Resources, acting through the AML Program, shall:

1. Publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act and as are approved by the Resources Committee of the Navajo Nation Council;
2. Develop and implement a program for reclamation of abandoned mine lands as provided in Title IV of this Act;
3. Consult and cooperate with federal agencies and other Navajo

Nation agencies to provide for the efficient and effective administration of this Act and to minimize unnecessary duplication of effort;

4. Collect data, conduct experiments, and do appropriate research regarding surface mining, and reclamation, and other appropriate areas of study;

5. Perform such other duties as may be provided by law and related to the purpose of this Act.

D. The Department shall be and is clothed with sovereign immunity from suit enjoyed by the Navajo Nation. In no event shall the Department be held liable for monetary damages, and no employee of the Department including the Director shall have the authority to waive, either explicitly or by implication, the immunity from unconsented-to suit recognized and established hereby. Nothing in this Act waives the sovereign immunity of the Navajo Nation with respect to actions seeking monetary relief of any kind.

### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

**Note.** Slightly reworded for statutory form.

### **Subchapter 3. [Reserved]**

### **Subchapter 4. Abandoned Mine Reclamation**

#### **§ 1631. Navajo Abandoned Mine Reclamation Fund and purposes**

A. There is created on the books of the Controller's Office of the Navajo Nation a trust fund to be known as the Navajo Abandoned Mine Reclamation Fund (hereinafter referred to as the "Fund") which shall be administered by the Director in accordance with Navajo law. For purposes of this Subchapter 4, the term "Director" shall mean the Director of the Navajo Abandoned Mine Lands Reclamation Department, a position established in § 1611 of this Act.

B. The fund shall consist of amounts deposited in the fund, from time to time, derived from:

1. Reclamation fees levied under § 402 of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), 30 U.S.C. § 1232, on Navajo Indian lands, and returned or transferred to the Navajo Nation pursuant to SMCRA<sup>1</sup> by the Secretary of the Interior;

2. Any user charge imposed by the Navajo Nation on or for land reclaimed pursuant to this Title, after expenditures for maintenance have been deducted;

3. Donations by persons, corporations, associations, and foundations for the purposes of this Title;

4. Recovered monies as provided for in this Title;
5. Interest credited to the fund under Subsection (e) of § 401 of SMCRA;<sup>2</sup> and
6. All other reclamation fees lawfully imposed by the Navajo Nation.

C. Monies in the fund may be used for the following purposes:

1. Reclamation and restoration of land and water resources adversely affected by past mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned processing areas, and abandoned refuse disposal areas; sealing and filling abandoned deep mine entries and voids, planting of land adversely affected by past surface mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by mine drainage including restoration of stream beds, and construction and operation of water treatment plant; prevent abatement, and control of burning coal refuse disposal areas and burning coal in situ; and prevention, abatement, and control of mine subsidence;
2. Acquisition and filling of voids and sealing of tunnels, shafts, and entryway under § 1639;
3. Acquisition of land as provided for in this Title and in the manner prescribed by Navajo law;
4. Monitoring, enforcement, and collection of fees provided for in this Title;
5. Studies by the Department to such extent or in such amounts as are provided in appropriation Acts with public and private organizations conducted in accordance with § 3501 of the Omnibus Budget Reconciliation Act of 1986,<sup>3</sup> conducted for the purposes of this Title;
6. Restoration, reclamation, abatement, control, or prevention of adverse effects of mining which constitutes an emergency as provided for in this Title;
7. Administrative expenses of the Navajo Nation to accomplish the purpose of this Title;
8. For use under § 1641; and
9. All other necessary expenses to accomplish the purpose of this Title.

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

### **§ 1632. Reclamation fees**

The Director shall do all things necessary and proper to facilitate the transfer to the fund of reclamation fees collected pursuant to § 402 of SMCRA <sup>1</sup> from operations on lands within the Navajo Nation by the Secretary of the Interior, and to ensure, after consultation with the Minerals Department of the Navajo Division of Natural Resources and any other appropriate agency or person, that the amounts tendered by the operators to the Secretary and by the Secretary to the Navajo Nation and to ensure, after consultation with the Minerals Department of the Navajo Division of Natural Resources and any other appropriate agency or person, that the amounts tendered by the operators to the Secretary and by the Secretary to the Navajo Nation are correct and proper.

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

**Note.** Slightly reworded for clarity.

### **§ 1633. Objectives of Fund**

A. Priorities. Expenditures of monies from the Fund of lands and water eligible pursuant to § 1634 except as provided for under § 1641 for the purposes of this Title shall reflect the following priorities in the order stated:

1. The protection of public, health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;
2. The protection of public health, safety, and general welfare from adverse effects of coal mining practices;
3. The restoration of land and water resources and the environment previously degraded by adverse effects of mining practices including measures of the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;
4. The protection, repair, replacement, construction, or enhancement of public facilities such as utilities roads, recreation, and conservation facilities adversely affected by mining practices;
5. The development of land owned in fee by the Navajo Nation or held in trust by the United States for the Navajo Nation adversely affected by mining practices including land acquired as provided in this Title for recreation and historic purposes, conservation, and reclamation purposes and open space benefits; and
6. Any other purpose consistent with SMCRA <sup>1</sup> and applicable Navajo law.

B. Inventory. For purposes of assisting in the planning and evaluation of reclamation projects pursuant to § 1635, and assisting in making the certification referred to in § 1641 (A), the Director shall maintain an inventory of eligible lands and waters pursuant to § 1634 which meet the priorities stated in Paragraphs (1) and (2) of Subsection (A).

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

#### **§ 1634. Eligible lands and water**

A. Lands and water eligible for reclamation or drainage abatement expenditures under this Title are those which were mined for coal and other minerals or which were affected by such mining, waste banks, coal processing, or other coal mining processes, except as provided for under § 1641 and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under applicable law. For other provisions relating to lands and waters eligible for such expenditures, see § 1639.

B. Lands and waters also eligible for reclamation on the Navajo Nation are those which were damaged and abandoned after August 3, 1977 by coal mining processes if the Director finds in writing that:

1. They were mined for coal or affected by coal mining processes; and

2. The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and September 28, 1984 and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

3. The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and ending on November 5, 1990, and that the surety of the mining operator became insolvent during such period and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

4. The site qualifies as a priority one or two site pursuant to § 1633(a)(1) and (2) of SMCRA. Priority will be given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

C. For other provisions relating to lands and waters eligible for such expenditures, see § 1639.

#### **History**

CJY-63-95, July, 21, 1995.

CD-113-94, December 14, 1994.

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

#### **§ 1635. Navajo Nation Reclamation Program**

A. The Director shall be responsible for the preparation and submission of the Navajo Abandoned Mine Reclamation Program and annual projects to carry out the purposes of this Title pursuant to this Act, SMCRA,<sup>1</sup> and any cooperative agreements which maybe entered into for this purpose by the Navajo Nation and the Federal Office of Surface Mining Reclamation and Enforcement.

B. The Director shall be responsible for ensuring that the Navajo Abandoned Mine Reclamation Program is in compliance with the Navajo Nation laws, this Act, SMCRA,<sup>1</sup> and any cooperative agreements under Subsection (A).

C. The Navajo Abandoned Mine Reclamation Plan shall identify the areas to be reclaimed, the purpose for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this title. For any submissions requiring the approval of the Secretary of the Interior, this Act shall constitute the legal authority for the performing of the tasks contemplated by § 405(e) of SMCRA.<sup>2</sup>

D. On an annual basis, the Director shall notify the Secretary of the United States Department of the Interior of specific reclamation projects to be undertaken and may submit to the Secretary an application for the support of the Navajo Nation Reclamation Program and implementation of specific reclamation projects, should such application be required for the Secretary to transfer reclamation funds collected pursuant to § 402(a) of SMCRA<sup>3</sup> from operators of coal mining operations on lands within the Navajo Nation subject to SMCRA.<sup>1</sup> Such annual notification and/or applications shall include such information as may be requested by the Secretary.

E. The Director shall include as costs for each proposed project under this Section actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

F. The Director shall report from time to time on the status of the Navajo Reclamation Fund; the use of monies in the fund; the projects completed, in progress, or planned; and the need for construction of specific public facilities in communities impacted by coal development.

G. The Director shall also be responsible for submitting such annual and other reports as may be required by the Secretary of the Interior pursuant to § 405(j) of SMCRA.<sup>4</sup>

## History

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

### § 1636. [Reserved]

### § 1637. Acquisition and reclamation of lands within the Navajo Nation adversely affected by past coal mining practices

A. If the Director makes a finding of fact that:

1. Land or water resources have been adversely affected by past mining practices; and

2. The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

3. The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices are not known, or readily available; or

4. The owners will not give permission for the Navajo Nation, its political subdivisions, agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices; then, upon giving notice by certified mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the Navajo Nation in which the land lies, the Director shall have the right to enter upon the property adversely affected by past mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The monies expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim, in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry, provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

B. The Director, his or her agents, employees, or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

C. The Director may recommend the acquisition of land to the Navajo Land Department, which, upon the approval of the appropriate Committee(s) of the Navajo Nation Council, shall acquire any land, by purchase, donation, or condemnation, which is adversely affected by past mining practices where the Director determines that acquisition of such land is necessary to successful reclamation and that:

1. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and

2. Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices; or

3. Acquisition of refuse disposal sites and all coal refuse thereon will serve the purpose of this title or that public ownership is desirable to meet emergency situations and prevent recurrence of the adverse effects of past mining practices. For the purpose of this Subsection (C), the phrase "acquisition of land" includes acquisition of grazing rights on lands held in trust by the United States for the Navajo Nation.

D. Title to all acquired lands pursuant to this Section shall be in the name of the United States in trust for Navajo Nation or in the name of the Navajo Nation, should the United States fail or refuse to accept title to such land in trust for the Navajo Nation. The price paid for land acquired under this Section shall reflect the fair market value of the land as adversely affected by past mining practices, as established by a competent appraisal.

E. The director shall from time to time recommend to the Navajo Land Department that specific lands be acquired for public purposes by the Navajo Nation pursuant to this title and/or pursuant to § 407 of SMCRA.<sup>1</sup> The director shall, in making such recommendations, identify valid public purposes to be served by the acquisition of such lands, and do all things necessary and proper to secure grants from the Secretary of the Interior pursuant to § 405(h) of SMCRA.<sup>2</sup>

F. The director shall, from time to time, recommend to the Navajo Land Department that specific lands acquired pursuant to § 407(c) of SMCRA<sup>3</sup> be used for industrial, commercial, residential, or recreational development by the Navajo Nation. The director shall, in making such recommendations, identify the type of development or use of such lands and shall ensure that such development is consistent with the land use plans, if any, of the appropriate chapter and of the Navajo Nation.

G. Should the Director's recommendation under Subsections (C) or (F) be accepted or conditionally accepted by the Navajo Land Department and the appropriate Committee (s) of the Navajo Nation Council, or should other lands be acquired by the director under this Section and/or under § 407 of SMCRA,<sup>1</sup> the Director shall notify the public thereof and, after such appropriate public



notice, in the appropriate chapter in which lands acquired pursuant to this Section are located. The hearings shall be held at a time which shall afford local citizens and chapters the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

H. In addition to the authority to acquire land under Subsection (D) of this Section, the director is authorized to use money in the fund to acquire land by purchase, donation, or condemnation, and to reclaim and transfer, with the approval of the appropriate oversight committee of the Navajo Nation Council and in accordance with Navajo law, acquire land to any chapter, or to any person, firm, association, or corporation, if he or she determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as a result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this Section, or persons dislocated as the result of adverse effects of mining practices which constitute an emergency as provided in § 1640 or persons dislocated as the result of natural disasters or catastrophic failure from any cause. Such activities shall be accomplished under such terms and conditions as the director shall require, which may include transfers of land with or without monetary consideration; provided, that to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under this title maybe used to pay the actual construction costs of housing. The director may carry out the purposes of this Subsection directly or he or she may make grants and commitments for grants, and may advance money under such terms and conditions as he or she may require to any chapter, or any department, agency, or instrumentality of the Navajo Nation, or any public body or non-profit organization designated by the Navajo Nation Council.

### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

### **§ 1638. Liens**

A. Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past mining practices on privately owned land, the director, pursuant to the Navajo Abandoned Mine Reclamation Program, shall itemize the monies so expended and may file a statement thereof in the office of the Clerk of the District Court of the Navajo Nation within whose jurisdiction the land lies, in a book separately maintained by such Clerk for the recording of judgments against land. The director may also file such statements in the office of the county in which the land lies which office records judgments against land. Such statement shall be accompanied by a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past mining practices if the monies so expended shall result in a significant increase in property value. Such

statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. No lien shall be filed against the property prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

B. The landowner may proceed as provided by Navajo law to petition on the appropriate District Court of the Navajo Nation within 60 days of the filing of the lien, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by Navajo law.

C. The lien provided in this Section shall be entered in the office of the Clerk of the District Court of the Navajo Nation within whose jurisdiction the land lies, in a book separately maintained by such Clerk for the recording of judgments against land. The lien may also be entered in the office of the county in which the land lies which office records judgments against land. Such statements shall constitute a lien upon the said land as of the date of the expenditure of the monies and shall have priority as a lien second only to the lien of real estate taxes lawfully imposed upon said land by the Navajo Nation.

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

#### **§ 1639. Filling voids and sealing tunnels**

A. The Navajo Nation Council declares that voids, and open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operation may degrade the environment. The Director, where requested by a duly promulgated resolution of the chapter with jurisdiction over the lands which include such voids and tunnels, is authorized pursuant to this Act and/or pursuant to § 409 of SMCRA <sup>1</sup> to fill such voids; seal such abandoned tunnels, shafts, and entryways or take other appropriate remedial action; and reclaim surface impacts of underground or surface mines which the Director determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment.

B. Pursuant to Navajo Nation laws, the Director is authorized to request funds from the Secretary of the Interior pursuant to § 409(c) of SMCRA <sup>2</sup> to carry out non-coal reclamation projects if such projects relate to the protection of the public health or safety.

C. In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the waste from

such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meets the purpose of this Section.

D. The Director and the Resources Committee, and in compliance with Navajo law, may with monies from the fund acquire by purchase or easement, or by donation or by other such interest in land as he or she determines necessary to carry out the provisions of this Section.

### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

### **§ 1640. [Reserved]**

### **§ 1641. Certification**

A. Certification of completion of coal reclamation. Pursuant to Navajo Nation laws, the Director may certify to the Secretary that all of the priorities stated in § 1633(A) for eligible lands and waters pursuant to § 404 of SMCRA<sup>1</sup> have been achieved.

B. Eligible lands, water, and facilities. If the Secretary has concurred in the Navajo Nation certification under Subsection (A), for purposes of determining the eligibility of lands and waters for annual grants under § 402(g)(1) of SMCRA,<sup>2</sup> § 1634 shall not apply, and eligible land, waters, and facilities shall be those:

1. Which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

2. For which there is no continuing reclamation responsibility under state, Navajo Nation, or other federal laws.

C. Priorities. expenditures of monies for lands, waters, facilities referred to in Subsection (B) shall reflect the objectives stated in § 1633 wherein the term "coal" shall be replaced with "mineral" pursuant to Subsection (B).

D. Specific sites and areas not eligible. Sites and areas designated for remedial action pursuant to the Uranium Mill Tailing Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this Section.

E. Utilities and other facilities. Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by

coal and other mineral mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in Subsection (C).

F. Notwithstanding Subsection (E), where the Secretary has concurred in the certification referenced in Subsection (A) and where the Director determines there is a need for activities or construction of specific public facilities related to the coal or mineral industry where impacted by coal or minerals development and the Secretary concurs in such need, then pursuant to Navajo Nation laws, may use annual grants made available under § 402(g)(1) of SMCRA<sup>2</sup> to carry out such activities or construction.

G. Application of other provisions. The provisions of §§ 407<sup>3</sup> and 408<sup>4</sup> shall apply to Subsections (A)-(E) of this Section, except that for the purposes of this Section the references to coal in §§ 1637 and 1638 shall not apply.

#### **History**

CAP-42-94, April 26, 1994.

#### **§ 1642. Fund report**

Not later than January 1, 1989, and annually thereafter, the Director shall report to the Resources Committee on operations under the fund together with his or her recommendations as to future uses of the fund.

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

#### **§ 1643. Miscellaneous powers**

A. The Director shall have the power and authority to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this Title, consistent with Navajo law.

B. The Director, with the approval of the Intergovernmental Relations Committee, upon the advice of the Resources Committee, of the Navajo Nation Council shall have the power and authority to engage in cooperative projects under this Title with any agency of the United States of America or any state.

C. The Director may request of the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this Title, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this Title.

D. The Director shall have the power and authority, consistent with Navajo law, to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this

control and treatment may be dependent upon the ultimate use of the water, provided that the above provisions of this Subsection shall not be deemed in any way to repeal or supersede any portion of the Navajo Water Code enacted on August 2, 1984, and the Federal Water Pollution Control Act (33 U.S.C. § 1151, *et seq.*, as amended), and no control or treatment under this Subsection shall in any way be less than that required under applicable law. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

E. The Director, upon the approval of the appropriate oversight committee of the Navajo Nation Council, may transfer funds to other appropriate Navajo Nation agencies in order to carry out the reclamation activities authorized by this Title.

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

#### **§ 1644. Interagency cooperation**

All departments, boards, commissions, and agencies of the Navajo Nation shall cooperate to the fullest extent with the director to implement and administer the provisions of this Title where such cooperation does not conflict with existing Navajo Nation and/or applicable federal laws.

#### **History**

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

**Subchapter 5. [Reserved]**

**Subchapter 6. [Reserved]**

**Subchapter 7. [Reserved]**

**Subchapter 8. [Reserved]**

### **Title 19**

#### **Parks and Monuments**

##### **Chapter 1. Generally**

#### **§ 1. Areas of scenic beauty and scientific interest; reservation**

All areas of scenic beauty and scientific interest which require preservation shall be reserved as Navajo parks, monuments, or ruins, to be managed by the Navajo Nation with the cooperation of other agencies.

### **History**

Tribal Council Res. 1922-1951 Res. p. 156, July 12, 1934.

**Revision note.** Slightly reworded for purposes of clarity.

**Relinquishment of rights by National Park Service.** Tribal Council Res. 1922-1951 Res. p. 156, provided that the Council petition the Secretary of the Interior and the Commissioner of Indian Affairs to take immediate steps to have the National Park Service relinquish any rights that they may have acquired to Navajo areas.

**Canyon de Chelly National Monument.** Tribal Council Res. 1922-1951 Res. p. 40, July 8, 1930, approved a bill authorizing the President of the United States to establish the Canyon de Chelly National Park Monument within the Navajo Indian Reservation.

ACO-82-51, 1922-1951 Res. p. 41, October 2, 1951, raised objections to the granting of concessions within the area by the National Park Service and suggested that an understanding should be worked out relative to the use and control of the Tribal lands within the area.

### **§ 2. Authority to establish parks, monuments and recreation areas**

The Resources Committee is authorized to set aside and withdraw areas of Navajo land for use as parks, monuments and recreation sites, upon recommendation of the Parks Commission and the Parks and Recreation Department, after proper clearance from the Navajo Land Department and the local chapter area.

### **History**

**Marble Canyon Navajo Tribal Park.** ACAU-149-66, August 1, 1966, established the "Grand Canyon Navajo Tribal Park" and authorized the Parks Commission to make rules and regulations for the park. ACAP-189-73, April 17, 1973, changed the name of the park to the "Marble Canyon Navajo Tribal Park." See Chapter 7 of this title.

CAU-48-64, August 28, 1964.

**Revision note.** Slightly reworded for purposes of clarity.

**Kinlichee Tribal Park.** ACMY-57-64, May 4, 1964, established the Kinlichee Tribal Park.

**Tse Bonito Tribal Park.** ACJ-143-63, October 1, 1963, established the Tse Bonito Tribal Park.

**Window Rock Tribal Park.** ACO-144-63, October 1, 1963, established the Window Rock Tribal Park.

**Little Colorado River Navajo Tribal Park.** ACMA-36-62, March 27, 1962, established the Little Colorado River Navajo Tribal Park and authorized the Parks Commission to make rules and regulations for such Park.

**Lake Powell Navajo Tribal Park.** ACMA-35-62, March 27, 1962, established the Lake Powell Navajo Tribal Park and authorized the Parks Commission to make rules and regulations for such Park.

**Tsegi Canyon.** ACD-238-60, December 15, 1960, authorized the setting aside for future development as a Tribal park the entire Tsegi Canyon located in Navajo County, approximately 11 miles south of Kayenta, Arizona, and in addition, an area on each side of the rim of Tsegi Canyon, one-quarter mile in width. ACD-238-60, further provided that the area thus set aside was to include all of the area in Tsegi Canyon not previously set aside for Navajo National Monument being approximately 15 miles in length.

**Monument Valley Tribal Park.** ACJ-80-58, July 11, 1958, authorized the establishment of the Monument Valley Tribal Park, to be administered by the Parks Commission.

#### **Cross References**

CN-72-92, November 4, 1992, wherein the Resources Committee of the Navajo Nation Council is established as an entity whose purpose is to ensure utilization of all resources of the Navajo Nation. The word "resources" is defined to include "parks."

Purposes and powers of the Resources Committee of the Navajo Nation Council, see 2 N.N.C. § 691 *et seq.*

#### **§ 3. Regulations**

The Resources Committee of the Navajo Nation Council has the authority to adopt rules and regulations for the operation of parks and recreation areas upon the recommendation of the Parks and Recreation Department and the Navajo Nation Parks Commission.

#### **History**

CAU-48-64, August 28, 1964.

#### **Cross References**

See 2 N.N.C. § 695(A), wherein the Resources Committee of the Navajo Nation Council has the authority "to promulgate rules and regulations to carry out its powers." See also, 2 N.N.C. § 692(A) which defines the word "resources" to include "parks."

#### **§ 4. Park Rangers; commissions**

A. Each Navajo Nation Park Ranger shall be commissioned by the President of the Navajo Nation to enforce the regulations or statutes established by the Parks Commissions, the Resources Committee, or the Navajo Nation Council for the purpose of controlling activities and protecting Navajo Nation property within the Navajo Nation parks and recreation areas.

B. Each Navajo Nation Park Ranger is further authorized to enforce the

provisions of the Antiquities Preservation Law, the Hunting and Fishing Laws of the Navajo Nation, and when acting in conjunction with the Navajo Nation Department of Law Enforcement, the law and order provisions of the Navajo Nation Code.

#### **History**

CN-66-76, November 9, 1976.

CAU-48-64, August 28, 1964.

**Revision note.** Slightly reworded for purposes of clarity.

### **Chapter 2. [Reserved]**

### **Chapter 3. Parks Commission**

#### **§ 201. Composition; appointment**

A. The Navajo Nation Parks Commission shall consist of five members, each member to be appointed to a term of four years, provided that the first appointments shall be made for one member for four years; one member for three years; one member for two years; and two members for one year; and thereafter each appointment shall be for four years.

B. The members of the Commission shall be appointed by the President of the Navajo Nation subject to the approval of the Government Services Committee of the Navajo Nation Council.

#### **History**

CAU-48-64, August 28, 1964.

**Preamble.** For preamble to CAU-48-64, see § 2 of this title.

#### **§ 202. Chairperson; selection**

The members of the Parks Commission shall select, each year, a chairperson of the Commission.

#### **History**

CAU-48-64, August 28, 1964.

#### **§ 203. Removal of members**

Each member of the Parks Commission may be removed upon a majority vote of the Government Services Committee of the Navajo Nation Council.

#### **History**

CAU-48-64, August 28, 1964.



## **§ 204. Policy guidance**

It is the intention of the Navajo Nation Council that the Parks Commission should provide guidance on policy matters affecting the Parks and Recreation Department. The Commission shall also advise the Navajo Nation Council and Resources Committee of problems affecting the Parks and Recreation Department and make recommendations to all concerned with the recreational program of the Navajo Nation of any necessary improvements or changes.

### **History**

CAU-48-64, August 28, 1964.

**Revision note.** Slightly reworded for purposes of clarity.

### **Cross References**

Purposes and powers of the Resources Committee of the Navajo Nation Council, see 2 N.N.C. § 691 *et seq.*

## **Chapter 4. [Repealed]**

### **History**

CAP-41-94, April 20, 1994.

## **Chapter 5. Camping**

### **§ 401. Definitions**

In this Chapter:

A. "Camping" shall be deemed to include any activity involving the use of Navajo land for purposes of establishing temporary living quarters for accommodations through the use of any motor vehicle, tent, trailer, other vehicle or shelter device, or for the purpose of overnight stay.

B. A "recreational area" shall include all areas designated as camping or recreational areas by the Resources Committee of the Navajo Nation Council and shall also include Navajo Nation parks. No areas or parks, other than those designated in Appendices (A) and (B) of this Chapter, have been designated as recreation areas. Recreation areas are classified as Class (a) areas, Class (b) areas, and Class (c) areas, as set forth in 19 N.N.C. § 405, and daily fees are charged for Class (a) and (b) areas.

C. A "regular camping permit" is a permit duly issued by the Director, or his or her authorized representative, in the form of a window sticker or such other form as may be prescribed by the Director and is required before any recreational area may be used for camping purposes. Daily fees for designated areas are in addition to fees for the camping permit.

D. A "special camping permit" is a permit duly issued by the Director, or his or her authorized representative, in the form of a window sticker or such

other form as may be prescribed by the said Director, authorizing the use of Navajo lands other than recreational areas for camping purposes.

E. The word "person" shall include any non-Navajo person except those persons authorized or required to conduct camping activities on Navajo lands by reason of their official capacity with the Navajo Nation or the federal government, and shall include all groups of persons traveling in the same private non-commercial vehicle or any group of persons not exceeding eight who are in close association with each other and not traveling by private non-commercial vehicle.

F. The term "Navajo lands" shall mean all lands subject to the jurisdiction of the Navajo Nation, and includes all areas commonly described as Land Management Districts 15, 16, and 19 and the Cutter Dam area.

G. The word "Director" shall mean the Director of the Parks and Recreation Department of the Navajo Nation.

H. "Private non-commercial vehicle" shall include any passenger car, station wagon, pickup, camper truck, motorcycle, or other motor vehicle which is conventionally used for private recreation purposes by a family.

#### **History**

CAU-45-73, August 29, 1973.

#### **§ 402. Restriction of camping to recreational areas**

A. Unless a "special camping permit" is obtained, no camping activities shall be allowed by any person on Navajo lands except within the recreational areas designated in Appendices (A) and (B) of this Chapter, and no person shall engage in camping activities within said recreational areas unless he or she has in his or her possession or affixed to the windshield of his or her private non-commercial vehicle, a valid camping permit.

B. No camping shall be allowed in Class (a) and (b) recreation areas, as set out in 19 N.N.C. § 405, unless daily fees provided herein are paid to an authorized enforcement officer.

#### **History**

CAU-45-73, August 29, 1973.

#### **§ 403. Special permission to conduct camping activities outside recreational areas**

A. No camping activities shall be allowed by any person on Navajo lands situated outside designated recreational areas unless such person shall have in his or her possession or affixed to the windshield of his or her vehicle, a valid "special camping permit." Application for "special camping permits" shall be made to the Department Director, or his or her authorized representative, and such permits may be issued upon such terms and conditions as said Department Director may prescribe.

B. All persons purchasing a Navajo hunting permit must also purchase a special camping permit before hunting on lands subject to the jurisdiction of the Navajo Nation.

C. Camping activities conducted on a commercial basis, or in relation to commercial tourist services, are prohibited on Navajo Nation lands unless the person, firm, association, or corporation conducting such activities shall first obtain a special camping permit. Only special camping permits shall be deemed valid authorization for conducting such camping activities. All camping regulations shall apply equally to such camping activities in the same manner as they apply to private, non-commercial camping.

#### **History**

CAU-45-73, August 29, 1973.

#### **§ 404. Permits**

A. The "regular camping permit" shall admit the purchaser, members of his or her immediate family, and all other persons accompanying the purchaser or members of his or her immediate family in one private non-commercial vehicle to recreational areas designated in Appendices (A) and (B) of this Chapter. The "special camping permit" shall admit persons named thereon, to lands described thereon, as limited by any terms imposed by the Director.

B. Every camping permit shall be validated by signature of its owner on the face of the permit at the time of its receipt. All permits shall be non-transferable.

C. All "regular" and "special camping permits" may be sold by the Director, and by any of his or her authorized representatives at such place or places as may be designated by said Director. Appendix (C) of this Chapter contains a list of individuals and organizations presently authorized to sell such permits and designates the places where such permits may be sold.

D. The Parks and Recreation Department of the Navajo Nation shall be responsible for printing and distribution of all camping permits, and shall collect and account for the same, and for all fees derived from the sale thereof.

#### **History**

CAU-45-73, August 29, 1973.

#### **§ 405. Daily fees**

A. Certain areas designated as camping or recreation areas are subject to exceptionally heavy use, and have facilities constructed and maintained by the Navajo Nation for use by campers. These areas are designated Class (a) and Class (b) areas, as set out in this Section, and daily fees will be charged in these areas. Use of the area for picnics will also be subject to the daily fees prescribed. These fees are intended to defray the cost of daily maintenance and to promote availability of the areas for use by all who wish to make use thereof. Class (a) areas are those areas designated as such in

Appendices (A) and (B) of this Chapter, and generally have facilities equivalent to franchised campgrounds. Class (b) areas are those designated as such in Appendices (A) and (B) of this Chapter and generally include such facilities as tables, campfire grills, and waste disposal cans. Class (c) areas are those designated as such in Appendices (A) and (B) of this Chapter, and include recreation areas with no facilities.

B. No person shall be permitted to occupy Class (a) or Class (b) areas without payment upon request to an authorized enforcement officer of the Navajo Nation of the appropriate fee approved by the Resources Committee of the Navajo Nation Council.

C. Area designations shall be determined by the Director, Parks and Recreation Department, and shall be subject to change.

D. Fees shall be paid to an authorized enforcement officer, who shall collect such fees at the camping area on a daily basis.

#### **History**

CN-72-92, November 4, 1992

CAU-45-73, August 29, 1973.

#### **§ 406. Enforcement**

A. Any person conducting camping activities on Navajo lands in violation of this Chapter shall be advised of the necessity of purchase of a permit, and shall forthwith purchase any necessary permit, and pay any applicable daily fees, or immediately cease any and all activities constituting a violation of this Chapter.

B. This Chapter shall be enforced by the Navajo Rangers or Park Rangers and by any other duly authorized persons.

#### **History**

CAU-45-73, August 29, 1973.

#### **§ 407. Overriding orders**

Any "regular permit" or "special camping permit" issued by or under authority of the Director shall not entitle any person to engage in any camping activities prohibited by order of the President or Vice-President of the Navajo Nation or of any other Navajo Nation official acting under proper authority. Such orders are occasionally issued by the President of the Navajo Nation or other appropriate official for the protection of Navajo Nation forests from fire or other hazards.

#### **History**

CAU-45-73, August 29, 1973.

#### **§ 408. Activities prohibited**

All persons engaged in camping activities shall comply with all applicable Navajo Nation and federal laws and regulations. Any person in violation of any such laws or regulations shall be deemed to have forfeited his or her camping privileges and his or her camping permit shall be null and void, and must be surrendered to any person authorized to enforce these regulations upon demand.

#### **History**

CAU-45-73, August 29, 1973.

#### **§ 409. Revenues**

Revenues generated from the imposition of camping fees shall be used to maintain and improve existing camping facilities and to provide new facilities where possible.

#### **History**

CAU-45-73, August 29, 1973.

#### **Appendix A. Designated Camping Areas**

##### *Appendix A*

##### *Designated Camping Areas*

<i>Name</i>	<i>Location</i>	<i>Route</i>	<i>State</i>
1. Summit Campground	8 mi. W. Window Rock	264	AZ
	Both Sides of Highway		
2. Kinlichee Park	2 1/2 mi. N. Cross Canyon Trading Post	264	AZ
3. Monument Valley	1/2 mi. N. Visitors Centers	Valley Road	AZ
4. Bowman Park	10.2 mi. S. Hunters Point Trading Point	12	AZ
5. Ganado Lake	2.6 mi. N. Round Top Trading Post	27	AZ
6. Pasture Canyon Reservoir	2.3 mi. N. Tuba City 1/2 mi. off HWY 160 on N. Side	Country	AZ
7. Captain Tom Reservoir	4.6 mi. N. Newcomb- 2 mi. off HWY	491	NM

8.Asaayi Lake	11 mi. E. Navajo, NM	Mexican Spring Road	NM
9.Red Lake	.6 mi. N. Navajo, NM, by HWY West Side	12	NM
10.Wheatfields Lake	22.4 mi. N. Navajo, NM, Both Sides HWY	12	AZ
11.Tsaile Lake- South Shore	53 mi. N. Window Rock- W. Side Of HWY 12	12	AZ
Tsaile Lake- North Shore	55 mi. N. Window Rock- W. Side of HWY 12	12	AZ
12.Round Rock Lake	4 mi. SW Jct. 12 & 64	12	AZ
13.Many Farms Lake	1.2 mi. E. Many Farms Trading Post	Country	AZ
14.Antelope Lake	16 mi. S. Summit Campground	Country	AZ
15.Chuska Lake	1.3 mi. E. Tohatchi and Boarding School Jct.	Country	NM

#### **Appendix B. Navajo Nation Parks**

##### *Appendix B*

##### *Navajo Nation Parks*

<i>Name</i>	<i>Res. No.</i>	<i>Acres</i>	<i>Use</i>
1.Monument Valley Tribal Park	ACJ-80-58	85.14	Camping
2.Tsegi Canyon	ACD-238-60	Included in Lake Powell Tribal Park	Camping
3.Lake Powell	ACMA-35-62	2,218,112.80	Camping
4.Little Colorado River	ACMA-36-62	360,992.23	Camping
5.Tse Bonito Tribal Park	ACO-143-63	36.14	Camping
6.Window Rock			

Tribal Park	ACO-144-63	85.14	No Camping
7.Kinlichee Tribal Park	ACMY-57-64	640.00	Camping
8.Bowl Canyon Recreation Area (Asaayi)	ACJN-89-65	645,579.00	Camping
9.Grand Canyon	ACAU-149-66	303,667.20	Camping

**Appendix C. Laws and Regulations Applicable to Camping Activities**

*Appendix C*

*Laws and Regulations Applicable to Camping Activities*

A. Federal Criminal Offenses

1. Hunting within the Navajo Nation without a camping permit. 18 U.S.C. § 1165
2. Leaving a fire unattended or unextinguished. 18 U.S.C. § 1856
3. Cutting or injuring a tree. 18 U.S.C. § 1853
4. Wilfully and without authority setting fire to timber, underbrush, grass or other inflammable material. 18 U.S.C. § 1855
5. Introducing, selling, or dispensing liquors, wine, or beer including forfeiture of vehicle used for introduction. 18 U.S.C. §§ 1154, 1156, 3113, 3488 and 3618
6. Taking fish, or game animals, or pelts, contrary to the terms of the Navajo Nation law. 18 U.S.C. § 1165
7. Disturbing or taking any object of prehistoric origin; Antiquities Act. 16 U.S.C. § 432

B. Violations of Navajo Nation Law

1. Unlawful disposal of refuse.
2. Violation of traffic regulations, breach of the peace, public drunkenness, unauthorized activity causing damage to Navajo Nation property, or commission of a crime as defined by state or federal law.
3. Remaining in areas posted for fire danger.
4. Lighting campfires or smoking in posted fire danger areas.
5. Violating Navajo Nation fishing regulations

### C. Violations of Permit Regulations

Commission of any of the following acts shall be deemed grounds for revocation by an authorized enforcement officer of any camping permit, or daily fee permit, as provided in these regulations:

1. Failure to remove or properly dispose of all garbage, waste materials, and rubbish.
2. Dumping or draining refuse or waste from a trailer or other vehicle.
3. Pollution contamination of waters, including cleaning fish in lake waters.
4. Indulging in boisterous, abusive, threatening or indecent conduct.
5. Destroying or removing any plants.
6. Posting handbills, notices, circulars or advertising devices.
7. Discharging firearms, firecrackers, rockets, or any type of fireworks.
8. Operating or using any noise-producing device at such times as to disturb other persons.
9. Building a fire outside of a stove, grill, fireplace, fire-ring, or similar control device, when in a Class (a) or (b) camping area.
10. Failure to clean camping debris and rubbish and to remove all camping equipment when leaving a site.
11. Pitching tents, parking trailers, or locating other camping equipment except in places in Class (a) and (b) areas provided for such uses.
12. Leaving campsite and camping equipment unattended for 12 hours without written permission of the enforcement officer.
13. Not maintaining dogs or other animals under physical restrictive control at all times.
14. When camping under a special permit, failure to break camp and leave at the request of individual Navajo land users whose lands are being occupied.
15. Tearing down or willfully defacing a notice posted by any Navajo Nation department or by the Bureau of Indian Affairs.
16. Destroying, injuring, or disturbing property of the Navajo Nation used in administration of camping areas, and used as a facility of any sort for camping areas.
17. Leaving any building provided for public use at a recreational facility without placing it in as sanitary condition as when entered.



18. Operating a motor vehicle in any recreation area in a manner that creates an impediment or hazard to the safety, comfort, or convenience of others, and operating any two wheeled motorized vehicle in any recreation area on lands not openly and apparently used as roads, or parking sites for vehicles.

## **Chapter 6. [Reserved]**

## **Chapter 7. Operation of Marble Canyon Navajo Nation Park**

### **§ 601. Park name; establishment of regulations**

The name of the Grand Canyon Navajo Tribal Park is changed to the Marble Canyon Navajo Nation Park, and this Chapter is established for the operation of Marble Canyon Navajo Nation Park. The Parks and Recreation is authorized to make such further rules and regulations, with the approval of the Resources Committee of the Navajo Nation Council, as will further the purposes of this Chapter for the operation of Marble Canyon Navajo Nation Park.

#### **History**

CN-72-92, November 4, 1992.

ACAP-189-73, April 17, 1973.

### **§ 602. Basic policy considerations**

A. Marble Canyon Navajo Nation Park is established to preserve an area of great scenic beauty and one of cultural and social significance to the Navajo People. This basic consideration dictates that all present and traditional Navajo religious, cultural, economic and social uses of the area shall continue without interference or regulation, and this Chapter is applicable only insofar as it does not interfere with these traditional uses of the area by the Navajo people.

B. All visitors to the park shall respect the privacy and property of Navajo residents within the park boundaries

#### **History**

ACAP-189-73, April 17, 1973.

### **§ 603. Commercial development and activities**

A. Commercial development and activities except as herein designated in this Chapter, shall be strictly prohibited within the park boundaries.

B. Food and drink or other types of concessions within the park boundaries shall be permitted only after proper investigation by the Parks and Recreation Department and after obtaining other necessary permits or leases. Such concessions will be approved only if they do not interfere with, or distract from, the natural beauty of the area.

### **History**

ACAP-189-73, April 17, 1973.

#### **§ 604. Vehicular traffic**

Vehicular traffic will be allowed only on properly designated roads or highways established within the park, except that official or emergency vehicles shall be allowed to operate anywhere within the park to the extent such operations are necessary to the administration and regulation of the park, or for the safety of persons within the park.

### **History**

ACAP-189-73, April 17, 1973.

#### **§ 605. Camping**

A. Camping and the use of trailers or other camper units will be permitted only at designated locations. The Director of the Parks and Recreation Department, however, may issue special permits to persons desiring to camp in the backcountry or other isolated areas within the park, or the Director may designate portions of the park where such permits will not be required. These locations will be indicated on a map available for public inspection in the park offices.

B. The Director of the Parks and Recreation Department may establish limitations on the length of time persons may camp within the park (either in a single period or in combined separate periods). Such limitations shall be posted at campgrounds, ranger stations or other appropriate locations.

C. Installation of permanent camping facilities by park visitors is prohibited.

D. Digging or leveling of the ground at any campsite is prohibited except by permission of the Director of the Parks and Recreation Department.

E. Camping equipment must be completely removed and the campsite utilized must be cleaned before departure.

F. Camping within 25 feet of any water hydrant, main highway, or well-defined water course is prohibited.

G. Quiet shall be maintained in all campgrounds between the hours of 10 p.m. and 6 a.m.

H. Gathering of wood for fuel in campgrounds or picnic areas will be limited to dead material on the ground, except where such gathering is prohibited by the Director of the Parks and Recreation Department by the posting of appropriate signs. Cutting of standing timbers or shrubs is strictly prohibited.

### **History**

ACAP-189-73, April 17, 1973.

**§ 606. Closing of areas**

The Director of the Parks and Recreation Department may establish a schedule of visiting hours for all or portions of the park, and if necessary, close or restrict public use of all or certain portions of the park for protection of the area or for the safety and welfare of persons or property, by posting appropriate signs. All visitors must observe and abide by any officially posted signs designating closed areas or visiting hours.

**History**

ACAP-189-73, April 17, 1973.

**§ 607. Disorderly conduct**

A. Disorderly conduct is prohibited.

B. A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she shall:

1. Engage in fighting, or in threatening, violent or tumultuous behavior; or

2. Make unreasonable noise or offensively coarse utterance, gesture, or display, or address abusive language to any person present; or

3. Create a hazardous or physically offensive condition by any act which serves no legitimate purpose.

**History**

ACAP-189-73, April 17, 1973.

**§ 608. Explosives**

A. The possession or use of explosives is prohibited except upon written permission of the Director of the Parks and Recreation Department. Any authorized possession or use of explosive shall conform with all applicable federal and Navajo Nation laws.

B. The possession or use of fireworks and firecrackers is prohibited, except upon written permission of the Director of the Parks and Recreation Department.

**History**

ACAP-189-73, April 17, 1973.

**§ 609. Firearms, traps and other weapons**

A. The use of traps, seines, hand thrown spears, nets (except landing nets), firearms (including air or gas-powered pistols and rifles), blow guns, bows and arrows or crossbows, or any other implements which are capable of trapping or destroying animal life is prohibited. The possession of such objects or mechanisms is prohibited unless unloaded and adequately cased, dismantled, or otherwise packed in such a way as to prevent their use while in the park.

B. When authorized by the Director of the Parks and Recreation Department licensed guides in charge of pack trains or saddlehorse parties may carry firearms for emergency use as stipulated in a written permit.

C. Authorized federal and Navajo Nation law enforcement officers are authorized to carry firearms in the performance of their official duties within the park.

### **History**

ACAP-189-73, April 17, 1973.

### **§ 610. Fires**

A. Kindling of fires is permitted only:

1. In designated camping and picnicking grounds and when confined in the fireplace or grill provided by the park for use of visitors, or in other locations as indicated by the Director of the Parks and Recreation Department. Areas so designated shall be marked on a map which shall be available for public inspection in the park office;

2. In locations in the backcountry, wilderness and remote sections of the park when a written permit has been secured from the Director of the Division of Natural Resources; or

3. In stoves or lanterns using gasoline, propane, butane gas or similar fuels.

B. Other Precautions:

1. Fires must be kindled in such manner that no tree, shrub, grass, or other inflammable or combustible matter will be set on fire, or caused to be set on fire;

2. When no longer needed, the fire shall be completely extinguished. Leaving a fire unattended is prohibited;

3. Throwing or dropping a lighted cigarette, cigar, pipe heel, match, or other burning material is prohibited;

4. The Director of the Parks and Recreation Department, at his or her discretion, may when necessary prohibit smoking on any parks lands, including roads and trails, by posting appropriate signs.

### **History**

ACAP-189-73, April 17, 1973.

**§ 611. Intoxication; drug incapacitation**

Entering or remaining in the park when manifestly under the influence of alcohol, narcotics or other drugs to a degree that may endanger oneself or other persons or property or unreasonably annoy persons in the vicinity is prohibited.

**History**

ACAP-189-73, April 17, 1973.

**§ 612. Picnicking**

Picnicking, except in officially designated locations, is prohibited. The Director of the Parks and Recreation Department may establish limitations on the length of time any person or group may use any picnicking facility. Appropriate signs designating picnicking locations and limitations will be posted.

**History**

ACAP-189-73, April 17, 1973.

**§ 613. Preservation of public property, natural features, curiosities and resources**

A. The collection, possession, destruction, injury, defacement, removal or disturbance of any building, sign, equipment, monument, statue, marker, ruin or other antiquity, or other structure, or of any animal or plant matter, including direct products thereof, is prohibited. This prohibition includes, but is not limited to, petrified wood, flowers, cone or other fruit, egg, nest, or nesting site, any soil, rock, mineral formation, phenomenon or crystallization, artifact, relic, historic or prehistoric feature, except as otherwise provided in this Section or in special regulations for the park.

B. Gathering or possession for personal consumption or use of such fruits and berries as the Director of the Parks and Recreation Department may designate is permitted. All such fruits and berries shall be picked by hand only; gathering or collecting of these for the purpose of sale, except by Navajos, is prohibited.

C. The use of any mineral or metal-detecting device capable of detecting underground or underwater locations of geological, archeological or historical objects or material is prohibited. The provisions of this Section shall not apply to fathometers, radar and electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

D. Damaging or molesting Navajo crops or livestock is prohibited.

E. Taking canes, umbrellas, sticks, or similar objects into caves or caverns is prohibited, except by permission of the Director of the Parks and

Recreation Department.

F. Tossing, throwing, or rolling stones or other materials inside caves or caverns, into valleys or canyons, or down hills and mountains, is prohibited.

#### **History**

ACAP-189-73, April 17, 1973.

#### **§ 614. Saddle and pack animals**

A. Horses and other saddle or pack animals are permitted only on established trails or bridle paths, except in areas where cross-country is permitted by the Director of the Parks and Recreation Department.

B. Horses or other saddle or pack animals will not be permitted on the main-traveled or maintained portions of roadways, except where such travel is necessary for ingress or egress from trails or privately owned property or is incidental to authorized travel.

C. In the interest of public safety and welfare, the Director of the Parks and Recreation Department, by special regulations, may require that saddle-horse parties and pack trains be in the charge of a guide, licensed under Navajo Nation laws, who meets the qualifications established by the Director of the Parks and Recreation Department.

D. Riding or hitching horses or other saddle or pack animals in campgrounds, picnic areas, or within the immediate vicinity of trail shelters, eating or sleeping establishments or other areas of public gatherings, except where trails and facilities are designated or provided for such use, is prohibited.

E. Riders shall slow their horses to a walk or slow trot when passing persons on foot or on bicycles.

#### **History**

ACAP-189-73, April 17, 1973.

#### **§ 615. Sanitation**

A. All garbage, papers, cans, bottles, waste materials and rubbish of any kind must be disposed of only at places designated for this purpose, or removed by the visitor from the park area. All combustible materials shall be deposited in incinerators constructed for this purpose, or removed from the area.

B. Draining or dumping refuse or waste from any trailer or other vehicle except in places or receptacles provided therefor is prohibited.

C. Cleaning food, or washing clothing or articles of household use at campground hydrants is prohibited.

D. Polluting or contaminating in any manner any watershed, water supplies or water used for drinking purposes is prohibited.

E. Depositing any body waste in or on any portion of any comfort station or other public structure except into fixtures provided for that purpose is prohibited. Placing any bottle, can, cloth, rag, metal, wood, or stone substances in any of the plumbing fixtures in such station or structure is prohibited. All comfort stations shall be used in a clean, sanitary, and orderly manner.

F. Urinating or defecating at places other than those provided therefor is prohibited, except in the backcountry, wilderness or other remote areas.

G. Using park refuse containers or other refuse facilities for dumping household or commercial garbage or trash brought into the park from private property is prohibited.

### **History**

ACAP-189-73, April 17, 1973.

### **§ 616. Scientific specimens**

A. Unless specifically permitted by special regulations, the collection of plants, rocks or minerals (non-fossilized), animal life, or other natural objects is permitted only in accordance with written permits obtained in advance from the Director of the Parks and Recreation Department.

B. Permits shall not be issued to individuals or associations to collect specimens for personal use, and shall be issued only to persons officially representing reputable scientific or educational institutions to procure specimens for research, group study or museum display.

C. Permits will be issued only on condition that specimens taken ultimately will become part of a permanent public museum or herbarium collection, or will in some suitable way be made available permanently to the public.

D. No permits may be granted for the collection of specimens the removal of which would disturb the remaining natural features or mar their appearance.

E. Permits to secure rare natural objects will be granted by the Director only upon proof of special need for scientific use and of the fact that such objects cannot be secured elsewhere.

F. Permits to survey, collect, excavate or test trench on any archeological or historical ruin, or to collect fossilized specimens, are issued by the National Park Service, which has been delegated this authority by the Secretary of the Interior (Federal Register, Vol, 37, No. 106, Thursday, June 1, 1972). Such permits are issued in accordance with the Antiquities Act of June 8, 1906 (34 Stat. L. 225), and 17 N.N.C. § 1801 *et seq.*, enacting an Antiquities Preservation Law, and only after written consent by the Navajo Nation has been given. Such permits are issued only to reputable scientific institutions and not to individuals.

### **History**

ACAP-189-73, April 17, 1973.

### **Cross References**

See The Navajo Nation Historic Preservation and Archaeology Departments Plans of Operation within the Division of National Resources. See also, 19 N.N.C., § 1001, *et seq.*, the Navajo Nation Cultural Resources Protection Act.

### **§ 617. Travel on trails**

A. Bicycles, motorcycles and other motor vehicles are prohibited on trails, except that bicycles only are permitted on trails designated for their use by posted signs.

B. Pedestrians on trails shall remain quiet when saddle or pack animals are passing.

### **History**

ACAP-189-73, April 17, 1973.

### **§ 618. Wildlife; hunting**

A. Hunting, killing, wounding, frightening or capturing, or attempting to kill, wound, frighten or capture, any wildlife species, is prohibited, except when it is necessary to prevent dangerous animals from inflicting personal injury or destroying human lives.

B. Except as otherwise provided herein, feeding, touching, teasing, molesting or intentionally disturbing any wildlife or nesting species, or related activities or phenomena thereof, is prohibited.

### **History**

ACAP-189-73, April 17, 1973.

## **Chapter 8. [Reserved]**

## **Chapter 9. Navajo Youth Camp**

### **§ 801. Establishment; purpose**

A. The Navajo Youth Camp is established within the Department of Parks and Recreation.

B. The Navajo Youth Camp provides a complete camp facility for youth organizations where programs in conservation, nature lore, recreation and scouting are available to all youths. The camp also serves as a meeting place for individuals, groups, and agencies from the Navajo Nation and other areas.



### **History**

ACN-247-76, November 4, 1976.

### **§ 802. Personnel**

There is established a position of Unit Manager, Navajo Youth Camp and such other positions as may from time to time be budgeted by the Navajo Nation Council. All personnel will be hired and compensated through the Navajo Nation Personnel Policies and Procedures.

### **History**

ACN-247-76, November 4, 1976.

### **§ 803. Authority, duties and responsibilities**

The Manager, Navajo Youth Camp is hereby authorized and directed to:

1. Report and be responsible to the Director, Department of Parks and Recreation.
2. Formulate and recommend overall administrative and operating standards and regulations pertaining to the camp and take such action as necessary for accomplishment.
3. Supervise all assigned personnel and delegate authority as necessary.
4. Develop a schedule of fees and charges for services and rental of the camp facilities. This schedule of fees and charges shall be submitted annually with the Camp Budget and may not be altered without the approval of the Resources Committee of the Navajo Nation Council.
5. Collect all income from the operation of the camp and deposit it with the cashier. The cashier shall report all such income to the Controller to be credited to an income account in the name of the Navajo Youth Camp to be used only in the operation of the camp. All unexpended funds shall revert to the General Fund at the close of the fiscal year.
6. Develop an operating budget annually to be included in the budget for the Department of Parks and Recreation.
7. Develop an overall Master Plan for the Navajo Youth Camp which is consistent with the management of the Asaayi watershed.
8. Work with youth organizations in developing-programs and scheduling use of the camp.
9. Work with the local communities and land users to bring about good relations and cooperation.
10. Cooperate and coordinate with Tribal and other natural resource organizations in planning, improvement, and development of the camp.

### **History**

ACN-247-76, November 4, 1976.

## **Chapter 10. Navajo Nation Museum**

### **History**

ACAP-63-88, April 15, 1988.

**Revision note.** The Navajo Nation Museum is now under the authority of the Navajo Historic Preservation Department.

### **§ 901. Establishment**

The Navajo Nation Museum is established within the Division of Natural Resources.

### **History**

ACAP-63-88, April 15, 1988.

### **§ 902. Purpose**

A. To collect and preserve and manage cultural and historical materials relating to the Navajo People and to the pre-Navajo cultures of the Four Corners region and natural history specimens relating to the geology, paleontology and environment of Navajo land.

B. To provide various informational and educational programs and services to the visiting public and Navajo People utilizing the above collections.

C. To disseminate information about the Navajo People, their culture and their history.

### **History**

ACAP-63-88, April 15, 1988.

### **§ 903. Personnel**

A. There is established the position of Museum Curator and such other positions that may be budgeted by the Navajo Nation Council.

B. All personnel shall be hired and compensated pursuant to the guidelines of the Navajo Nation Personnel Policies and Procedures manual.

### **History**

ACAP-63-88, April 15, 1988.

### **§ 904. Authority, duties and responsibilities**

The Museum Curator is hereby authorized and directed to:

A. Report and be responsible to the Executive Director, Division of Natural Resources, or any person designated on his or her behalf;

B. Formulate and implement overall administrative policies and procedures necessary for the efficient management of the Navajo Nation Museum and to take such action as deemed necessary for the accomplishment of objectives; and

C. Supervise the staff of the Navajo Nation Museum.

#### **History**

ACAP-63-88, April 15, 1988.

#### **§ 905. Organization**

The Navajo Nation Museum shall consist of such sections as are necessary for the accomplishment of its objectives, or as assigned by the Executive Director, Division of Natural Resources.

#### **History**

ACAP-63-88, April 15, 1988.

#### **§ 906. Amendments**

The Plan of Operation for the Navajo Nation Museum may be amended from time to time by the recommendation of the Museum Curator, Navajo Nation Museum with the concurrence of the Executive Director, Division of Natural Resources and the approval of the Resources Committee and the Government Services Committee of the Navajo Nation Council.

#### **History**

ACAP-63-88, April 15, 1988.

### **Chapter 11. Navajo Nation Cultural Resources Protection Act**

#### **History**

CMY-19-88, May 3, 1988.

**1988 Amendment.** CMY-19-88 repealed former Chapter 11 "The Cultural Resources Management Program," §§ 1001-1004, which was enacted by ACAP-86-77, April 27, 1977. The 1988 amendment replaced it with the "Navajo Nation Cultural Resources Protection Act".

**Note.** CAP-41-94, April 20, 1994, also repealed the former Chapter 11, the "Cultural Resources Management Program", 19 N.N.C. §§ 1001-1004. CAP-41-94 did not effect the Navajo Nation Cultural Resources Protection Act, 19 N.N.C. § 1001 *et seq.*

## **§ 1001. Findings**

A. This Act may be cited as the "Navajo Nation Cultural Resources Protection Act".

B. The Navajo Nation Council finds and declares that:

1. The spirit and direction of the Navajo Nation are founded upon and reflected in its cultural heritage;

2. The cultural heritage of the Navajo Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the Navajo People;

3. Cultural properties of the Navajo Nation are being lost or substantially altered, often inadvertently, with increasing frequency;

4. The preservation of this irreplaceable cultural heritage is in the interest of the Navajo Nation and its people so that its vital legacy of cultural, educational, aesthetic, inspirational, economic and energy benefits will be maintained and enriched for future generations of Navajos;

5. In the face of ever increasing energy development, economic development, sanitation and public health developments, the present Tribal governmental and non-Tribal governmental programs to preserve the Navajo Nation's cultural resources are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of the Navajo Nation;

6. Increased knowledge of our cultural resources, the establishment of better means of identifying and administering them, and fostering their preservation will improve the planning of federal, Tribal, state and other projects and will assist economic growth and development and expeditious project implementation; and

7. Although the major role in cultural resource preservation has been borne by the federal and state governments, and both must continue to play a role, it is nevertheless essential that the Navajo Nation expand and accelerate its cultural resource preservation programs and activities.

## **History**

CMY-19-88, May 3, 1988.

## **§ 1002. Policy**

It shall be the policy of the Navajo Nation, in cooperation with the states, federal government, other Indian Tribes, and private organizations and individuals to:

A. Use appropriate measures to foster conditions under which our modern

society and our cultural resources can coexist in productive harmony and fulfill the social, economic and other requirements of present and future generations;

B. Provide leadership in the preservation of cultural resources of the Navajo Nation;

C. Administer Navajo Nation-owned, administered or controlled cultural resources in a spirit of stewardship and for the inspiration of present and future generations;

D. Contribute to the preservation of non-Navajo Nation-owned cultural resources and give maximum encouragement to organizations and individuals undertaking preservation by private means; and

E. Encourage the public and private preservation and utilization of usable elements of the Navajo Nation's stock of historic buildings and structures.

### **History**

CMY-19-88, May 3, 1988.

### **§ 1003. Definitions**

As used throughout this Act, the term:

A. "Archaeology Department" means the Navajo Nation Archaeology Department.

B. "Building" means any structure made by man primarily to provide shelter.

C. "Cultural property" means any cultural resource deemed to be important enough to warrant listing in the Navajo Register.

D. "Cultural resource" means any product of human activity, or any object or place given significance by human action or belief.

E. "Department" means the Navajo Nation Historic Preservation Department.

F. "District" means any discrete area comprising buildings, objects, sites or structures that forms a recognizable, unified whole.

G. "Indian" or "Indian person" means any enrolled member of an Indian Tribe recognized by the Secretary of the Interior.

H. "Lands in which the Navajo People have a historical interest" means all lands historically or traditionally used by the Navajo People.

I. "Navajo Lands" means those lands held in Trust for the benefit of the Navajo Nation and those lands which the Navajo Nation holds in fee simple or in which it has a legal interest.

J. "Navajo Landmarks" means those cultural properties that are of significance to the entire Navajo Nation.

K. "Navajo Register" means the Navajo Nation Register of Cultural Properties.

L. "Object" means a product of human activity or an item given significance or meaning by human activity or belief.

M. "Place" refers to an identifiable location at which an event occurred or a location given significance by human action or belief.

N. "Preservation Officer" means the Navajo Nation Historic Preservation Officer, who is the Director of the Navajo Nation Historic Preservation Department.

O. "Site" means the location of the physical remains of human activity.

P. "Sponsor" means the agency official or the official in a private capacity who has decision-making authority over a particular undertaking.

Q. "Structure" means construction resulting from human activity, the primary purpose of which is other than to provide shelter.

R. "Tribal Archaeologist" means the Navajo Nation Archaeologist, who is the director of the Archaeology Department.

S. "Undertaking" means any project, activity or program that can result in changes in the character or use of cultural properties, if any such cultural properties are located in the area of potential effects. The project, activity or program must be under the direct or indirect jurisdiction of a Sponsor. Undertakings include new and continuing projects, activities or programs not previously considered under the authority of this Act.

### **History**

CMY-19-88, May 3, 1988.

### **§ 1004. Historic Preservation Department**

The Navajo Nation Historic Preservation Department (hereafter referred to as the "Department") within the Division of Natural Resources shall be the Navajo Nation's agency responsible for the protection, preservation and management planning for the Navajo Nation's cultural resources. The Department shall be directed by the Navajo Nation Historic Preservation Officer (hereafter referred to as the "Preservation Officer") who shall advise the President of the Navajo Nation, the Navajo Nation Council, the divisions, departments, programs, agencies, authorities, enterprises and any other instrumentalities of the Navajo Nation, the federal, state and local governments, private organizations and individuals on matters pertaining to cultural resource preservation to achieve the goals of this Act on Navajo lands, and on lands in which the Navajo people have a historical interest. The Department shall conduct such other activities authorized in accordance with the Department's approved Plan of Operation.

### **History**

CMY-19-88, May 3, 1988.

### **§ 1005. Archaeology Department**

The Navajo Nation Archaeology Department (hereafter referred to as the "Archaeology Department") within the Division of Natural Resources shall be the Navajo Nation's agency for providing cultural resources services to project sponsors. The Archaeology Department shall be directed by the Navajo Tribal Archaeologist (hereafter referred to as the "Tribal Archaeologist"), who shall be responsible for organizing and providing cultural resource services to sponsors, including instrumentalities of the Navajo Nation, Navajo people, other agencies and industry in need of cultural resources services both on and off the Navajo Reservation. The Tribal Archaeologist shall also organize and implement, in consultation with the Preservation Officer, a program of archaeological and anthropological research designed to enhance and benefit the Navajo Nation's cultural resources. The Archaeology Department shall conduct such other activities authorized in accordance with its approved Plan of Operation.

### **History**

CMY-19-88, May 3, 1988.

### **§ 1006. Navajo Nation Museum**

The Navajo Nation Museum shall be the repository for all cultural resources collected on Navajo lands. The Navajo Nation Museum shall conduct such other activities authorized in accordance with its approved Plan of Operation.

### **History**

CMY-19-88, May 3, 1988.

See also ACAP-63-88, approving the Navajo Nation Museum's Plan of Operation.

### **§ 1011. Navajo Nation register of cultural properties and cultural landmarks**

A. The Preservation Officer shall create, expand, maintain and administer a Navajo Nation Register of Cultural Properties (hereafter referred to as the "Navajo Register") comprising buildings, districts, objects, places, sites and structures significant in Navajo Nation history, architecture, archaeology, engineering and culture.

B. The Preservation Officer shall create, expand, maintain and administer a program for designation of Navajo Nation Cultural Landmarks (hereafter referred to as "Navajo Landmarks"), which shall include those cultural properties of significance to the entire Navajo Nation.

C. Cultural properties on Navajo lands shall be deemed to be included in the Navajo Register if, as of the date of enactment of the Navajo Nation

Cultural Resources Protection Act, they are:

1. Historic properties listed in the National Register of Historic Places;
2. Historic properties designated National Historic Landmarks;
3. Natural areas designated National Natural Landmarks;
4. Cultural properties included in the National Park System at Navajo National Monument, Canyon de Chelly National Monument, and Chaco Canyon National Historical Park; and
5. Archaeological sites designated as "Chaco Protection Sites" pursuant to P.L. 96-550.

D. The Preservation Officer shall establish a program to locate, inventory, and evaluate cultural resources on Navajo lands and to list all such resources as may be eligible in the Navajo Register and to designate such properties as may qualify as Navajo Landmarks.

#### **History**

CMY-19-88, May 3, 1988.

#### **United State Code**

Chaco Culture National Historic Park, see 16 U.S.C.A. § 410ii *et seq.*

#### **§ 1021. Protection of cultural properties**

In order to ensure the protection of the cultural properties of the Navajo Nation, the sponsor of any undertaking must obtain the approval of the Preservation Officer prior to implementation or authorization of any undertaking by the sponsor.

#### **History**

CMY-19-88, May 3, 1988.

#### **§ 1031. Prohibited activities**

No cultural property may be visited or investigated on Navajo lands, except those cultural properties designated as open to the public within the boundaries of a Navajo Nation Park or a National Park or Monument; nor may any person alter, damage, excavate, deface, destroy or remove, any cultural properties on Navajo lands. No person may sell, purchase, exchange or transport cultural resources from Navajo lands. No person may engage in ethnographic research on Navajo lands, except that such activities may be conducted under the authority of and in accordance with the stipulations of a valid Navajo Nation Cultural Resources Permit issued by the Preservation Officer under the authority of § 1032.

#### **History**



CMY-19-88, May 3, 1988.

**§ 1032. Permits**

A. There shall be three classes of permits.

1. *Class A* permits shall be issued for activities involving casual visitation and inspection of cultural properties.

2. *Class B* shall be issued for cultural resource inventory activities involving no collection or disturbance of cultural resources.

3. *Class C* shall be issued for cultural resource investigations involving alteration, collection, excavation, removal or any disturbance of cultural resources or for ethnographic research.

B. Permits shall be issued only on a case-by-case basis, except that an organization qualifying for a Class 1 or 3 under Navajo preference pursuant to the Navajo Nation Code may be granted blanket Class B permits. The Preservation Officer may waive this requirement whenever he or she finds that issuance of a blanket Class B permit is in the best interests of the Navajo Nation and its people.

C. Permits shall not be issued for periods to exceed 12 months, except when necessary to cover the duration of a single project.

**History**

CMY-19-88, May 3, 1988.

See 5 N.N.C. § 201 *et seq.* Navajo Nation Business Opportunity Act.

**Revision Note.** Slightly reworded for purpose of clarity.

**§ 1033. Exceptions**

A. The prohibition against visitation of cultural resources does not apply to enrolled members of the Navajo Nation or to Navajo Nation employees engaged in official activities.

B. The prohibitions against alteration, collection, disturbance, excavation or removal of cultural resources or collection of ethnographic data do not apply to:

1. Navajo traditional practitioners engaging in activities directly relating to the practice of traditional Navajo religion; or

2. To Navajo Nation employees engaged in official business, relating to cultural resources management activities approved in accordance with Department rules and procedures.

**History**

CMY-19-88, May 3, 1988.

**§ 1034. Permit requirements**

Any person proposing to visit or inspect cultural resources, undertake cultural resources inventory, alter, collect, excavate or remove cultural resources or engage in ethnographic research, who is not excepted pursuant to § 1033 of this Act, shall apply to the Preservation Officer for a Navajo Nation Cultural Resources Permit for the proposed activity. The Preservation Officer may issue a permit to any qualified individual, subject to appropriate terms and conditions.

**History**

CMY-19-88, May 3, 1988.

**§ 1035. Suspension of permits**

A. The Preservation Officer may suspend a permit without cause upon determining that continuation of activities under a permit would not be in the best interests of the Navajo Nation or its people. Such a suspension is made without liability to the Navajo Nation, its agents or employees. Such a suspension shall not prejudice the ability of the permit holder to hold or obtain other permits.

B. The Preservation Officer may suspend a permit for cause upon determining that any term or condition of a permit is not being met by a permit holder.

**History**

CMY-19-88, May 3, 1988.

**§ 1036. Revocation of permits**

A. The Preservation Officer may revoke a permit without cause upon determining that continuation of a permit is not in the interests of the Navajo Nation or its People. Such a revocation is made without liability to the Navajo Nation, its agents and employees. Such revocations shall not prejudice the ability of the permit holder to hold or obtain other permits.

B. The Preservation Officer may revoke a permit for cause upon finding that:

1. Any of the terms or conditions of a permit have been willfully violated;
2. A permit-holder has engaged in activities prohibited by this Act; and
3. A permit-holder has engaged in activities that resulted in the prior suspension of a permit.

**History**

CMY-19-88, May 3, 1988.

**§ 1037. Criminal penalties**

Any Indian person violating the provisions of § 1031 of this Act shall be subject to the following criminal penalties.

A. Any Indian person who:

(1) Engages in cultural resources inventory activities except under the authority of a Class B permit, or

(2) Who alters, collects, damages, destroys, excavates or removes cultural resources except under the authority of a Class C permit or under the exception provided by § 1033 of this Act, shall upon conviction, be guilty of a misdemeanor and subject to punishment of up to one year in jail and a fine of up to one thousand dollars (\$1000).

**History**

CMY-19-88, May 3, 1988.

**§ 1038. Civil assessments**

Individuals violating the prohibitions in § 1031 or § 1037 of this Act shall be subject to civil assessments. Civil assessments shall be imposed by the Resources Committee of the Navajo Nation Council (hereafter referred to as the "Resources Committee"), in accordance with procedures adopted by the Resources Committee expressly for this purpose. The Resources Committee shall adopt such procedures within 90 days of the adoption of this Act.

A. Violation of the provisions of § 1031 or § 1037 of this Act by any person who does business on the Navajo Nation shall be grounds for withdrawal of the privilege of doing business within the Navajo Nation. The Resources Committee shall consider whether or not to recommend to the Navajo Nation Council that any individual found to have violated § 1031 or § 1037 shall lose the privilege of doing business within the Navajo Nation.

B. Any non-Indian who visits or inspects cultural resources on Navajo lands without a valid Class A permit shall be committing trespass. Such individuals determined to be in trespass after a hearing before the Resources Committee of the Navajo Nation Council, shall be assessed a civil forfeiture of not more than one hundred dollars (\$100.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. For the purposes of this part, each visit to or inspection of a cultural resource on Navajo lands shall be considered a separate offense. The Resources Committee may, at its discretion, recommend to the Navajo Nation Council that any person found to be in trespass be excluded from the Navajo Nation.

C. Any non-Indian who engages in cultural resources inventory activities on Navajo lands, except under the authority of a valid Class B permit shall be committing trespass. Any individual determined to be in trespass after a hearing before the Resources Committee, shall be assessed a civil forfeiture of

not more than one thousand dollars (\$1000) for each offense. For the purposes of this part, each inventory on Navajo lands shall be considered a separate offense. The Resources Committee shall consider whether or not to recommend to the Navajo Nation Council that any individual found to have violated this prohibition be excluded from the Navajo Nation.

D. Any individual within Navajo lands who alters, collects, damages, defaces, destroys, excavates, removes or sells cultural resources or who collects ethnographic data without a valid Class C permit, or as permitted under the exceptions detailed in § 1033, or who engages in activities in violation of the terms and conditions of a valid permit shall be liable, after a hearing before the Resources Committee, to the Navajo Nation for civil damages as determined by the Resources Committee as follows:

1. Assessment of Actual Damages. The Resources Committee shall impose the civil assessments based upon actual damages in accordance with "Standards for Assessing Damages to Cultural Properties" that the Resources Committee shall adopt expressly for this purpose. The "Standards for Assessing Damages to Cultural Resources" shall include, but need not necessarily limit consideration to:

- a. Full costs of restoration of the cultural resource;
- b. Enforcement and administrative costs associated with the civil action;
- c. Costs of disposition of cultural resources, including as appropriate, costs of curation in perpetuity;
- d. Costs associated with documentation, testing and evaluation of the cultural resource in order to assess the characteristics of the cultural resource and plan for its restoration; and
- e. Costs of any additional mitigation measures the Resources Committee deems appropriate to implement.

2. Assessment of Treble Damages. In addition to the actual damages, the Resources Committee may, at its discretion, assess damages of up to three (3) times the amount of the actual damages.

3. Seizure of Equipment and Cultural Resources. The citing officer shall seize all cultural resources in the possession of any individual cited under § 1031 of this Act, together with any other property used for or related to the violation in the possession of the individual cited, as the officer may deem necessary to obtain payment of any civil assessment.

4. Forfeiture of Cultural Resources and Property. After hearing before the Resources Committee:

- a. Any cultural resources obtained in violation of this Act shall be forfeited to the Navajo Nation;
- b. Any other property seized in accordance with § 1038(D)(3),

shall be released to the owner upon timely payment of any related civil assessments; and

c. Any seized property shall be forfeited to the Navajo Nation if the assessment has not been paid within 15 days of the hearing at which the civil assessment was levied or pursuant to this Act, whichever is later. Any such forfeiture shall be limited to the amount of the civil assessment. Any property remaining after forfeiture of property up to the value of the assessment shall be returned to the owner.

E. Civil assessments imposed under this part shall be reserved solely for the purposes of restoring damaged cultural resources and for meeting the purposes of this Act and shall be deposited in the Historic Preservation Revolving Account for disbursement in accordance with Navajo Nation budgetary procedures.

F. Any individual assessed by the Resources Committee pursuant to § 1038 of this Act shall have the right to appeal the decision of the Resources Committee to the Navajo Nation District Court as follows:

1. Any appeal must be filed in writing with the Navajo Nation District Court within 30 days of notification of the action of the Resources Committee;

2. The review by the Navajo Nation District Court shall be limited to:

a. Ensuring that the appellant received due process of law; and

b. Ensuring that any rights the individual may have under the Navajo Nation Bill of Rights and the Indian Civil Rights Act (25 U.S.C. § 1301-1341) were observed; and

3. Consideration by the Navajo Nation District Court shall be limited to review of the administrative record created before the Resources Committee during the hearing before it.

#### **History**

CMY-19-88, May 3, 1988.

#### **Cross References**

See generally, Navajo Nation Civil Trespass Act, 21 N.N.C. § 2201 *et seq.*

#### **§ 1041. Appeals**

A. Any administrative action taken by the Preservation Officer pursuant to this Act which is a final action made on behalf of the Navajo Nation, may be appealed by any party directly and adversely affected by such action. Notice of appeal must be filed within 30 days of notification of the Preservation Officer's action.

B. Within 90 days of the adoption of this Act, the Preservation Officer shall establish regulations governing appeals of administrative decisions reached under the authority of this Act. The regulations shall specify the procedures governing appeals, identify who may appeal, detail notification requirements, establish time limits for action on the part of all parties, enumerate documentation requirements, and include any other elements necessary to carry out the purposes of this Section.

C. Any appellant adversely affected by the outcome of an appeal under regulations promulgated pursuant to § 1041(B) of this Act shall be entitled to review of the action in Navajo Nation District Court as follows:

1. Notice of an appeal under the provisions of this part must be filed with the Navajo Nation District Court within 30 days of receipt of notice of a final action by the Division of Natural Resources;

2. Judicial review by the Navajo Nation District Court shall be limited to:

a. Ensuring that the appellant received due process of law;  
and

b. Ensuring that all rights of the appellant under the Navajo Nation Bill of Rights and the Indian Civil Rights Act (25 U.S.C. 1301-1341) were observed.

3. Judicial review by the Navajo Nation District Court shall be limited to review of the administrative record created during the administrative appeals process.

#### **History**

CMY-19-88, May 3, 1988.

#### **§ 1051. Regulations, procedures, standards and guidelines**

The Preservation Officer shall develop, promulgate, publish and implement such regulations, procedures, standards and guidelines necessary to implement the requirements of or to achieve the purpose of this Act.

#### **History**

CMY-19-88, May 3, 1988.

#### **§ 1061. Severability**

If any provision of this Act or the application thereof to any person, court or circumstances is held invalid by a Navajo Nation or federal court, the invalidity shall not affect other provisions of this Act which can be given effect without the invalid provision or application and to this end, the provisions of this Act are severable.

#### **History**

CMY-19-88, May 3, 1988.

## **Title 20**

### **Professions and Occupations**

#### **Chapter 1. Barbers and Barbershops**

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

###### **§ 1. Definitions**

For the purposes of this Chapter and unless otherwise required by the context:

A. "Board" shall mean the Advisory Board of Barber Examiners.

B. "Certificate" shall mean a certificate of registration entitling the person to whom issued to practice, or a barber school or barbershop to be operated.

C. "Barbershop" shall mean any place, shop or establishment wherein the practice of barbering is engaged in or carried on as a business, trade, or profession.

D. "Barber school" or "barber college" shall mean any place, shop, or establishment where the practices, fundamentals, theories or practical applications of barbering are taught for pay, whether direct or indirect.

E. "Barbering" shall mean any one or any combination of the following practices done upon the upper part of the human body for cosmetic purposes; and not for the treatment of diseases or physical or mental ailments; and when done for payment either directly or indirectly, or without payment for the general public; upon a male or female: (1) shaving or trimming of the beard or cutting the hair; (2) giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances; (3) singeing; (4) shampooing or dyeing the hair; (5) applying tonics; (6) applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body.

F. "Communicable disease" shall mean an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a healthy person from an affected person, animal or arthropod or through the agency of an intermediate host, vector or the inanimate environment.

G. "Health advisor" shall mean the United States Public Health Service, Window Rock Area Medical Officer in Charge or his or her designated representative.

###### **History**

CJY-78-68, July 11, 1968.

## **§ 2. Persons exempt**

The following persons are exempt from the provisions of this Chapter while in the discharge of their professional duties:

- A. Persons licensed to practice medicine and surgery.
- B. Licensed physicians and surgeons and commissioned medical or surgical officers of the United States Public Health Service.
- C. Registered nurses.
- D. Undertakers and morticians.
- E. Establishments, and persons licensed under the Cosmetology Statute (Chapter 3 of this Title).
- F. Barber schools operated and conducted by any institution of learning as a part of their regular curriculum. Provided, however, that hours of study completed in such institutional school shall be counted toward the hours of study required by this Chapter.

### **History**

CJY-78-68, July 11, 1968.

## **Subchapter 3. Board of Barber Examiners**

### **§ 41. Membership of Board**

There shall be appointed by the President of the Navajo Nation a board of five members which shall be known as the Barber Examiners. The members of the Board shall be selected for their interest in developing a barbering profession of high standards and efficiency within the Navajo Nation. The Board shall have the following representation:

- A. One member shall be chosen from the staff of the United States Public Health Service.
- B. One member shall be a member of the Navajo Nation who is a registered barber.
- C. The other three members shall be members of the Navajo Nation who may be, but need not be registered barbers.

### **History**

CJN-43-71, June 1, 1971.

CJY-78-68, July 11, 1968.

### **§ 42. Term of office**



Two members of the Board shall be appointed for a term of one year, two members shall be appointed for a term of two years, and one member shall be appointed for a term of three years. As each member's term expires, and thereafter, members shall be appointed for terms of three years.

#### **History**

CJN-43-71, June 1, 1971.

CJY-78-68, July 11, 1968.

#### **§ 43. Election of officers; meetings**

The Board shall organize by electing a president, vice-president, and secretary from among its members. The Board shall meet semi-annually on the second Monday of February and the second Monday of August, and at such other times as are necessary in order to efficiently enforce this Chapter.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 44. Quorum**

A majority of the Board shall constitute a quorum and may perform and exercise all the duties and powers devolving upon it.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 45. Record of proceedings**

The secretary of the Board shall keep a record of its proceedings, a register of persons registered as barbers and apprentices, showing the name, place of business and residence of each and the date and the number of the certificate of each, and a record of all licenses or certificates issued, refused, renewed, suspended or revoked. Its records shall be open to public inspection at all reasonable times. The Board shall annually, on or before the first day of July, make a report to the Government Services Committee of the Navajo Nation Council of all its official acts during the preceding year.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 46. Removal**

The President of the Navajo Nation shall have the power to remove any member of the Board for incompetency, gross immorality, disability, for any abuse of his or her official power or for any other sufficient cause.

#### **History**

CJY-78-68, July 11, 1968.

**§ 47. Vacancies**

Any vacancies that shall occur shall be filled by an appointment within 90 days after the occurrence of the vacancy. Members appointed to fill vacancies caused by death, resignation or removal, shall serve only for the unexpired term of their predecessors.

**History**

CJY-78-68, July 11, 1968.

**§ 48. Powers and duties**

A. A member of the Board, or its agents or assistants, shall have the authority to enter upon and inspect a barbershop or barber school at any time during business hours. The Board may make reasonable rules and regulations for the administration of the provisions of this Chapter. A copy of the rules, regulations and sanitary requirements adopted by the Board shall be furnished by the Board to the owner or manager of each barbershop, barber school or barber college and such copy shall be posted in a conspicuous place in each barbershop, barber school or barber college.

B. The Board shall act as mediator or arbitrator in any controversy or issue relating to barbering which arises between or among barbers, either as individuals or as organized groups.

C. The Board shall have the full power to conduct hearings pursuant to this Chapter and all future regulations of the Board; to issue subpoenas and demand attendance at hearings, and to levy fines and to issue orders and judgments requiring the payment of fines or the compliance with this Chapter and regulations of the Board, and the doing of any and all acts pursuant to this Chapter and regulations of the Board deemed necessary to conduct a hearing or investigation.

**History**

CJY-78-68, July 11, 1968.

**Cross References**

Display of certificates, see 20 N.N.C. § 88.

Notice and hearings, persons accused of violations, see 20 N.N.C. § 201.

Penalties and payment of fines, see 20 N.N.C. § 208 *et seq.*

**§ 49. Findings; appeal**

The decision of the Board shall be final and binding. Provided, however, that the decision of the Board may be appealed to the Navajo Nation court system pursuant to the Navajo Rules of Civil Procedure as enacted by the

Judicial Branch of the Navajo Nation. Appeals to the Navajo Nation court system shall be in the form of *de novo* proceedings.

#### **History**

CJY-78-68, July 11, 1968.

#### **Cross References**

Courts and procedure, see Title 7 of the Navajo Nation Code.

#### **§ 50. Board of Barber Examiners' Fund**

A. All monies received by the Board under this Chapter shall be paid to the secretary, who shall give a receipt therefor.

B. At the end of each month the secretary shall report to the Navajo Nation Controller the total amount received under this Chapter from all sources and shall deposit the amount with the Navajo Nation Controller, who shall place it in a special fund known as the Navajo Board of Barber Examiners' Fund.

C. Ninety percent (90%) of all monies deposited in the Fund shall constitute a separate fund for the maintenance of the Board and for the enforcement of this Chapter, and the remainder shall be credited to the general fund of the Navajo Nation.

#### **History**

CJY-78-68, July 11, 1968.

#### **Subchapter 5. Barber Qualifications**

#### **§ 81. License requirements**

On and after the effective date of this Chapter, it shall be unlawful:

A. To practice barbering on the Navajo Nation without a certificate of registration as a registered barber issued pursuant to the provisions of this Chapter by the Board of Barber Examiners.

B. To act or attempt to act as a barber apprentice without a current certificate of registration as a registered apprentice issued by the Board of Examiners.

C. For any person, association of persons, or corporation to operate a barbershop, barber school or barber college, unless it is at all times operated under the personal supervision and management of a registered barber.

D. For any person, association of persons, or corporation to employ or engage as an associate any person to engage in the practice of barbering as herein defined unless such person shall display a currently valid certificate of registration as a registered apprentice or as a licensed barber.

E. For any person, association of persons, or corporation to operate a barbershop on the Navajo Nation without having obtained an annual establishment license, which license shall at all times be posted in a conspicuous place in the shop. The license shall not be transferable and shall be valid only for the place and location stated in the license.

F. For any person, firm or corporation to open or establish a barbershop on the Navajo Nation without first having had the shop inspected and approved by the health advisor.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 82. Qualifications**

Any person shall be qualified to receive a certificate of registration or practice as a registered barber:

- A. Who is a citizen of the United States of America;
- B. Who is qualified under the provisions of Subchapter 3 of this Chapter;
- C. Who is at least 18 years of age;
- D. Who is of good moral character and temperate habits;
- E. Who has practiced as a registered apprentice for a period of 18 months under the immediate personal supervision of a registered barber; and
- F. Who has satisfactorily passed an examination conducted by the Board to determine his or her fitness to practice barbering.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 83. Registered barbers transferring to the Navajo Nation**

Any person who is at least 18 years of age and of good moral character and temperate habits and who is a citizen of the United States of America and has a license or certificate of registration as a practicing barber from a state or country which has substantially the same or higher requirements for registering barbers than are required by this Chapter or who can prove by sworn affidavit that he or she has practiced as a barber for a period of at least five years prior to making application on the Navajo Nation shall, upon filing an application and payment of the required fee, be granted permission to take an examination to determine his or her fitness to receive a certificate of registration to practice barbering. Should he or she fail to pass the examination he or she may file a new application accompanied by the required fee and take another examination if he or she desires. In no event will he or she be permitted to practice barbering until such time as he or she has passed the satisfactory examination and has received the certificate of registration as a registered barber.

### **History**

CJY-78-68, July 11, 1968.

### **Cross References**

Fees, see 20 N.N.C. § 91.

### **§ 84. Apprentice qualifications**

A. Any person shall be qualified to receive a certificate of registration as a registered apprentice:

1. Who is a citizen of the United States of America;
2. Who is at least sixteen and a 16 1/2 years of age and who is of good moral character and temperate habits; and
3. Who has satisfactorily passed an examination conducted by the Board to determine his or her fitness to practice as a registered apprentice.

B. No registered apprentice may independently practice barbering, but may, as an apprentice, do any and all of the acts constituting the practice of barbering under the immediate supervision of a registered barber. Only one such apprentice shall be employed in any shop; provided, however, that two apprentices may be employed in a shop of six or more registered barbers.

C. Any apprentice registered under the provisions of this Chapter, who fails to satisfactorily pass an examination conducted by the Board must continue to practice as an apprentice for an additional six months before he or she is entitled to take the examination again for a registered barber and should he or she fail to pass the second examination he or she shall cease to practice barbering on the Navajo Nation until such time as he or she has satisfactorily passed an examination conducted by the Board.

### **History**

CJY-78-68, July 11, 1968.

### **§ 85. Registered apprentices transferring to the Navajo Nation**

A. Any apprentice who is at least 16 1/2 years of age and of good moral character and temperate habits and who is a citizen of the United States of America, and has a valid and unrevoked certificate of registration as an apprentice in a state or country which has substantially the same requirements for registering apprentices as provided by this Chapter, shall, upon payment of the required fee be granted permission to take an examination to determine his or her fitness to receive a certificate of registration as an apprentice.

B. Should he or she pass the required examination, a certificate of registration as a registered apprentice shall be issued to him or her and the time spent under such previous apprenticeship program shall be credited upon

the period of apprenticeship required by this Chapter as a qualification to take the examination to determine his or her fitness to receive a certificate of registration as a registered barber.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 86. Application**

Any person who desires to practice barbering, or to practice as an apprentice barber shall file with the secretary of the Board of Barber Examiners a written application under oath on a form prescribed by the Board, together with two 5"x 3" signed photographs of the applicant, and satisfactory proof that applicant is of good moral character, and also furnish the board with a certificate from a licensed physician showing that applicant is free from any contagious and infectious or communicable disease, together with results of laboratory tests for syphilis and tuberculosis, which certificate shall not be dated more than 10 days prior to the date of application for registration.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 87. Examinations**

A. The Board shall conduct examinations for applicants for certificates of registration to practice as a registered apprentice or registered barber at least two times each year at several locations around the Navajo Nation fixed and published in advance by the Board.

B. Such examinations shall include a practical demonstration by each applicant as well as a written and oral test of the applicants' knowledge of the subjects required to be taught at schools of barbering. The practical examination shall count for sixty percent (60%), and the written and oral examinations for forty percent (40%).

C. A certificate to practice shall be issued to each applicant who shall satisfactorily pass an examination with an average grade of not less than seventy-five percent (75%), and shall possess the other qualifications required by law.

#### **History**

CJY-78-68, July 11, 1968.

#### **Cross References**

Qualifications to receive certificate of registration, see 20 N.N.C. § 82.

#### **§ 88. Display of certificates**

Every holder of a certificate of registration shall display it in a conspicuous place at or near his or her work chair. Sanitation rules and ordinances shall be displayed in a conspicuous place within the barbershop.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 89. Renewal of certificates**

Every registered barber, every registered apprentice, and every owner of a barbershop, barber school or barber college, shall annually, on or before the first day of July of each year, renew his or her certificate of registration, establishment license or permit and pay the required fee. Upon applying for a renewal certificate every registered barber or apprentice shall furnish the Board with a medical certificate as in § 86 of this Subchapter. Every certificate of registration, establishment license, or permit which has not been renewed as herein required in any year, shall expire on the first day of August in that year. A registered barber or registered apprentice whose certificate of registration has expired may have his or her certificate restored upon payment of the required fee. Any registered barber or apprentice who has been absent from the practice of barbering for a period of over three years must retake and satisfactorily pass the examination for barber or apprentice, respectively, before issuance of a new certificate of registration.

#### **History**

CJY-78-68, July 11, 1968.

#### **Cross References**

Fees for renewal certificates or permits, see 20 N.N.C. § 91.

#### **§ 90. Revocation of certificates**

The Board shall either refuse to issue a renewal or shall suspend or revoke any certificate of registration for any one or combination of the following causes:

A. Conviction of a felony shown by certified copy of the record of the court of conviction, or conviction of a misdemeanor shown by certified copy of the record of the court of conviction, which in the opinion of the Board shows an unfitness to practice barbering.

B. Malpractice or incompetency.

C. Continuing to practice barbering while knowingly afflicted with an infection or communicable disease.

D. Advertising by means of knowingly false or deceptive statement(s).

E. Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.

F. Immoral or unprofessional conduct.

G. Obtaining or attempting to obtain a certificate of registration for money other than the required fee, or for any other thing of value or by fraudulent misrepresentations.

H. Willful failure to display certificate of registration or copy of the sanitation rules as provided in § 88 of this Subchapter.

I. Violation of any of the sanitary regulations promulgated by the Board of Barber Examiners and the health advisor for the regulation of barbershops, barber schools and barber colleges.

J. Owning, operating, or managing a barber school or a portion thereof in which the practice of barbering is carried on, unless at each entrance to such school is displayed a sign in letters not less than eight inches in height indicating to the public that the school, place, or establishment is a barber school and the work therein is done by students exclusively.

K. Owning, managing, or operating a barbershop unless there is displayed clearly visible at the main entrance thereto a sign indicating that it is a barbershop.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 91. Fees**

The Board of Barber Examiners shall charge and collect the following fees in advance:

A. For examination of an applicant to practice as a barber: Fifteen dollars (\$15.00).

B. For issuance of a certificate to practice as a barber: Ten dollars (\$10.00).

C. For renewal of a certificate to practice as a barber: Five dollars (\$5.00).

D. For restoration of an expired certificate to practice as a barber: Ten dollars (\$10.00).

E. For the examination of an applicant to practice as an apprentice barber: Ten dollars (\$10.00).

F. For issuance of a certificate as an apprentice barber: Five dollars (\$5.00).

G. For renewal of a certificate as an apprentice barber: Five dollars (\$5.00).

H. For restoration of an expired certificate to practice as an apprentice



barber: Ten dollars (\$10.00).

I. For annual establishment fee to be paid by each shop owner: Five dollars (\$5.00).

J. Each application to open or establish a barbershop on the Navajo Nation shall be accompanied with a fee of one hundred dollars (\$100.00) to cover expenses of inspection which shall be retained by the Board and deposited as other fees.

K. A duplicate license certificate or permit will be issued upon the filing of a statement covering the loss of a license, verified by the oath of the applicant, and submitting the signed photograph of applicant, and the payment of a fee of one dollar (\$1.00) for the issuance of a duplicate. Each duplicate shall have the word "Duplicate" stamped across the face thereof, and will be the same number as the lost original.

#### **History**

CJY-78-68, July 11, 1968.

#### **Cross References**

Board of Bar Examiners' Fund, see 20 N.N.C. § 50.

### **Subchapter 7. Licensing of Barbershops**

#### **§ 131. Licensing requirements**

No barbershop shall be licensed and approved by the Board unless:

A. It is located in separate quarters, or if located in less than the whole of a single building, the quarters occupied are separated from the remainder of the building by solid walls reaching from floor to ceiling, but a barbershop and a beauty shop may be located in the same room or quarters;

B. It has running hot and cold water therein;

C. It conforms to and complies with the rules and regulations promulgated by the Board; and

D. There is displayed at the main entrance thereto a sign clearly indicating that it is a barbershop.

#### **History**

CJY-78-68, July 11, 1968.

### **Subchapter 9. Regulation of Barber Schools**

#### **§ 161. Barber schools—Admission requirements**

No barber school shall be licensed and approved by the Board to operate

as such unless it requires as a prerequisite to admission that the applicant:

- A. Be more than 16 1/2 years of age;
- B. Be of good moral character and temperate habits;
- C. Furnish a diploma showing graduation from an eighth grade grammar school or have an equivalent education, as determined by the Board; and
- D. Be free from any infectious, contagious, or communicable disease.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 162. Application requirements**

No school or college of barbering shall enroll or admit any student unless the student shall file, in duplicate, a newly verified application. The form and content of the application shall be prescribed by the Board, and such forms shall be supplied by the Board to applicants, schools, or colleges upon request. One copy of the application shall be retained by the school or college enrolling or admitting the student and the other copy shall be filed by the school or college with the Board. No school or college of barbering shall enroll or admit any student in a postgraduate course when the postgraduate course is for the purpose of qualifying persons to pass the examination conducted by the Board, unless the student shall file, in duplicate, an application duly verified. The application shall be obtained by such student or school or college from the Board and the application shall show that the applicant has either: (1) graduated from a school or college of barbering approved by the Board; (2) holds a valid, unexpired and uncanceled certificate of registration as a registered apprentice; or (3) can prove by sworn affidavits that he or she has practiced as a barber in a state of the United States for a period of at least two years immediately prior to making such application. One copy of such application shall be retained by the college or school when admitting or enrolling said student and the other shall be filed by such school or college with said Board. Nothing in this Section shall contain or be construed as limiting or modifying the provisions of § 82 of this Chapter.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 163. Graduation requirements**

A. The school shall require as a prerequisite to graduation a course of instruction of not less than 1000 hours to be completed within six months and not more than eight hours in any one working day. Such course of instruction shall include the following subjects:

1. Scientific fundamentals of barbering, hygiene, histology of the hair, skin and nails; structure of the head, face and neck, and elementary chemistry relating to sterilization and antiseptics; and

2. Massaging and manipulating the muscles of the scalp, neck or skin of the neck; haircutting; shaving and arranging; coloring, bleaching and tinting the hair.

B. Not less than two hours out of each eight hour day shall be devoted to subjects in Subsection (A) (1) and the remainder shall be devoted to subjects in Subsection (A) (2).

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 164. Permit to operate barber school**

It shall be unlawful for any person, firm or corporation to operate a barber school or barber college without first obtaining a permit from the Board of Barber Examiners, fully complying with the provisions of this Chapter.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 165. Fees**

A permit to operate a barber school or barber college, shall be purchased at an annual fee of twenty dollars (\$20.00) for each chair installed in such school upon which work or service may be performed upon a patron of the school, but such annual fee shall not be less than two hundred dollars (\$200.00).

#### **History**

CJY-78-68, July 11, 1968.

### **Subchapter 11. Violation of Provisions**

#### **§ 201. Notice**

The Board, upon being advised of any violations of this Chapter or of any regulations enacted by the Board, shall give notice to the person or persons accused of the violation or violations. The notice shall:

- A. Be in writing and shall state the violation or violations;
- B. Be included in a statement for its issuance;
- C. State a date and time for a hearing on the matter; and

D. Be served upon the owner or his or her agent of a barbershop, barber school or barber college and/or upon the individual barber apprentice who is in violation. The notice or order shall be deemed to have been properly served when a copy of the notice or order is sent by registered mail to the last known address of the person in violation of this Chapter or regulations of the Board.

### **History**

CJY-78-68, July 11, 1968.

### **§ 202. Hearing**

Any person affected by any notice or regulation which is issued in implementation or enforcement of these regulations, may request and will be granted a hearing on the matter before the Board provided that such person shall file with the Board a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within 10 days of issuance of the notice or regulation. Upon receipt of such petition, the Board shall set a time and place for such hearing and, will give the petitioner written notice. At the hearing, petitioners will be given an opportunity to be heard and show why such notice or regulation should be modified or withdrawn. The hearing will be commenced no later than 10 days after the day on which the petition was filed, provided that upon application of the petitioner the Board may postpone the date of the hearing for a reasonable time beyond such 10-day period.

### **History**

CJY-78-68, July 11, 1968.

### **§ 203. Determination**

After the hearing the Board may sustain, modify or withdraw the notice or regulation pending the finding as to the compliance or noncompliance with these regulations. If the Board shall sustain or modify such notice, it shall be deemed to be in order. Any notice or regulation served pursuant to this Chapter shall become an order if a written petition for a hearing shall not have been filed with the Board within 10 days after such notice or regulation was passed.

### **History**

CJY-78-68, July 11, 1968.

### **§ 204. Record of proceedings**

The proceedings at such hearings, including the finding(s) and decision(s) of the Board, shall be reduced to writing and entered as a matter of public record with the Board. Such records shall include every notice or order issued in connection with the matter.

### **History**

CJY-78-68, July 11, 1968.

### **§ 205. Emergency action**

The Board may, when an emergency exists requiring immediate action to protect public health, take such action as is deemed necessary to meet the

emergency notwithstanding any other provision of this Chapter. The order shall be effective immediately.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 206. Orders**

Orders issued under the emergency powers of the Board shall remain in force and effect until revoked by the board or until a hearing has been held before the Board.

#### **History**

CJY-78-68, July 11, 1968.

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

#### **§ 207. Perjury**

A. The wilful making of any false statement of a material matter under any oath or affidavit which is required by provisions of this Chapter is perjury and punishable as such.

B. Perjury shall be punishable by a fine of not less than twenty-five dollars (\$25.00) and no more than two hundred dollars (\$200.00), or by imprisonment in the Navajo Nation jail not less than 20 days or more than six months or both.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 208. Penalties—Generally**

Each of the following constitutes a misdemeanor, punishable upon conviction by a fine of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00), or by imprisonment in the Navajo Nation jail not less than 10 days or more than 90 days, or both, in the discretion of the court trying the case:

A. The violation of any of the provisions of this Chapter.

B. Obtaining or attempting to obtain a certificate of registration for money other than the required fee or for any other thing of value or by fraudulent misrepresentation.

C. Practicing or attempting to practice by fraudulent misrepresentation.

D. The use of any room or place for barbering which is also used for business purposes (except the sale of hair tonics, lotions, creams, toilet articles, cigars, tobacco, confectionery, laundry and such commodities as are used and sold in barbershops), unless said room or place is separated from the

portion used for business purposes by solid walls reaching from floor to ceiling.

E. The use for barbering of a room or quarters also used for residential purposes, unless said quarters have an outside entrance and are separated from the remainder of the building by solid walls reaching from floor to ceiling.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 209. Nonmembers of the Navajo Nation**

Nonmembers of the Navajo Nation who fail to comply with this Chapter or the regulations of the Board, issued pursuant to this Chapter, may be excluded from Navajo Nation land. Nonmembers of the Navajo Nation excluded pursuant to this regulation<sup>1</sup> shall be excluded under the procedures as established in Title 17 of the Navajo Nation Code.

#### **History**

CJY-78-68, July 11, 1968.

#### **§ 210. Payment of fines**

Fines levied by the Board shall be paid directly into the Navajo Nation General Fund and shall not be retained for the benefit of the Board.

#### **History**

CJY-78-68, July 11, 1968.

### **Chapter 3. Practice of Cosmetology**

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

#### **§ 401. Definitions**

For the purposes of this Chapter and unless otherwise required by the context:

A. "Board" shall mean the Advisory Board of Cosmetology Examiners.

B. "Certificate" shall mean a certificate of registration entitling the person named therein to practice or operate a cosmetology school or cosmetology shop.

C. "Communicable disease" shall mean an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a healthy person from an affected person, animal or arthropod or through the agency of an intermediate host, vector or the inanimate environment.

D. "Cosmetology" shall mean any one or any combination of the following

practices done upon the upper part of the human body for cosmetic purposes; and not for the treatment of diseases or physical or mental ailments; and when done for payment either directly or indirectly; or without payment for the general public; upon a female: (1) massaging, cleansing, stimulating, manipulating, exercising, beautifying, or applying oils, creams, antiseptics, clays, lotions, or other preparations, either by hand or by mechanical or electrical appliances; (2) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of a person; (3) cutting, clipping, or trimming the hair; (4) arching eyebrows; (5) removing superfluous hair from the face, neck, shoulders, or arms by the use of depilatories; (6) cleansing, dressing, or polishing the nails of a person, referred to in this Chapter as manicuring.

E. "Cosmetology school" shall mean any place, shop, or establishment where the practices, fundamentals, theories or practical applications of cosmetology are taught for pay, whether direct or indirect.

F. "Cosmetology shop" shall mean any place, shop or establishment wherein the practice of cosmetology is engaged in or carried on as a business, trade, or profession.

G. "Health Advisor" shall mean the United States Public Health Service, Window Rock Area Medical Officer in Charge or his or her designated representative.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 402. Persons exempt**

The following persons are exempt from the provisions of this Chapter while in the discharge of their professional duties:

A. Persons licensed to practice medicine and surgery.

B. Licensed physicians and surgeons and commissioned medical or surgical officers of the United States Public Health Service.

C. Registered nurses.

D. Undertakers and morticians.

E. Establishments and persons licensed under the Barbering Statute.

F. Cosmetology schools operated and conducted by any institution of learning as a part of their regular curriculum. Provided, however, that hours of study completed in such institutional school shall be counted toward the hours of study required by this Chapter.

#### **History**

CJY-79-68, July 11, 1968.

### **Subchapter 3. Board of Cosmetology Examiners**

#### **§ 451. Membership of Board**

There shall be appointed by the President of the Navajo Nation a board of three members, which shall be known as the Board of Cosmetology Examiners. The members of the Board shall be selected for their interest in developing on the Navajo Nation a cosmetology profession of high standards and efficiency. The Board shall have the following representation:

A. One member shall be chosen from the staff of the United States Public Health Service.

B. One member shall be a registered cosmetologist from the Navajo Nation.

C. The third member shall be chosen from among the Navajo Nation, but need not be a registered cosmetologist.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 452. Term of office**

One member of the Board shall be appointed for the term of one year, the second member shall be appointed for a term of two years, and the third member shall be appointed for a term of three years. As each member's term expires, and thereafter, members shall be appointed for terms of three years. The Board shall be non-partisan.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 453. Election of officers; meetings**

The Board shall organize by electing a president, vice-president, and secretary from among its members. The Board shall meet semi-annually on the second Monday of February and the second Monday of August, and at such other times as are necessary in order to efficiently enforce this Chapter.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 454. Quorum**

A majority of the Board shall constitute a quorum and may perform and exercise all the duties and powers devolving upon it.

#### **History**

CJY-79-68, July 11, 1968.



#### **§ 455. Record of proceedings**

The secretary of the Board shall keep a record of its proceedings, a register of persons registered as cosmetologists and instructors, showing the name, place of business and residence of each and the date and the number of the certificate of each, and a record of all licenses or certificates issued, refused, renewed, suspended or revoked. Its records shall be open to public inspection at all reasonable times. The Board shall annually, on or before the first day of July, make a report to the Government Services Committee of the Navajo Nation Council of all its official acts during the preceding year.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 456. Removal**

The President of the Navajo Nation shall have the power to remove any member of the Board for incompetency, gross immorality, disability, for any abuse of his or her official power or for any other sufficient cause.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 457. Vacancies**

Any vacancies that shall occur shall be filled by an appointment within 90 days after the occurrence of the vacancy. Members appointed to fill vacancies caused by death, resignation or removal shall serve only for the unexpired term of their predecessors.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 458. Powers and duties**

A. A member of the Board, or its agents or assistant, shall have the authority to enter upon and inspect a cosmetology shop or cosmetology school at any time during business hours. The Board may make reasonable rules and regulations for the administration of the provisions of this Chapter. A copy of the rules, regulations and sanitary requirements adopted by the Board shall be furnished by the Board to the owner or manager of each cosmetology shop or cosmetology school and such copy shall be posted in a conspicuous place in each cosmetology shop, or cosmetology school.

B. The Board shall act as mediator or arbitrator in any controversy or issue relating to cosmetology which arises between or among cosmetologists, either as individuals or as organized groups.

C. The Board shall have the full power to conduct hearings pursuant to this Chapter and all future regulations of the Board; to subpoena the

attendance of witnesses and production of relevant books and papers; and to levy fines and to issue orders and judgments requiring the payment of fines or the compliance with this Chapter and regulations of the Board, and the doing of any and all acts pursuant to this Chapter and regulations of the Board deemed necessary to conduct a hearing or investigation.

#### **History**

CJY-79-68, July 11, 1968.

#### **Cross References**

Display of certificates, see 20 N.N.C. § 506.

Notice and hearings, persons accused of violations, see 20 N.N.C. §§ 651, 652.

Penalties and payment of fines, see 20 N.N.C. § 658 *et seq.*

#### **§ 459. Findings; appeal**

The decision of the Board shall be final and binding. Provided, however, that the decision of the Board may be appealed to the Navajo Nation court system pursuant to the Navajo Nation Rules of Civil Procedure as they are enacted by the Judicial Branch of the Navajo Nation. Appeals to the Navajo Nation court system shall be *de novo* proceedings.

#### **History**

CJY-79-68, July 11, 1968.

#### **Cross References**

Courts and procedure, see Title 7 of the Navajo Nation Code.

#### **§ 460. Board of Cosmetologist Examiners' Fund**

A. All monies received by the Board under this Chapter shall be paid to the secretary, who shall give a receipt therefor.

B. At the end of each month the secretary shall report to the Navajo Nation Controller the total amount received under this Chapter from all sources and shall deposit the amount with the Navajo Nation Controller, who shall place it in a special fund known as the Navajo Board of Cosmetologist Examiners' Fund.

C. Ninety percent (90%) of all monies deposited in the Fund shall constitute a separate fund for the maintenance of the Board and for the enforcement of this Chapter, and the remainder shall be credited to the General Fund of the Navajo Nation.

#### **History**

CJY-79-68, July 11, 1968.

## **Subchapter 5. Cosmetologist Qualifications**

### **§ 501. License requirements**

On and after the effective date of this Chapter, it shall be unlawful to:

A. Practice cosmetology on the Navajo Nation without a certificate of registration as a registered cosmetologist issued pursuant to the provisions of this Chapter by the Board of Cosmetology Examiners.

B. For any person, association of persons, or corporation to operate a cosmetology shop or cosmetology school, unless it is at all times operated under the personal supervision and management of a registered cosmetologist.

C. For any person, association of persons, or corporation to employ or engage as an associate any person to engage in the practice of cosmetology as herein defined unless such person shall display a currently valid certificate of registration as a registered cosmetologist.

D. For any person, association of persons, or corporation to operate a cosmetology shop on the Navajo Nation without having obtained an annual establishment license, which license shall at all times be posted in a conspicuous place in the shop. The license shall not be transferable and shall be valid only for the place and location stated in the license.

E. For any person, firm or corporation to open or establish a cosmetology shop on the Navajo Nation without first having had the shop inspected and approved by the health advisor.

### **History**

CJY-79-68, July 11, 1968.

### **§ 502. Qualifications**

A. Any person shall be qualified to receive a certificate of registration and practice as a registered cosmetologist:

1. Who is a citizen of the United States of America;
2. Who is qualified under the provisions of Subchapter 5 of this Chapter;
3. Who is at least 18 years of age;
4. Who is of good moral character and temperate habits;
5. Who is the possessor of at least a tenth grade secondary education; and
6. Who has satisfactorily passed an examination conducted by the Board to determine his or her fitness to practice cosmetology.

B. Any person who, under the provisions of this Chapter, fails to satisfactorily pass an examination conducted by the Board must continue to study for an additional six months before he or she is again entitled to take the examination for a registered cosmetologist and should he or she fail to pass the second examination, he or she shall not practice cosmetology on the Navajo Nation.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 503. Registered cosmetologist transferring to the Navajo Nation**

Any person who is at least 18 years of age and of good moral character and temperate habits and who is a citizen of the United States of America and has a license or certificate of registration as a practicing cosmetologist from a state or country which has substantially the same or higher requirements for registering cosmetologists than are required by this Chapter or who can prove by sworn affidavits that he or she has practiced as a cosmetologist for a period of at least five years prior to making application on the Navajo Nation shall, upon filing an application and payment of the required fee, be granted permission to take an examination to determine his or her fitness to receive a certificate of registration to practice cosmetology. Should he or she fail to pass the examination he or she may file a new application accompanied by the, required fee and take another examination if he or she desires. In no event will he or she be permitted to practice cosmetology until such time as he or she has satisfactorily passed the examination and has received the certificate of registration as a registered cosmetologist.

#### **History**

CJY-79-68, July 11, 1968.

#### **Cross References**

Fees, see 20 N.N.C. § 509.

#### **§ 504. Application**

Any person who desires to practice cosmetology shall file with the secretary of the Board of Cosmetology Examiners a written application under oath on a form prescribed by the Board, together with two 5"x 3" signed photographs of the applicant, and satisfactory proof that applicant is of good moral character, and also furnish the Board with a certificate from a licensed physician showing that applicant is free from any contagious and infectious or communicable disease, together with results of laboratory tests for syphilis and tuberculosis, which certificate shall not be dated more than ten days prior to the date of application for registration.

#### **History**

CJY-79-68, July 11, 1968.

### **§ 505. Examination**

A. The Board shall conduct examinations of applicants for certificates of registration to practice as a registered instructor, or registered cosmetologist at least two times each year at several locations around the Navajo Nation fixed and published in advance by the Board.

B. Such examinations shall include a practical demonstration by each applicant as well as a written and oral test of the applicant's knowledge of the subjects required to be taught at schools of cosmetology. The practical examination shall count for sixty percent (60%), and the written and oral examinations for forty percent (40%).

C. A certificate to practice shall be issued to each applicant who shall satisfactorily pass an examination with an average grade of not less than seventy-five percent (75%), and shall possess the other qualifications required by law.

#### **History**

CJY-79-68, July 11, 1968.

#### **Cross References**

Qualifications to receive certificate of registration, see 20 N.N.C. § 502.

### **§ 506. Display of certificates**

Every holder of a certificate of registration shall display it in a conspicuous place at or near his or her work chair. Sanitation rules and ordinances shall be displayed in a conspicuous place within the cosmetology shop.

#### **History**

CJY-79-68, July 11, 1968.

### **§ 507. Renewal of certificates**

Every registered cosmetologist, every registered instructor, and every owner of a cosmetology shop or cosmetology school, shall annually, on or before the first day of July of each year, renew his or her certificate of registration, establishment license or permit and pay the required fee. Upon applying for a renewal certificate every registered cosmetologist or instructor shall furnish the Board with a medical certificate as provided in § 504 of this Subchapter. Every certificate of registration, establishment license, or permit which has not been renewed as herein required in any year, shall expire on the first day of August in that year. A registered cosmetologist or registered instructor whose certificate of registration has expired may have his or her certificate restored upon payment of the required fee. Any registered cosmetologist or instructor who has been absent from the practice of cosmetology for a period of over three years must retake and satisfactorily pass the examination for cosmetologist or instructor, respectively, before issuance of a new certificate of registration.

## History

CJY-79-68, July 11, 1968.

## Cross References

Fees for renewal certificates or permits, see 20 N.N.C. § 509.

### § 508. Revocation of certificates

The Board shall either refuse to issue a renewal or shall suspend or revoke any certificate of registration for any one or combination of the following causes:

A. Conviction of a felony shown by certified copy of the record of the court of conviction, or conviction of a misdemeanor shown by certified copy of the record of the court of conviction, which in the opinion of the Board shows an unfitness to practice cosmetology.

B. Malpractice or incompetency.

C. Continuing to practice cosmetology while knowingly afflicted with an infection or communicable disease.

D. Advertising by means of knowingly false or deceptive statement(s).

E. Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.

F. Immoral or unprofessional conduct.

G. Obtaining or attempting to obtain a certificate of registration for money other than the required fee, or for any other thing of value or by fraudulent misrepresentations.

H. Wilful failure to display certificate of registration or copy of the sanitation rules as provided in § 506 of this Subchapter.

I. Violation of any of the sanitary regulations promulgated by the Board of Cosmetology Examiners and the health advisor for the regulation of cosmetology shops and cosmetology schools.

J. Owning, operating, or managing a cosmetology school or a portion thereof in which the practice of cosmetology is carried on, unless at each entrance to each school is displayed a sign in letters not less than eight inches in height indicating to the public that the school, place, or establishment is a cosmetology school and the work therein is done by students exclusively.

K. Owning, managing, or operating a cosmetology shop unless there is displayed clearly visible at the main entrance thereto a sign indicating that it is a cosmetology shop. The phrase "beauty shop", "beauty salon" or other phrase commonly used to designate a cosmetology shop shall be sufficient.

### **History**

CJY-79-68, July 11, 1968.

### **§ 509. Fees**

The Board of Cosmetology Examiners shall charge and collect the following fees in advance:

A. For examination of an applicant to practice as a cosmetologist: Fifteen dollars (\$15.00).

B. For issuance of a certificate to practice as a cosmetologist: Ten dollars (\$10.00).

C. For renewal of a certificate to practice as a cosmetologist: Fifteen dollars (\$15.00).

D. For restoration of an expired certificate to practice as a cosmetologist: Ten dollars (\$10.00).

E. For the examination of an applicant to practice as an instructor: Twenty dollars (\$20.00).

F. For issuance of a certificate as an instructor: Ten dollars (\$10.00).

G. For renewal of certificate as an instructor: Five dollars (\$5.00).

H. For annual establishment fee to be paid by each shop owner: Five dollars (\$5.00).

I. Each application to open or establish a cosmetology shop on the Navajo Nation shall be accompanied by a fee of one hundred dollars (\$100.00) to cover expenses of inspection which shall be retained by the Board and deposited as other fees.

J. A duplicate license, certificate or permit to replace a lost certificate shall be issued upon the filing of a statement covering the loss of same, verified by the oath of the applicant, and submitting the signed photograph of applicant, and the payment of a fee of one dollar (\$1.00) for the issuance of same. Each duplicate shall have the word "Duplicate" stamped across the face thereof, and shall be the same number as the lost certificate.

### **History**

CJY-79-68, July 11, 1968.

### **Cross References**

Board of Cosmetologist Examiners' Fund, see 20 N.N.C. § 460.

## **Subchapter 7. Licensing of Cosmetology Shops**

**§ 551. Licensing requirements**

No cosmetology shop shall be licensed and approved by the Board unless:

A. It is located in separate quarters, or if located in less than the whole of a single building, the quarters occupied are separated from the remainder of the building by solid walls reaching from floor to ceiling, but a barber shop and a beauty shop may be located in the same room or quarters;

B. It has running hot and cold water therein;

C. It conforms to and complies with the rules and regulations promulgated by the Board; and

D. There is displayed at the main entrance thereto a sign clearly indicating that it is a cosmetology shop.

**History**

CJY-79-68, July 11, 1968.

**Subchapter 9. Regulation of Cosmetology Schools**

**§ 601. Cosmetology schools—Admission requirements**

No cosmetology school shall be licensed and approved by the Board to operate as such unless it requires as a prerequisite to admission that the applicant:

A. Be more than 16 1/2 years of age;

B. Be of good moral character and temperate habits;

C. Furnish a diploma showing graduation from an eighth grade grammar school or have an equivalent education, as determined by the Board; and

D. Be free from any infectious, contagious, or communicable disease.

**History**

CJY-79-68, July 11, 1968.

**§ 602. Application requirements**

No school of cosmetology shall enroll or admit any student unless the student shall file, in duplicate, a newly verified application. The form and content of the application shall be prescribed by the Board, and such forms shall be supplied by the Board to applicants, schools, or colleges on request. One copy of the application shall be retained by the school or college enrolling or admitting the student and the other copy shall be filed by the school or college with the Board. No school of cosmetology shall enroll or admit any student in a postgraduate course when the postgraduate course is for



the purpose of qualifying persons to pass the examination conducted by the Board, unless the student shall file, in duplicate, an application duly verified. The application shall be obtained by such student or school or college from the Board and the application shall show that the applicant has either: (1) graduated from a school of cosmetology approved by the Board; or (2) can prove by sworn affidavits that he or she has practiced as a cosmetologist in a state of the United States for a period of at least two years immediately prior to making such application. One copy of such application shall be retained by the college or school when admitting or enrolling said student and the other shall be filed by such school or college with said Board. Nothing in this Section shall contain or be construed as limiting or modifying the provisions of § 502 of this Chapter.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 603. Graduation requirements**

A. The school shall require as a prerequisite to graduation a course of instruction of not less than 1800 hours to be completed within 18 months of not more than eight hours in any one working day. Such course of instruction shall include the following subjects:

1. Scientific fundamentals of cosmetology, hygiene, histology of the hair, skin and nails; structure of the head, face and neck; and elementary chemistry relating to sterilization and antiseptics; and

2. Massaging and manipulating the muscles of the scalp, neck or skin of the neck, haircutting, shaving and arranging, coloring, bleaching and tinting the hair.

B. Not less than two hours out of each eight hour day shall be devoted to subjects in Subsection (A) (1) and the remainder shall be devoted to subjects in Subsection (A) (2).

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 604. Instructor qualifications**

A. A person is qualified to receive a certificate to practice as a registered instructor who:

1. Is a registered beauty culturist; and

2. Satisfactorily passes an examination conducted by the Board.

B. An applicant for a certificate as an instructor who fails to pass an examination shall be required to complete a further course of study of not less than 100 hours in a registered school, which shall be completed within three months of not more than eight hours in any one day.

C. No applicant for an instructor's certificate shall be allowed to take the examination more than three times.

**History**

CJY-79-68, July 11, 1968.

**§ 605. Permit to operate cosmetology school**

It shall be unlawful for any person, association of persons, or corporation to operate a cosmetology school without first obtaining a permit from the Board of Cosmetology Examiners, fully complying with the provisions of this Chapter.

**History**

CJY-79-68, July 11, 1968.

**§ 606. Fees**

A permit to operate a cosmetology school shall be purchased at an annual fee of twenty dollars (\$20.00) for each chair installed in such school upon which work or service may be performed upon a patron of the school, but such annual fee shall not be less than two hundred dollars (\$200.00).

**History**

CJY-79-68, July 11, 1968.

**Subchapter 11. Violation of Provisions**

**§ 651. Notice**

The Board, upon being advised of any violations of this Chapter or of any regulations enacted by the Board, shall give notice to the person or persons accused of the violation or violations. The notice shall:

- A. Be in writing and shall state the violation or violations;
- B. Be included in a statement for its issuance;
- C. State a date and time for a hearing on the matter; and

D. Be served upon the owner of a cosmetology shop, or cosmetology school or his or her agent, and/or upon the individual cosmetologist or instructor who is in violation. The notice or order shall be deemed to have been properly served when a copy of the notice or order is sent by registered mail to the last known address of the person in violation of this Chapter or regulations of the Board.

**History**

CJY-79-68, July 11, 1968.

#### **§ 652. Hearing**

Any person affected by any notice or regulation which is issued in implementation or enforcement of these regulations, shall upon his or her request be granted a hearing on the matter before the Board provided that such person shall file with the Board a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten days of issuance of the notice or regulation. Upon receipt of such petition, the Board shall set a time and place for such hearing and shall give the petitioner written notice. At the hearing petitioner will be given an opportunity to be heard and show why such notice or regulation should be modified or withdrawn. The hearing shall be commenced no later than ten days after the day on which the petition was filed, provided that upon application of the petitioner the Board may postpone the date of the hearing for a reasonable time beyond such 10-day period.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 653. Determination**

After the hearing the Board may sustain, modify or withdraw the notice or regulation pending the finding as to the compliance or noncompliance with these regulations. If the Board shall sustain or modify such notice, it shall be deemed to be an order. Any notice or regulation served pursuant to this Chapter shall become an order if a written petition for a hearing shall not have been filed with the Board within ten days after such notice or regulation was passed.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 654. Record of proceedings**

The proceedings at such hearings, including the finding(s) and decision(s) of the Board, shall be reduced to writing and entered as a matter of public record with the Board. Such records shall include every notice or order issued in connection with the matter.

#### **History**

CJY-79-68, July 11, 1968.

#### **§ 655. Emergency action**

The Board may, when an emergency exists requiring immediate action to protect the public health, take such action as is deemed necessary to meet the emergency notwithstanding any other provisions of this Chapter. The orders shall be effective immediately.

#### **History**

CJY-79-68, July 11, 1968.

**§ 656. Orders**

Orders issued under the emergency powers of the Board shall remain in force and effect until revoked by the Board or until a hearing has been held before the Board.

**History**

CJY-79-68, July 11, 1968.

**§ 657. Perjury**

A. The wilful making of any false statement of a material matter under any oath or affidavit which is required by provisions of this Chapter is perjury and punishable as such.

B. Perjury shall be punishable by a fine of not less than twenty dollars (\$25) and no more than two hundred dollars (\$200.00), or by imprisonment in the Navajo Nation jail not less than 20 days or more than six months or both.

**History**

CJY-79-68, July 11, 1968.

**§ 658. Penalties-Generally**

Each of the following constitutes a misdemeanor, punishable upon conviction by a fine of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00), or by imprisonment in the Navajo Nation jail not less than 10 days or more than 90 days, or both, in the discretion of the court:

A. The violation of any of the provisions of this Chapter.

B. Obtaining or attempting to obtain a certificate of registration for money other than the required fee or for any other thing of value or by fraudulent misrepresentation.

C. Practicing or attempting to practice by fraudulent misrepresentation.

D. The use of any room or place for cosmetology which is also used for business purposes (except the sale of hair tonics, lotions, creams, toilet articles, or other articles pertinent to cosmetology, or as a laundry delivery agency), unless said room or place is separated from the portion used for business purposes by solid walls reaching from floor to ceiling.

E. The use for cosmetology of a room or quarters also used for residential purposes, unless said quarters have an outside entrance and are separated from the remainder of the building by solid walls reaching from floor to ceiling.

**History**

CJY-79-68, July 11, 1968.

**§ 659. Nonmembers of Navajo Nation**

Nonmembers of the Navajo Nation who fail to comply with this Chapter or the regulations of the Board, issued pursuant to this Chapter, may be excluded from Navajo Nation land. Nonmembers of the Navajo Nation excluded pursuant to this Chapter shall be excluded under the procedures as established in Title 17 of the Navajo Nation Code.

**History**

CJY-79-68, July 11, 1968.

**§ 660. Payment of fines**

Fines levied by the Board shall be paid directly into the Navajo Nation general fund and shall not be retained to the benefit of the Board.

**History**

CJY-79-68, July 11, 1968.

**Chapter 5. Licensing of Medical Personnel**

**§ 901. Persons licensed**

The Navajo Nation hereby expressly authorizes and licenses any physician, surgeon, dentist, dental assistant, registered nurse, medical assistant, practical nurse, ophthalmologist, optometrist, and optician who is employed by the Navajo Nation, its instrumentalities, entities and authorities under the following circumstances:

A. The professional is employed in his or her capacity or because of his or her professional qualifications;

B. The professional is rendering professional service, assistance or advice in his or her capacity as an employee of the Navajo Nation, or instrumentality or authority thereof;

C. The professional is licensed or certified to practice in any one of the states or territories of the United States of America and his or her right to practice in any such territory is not under suspension or revocation; and

D. The professional's credentials and references have been presented to, verified, found acceptable, and approved by the Health and Social Services Committee of the Navajo Nation Council.

**History**

ACMA-49-77, March 9, 1977.

**Revision note.** Reference to the "Advisory Committee" changed to the "Health and Social Services Committee" pursuant to 2 N.N.C. § 454(B)(1).

## **Chapter 7. Veterinary Code**

### **Subchapter 1. General Provisions**

#### **§ 1001. Authority**

It is within the inherent authority of the Navajo Nation to regulate and protect Navajo Nation lands and livestock/companion animal resources and to prescribe rules and regulations under which veterinary services may be delivered or permitted to Navajo individuals for the protection of the public and animal health.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1002. Findings; purpose**

A. The Navajo Nation Council finds and declares:

1. The Navajo Nation is comprised of over 27,000 square miles of land, of which, a majority is used for grazing by domestic livestock;

2. The Navajo People possess the inherent right of self-government, secured and protected by the Treaties of September 9, 1849, 9 Stat. 974, and June 1, 1868, 15 Stat. 667, and other federal law, which includes the right to condition and regulate the use of Navajo lands within the Navajo Nation;

B. It is the purpose of this Chapter:

1. To protect the Navajo people, livestock, companion animals & wildlife of the Navajo Nation.

2. To regulate the practice of veterinary medicine within the Navajo Nation, tribal ranches and agricultural enterprises.

3. To promote the better utilization and prudent use of the land resources at the appropriate carrying capacities by Navajo permittees to enable them to earn a living, in whole or in part, through the grazing of their own livestock.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1003. Definitions**

As used in this Chapter:

A. "Alternative Medicine" shall include but is not limited to: chiropractic, acupuncture, naturopathic medicines and practice.

B. "Animal" means any animal or mammal other than human and includes birds, fish, reptiles, and wild or domestic animals.

C. "Approved euthanasia drugs" means those controlled substances approved by the Board for the purpose of euthanizing animals.

D. "Board" means the Navajo Nation Board of Veterinary Medicine.

E. "Certified Veterinary Technician" or "CVT" means a person employed by, and working under the direction and supervision of a veterinarian licensed by the Navajo Nation Board of Veterinary Medicine, and whose work requires knowledge and education of the principles of animal health care, who has passed required state certification but is not licensed to practice veterinary medicine.

F. "Certified Euthanasia Technician" means a person whose activity is the humane euthanization of injured, abandoned or feral animals.

G. "Controlled Substance" means any substance which is registered and controlled under the Federal Controlled Substances Act, P.L. 91-513, as amended.

H. "Drug Enforcement Agency" or "DEA" means the federal agency for enforcement of narcotics laws.

I. "Equine Dentist" means an individual specially trained and certified in the techniques and practice of equine dentistry from a recognized equine dental school.

J. "Feral" means any unowned or free ranging animal or escaped from domestication and returned to its wild state and not under control of an owner.

K. "Incompetence" means lacking sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients.

L. "Horse" means a mammal of equine species.

M. "Letter of concern" means an advisory letter to notify a veterinarian / technician / assistant / lay person that, while there is insufficient evidence to support disciplinary action, the Board believes the person should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the Board may result in action against the specific person involved.

N. "Licensed veterinarian" means a person who is currently licensed to practice veterinary medicine within the Navajo Nation.

O. "Livestock" means cattle, dairy, buffalo, sheep, goats, swine and

llamas except feral pigs.

P. "Malpractice" means any one of the following:

1. Treatment in a manner contrary to accepted practices.
2. Any professional misconduct or unreasonable lack of professionalism or fidelity in the performance of professional practice.
3. Negligent treatment or practice of veterinary medicine resulting in injury, unnecessary suffering or death that was caused by carelessness, disregard of established principles or practices or neglect.
4. The practice of veterinary medicine by an individual without a license or certification of advanced training in the field of veterinary medicine.

Q. "Medicine" means any substance used to treat, alter or change a disease course.

R. "Navajo Nation" means:

1. When referring to the body politic, the same as set forth in 1 N.N.C. § 551 *et seq.*;

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 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 Tribe, any Band of Navajo Indians, or any individual Navajo Indian as such;

- c. All other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law; and

- d. All tribal ranches and agricultural enterprises.

S. "Owner" means those financially and legally responsible for an animal(s).

T. "Practice of veterinary medicine":

1. Means the following acts:



a. Making known that one will attempt to treat any animal condition, disease, deformity, wound, injury, etc. by means of prescribing or administering any medication, controlled substance or by means of surgery;

b. Prescribing or administering any prescription-only drug for a animal; or

c. Performing any surgery other than accepted livestock management practices.

2. Does not mean the following acts:

a. Certified veterinary technicians performing tasks authorized by the rules of the Board and in the course of employment under the direction and supervision of a licensed veterinarian;

b. Veterinary students enrolled in a certified veterinary medical school performing duties or actions assigned by/or working under direct supervision of a licensed Navajo Nation veterinarian;

c. Any member of the faculty of an accredited veterinary school performing as a person lecturing or giving instruction or in connection with the continuing education course or seminar for licensed veterinarians or veterinary technicians;

d. Any merchant or manufacturer authorized to sell at his regular place of business any over-the-counter medicine or other product used in the prevention or treatment of animal disease; or

e. Any Navajo individual performing functions of accepted livestock husbandry management.

f. Medicine practice by a traditional Navajo medicine person(s) who are recognized by an official association.

g. Standard practice of equine hoof trimming and shoeing for routine maintenance done by a farrier.

U. "Prescription Horse Shoeing" means horse shoeing done for the treatment or correction of a medical injury or disease as specified by a doctor of veterinary medicine.

V. "Responsible veterinarian" means an accredited veterinarian responsible to the Navajo Nation Board of Veterinary Medicine to practice veterinary medicine and will insure a veterinary premise complies with any applicable laws pertaining to the practice of veterinary medicine, and who is responsible for the establishment of policy at their veterinary premise.

W. "Small/Companion Animal" means any species of animal kept as a pet, excluding livestock, equine, zoo or wildlife species.

X. "Surgery" is the medical specialty that treats disease or injury (ies) by operative, manual & instrumental treatment.

Y. "Temporary sites" means sites where outpatient veterinary services are performed.

Z. "Unprofessional conduct" means receiving, performing veterinary services without meeting accepted veterinary practice standards of equipment or sanitation considering the procedures performed; other conduct deemed unprofessional or unethical by the Board or that referred to Sections 1021 through 1022.

AA. "Veterinarian" means a person who has received a doctorate of veterinary medicine from an accredited college of veterinary medicine; passed the National Veterinary Board Examination; is licensed by the state of residence and the Navajo Nation Board of Veterinary Medicine.

BB. "Veterinary assistant" means a person who is not a certified veterinary technician or licensed veterinarian and is employed by a licensed veterinarian.

CC. "Veterinary college" means any veterinary college or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent and that conforms to the standards required for accreditation by the American Veterinary Medical Association.

DD. "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry, acupuncture, manipulation, and the prescribing, administering or dispensing of drugs, vaccinations and medications or alternative medications for veterinary purposes.

EE. "Veterinary Mobile Clinic" means a mobile unit that contains the same treatment facilities as are required of a permanent veterinary establishment. The term does not refer to the car, truck, or other motorized vehicle used by a veterinarian in making a house call.

FF. "Veterinary & Livestock Program Office" means the veterinary program located within the Navajo Nation Department of Agriculture, Division of Natural Resources.

GG. "Wildlife" means any species of animal native and non-domesticated to the Navajo Nation excluding feral animals.

HH. "Zoo species" means any species of animal kept for public display at a zoological park or facility.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**Note.** Slight rewording: the word "the" changed to "than" at Subsection T(1)(c).

### **§ 1004. Applicability**

This Chapter shall apply to all residents/animals within the boundary of Navajo Nation lands, tribal ranches, and agricultural enterprise.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**Note.** Slight rewording: the word "natural pathy" changed to "naturopathic" at Subsection A; and the word "which" changed to "who" at Subsection E.

### **§ 1005. Rules and regulations**

A. The Resources Committee of the Navajo Nation Council, upon recommendation from the Navajo Nation Board of Veterinary Medicine, shall promulgate such rules and regulations from time to time as may be necessary to carry out the provisions of this Chapter.

B. 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.

C. The effectiveness and enforceability of this Chapter shall not be dependent upon the adoption of regulations pursuant to this Section.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1006. 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-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1007. Prior inconsistent law superseded**

Upon the effective date of this Navajo Nation Veterinary Act, 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-27-07, July 20, 2007. Effective date October 1, 2007.

**§ 1008. Short title**

This act may be cited as the "Navajo Nation Veterinary Act".

**History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**§ 1009. Amendments**

Upon the recommendation of the Resources Committee of the Navajo Nation Council, the Navajo Nation Council may from time to time amend the Navajo Nation Veterinary Act by a majority vote of the members present.

**History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**Subchapter 2. Violations; Unlawful acts; Prohibitions**

**§ 1020. Violations**

A. It is a violation of Navajo Nation law for anyone to:

1. Practice veterinary medicine, equine dentistry or alternative medicine for animals upon the Navajo Nation without a license or temporary permit from the Board;

2. Practice veterinary medicine under an assumed name or if a license has been suspended and/or revoked from another authority;

3. Falsely impersonate another veterinarian, certified veterinary technician, equine dentist or certified euthanasia technician;

4. Fraudulently obtain a veterinary medical diploma, license, or record of registration;

5. Append a veterinary title to one's name without being licensed to practice veterinary medicine, medical diploma, license, or record of registration;

6. Unlawfully assume or advertise a veterinary title conveying the impression that one is a lawful practitioner; or

7. Knowingly violate any provision of this Chapter.

B. The Veterinary & Livestock Program Office may, upon written complaint by any person, institute an investigation and, after notifying the accused, refer the complaint to the Navajo Nation Board of Veterinary Medicine and State

in which the violation is suspected to have occurred.

C. The Board, by majority vote, may impose a civil penalty not to exceed five hundred dollars (\$500.00) for each separate offense against the person for violation of this Section. Any person found by the Board to have violated this Section shall be subject to all applicable state, federal and Navajo Nation laws and may be prohibited from practicing on the Navajo Nation.

D. The Board by majority vote, may impose a cease and desist order or corrective action for the violation of this Act.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1021. Unlawful acts**

It shall be unlawful to practice veterinary medicine without a license on the Navajo Nation. Each day that a person shall so violate any provision of this Chapter shall constitute a separate unlawful act.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1022. Denial, suspension or revocation of license, permit or certificate**

A. The Board, by majority vote, may revoke or suspend a license, permit, or certificate granted to any person under the provisions of this Chapter, may reprimand, issue a letter of concern, and/or may impose a civil penalty not to exceed five hundred dollars (\$500.00) for each separate offense against any persons for:

1. Fraud, misrepresentation or deception in obtaining a license or permit or in services rendered;
2. Adjudication of insanity or manifest incapacity;
3. Use of advertising or solicitation that is false, misleading or is otherwise deemed unprofessional as determined by the Board;
4. Conviction of a felony or other crime involving moral turpitude in the practice of veterinary medicine;
5. Dishonesty, incompetence, gross negligence, or other malpractice in the practice of veterinary medicine;
6. Knowingly or recklessly having professional association with or employing any person practicing veterinary medicine unlawfully;
7. Fraud or dishonesty in the application or report of any test for disease in animals;

8. Practicing veterinary medicine under an assumed name;
9. Falsely impersonating another veterinarian or certified veterinary technician or equine dentist or certified euthanasia technician;
10. Failure to maintain professional premises and equipment in a clean and sanitary condition in compliance with regulations promulgated by the Board;
11. Habitual or excessive use of intoxicants or drugs;
12. Cruelty to animals;
13. Revocation of a license to practice veterinary medicine by a state, territory or district of the United States on grounds other than nonpayment of license or permit fees;
14. Unprofessional conduct by violation of a regulation promulgated by the Board;
15. Failure of a veterinary technician, certified euthanasia technician or equine dentist to work under the direction and/or supervision of a licensed veterinarian;
16. Failure of a licensed veterinarian to reasonably exercise direct supervision with respect to a veterinary technician, certified euthanasia technician, equine dentist, veterinary assistant or veterinary student;
17. Aiding or abetting the practice of veterinary medicine by a person not licensed, certified or permitted by the Board;
18. Using any controlled substance on any animal for the purpose of illegally influencing the outcome of a competitive event, show or sale or having been convicted of a violation of the "Uniform Controlled Substance Act," P.L.91-513;
19. Willfully or negligently administering a drug or substance that will adulterate meat, milk, poultry, fish or eggs;
20. Failure to maintain required logs and records;
21. The use of controlled substance or the sale of any controlled substance or the prescription of extra-label use of any over the counter drug in the absence of a legitimate purpose;
22. Failure to report, as required by law, or making false report of any contagious, infectious, zoonotic or foreign animal disease;
23. Unfair or deceptive practices; or
24. Violation of any of the provisions of this Act or any of the

rules of the Board.

B. The Veterinary & Livestock Program Office may, upon written complaint by any person, institute an investigation and, after notifying the accused, refer the complaint to the Board for a hearing to determine if a violation of this Section has occurred.

C. The Navajo Nation Board of Veterinary Medicine will notify the State Veterinary Licensing Board of its findings of any investigation, or any disciplinary actions.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**Note.** Slight rewording: the word "in" deleted at Subsection A(7); the word "impressionable" changed to "impersonating" at Subsection A(9); and the word "has" changed to "having" at Subsection A(18).

#### **§ 1023. Grounds for refusal to issue or renew a premises license; disciplinary action**

A. The Board may take disciplinary action against the responsible veterinarian, may place the person on probation, or may revoke, suspend, refuse to issue or refuse to renew a veterinarian's premise license for any of the following grounds:

1. Failure to notify the Board within 10 days of a change of ownership, management, or responsible veterinarian(s);

2. Failure to maintain clean and sanitary facilities for the performance of services in accordance with the rules established by this Chapter and the Board;

3. Failure to maintain accurate records or reports as required by the Board or applicable law;

4. Failure to maintain veterinary medical supplies, controlled substances, surgical equipment and other equipment in a safe, efficient, legal and sanitary manner;

5. Failure to keep a copy of records of all animals receiving veterinary services, failure to provide a summary of such records upon request to the client at the appropriate charge or failure to produce such records at the request of the Board;

6. Revocation or suspension of the license to practice veterinary medicine of the responsible veterinarian(s) holding the premises license;

7. Failure of the responsible veterinarian(s) to maintain a current license to practice veterinary medicine; or

8. Violation of any provisions in this Chapter.

B. The Veterinary & Livestock Program Office may, upon written complaint by any person, institute an investigation and, after notifying the accused, refer the complaint to the Board for a hearing to determine if a violation of this Section has occurred.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **Subchapter 3. Navajo Nation Board of Veterinary Medicine**

#### **§ 1030. Establishment**

There is hereby created the Navajo Board of Veterinary Medicine within the Navajo Nation Department of Agriculture.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1031. Purpose**

The purpose of Navajo Nation Board of Veterinary Medicine shall be:

A. To promote and encourage the highest quality and professionalism in the practice of veterinary medicine on the Navajo Nation; and

B. To regulate the admission of veterinarians, certified veterinary technicians, certified euthanasia technicians, equine dentists and veterinary assistants on the Navajo Nation.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1032. Personnel and organization**

A. The Board shall consist of seven members. No less than five of the members shall be enrolled members of the Navajo Nation.

1. Two members shall be licensed veterinarians. These two members must have a license to practice veterinary medicine by any state in the United States. After the Board's first term, during which time the Board will have instituted a licensing system in accordance with this Chapter, the two veterinary members must have a license issued by the Board.

2. Two members shall be a certified veterinary technician, equine dentist or certified euthanasia technician. These two members must have a



license to practice veterinary technology, equine dentistry and/or certified euthanasia technician by any state in the United States. After the Board's first term, during which time the Board will have instituted a certification system in accordance with this Chapter, the two members must be certified by the Board as a certified veterinary technician, equine dentist or certified euthanasia technician.

3. A representative from the Department of Agriculture as a member.

4. A representative from the Department of Resource Enforcement as a member.

5. One member shall be a layperson and shall represent the public interest. The layperson shall not be a veterinarian or veterinary technician or have any significant financial interest in the field of veterinary medicine.

6. All members of this board shall be residents of the Navajo Nation.

B. Selection. Initially, the Board shall be appointed by the President of the Navajo Nation. Thereafter, the Board members shall be nominated by Navajo Nation licensed veterinarians and Navajo Nation certified veterinarian technicians and voted into office.

C. The Resources Committee of the Navajo Nation Council shall confirm the seven board members.

D. Term. Each member shall serve for a term of four years.

E. Officers. The Board shall elect a chairperson and other officers as it deems necessary. The term of each officer shall be one year ending June 30 or until the successor is elected.

F. Compensation. Each member of the Board shall receive compensation at a rate determined by the Board, but not to exceed one hundred dollars (\$100.00) for each day engaged in the service of the Board.

G. Revolving Account. The Board shall deposit all fees received pursuant to this Chapter with the Navajo Nation for the exclusive use of the Board, and money shall be expended only upon vouchers certified by a majority of the Board.

H. Meetings. The Board shall hold four quarterly meetings annually. Other special meetings may be held as necessary, but subject to the availability of funds.

I. Quorum. Unless otherwise stated, a majority of the Board members shall constitute a quorum.

J. Reports. The chairperson of the Board shall make an annual report to the Resources Committee on or before October 1 of each year. The report shall include a summary of licenses and certificates censured, summary of all investigations and actions of censure and a financial statement for the

preceding fiscal year.

K. Removal. If a Board member fails or refuses to fulfill the responsibilities and duties of a Board member, including attendance at Board meetings, the Board may remove the Board member and replace the member in accordance with this Chapter.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1033. Board duties and powers**

The Board shall have the following powers:

A. To examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in the Navajo Nation and issue, renew, deny, suspend or revoke licenses, certificates and issue letters of concern;

B. To create a procedure for license, permit, and certificate application;

C. To establish annually a schedule of nominal license, permit, and certificate fees based in part on the Board's financial requirements for the ensuing year in accordance with this Chapter;

D. To conduct investigations necessary or the assignment of an independent investigator to determine violations of this Act, and discipline persons found in violation of it;

E. To coordinate with the Veterinary & Livestock Program Office in administering and enforcing this Act;

F. To promulgate and enforce regulations necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of this Act;

G. To adopt regulations establishing continuing education requirements as a condition for license or certificate renewal;

H. To examine all applicants for certification and licensure purposes. Such examination shall be held at least once a year at the time and place designated by the Board; and

I. To communicate with State Boards of Veterinary Medicine.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1034. Legislative oversight**

The Navajo Nation Board of Veterinary Medicine shall operate under the legislative oversight of the Resources Committee of the Navajo Nation Council pursuant to 2 N.N.C. § 691 *et seq.*

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **Subchapter 4. Licensing of Veterinarians**

#### **§ 1040. Qualifications of license applicants**

Every veterinarian applicant shall:

A. Be of good moral character as it relates to the functions and duties of licensed veterinarian;

B. Have graduated from a veterinary university or college recognized by the AVMA (American Veterinary Medical Association);

C. Pass the National board exam and state examination of primary residency approved by the Board on subjects of veterinary medicine to be determined by the Board;

D. Be in good standing with State Veterinary Licensure; and

E. Review and pass test of jurisprudence of the Navajo Nation Veterinary Act.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1041. Examination of applicants**

The veterinary examination shall consist of:

A. Passing national, state and Navajo Nation examinations for licensure approved by the Board; and

B. An interview by the Board.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1042. License by endorsement**

The Board may issue a license without examination on Navajo laws related

to the practice of veterinary medicine, to any qualified applicant who:

- A. Holds an active license in one or more states;
- B. Has actively engaged in the practice of veterinary medicine for at least three of the preceding five years in one or more states before filing an application for licensure in the Navajo Nation;
- C. Has graduated from an accredited veterinary college recognized by the AVMA;
- D. Has had no disciplinary action taken against the applicant by any public agency concerned with the practice of veterinary medicine, has not been the subject of an adverse judgment resulting from the practice of veterinary medicine, and no disciplinary action taken against the applicant regarding illegal drug use;
- E. Has good standing in other States or the Navajo Nation; and
- F. Has paid the required licensing fee and other fees of the Board.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1043. Temporary permits**

A. The Board may issue temporary permits to license applicants who have graduated from an accredited veterinary college recognized by the AVMA and who have applied for a license board meeting.

1. The permit shall expire at the next board meeting.
2. If an applicant fails to attend the board meeting, the Board, by majority consent, may extend the permit until the next examination period's results are available.
3. No more than two temporary permits shall be issued to one individual. No temporary permit shall be good for more than three months.
4. Must be licensed in good standing within state residing as an active practicing veterinarian.

B. Temporary permits entitle their recipients to engage in the active practice of veterinary medicine in the Nation as employees of a Navajo licensed veterinarian or under the supervision of the Nation.

C. Holders of temporary permits shall be eligible for the next board meeting provided the holder meets the qualifications set forth in Section 1040 or 1042 and provided the holder has not violated any provision of this Chapter.

D. Temporary permits maybe revoked in violation of this Act.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1044. Permit for non-resident practice**

If the Board sees fit, it may choose to issue temporary permits to veterinarians licensed to practice in states of the United States and whose practice occasionally extends into the Navajo Nation.

A. In good standing with the Veterinary Medical Board of the Navajo Nation.

B. Shall not supersede Section 1043 (A) (3), (A) (4), and (B).

C. Shall abide by all other provisions of this Act.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1045. License renewal**

A. Each license issued in accordance with this Chapter will be subject to a two-year renewal cycle as demonstrated by a two-year expiration date printed on the license.

B. Each license automatically expires on the expiration date printed on the license, unless renewed.

C. For license renewal, the Board shall require proof of:

1. Continuing education;

2. Good standing with State of Residence and have active veterinary license;

3. Premise License;

4. No suspension, revocation or conviction against the renewal applicant's previous certificate;

5. The applicant having paid the reasonable renewal fee determined by the Board;

6. The applicant having provided up-to-date information on the address of applicant's license; and

7. Any other factors the Board finds compelling.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

## **Subchapter 5. Certified Veterinary Technicians**

### **§ 1050. Certification**

The Board shall certify qualified applicants as veterinary technicians.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1051. Qualifications**

A. Applicants shall be of good moral character and be at least 18 years of age. Applicants shall furnish one of the following:

1. Proof of graduation from a two-year curriculum in veterinary technology, or its equivalent, in a college or other institution approved by the Board, or the equivalent of such graduation as determined by the Board; or

2. Proof that the applicant has been employed for at least two years as a veterinary assistant under the supervision of a veterinarian licensed in the Nation, any state or territory of the United States, and is recommended to the Board by the employing veterinarian.

B. Applicants must have passed a state veterinary technician examination and is licensed by said state.

C. Applicants must also be approved by the Board.

D. Applicants must also pay the nominal application fee determined by the Board.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1052. Temporary certificates for non-resident technicians**

A. If the Board sees fit, it may choose to issue certificates to veterinary technicians certified to practice in states of the United States and whose practice occasionally extends into the Navajo Nation.

B. Applicants must also pay the nominal application fee determined by the Board.

C. No more than two temporary permits shall be issued to one individual. No temporary permit shall be good for more than three months.

**History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**§ 1053. Services**

A. The Board shall adopt rules and regulations pertaining to and limiting the services performed by a veterinary technician.

B. Veterinary technicians may perform those services authorized by the Board but may not perform surgery other than simply on the skin and underlying soft tissue, diagnosis or prognosis of animal diseases, or prescribe controlled substances.

C. Emergency exemptions may be made as may be required by the Board, but shall not violate Section 1063.

**History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**§ 1054. Certificate renewal**

A. Each certificate issued in accordance with this Chapter shall be subject to a two-year renewal cycle as demonstrated by a two-year expiration date printed on the certificate.

B. Each certificate automatically expires on the expiration date printed on the license unless renewed.

C. Certificate renewal, the Board shall require proof of:

1. Continuing education;
2. Employment;
3. No suspension, revocation or conviction against the renewal applicant's previous certificate;
4. The applicant's having paid the reasonable renewal fee determined by the Board; and
5. Any other factors the Board finds compelling.

**History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**§ 1055. Responsibility**

A. Veterinary technicians and the veterinarians who directly supervise them are jointly and severally liable for the acts and omissions of the veterinary technicians in the course of their work.

B. Veterinary technicians whom conduct veterinary activity previously covered in this Act without the approved consent of a supervising veterinarian, shall be solely liable for their actions.

**History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**Subchapter 6. Equine Dentist**

**§ 1060. Certification**

The Board shall certify qualified applicants as an equine dentist.

**History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**§ 1061. Qualifications**

A. Applicants shall be of good moral character and be at least eighteen years of age. Applicants shall furnish the following:

1. Proof of graduation from a certified program of equine dentistry;

2. Minimum of 40 hours of supervised field experience of equine dentistry; and

3. Review and pass test of jurisprudence of the Navajo Nation Veterinary Act.

B. Applicants must also be approved by the Board.

C. Applicants must also pay the nominal application fee determined by the Board.

**History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**§ 1062. Temporary certificates for non-resident equine dentists**



A. If the Board sees fit, it may choose to issue certificates to equine dentists certified to practice in states of the United States and whose practice occasionally extends into the Navajo Nation.

B. Applicants must also pay the nominal application fee determined by the Board.

C. No more than two temporary permits shall be issued to one individual. No temporary permit shall be good for more than three months.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1063. Services**

A. The Board shall adopt rules and regulations pertaining to and limiting the services performed by an equine dentist.

B. Equine Dentists may perform only those services authorized by the Board.

C. Only a licensed veterinarian and not an equine dentist may prescribe or administer, or both prescribe and administer, any drug.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1064. Certificate renewal**

A. Each certificate issued in accordance with this Chapter shall be subject to a two-year renewal cycle as demonstrated by a two-year expiration date printed on the certificate.

B. Each certificate automatically expires on the expiration date printed on the license unless renewed.

C. Certificate renewal, the Board shall require proof of:

1. Continuing education;

2. Employment;

3. No suspension, revocation or conviction against the renewal applicant's previous certificate;

4. The applicant's having paid the reasonable renewal fee determined by the Board; and

5. Any other factors the Board finds compelling.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1065. Responsibility**

A. Equine Dentists and the veterinarians who directly supervise them are jointly and severally liable for the acts and omissions of the equine dentists in the course of their work.

B. Equine Dentists whom conduct dentistry activities previously covered in this Act without the approved consent of a supervising veterinarian, shall be solely liable for their actions.

C. Equine Dentists must carry proof of certification while practicing equine dentistry.

D. Supervising veterinarian and certified equine dentists must maintain dental charts for procedures done.

E. Equine Dentists shall practice current biosafety and hygiene procedures during and after every patient.

F. Equine Dentists shall be required to report any suspicious diseases encountered to the Navajo Nation Veterinary & Livestock Program, Department of Agriculture.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

## **Subchapter 7. Licensing of Veterinary Medical Premises**

### **§ 1070. Generally**

All premises (veterinary clinics, hospitals, veterinary mobile clinic, etc.) within the boundaries of the Navajo Nation of all practicing veterinarians shall be licensed and shall meet the requirements of construction, sanitation and cleanliness set forth in this Chapter and expanded upon by the Board. The Board shall recognize premise licenses issued by applicable states.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1071. Inspections**

The Board or its designee shall inspect all premises before licensing them.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1072. Building and grounds standards**

All buildings, vehicles and grounds shall conform to applicable laws and regulations. The premises shall be identifiable as veterinary medical facilities during all hours in which services are available to the public and all licensed veterinary medical premises registered with Navajo Nation Animal Identification System.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1073. Equipment standards**

A. All veterinary premises shall be equipped with adequate diagnostic and treatment equipment and supplies.

B. The Board shall determine what constitutes adequate equipment and supplies.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1074. Housekeeping standards**

A. All areas of the veterinary medical grounds, buildings and facilities shall be kept clean and free of refuse.

B. Floors, countertops, tables, sinks, and similar equipment and fixtures shall be cleaned and disinfected after contact with any internal organ, body fluid or other bodily discharges.

C. Examination tables, surgery tables and all indoor animal compartments shall be cleaned and disinfected after each patient use.

D. Indoor animal compartments and exercise runs shall be cleaned and disinfected at least once a day when in use.

E. Equine compartments shall be cleaned at least once daily while in use.

F. Large Animal Compartments shall be cleaned at least once a week upon vacating the premise.

G. If communicable disease of the patient housed therein is present, the

enclosure shall be disinfected after each patient usage, and personnel shall practice current biosecurity containment and safety procedures following each treatment or contact.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1075. Veterinary mobile clinics**

All facility, housekeeping and equipment standards enumerated in this Act shall be applicable to Animal Mobile Clinics. All Animal Mobile Clinics shall be equipped with:

- A. Hot and cold water sources;
- B. Storage containers for the disposal of waste & biohazard materials;
- C. A power source to operate all diagnostic equipment;
- D. If treating communicable diseases personnel shall follow current biosecurity procedures following each treatment of contact;
- E. Drugs shall be maintained in a safe and orderly manner;
- F. Facilities shall be provided for meeting manufacturers' requirements for temperature control of medications and supplies;
- G. Surgical equipment shall be in either individual sterilized packs or a sterilizing solution; and
- H. Any other equipment the Board finds compelling.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **Subchapter 8. Dispensing of Drugs and Devices**

#### **§ 1080. Provisions**

A. Veterinarians may dispense drugs and devices kept by veterinarians, if the drugs and devices are dispensed in packages labeled with the following information:

1. The dispensing veterinarian's name, address and telephone number;
2. The date the drug and/or device is dispensed;
3. The animal owner's name and the animal's or the herd's identification; and

4. The name, strength and quantity of the drug and/or device, directions for its use and any cautionary statements.

B. The dispensing veterinarians enter into the medical record the name, strength and quantity of any drug dispensed, the date the drug and/or device is dispensed and the therapeutic reason(s).

C. Veterinarian and medical personnel will have an appropriate Veterinary-Client-Patient-relationship.

D. All medical orders shall be explained to the owner in oral and understandable terms.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1081. Packaging requirements**

A. Controlled substance that is repackaged by veterinarians shall be dispensed in a child-proof container unless the animal owner or the person responsible for the animal is physically incapable of opening such a container and him or her signs and waives this requirement.

B. Veterinarians may dispense bulk controlled substance in non-child-proof containers. For the purposes of this Section, more than one ounce of any product shall constitute a bulk product.

C. Veterinarians may dispense controlled substance in the manufacturer's original dispensing package without repackaging the product in child-proof containers.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1082. Storage**

A. All controlled substance shall be kept in a locked container unless a veterinarian or certified euthanasia technician is immediately present.

B. All controlled substances shall be stored and locked in an area where members of the public are not allowed access unless accompanied by a veterinarian or a member of the veterinarian's staff.

C. All unused and/or expired controlled drugs shall be destroyed or returned to the source of supply in accordance with DEA requirements.

D. Non-veterinarian employee(s) shall not have access to controlled substances unless a veterinarian is present.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1083. Who may dispense drugs**

A. When dispensing prescription medication, a veterinarian or an authorized employee acting under the direct supervision of a veterinarian may select the drug, count the quantity of the drug, and place the drug in a prescription container. Any employee may prepare labels, prepare drug containers, or record information required by applicable law. A veterinarian shall personally review the repackaged product and the records to ensure that they are accurate and comply with any applicable laws before the drug is dispensed.

B. When dispensing controlled substance, only a licensed veterinarian may dispense. The veterinarian supervising the dispensing shall personally ensure that records are maintained and that all applicable laws are followed.

C. Outdated drugs shall not be dispensed, except in times of emergency and no other drugs are available for the condition being treated.

D. Prescriptions may be written for third-party dispensing pursuant to Section 1082.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

## **Subchapter 9. Certified Euthanasia Technician**

#### **§ 1090. Application; qualifications; endorsement**

A. Only Certified Euthanasia Technicians (CET) are allowed to handle and administer controlled euthanasia drugs.

B. Application for certification as a certified euthanasia technician (CET) must be made on forms prescribed by the Board.

C. Application must include:

1. A current, within two years, photograph of the applicant, certified by a notary;
2. Documentation of successful completion of a Board-approved training program taken within three years from the application date;
3. Documentation of successful completion of a Board-approved written and practical examination;

4. Verification of all current employment at certified agencies;

5. Navajo Nation Department of Criminal Investigation background check verifying that the applicant has no previous criminal convictions involving dangerous drugs and/or controlled substances, domestic violence or animal cruelty;

6. Verification that applicant is at least 18 years of age; and

7. Payment of the proper application fee.

D. The Board may allow submission of a current euthanasia technician license from another state or province to meet the requirements of (C) (2) and (3) of this Section, if the Board determines that the other state's or province's equivalent to or greater than the standards of the Navajo Nation.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1091. Board-approved training program criteria**

To qualify for approval, a euthanasia training program must:

A. Be conducted by a qualified instructor;

B. Include but not be limited to instruction in:

1. Proper dosage and handing of approved euthanasia drugs;

2. Human safety and proper injection techniques;

3. Pharmacology of approved euthanasia drugs;

4. Proper animal handling to ease trauma and stress;

5. Animal anatomy;

6. Proper security precautions;

7. Proper record keeping; and

8. Appropriate verification of death; and

C. Issue a certificate of approval containing:

1. Name of applicant;

2. Name of instructor;

3. Title of course;

4. Date of course;
5. Number of hours; and
6. Presentation format.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1092. Certified Euthanasia Technician test criteria**

A. A Board-approved written and practical test for CETs must include:

1. Navajo Nation regulations governing CETs;
2. State and DEA drug record keeping requirements including disposal of out-of-date drugs and reporting of loss or theft of drugs;
3. Human safety in administration of animal euthanasia;
4. Pharmacology of sodium pentobarbital or its derivatives;
5. Proper dosage and injection techniques of approved euthanasia drugs;
6. Animal anatomy;
7. Verification of death; and
8. Proper disposal of carcass.

B. A passing score on the written portion of the examination of 70% is required.

C. A passing score on the practical test will be determined by the successful completion of hands-on demonstrations which indicate that the applicant has been properly trained in procedures which enable the applicant safely and effectively to perform humane euthanasia with sodium pentobarbital. The practical examination will be graded on a pass/fail basis.

D. Applicants who fail to achieve a passing score on any portion of the exam will not be eligible for certification, or eligible for retesting for one year.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.



**§ 1093. Application for Certified Euthanasia Agencies**

A. A certified euthanasia agency (CEA) may purchase and possess controlled substances approved for the purpose of euthanasia. The application for initial certification as a CEA must be made on forms provided by the Board.

B. Applications must include:

1. Documentation of passage of an inspection by a Board-approved instructor;

2. A copy of completed application sent to the DEA to possess and store controlled substances approved by the Board for the purpose of euthanasia, DEA number to be reported to Board when issued;

3. A list of all CETs or veterinarians employed by the agency with the day, month, and year that each individual began employment;

4. Indication of which CET is responsible for all aspects of euthanasia at the agency; and

5. Payment of the proper fee.

**History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

**§ 1094. Certified Euthanasia Agency inspection criteria**

A. An inspection of a CEA must be conducted annually by the Board or a person authorized by the Board with its full authority.

B. The inspection must include:

1. Verification that the area and equipment is appropriate for animal euthanasia;

2. Verification of the correct security, storage, disposal and labeling of euthanasia drugs;

3. Verification of correct drug record keeping;

4. Appropriate sanitation; and

5. Any other condition that the Board determines is relevant to the proper euthanasia of animals.

C. If the inspector determines that a deficiency substantially affects the public health, safety, or welfare or jeopardizes animals under the control of the CEA, the inspector must immediately inform law enforcement and the Board which may summarily suspend the CEA's certificate pursuant to and applicable Navajo Nation law. If a less serious deficiency is found after inspection, it

must be communicated to the agency and the Board in writing. The CEA must correct any such deficiency within 30 days from the date of the inspection. If a second inspection is required, a second inspection fee must be paid by the agency. Failure to sufficiently correct a noted deficiency will be addressed as a disciplinary matter by the screening panel of the Board and the Board may notify the DEA.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1095. Termination of Certified Euthanasia Technician employment; lapse of certificate**

A. A CEA must notify the Board in writing within 10 days of the date of termination of a CET. The certificate of the CET must be lapsed by the Board upon notification that the technician is no longer employed by a CEA as required by law.

B. A CET must notify the Board in writing within 10 days of the change in employer or addition of a new CEA employer.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1096. Approved euthanasia drugs**

The following drug is an approved euthanasia drug: Sodium pentobarbital or its derivative.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1097. Annual renewal of certificate; technicians; Certified Agencies**

A. CETs must re-certify on a form or by a method approved by the Board on or before May 30 of every year, beginning in 2008. The certification renewal application must include:

1. Verification of satisfactory completion of a Board-approved euthanasia course;
2. Documenting continued education taken within the 24 months immediately preceding the current renewal deadline date;
3. Verification of current employment at a CEA; and

4. Payment of the proper fee.

B. CEAs must renew certification on a form or by a method approved by the Board on or before May 30 of every year, beginning in 2008. The renewal application must include:

1. Verification of completion of satisfactory inspection within 12 months of the current renewal deadline date;

2. A list of currently employed CETs or veterinarians with day, month, and year that each individual began employment and indication of which CET is responsible for all aspects of euthanasia at the agency;

3. The proper fee; and

4. Verification of current DEA registration.

C. A renewal notice will be sent by the Board to each certificate holder at the current certified agency address in the Board's files at least 30 days prior to the renewal deadline. Failure to receive such notice will not relieve the certificate holder of the certificate holder's obligation to pay certification renewal fees in such a manner that they are received by the Board on or before the certificate renewal date.

D. A CET's or CEA's renewal certificate shall be valid for one year following the expiration date of the previously held certificate.

E. The fee for any certificate holder who fails to recertify or submit the proper fee prior to the expiration date will be increased by an amount determined by the Board and specified as fees are paid.

F. Any certificate holder failing to renew a certificate within 90 days of the expiration date will be considered to have forfeited the certificate. If 90 days have passed, the CET or CEA must reapply to the Board for an initial certificate to function as a CET or CEA and pay the required fee.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1098. Unprofessional conduct**

For the purposes of implementing the provisions the Board further defines unprofessional conduct as follows:

A. Violation of any state or federal statute of administrative rule regulating the practice of animal euthanasia, including any statute or rule defining or establishing standards of animal euthanasia or professional conduct or practice;

B. Cruel or inhumane treatment of animals;

C. Incompetence, negligence, cruelty or use of any practice or procedure

in the practice of animal euthanasia, which creates an unreasonable risk of physical harm to the animal, staff or practice;

D. Possession, use, addiction to, diversion or distribution of controlled substances in any way other than for legitimate euthanasia purposes, or violation of any drug law;

E. Failure to cooperate with an investigation or inspection authorized by the Board;

F. Failure to maintain sanitary facilities or apply sanitary procedures for euthanizing animals;

G. Practicing as a CEA or as a CET without current certificate;

H. Willful or repeated violations of rules established by this Board, any health agency or authority of the state or political subdivision thereof;

I. Resorting to fraud, misrepresentation or deception in the euthanasia of an animal;

J. Failure to have current DEA registration;

K. Failure to report to the Board termination of change of employment for a CET within 10 days;

L. Euthanasia of an animal for which the CET has not received training.

M. Failure to report any suspected zoonotic disease as required by law.

N. Failure to dispose of the carcass in an approved manner.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **Subchapter 10. Prescription Horse Shoeing**

#### **§ 1101. Generally**

The Board shall oversee the proper practice of prescription horse shoeing.

#### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

#### **§ 1102. Qualifications**

Only those farriers with advanced training in prescription horse shoeing shall be permitted to do prescription horse shoeing.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1103. Services**

The Board may adopt rules and regulations pertaining to and limiting prescription horse shoeing.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.

### **§ 1104. Responsibility**

A. Farriers whom conduct prescription horse shoeing activities previously covered in this Act without the approved consent of a licensed veterinarian shall be solely liable for their actions.

B. Farriers whom conduct prescription horse shoeing shall record and maintain records for three years for all treatments done.

C. Failure to meet the standards of this Section may be referred to the Board for corrective actions.

### **History**

CJY-27-07, July 20, 2007. Effective date October 1, 2007.